

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1268  
Tuesday, March 9, 2020, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2nd Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
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 March 3, 2020, at 2:18 p.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.

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

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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/CityOfTulsa/boa-gotomeeting-in-council-chambers-march-9th>

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**

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 **Minutes** of the February 23, 2021 Board of Adjustment meeting No. 1267.

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### **UNFINISHED BUSINESS**

None.

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### **NEW APPLICATIONS**

#### **23091—Gregg Norris**

##### **Action Requested:**

Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 3025 South Memorial Drive East (**CD 5**)

##### **Presentation:**

The applicant was not present.

**Mr. Chapman stated that staff requests a continuance for this case. The applicant needs to provide additional exhibits, preferably by a surveyor, from the subject dispensary and an opposing dispensary.**

##### **Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Mr. Bond stated this case will be heard at the end of the agenda to allow time for the applicant to arrive.**

**Board Action:**

No Board action required at this time; for the following property:

**LT 3 LESS BEG SWC TH N32 SE36.02 E175 S12 W205 POB & LESS BEG NWC TH S168 SE APROX 12.73 NW APROX 17.94 N158.08 W9.79 POB BLK 1,GROVELAND ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**23084—AAB Engineering, LLC – Arborstone Land Holdings**

**Action Requested:**

Special Exception to permit a Commercial/Self-service Storage Facility in a CS District (Section 15.020, Table 15-2); Variance to reduce the 50-foot frontage requirement in the CS District to allow the expansion of a lot permitted in BOA-18676 (Section 15.030, Table 15-3). **LOCATION:** 10833 East 41st Street South (**CD 6**)

**Presentation:**

**Alan Betchan**, 200 North McKinley, Sand Springs, OK; stated this application is for the expansion of an existing storage facility use. The tract is off shaped and is sitting behind several other parcels that have been approved from a non-fronting standpoint. When the property was originally platted there was a substantial amount of flood plain pm the north end since that time with the Mingo improvements the flood plain has been reduced and is mostly contained to the channel. The area that was platted as a reserve is now open and viable for development. The client would like to expand the existing mini storage use into that area. Along the north and east sides there is a substantial drainage ditch and heavy tree growth buffering the mini storage thoroughly by natural characteristics of the property. The existing tract was approved by a Variance previously for the frontage requirement, but the reserve area is a separate stand-alone tract that the mini storage is expanding into, so technically it has not been granted the Variance. It is not creating another non-conforming parcel but actually reducing it by the reserved portion of the lot that was already there.

Mr. Brown asked Mr. Betchan how many storage buildings will be added. Mr. Betchan stated there will be two storage buildings added.

Mr. Brown asked Mr. Betchan about the covered parking. Mr. Betchan stated the exterior covered parking is to meet the heavy demand for RV storage. The area designated for the covered parking structure cannot have three sides because of the flood plain ordinance.

Ms. Shelton asked Mr. Betchan if there was any plan to sell one parcel and not the other. Mr. Betchan answered no stating that the intent is to get the property replatted and those will become a single parcel.

Ms. Shelton asked Mr. Betchan if the access drive is wholly contained on the dogleg or is it sitting on the adjacent parcels. Mr. Betchan stated that it is sitting a little bit on the adjacent parcels but there is a mutual access easement that is shared.

Ms. Shelton asked Mr. Betchan if the mutual access easement is a perpetual access easement. Mr. Betchan answered affirmatively.

Mr. Van De Wiele asked Mr. Betchan if there were any plans to access the mini storage from the residential area. Mr. Betchan answered no.

Mr. Bond asked Mr. Betchan if there was a fence around the subject property. Mr. Betchan stated there is a fence on the east side on the back side of the channel, everything that is being proposed is west of the channel.

**Interested Parties:**

There were no interested parties present.

**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 request for a Special Exception to permit a Commercial/Self-service Storage Facility in a CS District (Section 15.020, Table 15-2); Variance to reduce the 50-foot frontage requirement in the CS District to allow the expansion of a lot permitted in BOA-18676 (Section 15.030, Table 15-3), subject to conceptual plan 2.20 of the agenda packet. The two lots are to be combined. There is to be no access provided to the residential subdivision on the north and east sides of the subject property. The property owner is to maintain the access easement to 41st Street South. 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:

**RESERVE A; PRT LT 3 BEG SECR TH NW15.66 N588.58 W152.49 S36 W162.50 N454.94 SE216.51 SE94.68 SE160 SE90 S589.86 POB BLK 1, RAVENWOOD, City of Tulsa, Tulsa County, State of Oklahoma**

**Mr. Chapman informed Mr. Bond that the applicant in case BOA-23091 has arrived. Mr. Bond stated the board would hear the request for a continuance now.**

**23091—Gregg Norris**

**Action Requested:**

Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 3025 South Memorial Drive East (CD 5)

**Staff has requested a continuance in this case due to a possible conflict with the subject dispensary and another dispensary in the area.**

**Presentation:**

**Greggory L. Norris**, 6380-A East 31st Street, Tulsa, OK; stated that he has no objections to the request for a continuance.

