

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1265
Tuesday, January 26, 2020, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Bond, Chair VanDeWiele, V. Chair Radney, Secretary Brown Shelton		Wilkerson Chapman Sparger	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on January 21, 2020, at 9:38 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Bond called the meeting to order at 1:00 p.m.

Mr. Chapman read the rules and procedures for the Board of Adjustment Public Hearing.

The City Board of Adjustment was held by videoconferencing and teleconferencing via **GoToMeeting**, an online meeting and web conferencing tool. Members of the public will be allowed to attend and participate in the Board of Adjustment’s meeting via videoconferencing and teleconferencing by joining from a computer, tablet or smartphone using the following link:

<https://www.gotomeet.me/COT5/boa-gotomeeting-in-council-chambers-january-26th>

The staff members attending remotely are as follows:

Ms. Audrey Blank, City Legal

The Board members and staff members attending in person are as follows:

- Mr. Austin Bond, Chair
- Mr. Stuart Van De Wiele, Vice Chair
- Ms. Burlinda Radney, Secretary
- Mr. Steve Brown, Board Member
- Ms. Jessica Shelton, Board Member
- Mr. Austin Chapman, Tulsa Planning Office
- Mr. Dwayne Wilkerson, Tulsa Planning Office
- Ms. Janet Sparger, Tulsa Planning Office

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MINUTES

None.

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NEW APPLICATIONS

23074—Rashad Hall

Action Requested:

Special Exception to permit a bar within 150 feet of a residentially zoned district (Section 15.020-G). **LOCATION:** 6202 South Peoria Avenue East (**CD 2**)

Presentation:

The applicant has withdrawn the application; relief is not needed per BOA-19355.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

**PRT LT 1 BEG SECR LT 1 TH W243.15 N303.94 CRV LF 56 E198.13 S333.05 POB
BLK 1, ZANDBERGEN ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

UNFINISHED BUSINESS

23051—William Bell

Action Requested:

Special Exception to permit a 12-foot wall in the front street setback and a 10-foot wall around the perimeter (Section 45.080-A); Variance to allow a wall to be located inside the City of Tulsa right-of-way or planned right-of-way (Section 90.090-A). **LOCATION:** 3514 South Yale Avenue East (**CD 9**)

Presentation:

The applicant requests a continuance to February 23, 2021.

Mr. Van De Wiele asked Mr. Bell to state the purpose for the continuance because the Board has heard this case a few times already. Mr. Bell stated that he is still working with Chris Kovak on the process of this and the redesign has not been approved by the homeowner. The homeowner has been out of town quite a bit, so he has not been able to finalize the redesign of the wall. Mr. Bell stated the homeowner is struggling with having openings in the wall for security purposes.

Ms. Shelton stated this item has been on the agenda three previous times, so if the Board continues this request for 30 days, she would like to have the Board hear the request or just deny the request.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SHELTON**, the Board voted 4-1-0 (Bond, Brown, Radney, Shelton "aye"; Van De Wiele "nay"; no "abstentions"; none absent) to **CONTINUE** the request for a Special Exception to permit a 12-foot wall in the front street setback and a 10-foot wall around the perimeter (Section 45.080-A); Variance to allow a wall to be located inside the City of Tulsa right-of-way or planned right-of-way (Section 90.090-A) to the February 23, 2021 Board of Adjustment meeting; for the following property:

PRT SE NE BEG NEC N/2 S/2 SE NE TH W280 S195.11 E280 N195.11 POB LESS E50 THEREOF FOR RD SEC 21 19 13 1.03AC, City of Tulsa, Tulsa County, State of Oklahoma

23065—Kyler & Allison Ketron

Action Requested:

Variance to allow the floor area of a detached accessory building to exceed 500 square feet or 40% of the floor area of the principal residential structure (Section 45.030-A). **LOCATION:** 2713 East 55th Place South **(CD 9)**

Presentation:

Allison Ketron, 2713 East 55th Place, Tulsa, OK; presented photos from the overhead projector showing the subject property and the proposed site of the requested accessory building, and the surrounding area. Ms. Ketron stated there are 13 houses on her street; 5 are rentals, 4 are vacant. At the last meeting Ms. Ketron stated she did listen to the Board's concerns and she did not take them lightly. The siding or wood would be a costly expense and it would not hold up as long as the proposed structure. The aesthetics were a concern, but she assured the Board that the proposed structure will look as nice as the many houses that surround her property. Ms. Ketron stated that they have also added wainscoting to the proposed structure as the Board suggested.

Mr. Van De Wiele asked Ms. Ketron if the overhead doors would face to the east. Ms. Ketron answered affirmatively. Mr. Van De Wiele asked Ms. Ketron if the patio would face south. Ms. Ketron answered affirmatively.

