

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1287  
Tuesday, August 10, 2021, 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>
Radney, Vice Chair Brown, Secretary Wallace	Bond, Chair Barrientos	Wilkerson Chapman Sparger K. Davis	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on August 5, 2021, at 8:35 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Vice Chair Radney 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, an online meeting and web conferencing tool. Members of the public were 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://us06web.zoom.us/j/84052072071>

312-626-6799 Meeting ID: 840 5207 2071

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

Ms. Burlinda Radney, Vice Chair  
Mr. Steve Brown, Secretary  
Mr. Tyler Wallace

Ms. Audrey Blank, City Legal  
Mr. Dwayne Wilkerson, Tulsa Planning Office  
Mr. Austin Chapman, Tulsa Planning Office  
Mr. Kendal Davis, Tulsa Planning Office  
Ms. Janet Sparger, Tulsa Planning Office

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Ms. Radney explained to the applicants and interested parties that there were only three board members present today. Motions from the Board will require an affirmative vote of all three members. When there is less than a full Board, the Board will entertain a request to continue agenda items to a later meeting date, at which all five members of the Board may be present. Ms. Radney asked if there were any applicants that would like to postpone his or her hearing until the next meeting he or she could do so. The audience nodded their understanding and no one came forward to request a continuance.

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### **MINUTES**

On **MOTION** of **WALLACE**, the Board voted 3-0-0 (Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Barrientos, Bond absent) to **APPROVE** the **Minutes** of the July 13, 2021 Board of Adjustment meeting No. 1276.

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### **UNFINISHED BUSINESS**

**23160—Hall Estill – Stuart Van De Wiele**

**Action Requested:**

Special Exception to allow a Public, Civic & Institutional/Governmental Service or Similar Functions use for a family justice center in an RS-3/OL/IL/CH zoned district (Sec. 5.020, Table 5-2, Sec. 15.020, Table 15-2); Variance of the 75-foot setback from Office and Residentially zoned properties in the IL Zoning District (Sec. 15.030-A, Table 5-3) **LOCATION:** 2821 South Sheridan Road East (**CD 5**)

**Presentation:**

The applicant has requested a continuance to August 24, 2021.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BROWN**, the Board voted 3-0-0 (Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Barrientos, Bond absent) to **CONTINUE** the request for a Special Exception to allow a Public, Civic & Institutional/Governmental Service or Similar Functions use for a family justice center in an RS-3/OL/IL/CH zoned district (Sec. 5.020, Table 5-2, Sec. 15.020, Table 15-2); Variance of the 75-foot setback from Office and Residentially zoned properties in the IL Zoning District (Sec. 15.030-A, Table 5-3) to the August 24, 2021 Board of Adjustment meeting with the condition that the applicant is to pay all re-notification fees; for the following property:

**A tract of land in the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section Fourteen (14), Township Nineteen (19) North, Range Thirteen (13) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, and being more particularly described as follows, to-wit: BEGINNING at the Northeast Corner of Lot One (1), Block Forty-five (45), South Sheridan Acres; THENCE, S88°43'53"W for a distance of 120.00 feet; THENCE, S01°18'42"E for a distance of 100.00 feet; THENCE, S88°43'53"W for a distance of 492.71 feet; THENCE, N01°15'07"W for a distance of 295.26 feet; THENCE, N88°41'18"E for a distance of 612.40 feet; THENCE, S01°18'42"E for a distance of 195.72 feet to the Point of Beginning; Said Tract containing 3.88 acres more or less., City of Tulsa, Tulsa County, State of Oklahoma**

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**NEW APPLICATIONS**

## **23166—Crown Neon – Gary Haynes**

### **Action Requested:**

Variance to permit a dynamic display sign within 200 feet of an R District (Section 60-100-F). **LOCATION:** 1635 East 11th Street South **(CD 4)**

### **Presentation:**

**Gary Haynes**, 10101 East 46th Place, Tulsa, OK; stated he thinks the residential will not be affected by the proposed sign. The LED board is on the east side of the building. The subject property does not have any street frontage and that is why they would like to have the sign. The sign will have an automatic dimmer and will be turned off at 10:00 p.m. and back on at 6:00 a.m.