**Interested Parties:**

There were no interested parties present.

**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 **CONTINUE** the request for a Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) to the March 23, 2021 Board of Adjustment meeting; for the following property:

**LT 3 LESS BEG SWC TH N32 SE36.02 E175 S12 W205 POB & LESS BEG NWC TH S168 SE APROX 12.73 NW APROX 17.94 N158.08 W9.79 POB BLK 1, GROVELAND ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**23086—Andrew Kern**

**Action Requested:**

Appeal of a decision by the Tulsa Preservation Commission to deny Historic Preservation Permit Application HP-0239-2020 to permit the installation of roof-top solar panels (Section 70.070-L). **LOCATION:** 1540 South Gillette Avenue East **(CD 4)**

**Presentation:**

**Roy Malcom Porter**, Historic Preservation Officer, City of Tulsa, 2 West 2nd Street, Suite 800, Tulsa, OK; stated that on January 26, 2021 the Tulsa Preservation Commission disapproved a proposal for the installation of three solar panels on the roof of the subject residence because the panels would have been visible from the right-of-way creating an adverse affect on the residents and on the Gillette Historic Preservation Overlay District. According to the Zoning Code the Tulsa Preservation Commission should rely on its unified design guidelines during evaluation of a proposal and strive to balance the intention of the guidelines within the needs of the owner. As directed by the Zoning Code among the factors which the Tulsa Preservation Commission must consider is the degree to which the proposed project is consistent with the guidelines, particularly in this case, three guidelines; guidelines A76, E12 and E14. Guideline A76 advises installation of components, such as solar panels, where they will have minimal impact not where they will be less visible but where they will be minimally visible, and the guidelines specifically identifies those locations; the rear of the residence, the rear of the yard, or an accessory structure such as a shed or garage. Guideline 1.2 reminds the Commission to consider non-contributing structures as products of their own era and to avoid creation of a false appearance of the character and style of the Gillette District. Guideline 1.4 reminds the Commission to ensure that any treatment of non-contributing structures does not detract or diminish of the district. So, among the factors considered in review of this application was the impact of the visibility of the solar panels. In the documentation provided by Mr. Kern, where he mentions the skylights and awnings installed on residences elsewhere in the Gillette

Historic Preservation Overlay District and other districts, which Mr. Kern contends would be more visible than the solar panels. Review of the Commission's records revealed that these installations occurred prior to the implementation of the Historic Preservation Overlay or after its implementation without the approval of the Tulsa Preservation Commission and should not be cited as appropriate. So, the effort, as always, was to strike a balance between the request of the owner and the guidance provided by unified design guidelines, and the Tulsa Preservation Commission strives to do so. In fact, over 90% of the applications are approved, but the Tulsa Preservation Commission is not required to approve every application particularly when it presents a violation of its own guidelines as with this proposal. At this point Dr. Porter deferred to Commissioners Townsend and Reeds after the presentation by Mr. Kern, and asked for the opportunity to return with a summary at the conclusion of the remarks.

Mr. Van De Wiele asked Dr. Porter about the second design criteria, Guideline E12. Dr. Porter stated that when there is a non-contributing structure there is never an attempt to alter its appearance and imitate a style, i.e., if there is mid-century modern ranch style residence there would be no attempt to attach a colonial revival portico, but a person cannot permit the alteration to detract or diminish the character of the district.