Ms. Ketron stated that all the neighbors she has spoken with have given their support. She grew up in this neighborhood and is committed to the neighborhood.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Brown stated he appreciates the new photos, but he still thinks it looks like an auto repair shop and it does not fit into the neighborhood.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-1-0 (Bond, Radney, Shelton, Van De Wiele "aye"; Brown "nay"; no "abstentions"; none absent) to **APPROVE** the Variance to allow the floor area of a detached accessory building to exceed 500 square feet or 40% of the floor area of the principal residential structure (Section 45.030-A), subject to conceptual plans 2.10 of the agenda packet and submitted today. The Board finds the hardship to be size of the lot as compared to the surrounding neighborhood, the location of the proposed accessory building on the north side street that is uniquely narrow as a City street, and the existence of other out buildings in the immediate vicinity. The accessory building is to be located as shown on page 2.10 and oriented as shown in the images submitted today, so that the overhead doors face east and the patio feature faces south. The accessory building is to be finished and landscaped as shown in the same images. All driving and parking surfaces are to comply with the Zoning Code. In

granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

TR BG 660 E NW COR S/2 SE NW TH S 330 E 132 N 330 W 132 TO PT BG SEC 32 19 13, City of Tulsa, Tulsa County, State of Oklahoma

23066—Tulsa Housing Authority

Action Requested:

Variance to increase the width of the Build-to-Zone in a MX1-U District; Variance to reduce the percentage of the building facade that must be located in the Build-to-Zone in a MX1-U District (Section 10.030, Table 10-5). **LOCATION:** NW/c of West 23rd Street South and South Jackson Avenue West **(CD 2)**

Presentation:

Mark Capron, Wallace Engineering, 123 North Martin Luther King Boulevard, Tulsa, OK; stated this request is for a housing development that is part of a larger project and this is Phase III and Phase IV. Phase I and Phase II is already permitted and under construction. Originally the property was zoned in a PUD, and the size and shape of the development was changed slightly, and the project can no longer do a PUD and PUDs cannot be expanded. After looking into other options it was decided to check into the MX Zoning. The MX Zoning has a lot to do with the urban look and feel, and the subject project is garden apartments. A typical garden apartment development a person could not see the buildings along the outside and the parking would not be concentrated in the center, it would be more mixed up. What this project attempted to do is to get the buildings to the outside and provide an urban feel, which he thinks is in keeping with the

MX Zoning. In Phase I and in Phase II there were no issues as they are having now. The issue on the west side is a planned 18" sanitary sewer line and a 20'-0" utility easement on the east side. That forbids the building in the first 20'-0", that created problems of getting into the build-to zone. On the south side there is a significant slope with an existing wall, and there is a transition area that is being dedicated as a landscape and pedestrian reserve. There is also an 18" sanitary sewer line going through the south. There is a unique situation on the east side in Phase III. All the buildings were to the 20-foot build to zone, but the Engineers reviewed the driveway coming out onto Jackson and realized that with the curve that is in Jackson there was an issue with the sight distance. After discussion with the City it was decided to push the building back. There are significant issues with being able to get the buildings to the build to zone. Also, the percentages that are required per the MX Zoning the project is not meeting the requirements. There is not one single apartment in the middle of the project, the middle building is a shelter, and all the residents are on the outside. Mr. Capron thinks the project meets the intent of the Code with urbanism and the outwardly focused street scape. The site had to be raised to get it out of a flood plain. Last evening, it was brought to his attention that there is an additional issue with the northwest corner of the building. So it was decided that on each corner to present to the intersection and not necessarily to one street or the other; that is a Variance that was not requested in today's application. There are rain guards in the corners, and they are not in Phase III. Originally, they were going to be a slow water reserve but that may not happen. The intent of the MX Zoning is for an urbanism feel, and he thinks this is being provided in this project. The buildings are similar in size, but they are very different architecturally. In speaking with staff, since there is an issue with the northwest building, he would like to limit the Variance request to Phase III, which would be the eastern half.

Mr. Van De Wiele asked Mr. Capron if the shelter was a storm shelter. Mr. Capron deferred to Jeff Hall.

Interested Parties:

Jeff Hall, Tulsa Housing Authority, 601 South Boulder, Tulsa, OK; stated that the shelter is a storm shelter, and it is required.

Mr. Van De Wiele asked if the balance of the interior space was playground space. Mr. Hall answered affirmatively stating that it is situated for residential use, so it is a barbecue area and playground.

Mr. Van De Wiele asked staff if the Variance request is to let the buildings be farther from the street than normal. Mr. Wilkerson stated that it is two things, it is to allow the buildings to be farther from the street and to reduce the percentage of the building that is required inside the build to zone. As part of the mixed-use zoning there is a requirement that states 60% of the build to zone is to be occupied by a building if Jackson is designated as a primary street in the Zoning Code, and in this instance, it is less than that thus the Variance request.