Mr. Brown asked Mr. Haynes how will the change? Mr. Haynes stated that whatever the customer places on the sign, i.e., their specials.

Mr. Wallace asked Mr. Haynes if the sign would be a stationary sign with no animations. Mr. Haynes answered affirmatively.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

Mr. Wilkerson informed the Board that the trees on the QuikTrip property will one day block the sign and he wants the trees to prevail and not the sign. If there is a Code violation in the future the trees should have the priority.

### **Board Action:**

On **MOTION** of **BROWN**, the Board voted 3-0-0 (Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Barrientos, Bond absent) to **APPROVE** the request for a Variance to permit a dynamic display sign within 200 feet of an R District (Section 60-100-F), subject to conceptual plan 3.8 of the agenda packet. The Board finds the hardship to be the restrictions of the property's location of the sign. 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:

**LTS 21 & 22 LESS S2.5 THEREOF BLK 9, PARK DALE AMD, City of Tulsa, Tulsa County, State of Oklahoma**

**23167—Louis Fernandez, Jr.**

**Action Requested:**

Appeal of the Administrative Decision issued by a Neighbor Inspector that the subject property is in violation of Sections 45.100 (Home Occupations ) and Section 45.130 (Parking and Storage of Commercial Vehicles) of the zoning codes (Section 70.140). **LOCATION:** 9239 South 86th East Avenue **(CD 7)**

**Mr. Chapman stated that as a matter of precedent it is typically requested that the neighborhood inspector speak first or, in other situations, the HP Administrator.**

**Presentation:**

**Michael Ryder**, City of Tulsa Working in Neighborhoods, 175 East 2nd Street, Tulsa, OK; stated that he is the inspector that issued the notice that is before the Board today. He previously submitted an outline stating what led up to the issued notice, and he has included all the supporting documentation. He does not think there were any specific assertions by the appellant that he can respond to.

Mr. Brown asked Mr. Ryder if it appears there is a business operating in a residential area. Mr. Ryder answered affirmatively stating that it was his finding that the business is operated either in whole or in part from the residence. When he spoke to the property owner, he admitted that the vehicles are regularly brought to the subject property and stored there. When the situation was discussed there seemed to be a hesitation to voluntarily comply, so he sent an e-mail summarizing what had been talked about, sent the entire Code section to the appellant and after a period of time he followed up with the appellant, after not hearing from him, he called and the appellant lodged a disagreement with his (the inspector) finding he issued the notice of violation that the vehicle was in fact prohibited by the Zoning Code. The appellant was advised that if he disagreed with the notice that he should file an appeal to be heard by the Board of Adjustment. Mr. Ryder stated that as a part of his research he discovered a Facebook post about the appellant was being solicited to move the truck, and the post describes the make and model of the vehicle. The Freightliner website reveals the weight of the subject truck, so he thinks this vehicle is prohibited for at least two reasons, one, because it is associated with a homebased business, and it is restricted from being stored outside of a completely enclosed structure; and two, is based on the size of the vehicle. It is required to have a commercial tag and the Zoning Code refers to an Administrative Code which has been included in the packet. That threshold is 15,000 pounds and this vehicle is around 26,000 pounds.

**Louis Fernandez, Jr.**, 9239 South 86th East Avenue, Tulsa, OK; stated the business is not operated out of the house. He conducts no transactions at the house. The truck moves six days a week. Nobody comes to the house to transact business. He does not have UPS come to the house for outgoing shipments. He does not have any employees, he is self-employed. He travels to different independent repair shops and

dealerships and services them at their locations. He does nothing at the house. Mr. Fernandez stated that it is his understanding that since the truck is under 26,001 pounds, he is not required to have a CDL license, so he is not required to have a commercial tag. The subject truck has never had a commercial tag. Mr. Fernandez stated that he understands Section 45.130 to refer to parking on a lot. Mr. Fernandez asked if he were to park the truck in the street would that meet the requirement of not parking the truck at his residence if he is not required to have a commercial tag?