**Interested Parties:**

**Andrew Kern**, 1540 South Gillette Avenue, Tulsa, OK; stated he has lived at South Gillette Avenue for 15 years and is an Architect and a Structural Engineer. He really appreciates the Historic Preservation District, he grew up at Hazel and Woodward and his parents live in Maple Ridge so he has a good background of the mid-town neighborhoods. Mr. Kern stated he went before the Historic Preservation Council and his house was built in 2005 as a non-contributing structure. One of the things he is trying to adhere to in Guideline A76, it states that preferably at the rear of the house or yard or out building for minimal impact but not required. These considerations are to be made on a case by case basis, which is what he is attempting to do. During the two Historic Preservation meetings he had, it was not a unanimous decision to disapprove of his proposal. In both meetings there were two votes in favor of the proposal so this is not a cut and dried case. He believes the two things that ventured into it was the sensitivity to the symmetrical layout of the solar panels, the fact that they are on the south facing roof of the front porch and set back three feet from the edge of the roof. Considering the fact that the house was built in 2005, it is not historic and is a non-contributing structure. The panels are an era of its time and the sensitivity to visibility from 90% of the view points the panels will not be visible whatsoever, which he thinks meets the definition of minimal impact. He currently went through the process, the house is presented in the BOA application, as there are panels at the rear of the house, as many as possible, and there are panels on the out building and detached garage, and he has achieved about 80% of his electrical usage but he is hoping to achieve 100% of his electrical usage in a way that does not impact the neighborhood substantially. Now he is presenting his case to the Board of Adjustment.

Mr. Van De Wiele asked Mr. Kern if his presentation was the six panels depicted in his site plan or for the three panels mentioned in the presentation. Mr. Kern stated that he

presented both to the Historic Preservation Commission, he applied for both and in both cases he received two votes in favor, but he would prefer the six panels which would give him the 100%.

Mr. Chapman stated the Board is hearing the denial for three panels.

Mr. Bond asked Mr. Kern if he had heard any opposition from any of his neighbors. Mr. Kern answered no.

Mr. Van De Wiele asked Mr. Kern where the HP committee recommended the panels be installed. Mr. Kern stated the HP committee recommended placing the solar panels on the west façade and the south roof the garage and the south roof of the deck. Placing the panels on the west side would not work because that area receives shade for most of the day.

**Mary Lee Townsend**, 1909 East 33rd Place, Tulsa, OK; stated she is Chair of the Historic Preservation Commission. She wants to emphasize what Dr. Porter said. There were two votes in the Committee and both of the those votes are because people are so in favor of environmentally collect solar panels. Both of those votes states specifically that they were over riding their objections as preservationists because they were so strongly in support of environmentally correct energy. In general, the biggest problem is the establishment of a precedent. In the homeowner's proposal he identified several skylights in historic neighborhoods and generalized that if skylights are allowed then he could have solar panels. The Commission's fear is that if they approve the solar panels then other people will think there is precedence for solar panels so they are okay in historic districts. It is not just that the solar panels should be at the back of the house but in Section 70.070-F.3 suggests that proposed work should not introduce elements that are out of character with the residence and its setting. So, it is a non-contributing structure that was built in 2005 but it is in a historic district, and historic districts do not have solar panels. Ms. Townsend deferred to Mr. Ted Reeds who is an Architect on the Commission.

Mr. Van De Wiele stated that the Board has heard that there were two votes in favor of the proposal and he asked Ms. Townsend how many voting members were at those meetings. Ms. Townsend deferred to Dr. Porter.

**Jed Porter** came forward and stated there six members present which constitutes quorum, so twice as many members voted to disapprove the application as to approve the application.

**Ted Reeds**, 2872 East 35th Place, Tulsa, OK; stated he is before the Board today as a Commission Member of the Preservation Commission and a TMAPC Commission member. To address the non-contributing structure that was brought up by the applicant, in most of the historic overlays a lot more contributing structures have been registered. The very first one that was created, the North Maple Ridge structure, was created very quickly to avoid having a freeway plow right through it and eliminate the



school among other things. The minimum amount of buildings was registered so that they could become a historic district. That is very common practice. In fact, there have been some grants applied for where the nomination for more historic structures within the five overlay districts will be expanded. The idea that the structure is non-contributing structure and anything can be done is not a point well taken. The Commission did discuss with the applicant about placing the solar panels on the back of the building or on the west side, he does not understand why a bracket or something could not be designed that would pivot or some sort of structure. Mr. Kern is in a historic overlay district and it is all for one and one for all.

Mr. Brown asked Mr. Reeds how solar panels versus skylights interfere with the historic character of the neighborhood. Mr. Reeds stated that Dr. Porter has already addressed that. The skylights that are being referenced, and Dr. Porter did a thorough research of address by address for that, the skylights were not approved by the Commission. They were installed prior to and after.