Ms. Shelton asked Mr. Capron if this is the old platting that is being worked within. Mr. Capron stated he has submitted and had approved the preliminary plat along with a list of requirements and comments. He has also submitted a conditional final plat, so the property is being replatted. The rezoning triggers that requirement.

Ms. Shelton asked Mr. Capron if the utility easements on the east end were newly filed easements or are, they easements for utility that already existed? Mr. Capron stated that on the west there is a new sanitary sewer line and the City dictated where that would be, and on the west side there is a gas line and a utility easement existing for that, so the project had to be cognizant of that.

Mr. Van De Wiele asked Mr. Wilkerson why was this not multi-family zoning instead of the MX zoning? Mr. Wilkerson stated in looking at just this block it made sense to have some different zoning, but the overall project is a much larger more urban kind of feel, especially along Southwest Boulevard.

Ms. Shelton asked Mr. Capron how units are in the two phases of the project. Mr. Capron stated that Phase III is 77 units and Phase IV is 65 units.

Ms. Blank asked if the applicant has submitted a revised legal description, because the Variance application applies to a legal description for the entire site. Mr. Chapman asked Ms. Blank if she was speaking to the City ownership issue, or if it is that the applicant is only wanting to do Phase III. Ms. Blank stated it is because the applicant wants the Variance only applied to Phase III. Mr. Chapman stated the applicant has not separated out the legal description, but he thinks the intent is that on the approval that the applicant ties it to Phase III, and Mr. Chapman stated he does have a legal description for Phase III, but currently it has been advertised for both phases. Ms. Blank stated the legal description should apply to the Variance granted today.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Bond, Brown, Radney, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the Variance to increase the width of the Build-to-Zone in a MX1-U District; Variance to reduce the percentage of the building facade that must be located in the Build-to-Zone in a MX1-U District (Section 10.030, Table 10-5), subject to conceptual plan submitted today. The approval is limited to Phase III of the development as shown on the site plan submitted today. The applicant is to submit to INCOG a legal description for Phase III of the subject property. The Board has found the hardship to be the utility easements and utility lines that are located around the property, as well as how the streets wrap around the subject property, and the flood plain issues that are related to the subject property. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

A PART OF BLOCKS I AND III OF RIVER VIEW PARK ADDITION, A REPLAT OF BLOCK 1 AND A PLAT OF BLOCKS 2-13, CITY OF TULSA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER (NE/4) OF SECTION FOURTEEN (14), TOWNSHIP NINETEEN (19) NORTH, RANGE TWELVE (12) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, RECORDED AS PLAT NUMBER 3128.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF RIVER WEST PHASE I, A RE-SUBDIVISION OF PART OF BLOCK I AND BLOCK III OF RIVERVIEW PARK ADDITION IN THE NORTH HALF (N/2) OF SECTION FOURTEEN (14), TOWNSHIP NINETEEN (19) NORTH, RANGE TWELVE (12) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF AND RECORDED AS PLAT NO. 6913 IN THE OFFICE OF THE TULSA COUNTY CLERK; THENCE S 22° 11' 39" E, ALONG THE EAST LINE OF SAID RIVER WEST PHASE I, A DISTANCE OF 212.29 FEET; THENCE S 24° 02' 20" E, CONTINUING ALONG THE EAST LINE OF SAID RIVER WEST PHASE I, A DISTANCE OF 169.37 FEET; THENCE S 38° 34' 14" E, CONTINUING ALONG THE EAST LINE OF SAID RIVER WEST PHASE I, A DISTANCE OF 78.38 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUING S 38° 34' 14" E, AND ALONG THE EAST LINE OF BLOCK III OF RIVER VIEW PARK ADDITION, A REPLAT OF BLOCK 1 AND A PLAT OF BLOCKS 2-13, CITY OF TULSA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER (NE/4) OF SECTION FOURTEEN (14), TOWNSHIP NINETEEN (19) NORTH, RANGE TWELVE (12) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, RECORDED AS PLAT NUMBER 3128, A DISTANCE OF 98.44 FEET, TO THE NORTHEAST CORNER OF BLOCK I OF SAID RIVERVIEW PARK ADDITION; THENCE CONTINUING S 38° 34' 14" E, AND ALONG THE EAST LINE OF SAID BLOCK I, A DISTANCE OF 191.02 FEET, TO A POINT OF CURVATURE; THENCE ALONG A TANGENT CURVE TO THE RIGHT, CONTINUING