Ms. Radney asked Mr. Fernandez if he was disputing the assertion by the City that he has a commercial truck. Mr. Fernandez answered affirmatively stating that it is his understanding that since he is not required to have a CDL he is not required to register the truck as a commercial vehicle.

Ms. Radney asked Mr. Fernandez if his business is the truck. Mr. Fernandez answered affirmatively.

Mr. Fernandez stated that he does not have a home office, everything he does is done while on the road.

Ms. Radney asked Mr. Fernandez where he actually parks the truck. Mr. Fernandez stated he parks the truck in his driveway. The truck is completely in the drive and does not stick out into the street.

Mr. Brown asked Mr. Fernandez how he does business. Mr. Fernandez stated he starts with a geographical area and visits the shops in that area. Mr. Brown asked Mr. Fernandez if he received telephone calls from customers. Mr. Fernandez answered affirmatively stating that it is just during business hours, if he receives a telephone call after 6:00 P.M. and it is one of his customers that customer can text him and he calls them back in the morning. All his calls go to a cell phone not a house land line.

Mr. Brown asked Mr. Fernandez if he had any drive-in traffic at the house. Mr. Fernandez stated that he does not. Mr. Brown asked Mr. Fernandez if he performed servicing at his house. Mr. Fernandez answered no. Mr. Brown asked Mr. Fernandez if he made repairs at his house. Mr. Fernandez stated if he has to perform an on-the-spot repair of a tool that repair is performed at the dealership or at the independent shop.

Ms. Radney asked Mr. Fernandez if he was saying that when the truck is parked in his driveway he is off work and no longer doing business. Mr. Fernandez answered affirmatively.

Mr. Brown asked Mr. Fernandez how many trucks he has. Mr. Fernandez stated that he has just one.

Mr. Fernandez stated that there are at least ten other tool dealers in Tulsa that have parked their vehicles at their residences ranging from 4 years to 35 years, and they have not had any issues such as this.

Ms. Radney stated that in Section 45.100-F, Item 10, it states that this would be a prohibited storage of a vehicle because it is not in an enclosed building.

Mr. Ryder came forward and stated that it is the City's position that this violates both sections, by its weight and it is a use that involves the storage of equipment and vehicles outside of a completely enclosed building. Even that it is the only thing that Mr. Fernandez does at the residence he would submit that it is operating a business from his residence. The other issues that could come into play, assuming the Board thought this was an allowed type of vehicle, there is the signage which is regulated in the Zoning Code. The vehicle is, in fact, in the street as far as the right-of-way because it completely obstructs the right-of-way which in violation of the nuisance code. There is no sidewalk but there is still a right-of-way and there is a right to pass, and it is blocked most of the time after hours. There are a lot of layers to this, but he felt the two sections cited were the one most appropriate to address the issue.

Mr. Ryder stated that due to the ransom ware attack at the City he was not able to submit a photo of Mr. Fernandez's recycling bin that shows a UPS delivery from Cornwell Corporate to the subject property, but he could submit that photo in the future if the Board wants.

**Interested Parties:**

**Tim Noteboom**, 9245 South 85th East Avenue, Tulsa, OK; stated he sent an e-mail summarizing his thoughts about this situation. Mr. Noteboom stated that Mr. Fernandez leaves his truck in his driveway every evening but during the day it is gone. There is no noise, the truck does not block anyone's view, and it does not seem to be a problem. Mr. Noteboom stated that Mr. Fernandez has been a good neighbor, the house is clean, and the lawn is mowed.

Ms. Radney asked Mr. Noteboom where his residence is in relation to the applicant's residence. Mr. Noteboom stated he lives one street over, 85th East Avenue which is to the west of Mr. Fernandez. Mr. Noteboom stated he walks his dog down Mr. Fernandez's street quite a bit.

Ms. Radney asked Mr. Noteboom if he was saying that Mr. Fernandez is not in violation of the home occupation section of the Code. Mr. Noteboom answered affirmatively stating that as far as he can tell Mr. Fernandez is not doing business except when he is driving the truck.