Mr. Brown asked Mr. Reeds how the Historic Commission states that solar panels interfere with the character of the neighborhood? He believes in historic preservation and he also believes in energy efficiency, sometimes they are very conflicting. Mr. Reeds stated that on an individual case by case basis he believes that if a skylight were truly part of the fabric of the design then the Commission might not object, but this clearly not part of the design.

Mr. Van De Wiele asked Mr. Reeds if non-contributing structures are subject to the Commissions purview. Mr. Reeds answered affirmatively.

**Rebuttal:**

**Jed Porter** came forward and stated that within districts there are contributing structures whose style and character contribute to the character of the district. There are non-contributing structures whose age or alteration has diminished their character so they do not contribute to the character of the district. They are valuable to the owner but they are not recognized as a contribution to the character of the district. When the Commission views the alteration of a non-contributing structure the Commission is mindful of its character and simultaneously mindful of any diminution or any distraction created from the character of the district. The Commission applied the guidelines to contributing and non-contributing structures, and it is important to view Guideline 1.2 and be mindful of the character of a particular residence. Simultaneously, the Commission has to view Guideline 1.4 and not treat that residence in such a manner that the Commission would introduce an element that is out of character, not only with the residence, but out of character with the district or create any distraction of visual or physical. Throughout the districts there are a number of features which were present prior to the implementation of the overlay; there are skylights, there are awnings, there are chainlink fences. All of those conditions were permitted to remain, owners were not required to remove a chainlink fence or remove a skylight. The Commission simply recognizes that those conditions existed prior to the implementation of the overlay. The Commission does not permit those conditions to be a leverage for future treatment, so

when an owner proposes a fence every future treatment is a treatment that is protective of the character of the residence and protective of the character of the district.

Ms. Radney asked Dr. Porter if an owner would be allowed to replace a skylight? Dr. Porter answered possibly so, but he would defer to the Tulsa Preservation Commission. The Commission would consider a proposal. When Mr. Kern submitted his application he was reminded about Guideline A76 and reminded him the application could face challenges because the Guideline is explicit about the location and the installation of panels. Because it is not the decision Mr. Kern would have wished, or maybe a decision less popular with the neighbors, it does not mean that the decision is wrong, it simply means that the Tulsa Preservation Commission could not persuade itself to violate a guideline to accommodate Mr. Kern's request.

Ms. Radney asked Dr. Porter if Mr. Kern was also asking to not be treated differently from the other non-conforming structures, because this is reversible? Dr. Porter stated that it is reversible although he would submit that many treatments presumably reversible stray toward permanence.

Ms. Radney asked Dr. Porter if this installation could be reversible. Dr. Porter stated the installation is reversible; a panel could be installed and a panel could be removed is correct. But the Tulsa Preservation Commission would not be inclined to introduce an element that is certainly not present elsewhere in the district. A balance has to be struck between the request of the owner and the protection of the character of the residence and the character of the district. The Tulsa Preservation Commission is keenly aware of the character of this district – it's among the most intact districts in the City of Tulsa. There is certainly concern about the establishment of precedent.

Ms. Radney stated that she appreciates that the Commission feels that this would detract, but the only that gives her pause is that it's non-contributing, there are similar aggregations of this style in many other non-contributing structures in the district and it is of the time of a 2005 structure to place solar panels and it is reversible. Dr. Porter stated that a new element should not be introduced a new element that is not compatible with the character of the district and that while this residence is a non-contributing structure, that application of the guidelines is no less stringent. The Commission is mindful of its character of its era and a balance is struck with the protection of the character of the district. When the proposal for the subject residence was submitted, new construction, the presence of the guidelines insured that this arrival in the district would be compatible with the character of the district. There has to be some observance of context, but the fact that the residence is a non-contributing structure does not reduce the vigilance in the review. It does not mean that a lesser standard is applied. It is the same standard, it's just a recognition that some residences, because of their age, have a particular character and the districts have non-contributing structures and it does not mean that they are less beloved it just means that when the Commission treats them they are respectful of their era, but the Commission is likewise respectful of the character of the district. The Commission does not diminish the

character of the district or introduce an element that becomes a distraction just because the residence is a non-contributing structure.