ALONG THE EAST LINE OF SAID BLOCK I, HAVING A RADIUS OF 140.00 FEET, AN ARC LENGTH OF 161.98 FEET, A CENTRAL ANGLE OF 66° 17' 21", A CHORD BEARING OF S 05° 25' 33" E AND A CHORD DISTANCE OF 153.09 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A TANGENT CURVE TO THE LEFT, CONTINUING ALONG THE EAST LINE OF SAID BLOCK I, HAVING A RADIUS OF 344.71 FEET, AN ARC LENGTH OF 171.00 FEET, A CENTRAL ANGLE OF 28° 25' 21", A CHORD BEARING OF S 13° 30' 27" W AND A CHORD DISTANCE OF 169.25 FEET; THENCE S 00° 47' 32" E, CONTINUING ALONG THE EAST LINE OF SAID BLOCK III, A DISTANCE OF 309.88 FEET, TO THE SOUTHEAST CORNER OF SAID BLOCK I; THENCE S 89° 07' 09" W, ALONG THE SOUTH LINE OF SAID BLOCK I, A DISTANCE OF 330.00 FEET; THENCE N 00° 47' 32" W, PARALLEL WITH AND 330.00 FEET WEST OF LAST SAID EAST LINE, A DISTANCE OF 705.20 FEET, TO A POINT ON THE SOUTH RIGHT OF WAY OF WEST 22ND STREET ACCORDING TO SAID PLAT OF RIVER WEST PHASE I; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT, ALONG SAID SOUTH RIGHT OF WAY LINE, HAVING A RADIUS OF 5000.00 FEET, AN ARC LENGTH OF 117.87 FEET, A CENTRAL ANGLE OF 01° 21' 02", A CHORD BEARING OF N 50° 18' 10" E AND A CHORD DISTANCE OF 117.87 FEET, TO A POINT ON THE NORTH LINE OF SAID BLOCK III; THENCE CONTINUING ALONG LAST SAID CURVE TO THE LEFT, ALONG SAID SOUTH RIGHT OF WAY LINE, HAVING A RADIUS OF 5000.00 FEET, AN ARC LENGTH OF 118.45 FEET, A CENTRAL ANGLE OF 01° 21' 26", A CHORD BEARING OF N 48° 56' 56" E AND A CHORD DISTANCE OF 118.45 FEET, TO THE POINT OF BEGINNING;

SAID TRACT OF LAND CONTAINING 6.08 ACRES / 264,875.30 SQUARE FEET.

THIS LEGAL DESCRIPTION WAS CREATED ON JULY 9, 2020 BY ALBERT R. JONES, III, OK PLS #1580, WITH THE BASIS OF BEARING BEING S 22° 11' 39" E, ALONG THE EAST LINE OF RIVER WEST PHASE I, A RE-SUBDIVISION OF PART OF BLOCK I AND BLOCK III OF RIVERVIEW PARK ADDITION IN THE NORTH HALF (N/2) OF SECTION FOURTEEN (14), TOWNSHIP NINETEEN (19) NORTH, RANGE TWELVE (12) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF AND RECORDED AS PLAT NO. 6913 IN THE OFFICE OF THE TULSA COUNTY CLERK., City of Tulsa, Tulsa County, State of Oklahoma

23073—City of Tulsa – Mary Kell

Action Requested:

Special Exception to allow a Public, Civic and Institutional Use/Library of Cultural Exhibit to permit a museum in an RS-3 and AG Districts (Section 5.020, Table 5-2 & Section 25.020, Table 25-2); Variance to increase the maximum permitted height of 35 feet in an RS-3 District (Section 5.030, Table 5-3). **LOCATION:** 1400 North Gilcrease Museum Road West (**CD 1**)

Presentation:

Mary Kell, City of Tulsa, 2317 South Jackson Avenue, Tulsa, OK; stated this project is part of the Vision Tulsa bond package that was approved in 2016. There was a meeting with the neighbors last month and there were mailings sent out to a 900-foot radius, and

there was a little bit of feedback and the project is committed to keeping the neighbors informed about everything that is being done.

Interested Parties:

Susan Neal, Executive Director, Gilcrease Museum, 1400 North Gilcrease Museum Road, Tulsa, OK; stated she is speaking directly to the need to resolve the Special Exception related to the museum's location. The Thomas Gilcrease Institute of American History and Art, more commonly known as Gilcrease Museum, has been functioning as a museum at this location for 72 years, since 1949. The Thomas Gilcrease home and as well as the Gilcrease family mausoleum are also located on the subject property making this location with historic significance, not only to the museum but to the City of Tulsa. The support for and acknowledgement of the museum's presence in this neighborhood can be seen not only in the museum but also in the naming of the street on which the museum is located, the naming of the adjacent neighborhood and the still planned Gilcrease Expressway. Throughout its history the museum has been recognized as one of Tulsa's most valuable assets and it has been supported by the community in numerous public votes at this location. Additionally, in recognition of the museum at this location the City of Tulsa invested in 468 acres adjacent to Gilcrease to be used for the benefit of the museum.