**Anna Birkett**, 9226 South 86th East Avenue, Tulsa, OK; stated she lives on the same street and a couple of houses away, across the street. She has heard nothing but good things about this neighbor and she sees his children playing. The only problem is, from her perspective, is the truck is a large eyesore. At night, late at night, she has seen the truck open and there is a bright light shining down the street, though that does not happen every night. If she were looking to purchase a house in the neighborhood and saw the truck in the driveway and found out that it was parked there on a regular basis,

she would not want to purchase a house in the neighborhood. She does not want Mr. Fernandez not to have his business; however, the truck does not fit into the neighborhood.

Ms. Radney stated that the Board is charged with affirming or reversing the position of the neighborhood inspector, and the Board is limited to considering whether the inspector is in error in their decision.

Ms. Radney asked staff if the opportunity exists to request a Variance to park a similar vehicle if it is not a commercial vehicle in a residential neighborhood in the future. Mr. Chapman stated that in regard to the home occupation, home occupation specifically prohibits certain uses, one of those is the use involving the use or storage of vehicles, products, parts, machinery or similar materials or equipment outside a completely enclosed building. Mr. Chapman stated he would not accept an application to vary that because the Board cannot grant a Variance for a use, that is specifically called out as a prohibited use. With regard to the parking and storage of a commercial vehicle he would tend to agree that it would be an accessory use and a Variance cannot be granted of that as well.

**Rebuttal:**

**Anna Birkett** stated that Mr. Fernandez said there were ten other trucks in Tulsa that parked in residential areas, and she would like to know where those trucks are located, are they parked in a similar neighborhood because this is a middle-class residential neighborhood. Have there been complaints on the other trucks? This one truck does make a huge difference in the neighborhood.

**Louis Fernandez** came forward and stated that one of the trucks is located in Bixby in a middle-class neighborhood, a Snap-On dealer until five years ago lived in Tulsa near Highway 169 around the 11th Street area in another middle-class neighborhood and he parked there for 35 years with no issue. Mr. Fernandez stated there is another Cornwell Dealer that now lives in Skiatook but did live in Tulsa, and he spoke to him two days ago about the parking of the truck and he never had any issues. There is another dealers in the 21st and Garnett area, he has had the same truck for the last 15 years and there has been no issue. Mr. Fernandez stated when he was shopping for houses, he discussed the truck with his realtor, and he moved into the house in October 2020.

Ms. Radney asked Mr. Fernandez if there was a homeowner's association. Mr. Fernandez stated that it is his understanding that it was abandoned about ten years ago.

Mr. Wallace asked Mr. Fernandez where Cornwell is located. Mr. Fernandez stated that Cornwell Corporate is located in Ohio. Mr. Wallace asked Mr. Fernandez where he received shipments. Mr. Fernandez stated he receives his shipments at his house.

**Michael Ryder** came forward and stated the appellant just admitted to the Board what he believes is a business operation from his residence by receiving packages there. Mr.



Ryder stated that in his submissions he submitted that the appellant admitted to him that he runs his business from his house. He would urge the Board if they were inclined to reverse the decision, he would ask them the opportunity to bring the photograph that he had mentioned earlier, and maybe the original complaining citizen would come before the Board because he is concerned about the implication such an action could have. Also, as the enforcer it makes him feel as if he would have had to purchase a tool at the residence in order to prove to the Board that there is a business in the home. Mr. Ryder stated that Mr. Fernandez submitted that Mr. Fernandez admitted to operating an office out of the house when he was asked where his office is located. Mr. Ryder stated he made his decision on the fact of parking the vehicle in the driveway exclusively, which could be considered non-accessory parking, that action alone was enough to constitute a business operation from the home.

**Comments and Questions:**

Mr. Brown stated that if he lived in this neighborhood he would not like this truck in the neighborhood. He does understand Mr. Fernandez having a business but this is an active residential area. He believes there is a business being operated out of the house and he finds it hard to believe that no employees or customers come to the subject property and that there are no deliveries to the property. The truck is an eyesore and would tend to affirm the neighborhood inspector's findings for both violations.

Mr. Wallace is having a hard time determining how this is not a commercial truck, it is a tool truck, a Chevy Tahoe is 5,500 pounds so from the Working In Neighborhoods aspect he believes it is a commercial vehicle.