Ms. Radney stated she absolutely understands the logic of the Commission, but what is before the Board is to consider is this worthy of being granted a Special Exception. What is interesting is that the invested residents in the district are not here today, and they are typically quite vocal about these things. So, she has to wonder if Mr. Kern is acting for something that isn't quite so detrimental. She is not saying that it does not detract, she has been won over on that, the question is does it detract sufficiently that it reaches E.14 and right now she has not been convinced. Dr. Porter stated that it does create a distraction and he would add that the presumption is that the Tulsa Preservation Commission relying on its expertise, engaging best practices acted accordingly. Its decision was rightfully rendered fully compliant with unified design guidelines and the Zoning Code. The Commission disapproved this application twice and it is absolutely consistent in its review twice.

**Mary Lee Townsend** came forward and stated she is history professor and she had heard a lot about skylights. If she has a student that come to her and say the professor before her let students have open book tests she would say that is then, this is now. So if the skylight was installed before she was the sheriff that is fine but there are no more skylights to be installed. If a student says that Joey was using an open book to take a test she would that Joey cheated and you don't get to cheat. The deal with skylights, they were there before. Some were installed without approval but that does not make them a reference for what is being done now.

Ms. Radney asked Ms. Townsend if the skylight could be replaced. Ms. Townsend stated that anything can be replaced, its what her contractor says, "if you have enough money and enough time you can replace a lot of things but you are not easily going to replace them".

**Andrew Kern** came forward and stated he thinks this an unique situation. He really tried to find a proposal and a design that met the unified guidelines. He thinks the critical thing that is missing is Guideline A.76. It does not specifically say solar panels are not allowed to be viewed from the street side whatsoever, it allows it on a case by case basis. It says preferably at the rear of the yard and he thinks he has tried to be very sensitive by being on the south facing roof to mimic other architectural styles in the district. From 90% of the view points of the house a person will not know there are solar panels on the house. If you view the house from the north nothing can be seen, if you look at it from the east looking straight on at the house there is nothing to be seen, and even if you look at from the south due to the build up of trees and vegetation nothing can be seen, if you driving on the street from the south you will see the solar panels and it will appear like a satellite; you would see the solar panels for a matter of seconds. It would be very difficult to even know the house has solar panels. The neighbors love the proposal because the solar panels were not installed on the east façade. Every argument he has heard it is almost like this is setting precedence for solar panels in historic districts and he does not think that is the case. He thinks this is a case of a very

sensitive proposal by a licensed architect, licensed in Oklahoma since 2006. He hopes he has made his case.

**Audrey Blank** stated that on page 3.3 of the agenda packet it shows Section 70.140-G and it gives guidance to the Board about things they need to look at and in making a decision on an appeal. In #4 on the list it states, “the Board of Adjustment must grant to the officials decision a presumption of correctness placing the burden and persuasion of error on the appellant”. The second review criteria is in Section 70.140-H it states, “the Board may reverse, wholly or partially modify only if the Board finds that Preservation Commission erred”. In the packet, page 3.9, in the letter from Jed the wording of Guideline A.7.6 is in the middle of the page, and when it comes to thinking about if the Preservation Commission erred, that guideline is something that has been discussed a lot today.

### **Comments and Questions:**

Mr. Van De Wiele stated the Board may see one or two of these appeals a year and they're usually some of the more complicated matters the Board sees. There have been some that have been very contentious and there have been some that have gone to District Court. These generally tend to be more problematic. The Board is being asked if the HP Commission made a reversible error. The guidelines are not black and white because Historic Preservation is not a cause where everything is left or everything is right, it's a very delicate subject. When he reads A.76 the word preferable is not read that the Commission would like for a person to the panels in the back yard, it is a more rigid standard. He is not seeing an error. There is definitely a rub between the newer technology and the preservation of old looking things. He is not seeing an error that tells him to grant an appeal, he will be voting to deny the appeal.

Ms. Radney stated that in the same letter there is emphasis in the last two paragraphs on the aesthetic impact that the solar panels would have on the street. She acknowledges that the appellant has brought forth evidence that suggests that what he wants to do does not detract any more than the existing exceptions already installed, whether they were installed with the permission of the Commission or not they exist. To the extent that no action has been taken to compel those that were installed without permission after the overlay was in place suggests to her that they do not detract as much as the Board is encouraged to consider. The Commission is really leaning on Guideline E.14 for their logic, but there are nuances in E.12 and A.76 that can be argued that the property owner has made every possible effort to conform, so the right to expect to be granted an exception the owner has made a good case for that. She does not see that this sets a precedent that has already been established by all the non-conforming structures that exist.

Mr. Brown agreed with Ms. Radney. The impact to him is minimal and to him that is important. He does not see the solar panels as intrusive and does not see them as demeaning the character of the neighborhood. He would tend to vote in favor of the appeal.