Jame Anderson, Smith Group, 1700 New York Avenue N. W., Washington, D.C.; stated that the Smith Group is the architectural and engineering firm on the project. Smith Group has partnered with several groups including One Architecture in Tulsa. Today's request is for an additional 20 feet in height. This ensures the new museum building can be designed with the preservation of the collection as one of the highest priorities. Operational effectiveness is also a priority for the project. The HVAC system can be centrally located and efficiently maintained in this new stacked mapping rather than the sprawling configuration. There are significant sites and landscape opportunities on the grounds, however, these same extraordinary features pose significant difficulties and hardship to building on the subject site. The museum campus has natural features, including rocks below grade, steep sloping topography and the uneven terrain. Each of these factors limits the potential location of any built structures. The buildable area on site is also limited. There are teams that have consolidated the new building footprint to create the highest and best use for the total campus and the property. Ms. Anderson had a photographic presentation of the site on the overhead projector and she explained the photos. Ms. Anderson stated that the most practical location for the proposed new building is within the footprint of the removed existing building. The new footprint will be smaller because the structure will be stacked upward instead of sprawling outward. The height difference between what exists currently and what is proposed is 20 feet. The existing museum has a setback of 255 feet from Gilcrease Museum Road and the new museum structure will be pulled back by an additional 155 feet. Ms. Anderson stated that essentially the proposal is a footprint that will minimize excavation, which is less disruptive for the museum's neighbors. Visitors to the new museum will enjoy the reclaimed landscape in the front portion of the building and will be able to orient themselves within the museum due to the rational building mapping and the more compact footprint, which will offer greater views toward the Osage Hills.

Mr. Van De Wiele stated there is an e-mail from a nearby neighbor and he would like to know if the existing museum would be completely razed for the build out and proposed design. Ms. Kell answered affirmatively. Mr. Van De Wiele stated the same neighbor would like to know if the existing building is to be razed is there a plan to salvage and repurpose the existing materials from the museum, i.e., native stone. Ms. Kell stated that is being considered but the plans are not far enough along in the design to specify that. Ms. Kell stated there are efforts to reuse or conserve, but the plans are not far enough along to have specifics. Mr. Van De Wiele stated the same neighbor would like to know if there will be an environmental impact study done prior to construction allowing for public consideration and comment. Ms. Kell stated the City has hired Intercon for the project and they are creating an abatement plan for the existing museum; anything environmental Intercon is on board to take care of that.

Comments and Questions:

Mr. Van De Wiele asked Mr. Wilkerson about the 63-foot existing roof height along with the current maximum of 35 feet. Mr. Wilkerson stated that his interpretation of this information is they are trying to illustrate that the proposed building is going to be 20 feet higher in the air than the existing building. The exhibits that are attached, page 4.22, shows the maximum building height is 108 feet. The maximum height of a building in the subject zoning district is 35 feet, which is more for residential uses. The proposal is to go 20 feet higher than what exists.

Board Action:

On **MOTION** of **SHELTON**, the Board voted 5-0-0 (Brown, Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the Special Exception to allow a Public, Civic and Institutional Use/Library of Cultural Exhibit to permit a museum in an RS-3 and AG Districts (Section 5.020, Table 5-2 & Section 25.020, Table 25-2); Variance to increase the maximum permitted height of 35 feet in an RS-3 District (Section 5.030, Table 5-3), subject to conceptual plans 4.16 through 4.49, inclusive, of the agenda packet. The Board finds the hardship to be the topographical nature of the subject property and the location of the existing building on the subject property. The built height of the structure be approximately related to the exhibits in the agenda packet. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;

- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

28-20-12 BEG NE/C SE SE-W 667.5'-S 8 08 E 906'-SE 550' TO PT 985' S OF NE/C SE SE-N 985' TO BEG, BEG 33' W & 32.38' N OF SE/C SEC- W 550.32'-NW 389.6'-N 14 00 E 292.48'-N 5 21 W 741.90'-E 159.25'- S 8 00 E 1407.56'-S 310. 66' TO BEG

And

28-20-12 TR IN S/2 SE SE- BEG 565.6' W OF SE/C SE-W 317.54'-N 54.26'- N 35 15 25 E 95.95'-N 10 46 55 E 80.68'-E 172.26'-S 20 35 00 E 222.10' TO BEG, City of Tulsa, Osage County, State of Oklahoma

23075—Tom Neal

Action Requested:

Variance of the required 25-foot front street setback in an RS-3 District (Section 5.030, Table 5-3). **LOCATION:** 1624 South Victor Avenue East (**CD 4**)

Presentation:

Tom Neal, 2507 East 11th Place, Tulsa, OK; stated his client has a house in the Yorktown neighborhood which is a Historic Preservation neighborhood. The current stoop is in disrepair and a little small. The client would like to have a slightly larger porch and cover it to have protection from the weather at the front door. Mr. Neal stated he has already visited with the Historic Preservation Committee and will continue to work with them on this project; he has a meeting with the Historic Preservation Committee on the 4th. The relief is to be able to rebuild a porch that is already non-conforming by about 1'-3" larger and have the steps be slightly larger, from 12" to 15", install a cover and to extend the existing gable.

Mr. Van De Wiele asked Mr. Neal if the porch would be coming out 1'-3" and be the same width. Mr. Neal answered affirmatively stating that the current stoop is slightly inset from the vestibule and it will be lined up, about 4 or 5 inches difference on each side.

Ms. Shelton asked Mr. Neal how this will line up with the houses on each side. Mr. Neal stated the existing house sits inset from the adjacent neighbors and the extension will be less farther out than the neighbors except for the steps.

Ms. Radney asked Mr. Neal if the new porch would be symmetric to the outside of the house, but the door will be offset. Mr. Neal answered affirmatively. Ms. Radney asked Mr. Neal if the Historic Preservation Committee will still have the opportunity to review this. Mr. Neal stated they have already reviewed this once and may request some minor changes.

Mr. Brown asked Mr. Neal what the change might be. Mr. Neal stated the Historic Preservation Committee did not like the way the shingle material met the clinkabrick on the corners, so in respect to that it will be opened up. The clincker brick is almost baroque the way it extrudes on the corners so the extension will be pulled back so that the extension is in the roofline and the wood will be at the corners, so there will not be a sliver of wood that meets the brick.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SHELTON**, the Board voted 5-0-0 (Brown, Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the Variance of the required 25-foot front street setback in an RS-3 District (Section 5.030, Table 5-3), subject to conceptual plans 6.8 and 6.9 of the agenda packet while incorporating any changes requested by the Historic Preservation Committee as long as they are architectural in nature. The Board finds the hardship to be the existing non-conforming structure as it exists. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and

- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

LT 6 BLK 16 & 10' VAC ALLEY, ORCUTT ADDN, City of Tulsa, Tulsa County, State of Oklahoma

23076—Elizabeth Koelle

Action Requested:

Special Exception to permit Low-Impact Medical Marijuana processing (Low-Impact Manufacturing & Industry Use) in the CH District (Section 15.020, Table 15-2). **LOCATION:** 1213 & 1215 South Houston Avenue West **(CD 4)**

Presentation:

Elizabeth Koelle, Up Town Wellness, 1215 South Houston Avenue, Tulsa, OK; stated she has successfully operated at dispensary at the subject location for about 1 ½ years. She would like to add processing to the 1213 South Houston address. The processing will be low impact, which would include pre-rolls and possibly baking edibles.

Mr. Van De Wiele asked Ms. Koelle if there would be any extraction. Ms. Koelle stated she has no intention on doing any extractions at the subject address.

Mr. Bond asked Ms. Koelle to explain the baking proposal. Ms. Koelle stated the baking portion would be Phase II of the business plan and would probably start in about a year.

Mr. Van De Wiele asked Ms. Koelle if she would be baking with product that is processed elsewhere. Ms. Koelle answered affirmatively.

Mr. Brown asked Ms. Koelle how her product is delivered. Ms. Koelle stated that either the vendor or the processor would deliver, because they would have the necessary transport license. Mr. Brown asked Ms. Koelle about the parking at the subject property. Ms. Koelle stated that currently there are seven parking spaces in front of the building, and they are used for the dispensary. She also rents space from the gas station to the north. The processing portion of the operation would not require any additional parking because there would be no clients at that location.

Mr. Van De Wiele asked Ms. Koelle about clients consuming product on site per correspondence received by the Board; are the owners or customers consuming product on site? Ms. Koelle answered no stating that sometimes her employees will take a break off premises, the area between the barber shop and the corner of the subject building. Ms. Koelle used a laser pointed to show the break area on the overhead projector.