Mr. Wilkerson stated that per the Zoning Code there are two different types of home occupations that are allowed, one is Type I which is allowed by right. This is a Type II home occupation in the analysis of the sight, that is what the appellant is allegedly in violation of.

Mr. Ryder stated the issued citation was based on prohibited uses because there is something associated with the home occupation. The difference between Type I and Type II is explained in the field is a person is allowed to have a business at their residence so long as no one can tell from the outside. Once there is a sign erected, once there is a vehicle stored that is different. It can be even greater when there is a vehicle, even a police car, that at a residence with signage on it and is not associated with something that is going on inside the home. A lot of people have had to disassociate their vehicles with their home-based business in order for it to remain there or associate the business elsewhere other than the home.

Mr. Wilkerson stated it might be worth considering recognizing if it is a Type I or a Type II home occupation if the Board were to continue this request or vote on it today. Then to confirm what the inspector has found in the field. He thinks it is important to stay consistent with the Code and he is concerned that the Board may be drifting away from that on the home occupation type.

Mr. Ryder stated that he has had no evidence of customers, employees, or other types of thing, this is all centered around the truck being stored at the residence on a regular and recurring basis.

Ms. Radney stated that with that limited extent she is not persuaded that a business is being operated at the residence, Type I or Type II.

Mr. Wilkerson stated that if that is the case, he thinks it is important that in the motion there should be something said about a Type I business. From what he understands about this and from what he has heard today he think the Code is clear.

Mr. Ryder stated the truck is, if nothing else, an accessory use not consistent with the principal use; he heard that from the neighbor and no one else.

Ms. Radney stated she is still not persuaded, but maybe this is something that should be brought before the full Board. Mr. Ryder agreed and stated that he would request that.

Ms. Radney asked Mr. Fernandez if he had any objections to continuing his request so that it may be heard by the full Board. Mr. Fernandez agreed to the continuance.

**Board Action:**

On **MOTION** of **BROWN**, the Board voted 3-0-0 (Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Barrientos, Bond absent) to **CONTINUE** the request for an Appeal of the Administrative Decision issued by a Neighbor Inspector that the subject property is in violation of Sections 45.100 (Home Occupations ) and Section 45.130 (Parking and Storage of Commercial Vehicles) of the zoning codes (Section 70.140) to the September 14, 2021 Board of Adjustment meeting; for the following property:

**LT 9 BLK 5, OAK LEAF, City of Tulsa, Tulsa County, State of Oklahoma**

## **23168—Leonora Bustas**

### **Action Requested:**

Special Exception to permit a Personal Vehicles Sales and Rental Use in a CS District (Section 15.020, Table 15-2); Variance to permit outdoor display of merchandise within 300 feet of an abutting Residential District (Section 15.040-A). **LOCATION:** 6339 East 7th Street South (**CD 5**)

### **Presentation:**

**Leonora Bustas**, 804 North Sheridan Road, Tulsa, OK; stated the subject property is vacant and is zoned commercial and the owner would like to have a used car sales lot as a rental property. There have been changes made so the property could be used as a used car sales lot.

Ms. Radney asked Ms. Bustas to state her hardship for the Variance. Ms. Bustas stated the hardship is that the owner has had the property for a long time, and it has been vacant for a long time. The property is located on the corner and the existing building is not very big so it would be hard to have another type of business located there. The only thing the owner has been approached about is to use the property as a car lot.

Ms. Radney asked Ms. Bustas about the barbed wire that is on the top of the existing fence because that is a Code violation. Ms. Bustas stated that she had been asked to erect that fence to separate the lot from the residential area. Ms. Radney stated that it is not necessarily the fence, it is the barbed wire. Ms. Bustas stated that was not clear to her, she was told to erect a fence and she was not aware that barbed wire was not allowed by the City Code. Ms. Bustas stated that when she submitted the application, she was told the lot would need lighting, so she had lighting installed. Ms. Radney stated that it is her understanding that the fencing between the subject property and the residential area needs to be opaque to obscure the residential from the commercial use. Ms. Bustas asked if the fence needed to a privacy fence. Ms. Radney deferred to Mr. Chapman.