Ms. Shelton stated that she is not sure the Commission erred in their judgement.

Mr. Bond stated that he thinks there is a strong point that non-contributing structures detract or diminish a historic character of a district, and he thinks the three regulations quoted are not harmonious. He does not think that solar panels are disharmonious because there have been solar panels installed and taken down on the White House, and they will probably be re-installed. If he were a member of the HP Commission he would have voted in favor of the application because he thinks that it does not detract because it is a non-contributing house. Based on the standard the Board has in reviewing the case, he does not think the Commission has erred.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 3-2-0 (Bond, Shelton, Van De Wiele "aye"; Brown, Radney "nays"; no "abstentions"; none absent) to **AFFIRM** the decision by the Tulsa Preservation Commission to **DENY** the Historic Preservation permit application HP-0239-2020 to permit the installation of roof top solar panels which would constitute a denial of the **Appeal** by the applicant. The Board finds the Tulsa Preservation Commission acted appropriately in its denial of HP-0239-2020; for the following property:

**S40.5 LT 10 & N34.5 LT 11 BLK 2, HOPPING'S ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**23087—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 façade that must be located in the Build-to-Zone in a MX1-U District (Section 10.030, Table 10-5). **LOCATION:** NE/c of West 23rd Street South and South Maybelle Avenue West (**CD 2**)

**Presentation:**

**Mark Capron**, Wallace Engineering, 123 North Martin Luther King, Jr. Boulevard, Tulsa, OK; stated this case was before the Board in a previous meeting. He is working on a couple of phases for an overall development. The Board approved the previous request for Phase III of the eastern half and the western half was deferred. On the western side of the project there is a large sanitary sewer mainline that is being constructed and associated with that is a 20-foot wide utility easement making it impossible to get the buildings within the "build-to" zone. Also, on the south side of the project there are steep slopes and a continuation of the sanitary sewer line. What is before the Board today is Building 12, which is the northwest corner of the tract. Originally the building was oriented at a 45-degree angle and presented itself to the intersection, and not necessarily to each street. By the building being at a 45-degree angle made the building non-compliant not only with the "build-to" zone but with the 25-foot area of the "build-to" zone that requires the building to be within at each corner. After some discussion, the

site plan has been modified to move the building to parallel with the street. Not only did that make the building more compliant with the intent of the “build-to” zone, but it also made the project compliant with the measurement section of the Code requiring the building to be within 25 feet of the intersection. What is being proposed is that the “build-to” zone be widened to be within 35 feet; the project is compliant on the north side, 22nd Street.

Ms. Shelton asked Mr. Capron to remind her about the sewer line easement preventing the building to be built closer to the street and therefore inside the “build-to” zone. Mr. Capron stated the sanitary sewer line easement is 20 feet and the building, not only have some articulation, in addition to that the footings is the reason it was expanded to 15 feet wider.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Brown, Bond, 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 façade that must be located in the Build-to-Zone in a MX1-U District (Section 10.030, Table 10-5), subject to conceptual plan 4.14 of the agenda packet. The Board finds the hardship to be the existence of a 20-foot utility easement that surrounds the property frontages. 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 BLOCK I 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; 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, TO THE POINT OF BEGINNING; THENCE CONTINUING S 89° 07' 09" W, CONTINUING ALONG THE SOUTH LINE OF SAID BLOCK I, A DISTANCE OF 328.90 FEET, TO THE SOUTHWEST CORNER OF SAID BLOCK I; THENCE N 00° 52' 53" W, ALONG THE WEST LINE OF SAID BLOCK I, A DISTANCE OF 302.63 FEET, TO AN INTERIOR CORNER OF SAID BLOCK I; THENCE CONTINUING N 00° 52' 53" W A DISTANCE OF 273.21 FEET, TO A TANGENT POINT OF CURVATURE; THENCE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 39.27 FEET, A CENTRAL ANGLE OF 90° 00' 14", A CHORD BEARING OF N 44° 07' 14" E AND A CHORD DISTANCE OF 35.36 FEET; THENCE N 89° 07' 20" E A DISTANCE OF 49.40 FEET, TO THE SOUTHWEST CORNER OF SAID RIVER WEST PHASE I; THENCE CONTINUING N 89° 07' 20" E, ALONG THE SOUTH LINE OF SAID RIVER WEST PHASE I, A DISTANCE OF 23.28 FEET, TO A TANGENT POINT OF CURVATURE; THENCE ALONG A TANGENT CURVE TO THE LEFT, CONTINUING ALONG THE SOUTH LINE OF SAID RIVER WEST PHASE I, HAVING A RADIUS OF 285.00 FEET, AN ARC LENGTH OF 185.44 FEET, A CENTRAL ANGLE OF 37° 16' 47", A CHORD BEARING OF N 70° 28' 57" E AND A CHORD DISTANCE