Interested Parties:

Mitchell Blessing, 1224 South Galveston, Tulsa, OK; stated he owns the three properties that are directly behind the dispensary. This is a fairly wooded area and the employees do take breaks out back. He has also seen children in the back. The dispensary is open 24 hours a day and it is in a residential neighborhood. The property was originally a day care center, and now that there is traffic 24/7 the crime has increased. There is also a convenience store that is allowing things to go on that is not good for the neighborhood. There is homeless in the area. Mr. Blessing stated that he never thought a dispensary would be a 24/7 operation. It is difficult to get any clarification because OMMA oversees this operation. The Tulsa Police will not do anything about the smoking on the premises because it is handled through OMMA. Mr. Blessing is concerned about smells from the baking process. Because the location is so close to downtown the clients walk down the street while smoking back to the different homeless centers in downtown. Mr. Blessing thinks this operation devalues his property.

David Olsen, 1320 South Galveston, Tulsa, OK; Mr. Olsen's presentation was very mumbled and indistinct. Mr. Bond asked Mr. Olsen to back away from his microphone but it did not help.

Mr. Chapman stated he spoke to Mr. Olsen and he believes what Mr. Olsen is saying is that the Permit Office noted a couple of other deficiencies with the application, one of which, there is an existing dispensary, and they cannot be within a 1,000 feet of another dispensary. That was taken care of in a previous Board case and that has been verified. The other deficiency is that the applicant needs to provide documentation to the Permit Office showing they meet the filtration standards so smells cannot be detected outside. That is something that cannot be waived at this hearing, the permit center will need to do that if the applicant is approved. Mr. Chapman asked Mr. Olsen if what he had stated were his concerns. Mr. Olsen answered affirmatively.

Carol Thayer, 1222 South Houston, Tulsa, OK; stated she has owned her property for more than 15 years. When she purchased the property across the street was a day care center, Teddy Bear Day Care. The new tenant's business is very disturbing, has a very negative effect on the area and it is affecting property values. There are problems with parking, problems with traffic and there are children living there. There are smells being emitted from the subject property. She is very much against this request.

Rebuttal:

Elizabeth Koelle came forward.

Mr. Bond asked Ms. Koelle what her hours of operation are. Ms. Koelle stated the hours of operation as of November 1st is 24 hours a day.

Ms. Koelle thanked the neighbors for voicing their concerns and stated this is the first she has heard of these concerns. She does not want any problems with anyone in the neighborhood, she wants to be a welcomed part of the neighborhood, and she wants everyone to feel their children are safe. Ms. Koelle stated there will be no changes in the parking. As of September 11th OMMA changed the laws allowing her to have her

children at the dispensary. Ms. Koelle stated she does utilize the playground that is in the back for her children when she does not have childcare available.

Mr. Van De Wiele asked Ms. Koelle about her plans for ventilation and air filtration. Ms. Koelle stated that currently she has a heavy-duty ventilation system inside the building. The only things she is not sure about is if the ventilation system between the dispensary and the processing facility has to be separated, because right now the two areas share ventilation. She would assume that the smells outside would come from the people consuming cannabis outside and off the premises. With pre-rolls there should be no smells that should vacate the building and with the baking she believes the ventilation system is adequate.

Comments and Questions:

Ms. Radney stated she is not sure where the concerns lie in terms of what the Board has in the boundaries to make a decision. She is concerned about the increase in intensity of the use at the site and that is probably because of the new hour structure.

Mr. Van De Wiele stated he too is on the fence. This type of business in of itself he believes is less impactful than the dispensary because there is usually not anywhere near as much interface with the public but there is definitely an increase in overall scope of a medical marijuana facility. Most of the neighboring properties tend to be in a high intensity commercially zoning even though a lot of them are residential uses, so he struggles with this. He guesses most of the impact is coming from the hours of operation and the foot traffic that consumes product when they leave the facility. A lot of this comes down to being a good business owner, being a good neighbor and policing the customer base.

Mr. Brown stated he is concerned about the neighbor's perception about the smoking that is happening, either there or as people are leaving.

Mr. Bond stated the Board rarely see people who are adverse to this type of business. It is licensed in the State, and that is something the Board weighs in on. His concern is the 24-hour footprint because it is so close to the residential community.

Ms. Radney stated she does like the increase in intensity of the use. She says this as a person who is on the record as to having a dispensary on her street. The dispensary is one of those that was grandfathered in little commercial use location that is actually carved into the residential street. The neighborhood is pretty progressive, but she is imagining if they came to the Board asking for a Special Exception for manufacturing and if they wanted to operate a dispensary in a 24-hour frame. The major concern for her is the 24 hours in a residential neighborhood. She realizes that that question is not before the Board, but part of what they are wanting to do, in terms of expanding the operation, leads to more pedestrian foot traffic. She believes that of the two products that were described by the applicant they too would lead to the patient behavior that is objectionable to the neighborhood. It would be different if the location were inside the

CBD District, but this is on the other side of the highway and inside a residential neighborhood. This situation is distressful to her and concerns her.