Mr. Chapman stated the fence, where it is located on 7th Street and Sheridan, there is not a Code requirement for fencing. There is no relief the Board can give on the barbed wire because it is too close to the sidewalk, so it is a nuisance ordinance. Along the back portion of the property, the fence between the residential area needs to be at least six feet tall and it needs to be a wooden fence or wall. To be in the CS District street setback, per Code, the fence would be limited to four feet in height for the portion that is along the street.

Ms. Radney asked Ms. Bustas if the outdoor display of merchandise was just because of the vehicles. Ms. Bustas answered affirmatively.

Ms. Radney asked Ms. Bustas if she knew the subject property had historically been used as a used car lot. Ms. Bustas stated she does not know.

Ms. Radney asked Ms. Bustas to state her hardship to the Board again. Ms. Bustas stated the hardship is that the owner has not been able to use the property after purchase. The building is too small for a restaurant and is too small for offices, and the owner does not want to expand the existing building, so he is interested in the used car lot approach. Ms. Bustas stated the permits were submitted but they were never approved because of the lack of lighting. This is the second- or third-time paperwork has been submitted and permit inspections have been paid for.

She did not ask about the fencing when she was told about the separation, so she had chain link fencing erected.

Mr. Brown asked Ms. Bustas if she had heard anything from the neighborhood. Ms. Bustas stated that she has not.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Mr. Brown stated that he believes there is a precedent established to the north of the subject property because of vehicles for sale next to a residential area.

**Board Action:**

On **MOTION** of **WALLACE**, the Board voted 3-0-0 (Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Barrientos, Bond absent) to **APPROVE** the request for a Special Exception to permit a Personal Vehicles Sales and Rental Use in a CS District (Section 15.020, Table 15-2); Variance to permit outdoor display of merchandise within 300 feet of an abutting Residential District (Section 15.040-A), subject to conceptual plan 5.21 of the agenda packet. The barbed wire fence is to be brought into compliance with the Code. The vehicle parking is to meet parking design standards of the Code. The Board finds the hardship to be the requested use is consistent with the prior use that predates the Code. 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:

**S77.5 OF E150 BLK 32, GLENHAVEN, City of Tulsa, Tulsa County, State of Oklahoma**

## **23169—Matthew Boyd**

### **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:** 708 West 23rd Street South (**CD 2**)

### **Presentation:**

**Rachel Boyd**, 708 West 23rd Street, Tulsa, OK; stated the processing would consist of topicals, tinctures and pre-rolls.

Ms. Radney asked Ms. Boyd if she would be using the entire building for the processing. Ms. Boyd stated she just rents a space, one room, in the building and that is the space that would be used.

Ms. Radney asked Ms. Boyd if there would be sales operating out of the location. Ms. Boyd stating there is a sales space in the building, but it is separate from the area that the processing would be taking place. Mr. Chapman stated the building is an existing dispensary.

Ms. Radney asked Ms. Boyd if she wants to add a use to an existing dispensary. Ms. Boyd answered affirmatively.

Ms. Radney asked if there would be any change in the operating hours. Ms. Boyd answered no.

Mr. Wallace asked Ms. Boyd about the hours of operation. Ms. Boyd stated the hours are 8:00 A.M. to 12:00 midnight, but the room would be closed no later than 9:00 P.M.

Ms. Radney asked Mr. Chapman about the spacing measurement between a dispensary and a school. Mr. Chapman stated that it is 1,000 feet but the measurement is not performed the same as the City, he believes it is measured from the location of the door. To that point, the applicant would have had to verify that with the State so he thinks the dispensary would meet that requirement. Since the property meets the State requirements it is not something the City would review.

Ms. Radney asked if there would be an update to the Certificate of Occupancy with the change of use. Mr. Chapman answered affirmatively stating there is not a spacing requirement from a processing facility and a school per the State requirements, it would be the dispensary itself.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

None.