OF 182.18 FEET, TO A POINT OF COMPOUND CURVATURE; THENCE ALONG A TANGENT CURVE TO THE LEFT, CONTINUING ALONG THE SOUTH LINE OF SAID RIVER WEST PHASE I, HAVING A RADIUS OF 5000.00 FEET, AN ARC LENGTH OF 75.44 FEET, A CENTRAL ANGLE OF 00° 51' 52", A CHORD BEARING OF N 51° 24' 37" E AND A CHORD DISTANCE OF 75.44 FEET; THENCE S 00° 47' 32" E A DISTANCE OF 705.20 FEET, TO THE POINT OF BEGINNING; SAID TRACT OF LAND CONTAINING 4.72 ACRES / 205,798.70 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

### **23088—Josh Kunkel**

#### **Action Requested:**

Special Exception to allow an accessory dwelling unit in an RS-3 District (Section 45.031-D). **LOCATION:** 2221 East 12th Place South (**CD 4**)

**Ms. Shelton and Ms. Radney recused and left the meeting at 2:50 P.M.**

#### **Presentation:**

**Josh Kunkel**, 2303 East Admiral Boulevard, Tulsa, OK; stated his client would like to add a new garage. From an ADU perspective it meets all the guidelines in that it is 34% of floor area ratio, and it meets the overall context of the neighborhood.

Mr. Brown asked Mr. Kunkel if there were any existing buildings that will be retained. Mr. Kunkel stated there is a poorly constructed footing foundation for what probably a garage that rotted and fell over.

Mr. Van De Wiele asked Mr. Kunkel if this would be the only accessory dwelling unit. Mr. Kunkel answered affirmatively.

Mr. Bond asked Mr. Kunkel if he had heard from any of the neighbors about this proposed project. Mr. Kunkel stated the homeowners have spoken with the neighbors and there has been no opposition.

#### **Interested Parties:**

There were no interested parties present.

#### **Comments and Questions:**

None.



**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-2 (Brown, Bond, Van De Wiele "aye"; no "nays"; Radney, Shelton "abstentions"; none absent) to **APPROVE** the **Special Exception** to allow an accessory dwelling unit in an RS-3 District (Section 45.031-D), subject to conceptual plans 5.11, 5.12, 5.13, 5.14, 5.15, 5.16 and 5.17 of 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; for the following property:

**LOT 17 BLK 2 ", TERRACE DRIVE ADDN AMD SUB B2-3&7, City of Tulsa, Tulsa County, State of Oklahoma**

**Ms. Radney and Ms. Shelton re-entered the meeting at 3:02 P.M.**

**23089—Josh Kunkel**

**Action Requested:**

Variance to reduce the required 35-foot setback from an arterial street (Harvard Avenue) (Section 5.030, Table 5-3). **LOCATION:** 3243 East Archer Street North; 106 and 116 North Harvard Avenue East **(CD 3)**

**Ms. Shelton recused and left the meeting at 3:02 P.M.**

**Presentation:**

**Josh Kunkel**, 2303 East Admiral Boulevard, Tulsa, OK; stated the property is currently zoned RM-2 and he would like to add apartments to the property. On page 6.13 of the agenda packet the contextual setback on the residences to the north and to the south is shown. There is an existing house to the north that is approximately 10 feet to the setback and to the south there are three houses that have a similar setback from Harvard. The site plan shows the buildings look similar in the front and the back and dormers have been added to emphasize the singleness down the street, so the parking can be in the back making it feel very residential in nature.

Mr. Bond asked Mr. Kunkel how far into the setback are the buildings. Mr. Kunkel stated that it is 10 feet.

Mr. Kunkel stated a lot combination has been approved and, in this application, it shows three separate lots but it is now one single lot.

**Interested Parties:**

**Libby Cole**, 3301 East Archer, Tulsa, OK; stated she does not want apartments in the neighborhood, houses would be fine. Apartments are on Admiral Court and they are a blight and are destructive, and she does not those type of neighbors which would be right across the street from her. She moved into the neighborhood in 1973 and purchased her house in 1975 and she has seen a lot of things go on in the area.