Ms. Shelton stated she is struggling with this request. She hears injury to the neighborhood, but she is not sure if there will be more injury to add this use. She does agree with Ms. Radney's concerns. She thinks there should be some expectation by the neighbors in the area to be up against commercial and have bought property in a CH area and this close to downtown. She also thinks there is not enough buffer and screening in the subject area so something has to be done to protect the neighbors, so she may be leaning toward no in this request. The middle ground for her would be an improvement plan by the property owner to help mitigate some of the things already happening. Whether it is designating a smoking area or providing extra screening.

Mr. Van De Wiele stated that the Board has certainly expressed where all their concerns lie, and he would entertain a continuation to give the applicant time to review their plans to see if the concerns are addressable. Even though the dispensary operation is not before the Board he thinks it is absolutely in the purview of the Board's condition setting to say if the new use to be approved the applicant will limit the other use.

Ms. Radney stated that in terms of the setting of this case, in so much as there is commercial abutting residential, at some point in time the business day ends and in this particular case it never ends, it is 24/7. Given its proximity to downtown the later it gets in the evening the more active it is likely to be as it relates to some of its competitors that are in the CBD District.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Brown, Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the Special Exception to permit Low-Impact Medical Marijuana processing (Low-Impact Manufacturing & Industry Use) in the CH District (Section 15.020, Table 15-2) to the February 9, 2021 Board of Adjustment meeting; for the following property:

S 10 OF W 97 .5 LT 3 & N 29 OF W 97.5 LT 4 BLK 15; S 43 OF W 97.5 LT 4 BLK 15, LINDSEY THIRD ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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OTHER BUSINESS

23067—Warkeisha Metoyer

Action Requested:

Possible Reconsideration of a Variance to allow a detached accessory building in the street setback (Section 90.090-C). **LOCATION:** 4229 North Hartford Avenue East (CD 1)

Ms. Blank stated the Board's procedures provides a two-step process by which a decision the Board has made at a meeting can be possibly reconsidered and then set for hearing on a subsequent agenda of the Board. The rules are that only a Board member who voted in favor of the application, and in this case the Board voted to allow the accessory building to be in the front yard. The vote at that meeting was unanimous so anyone one of the Board members could vote to reconsider the application. The only thing that is before the Board today is to decide whether they want to have the case placed on the next agenda and have a farther on the application. If the Board votes to have the case reconsidered it will be set at the next meeting's regular agenda. The Board also has the option to say that they have heard the case, decided the case, and they are good with their decision.

Board Discussion:

Mr. Van De Wiele stated that when the Board received the e-mail, what does not carry any weight with him is the wish to have the Board vote a different way. The public had their opportunity to come to the meeting to be heard. The comment that someone is using the accessory building as a residence is what concerned him. Given the short cycle of the Board's ability to rehear a case is why he agreed to have the item placed on the agenda for reconsideration. Whether the case is heard or not, at this point he does have a feeling one way or the other, but he wanted the Board to have the discussion. Is the Board inclined to hear from a neighbor who did not take the opportunity to be here and speak about the use? The mitigating nature of that is that the Board placed a time frame on the use, so at one point it will come back before the Board.

Ms. Shelton stated that three things about the e-mail stuck out to her. She specifically remembers asking the applicant if she had engaged the two directly adjacent neighbors. The Board did specifically ask the applicant if someone were living in the accessory building because that would have been a decision factor for her, and the applicant answered in the negative. She does not know if the Board could get an answer on that because it would be a word-on-word situation. She does not necessarily hold it against the person who wrote the e-mail about not coming because she has issues with the way people are noticed.

Mr. Van De Wiele asked Mr. Wilkerson if the notices are mailed to tax addresses and not the physical address. Mr. Wilkerson stated the address that is on the Assessor's record is what is used.

Mr. Bond stated he had concerns about this case because he had never heard a case about an accessory building in a front yard. He knows he heard mitigating factors but one of the things that was crucial in his vote for this was that the neighbors were not objecting. Mr. Bond thinks the Board has to consider the neighbors and the e-mail received by the Board gives him pause about the vote.

Ms. Radney stated she visited the site, drove around the neighborhood, and sat on Hartford directly across the street during the rush hour period. She thinks Ms. Shelton is correct, it would be a "she said, she said" so she would be inclined to support the applicant. It is an odd-looking structure. She did watch the neighbors coming in and out of their driveways and the street setback at that location is wide, and she did not observe any site issues. She would not be inclined to change her vote.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Brown, Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **DENY** the Possible Reconsideration of a Variance to allow a detached accessory building in the street setback (Section 90.090-C); for the following property:

LT 16 BK 5, SUBURBAN ACRES AMD, City of Tulsa, Tulsa County, State of Oklahoma

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:08 p.m.

Date approved: Feb. 9th, 2021

Ant P. Bond
Chair