### **Board Action:**

On **MOTION** of **BROWN**, the Board voted 3-0-0 (Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Barrientos, Bond absent) to **APPROVE** the request for a Special Exception to permit Low-Impact Medical Marijuana processing (Low-impact Manufacturing & Industry Use) in the CH District (Section 15.020, Table 15-2), subject to conceptual plans 6.23 and 6.25 of the agenda packet. The approval will have a time limit of five years, August 10, 2026. 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:

**The East 330 feet of Block X Less Beginning Northeast Corner; Thence South 200 feet; Thence West 129.47 feet; Thence North 200.06 feet; Thence East 129.71 feet to the Point of Beginning, Riverview Park Addition, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma**

## **23170—Jim Beach**

### **Action Requested:**

Special Exception to modify a previously approved site plan for a university in a residential district (Section 5.020, Table 5-2 & Section 70.120); Variance to increase the maximum permitted height of 35-feet in an RS-3 District (Section 5.030, Table 5-3). **LOCATION:** 7777 South Lewis Avenue East (**CD 2**)

### **Presentation:**

**Jim Beach**, Wallace Design Collective, 123 North Martin Luther King, Jr. Boulevard, Tulsa, OK; stated this application is for the ORU Welcome Center and Library which will be built near the praying hands which is the main entry from Lewis Avenue; the library will be to the east of the welcome center. The two subject buildings are being planned and the Special Exception to modify the previous site plan will allow the two buildings.

Mr. Brown asked Mr. Beach to state the hardship for the Variance request.

Mr. Chapman explained his staff report, there are several approvals on the subject site. Some are convoluted on what was approved. Mr. Chapman stated that he included a previous aerial that he felt reflected what was approved previously. All the previous approvals the height seemed to be taken by the Board as approval of the site plan. On a new application staff felt the applicant needed a Variance on the height for the proposed buildings.

Mr. Beach stated the overall height is approximately 42 feet and it might be 50 feet if the screening of the roof top units is added. The height limit in the RS-3 District is 35 feet and this is not a typical RS-3 use. There are many buildings on campus that are far taller than 50 feet. The scale of the site, the scale of the buildings on the site, the appropriate character of the buildings and proportions call for it to be the proposed height. This will be a possible three-story library building with a research facility within. The welcome center is below the 35-foot height.

Ms. Radney asked Mr. Beach to state the hardship for the Variance request. Mr. Beach stated the hardship lies in the fact that the zoning is RS-3, and it poses a height limit which is uncharacteristic of a use of this sort.

Mr. Wilkerson asked Mr. Beach if there had been any discussions with ORU about rezoning the site. In 1969 this may have been the best option but at some point it seems that it would be beneficial to ORU to consider IMX zoning that would this by right. Mr. Beach stated that he understands Mr. Wilkerson's point, it has been discussed but the project was so far along that it was necessary to follow the same pattern of requesting a Special Exception for the scheduling. Mr. Beach stated that he has advised the architect working on the project that it would be worth a discussion in considering future projects. Mr. Wilkerson stated that same conversation has been going on for 50 years and the idea of changes in the Code would be beneficial to ORU. This site has incrementally changed so much over time that he thinks it would be a more honest representation of what is expected for the future growth of the campus to consider rezoning.

Mr. Brown asked Mr. Beach about the parking for the two buildings. Mr. Beach stated that a parking study has been performed and the parking that has been provided, it has been analyzed and it has been concluded that the parking spaces that are in a practical distance there are more than adequate parking spaces available.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BROWN**, the Board voted 3-0-0 (Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Barrientos, Bond absent) to **APPROVE** the request for a Special Exception to modify a previously approved site plan for a university in a residential district (Section 5.020, Table 5-2 & Section 70.120); 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 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, 7.31, 7.32, 7.33 and 7.34 of the agenda packet. The Board has found the hardship to be the existing zoning of the site is restrictive to development in keeping with the current use. 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. The Board finds the hardship to be 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:

**BLK 1 LESS BEG SWC TH N22 SE31.19 W22 POB, ORAL ROBERTS UNIVERSITY HGTS, 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 3:02 p.m.

Date approved: 9-14-2021

Andrew P. Bell  
Chair