**Rebuttal:**

**Josh Kunkel** came forward and stated the apartments will be owned and managed by Boom Town which is a sister company to Habitat for Humanity. The intent is that the apartments will be rented to senior citizens and potentially individuals that are hard of hearing. These are not the typical for-profit apartments and there will be a different kind of care in managing these apartments and selecting the tenants. The style of the proposed apartments will be in keeping with the character of the neighborhood.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-1 (Brown, Bond, Radney, Van De Wiele "aye"; no "nays"; Shelton "abstentions"; none absent) to **APPROVE** the **Variance** to reduce the required 35-foot setback from an arterial street (Harvard Avenue) (Section 5.030, Table 5-3), subject to conceptual plans 6.5, 6.6, 6.7, 6.8, 6.9, 6.10 and 6.11 of the agenda packet. The Board finds the hardship to be that the multi-family zoned district previously had structures built to the building line that is requested by the applicant or potentially even more, and that the requested relief would be in keeping with the character of the building line in the neighborhood, finding that such matters result in a hardship justifying the Variance. 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 26 BLK 1; S/2 LT 1 & 2 BLK 1; LT 25 BLK 1, LINDELL PARK, City of Tulsa, Tulsa County, State of Oklahoma**

**Ms. Shelton re-entered the meeting at 3:20 P.M.**

**23090—Dustin Justice**

**Action Requested:**

Special Exception to permit a medical marijuana grower operation (Agricultural/Horticulture Nursery Use) in the CH District (Section 15.020, Table 15-2). **LOCATION:** 2880 East Admiral Place North **(CD 3)**

**Presentation:**

**Dustin Justice**, 11701 East 83rd Place North, Owasso, OK; stated this building has every piece of red tape on it that the City could place on it, the building is a detriment to the community. He would like to remodel the building and change the curb appeal. The building is a 1930s style.

Mr. Brown asked Mr. Justice if he would be using the entire building. Mr. Justice stated that he is not sure. The building is 8,000 square feet and the plan is to start using 3,200 square feet and build out from there. The building itself is separated into five separate spaces and he is hoping to have other business lease sections.

Mr. Bond asked Mr. Justice what is located on the north side of the building across Admiral. Mr. Justice stated there is an empty lot and a frame straightening shop. Mr. Justice stated that he has approached every business owner with the exception of the accountant because he has not been able to catch him in the office.

Ms. Radney asked Mr. Justice if he was inside the Route 66 overlay. Mr. Justice stated that he did not know.

Ms. Shelton asked Mr. Justice what improvements he had planned for the building. Mr. Justice stated the bones of the building are good, but he will be remodeling the entire

inside of the building. He currently is cleaning out the building with a power washer because there are heroin needles and human feces in the building. He has no plans to install windows due to the security factor. He wants to be proud of the building.

Ms. Shelton asked Mr. Justice about parking for the property. Mr. Justice stated that it is street parking and the parking that is shown west of the building is actually a drive that goes toward a garage and a storage building.

Mr. Bond asked if there was a residence immediately to the west of the subject property. Mr. Justice it is an accounting office that is in a former house.

Mr. Brown asked Mr. Justice where the building entrance will be located. Mr. Justice stated that it will be off North College. Mr. Brown asked where the delivery entrance will be located. Mr. Justice stated the delivery entrance can be accessed through the garage doors in the rear.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Ms. Radney encouraged Mr. Justice to contact the Route 66 Commission so he will have a good understanding of what their expectations are as they are working to restore Route 66.

**Board Action:**

On **MOTION** of **SHELTON**, the Board voted 3-0-2 (Brown, Bond, Van De Wiele "aye"; no "nays"; Radney, Shelton "abstentions"; none absent) to **APPROVE** the Special Exception to permit a medical marijuana grower operation (Agricultural/Horticulture Nursery Use) in the CH District (Section 15.020, Table 15-2), subject to conceptual plan 7.8 of the agenda packet. The existing building is to be retained with improvements to the building. 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; for the following property:

**LT 20 & LT 21 LESS 20 X 20 IN SWC & LESS S7 E45 BLK 3, UNIVERSITY PARK,  
City of Tulsa, Tulsa County, State of Oklahoma**

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**OTHER BUSINESS**

None.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

None.

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There being no further business, the meeting adjourned at 3:35 p.m.

Date approved:         Austin Bul        

        3-23-2021          
Chair