

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1257
Tuesday, August 25, 2020, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Van De Wiele, Chair Bond, Vice Chair Radney, Secretary Shelton		Wilkerson Chapman Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on August 20, 2020, at 8:57 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

The City Board of Adjustment was held in person, by videoconferencing and teleconferencing via **GoToMeeting**, an online meeting and web conferencing tool. Board of Adjustment members and 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://www.gotomeet.me/CityOfTulsa2/board-of-adjustments-aug-25th>

The staff members attending remotely are as follows:

- Ms. Burlinda Radney
- Ms. Jessica Shelton, Board Member
- Mr. Mark Swiney, City Legal

The staff members attending in person are as follows:

- Mr. Stuart Van De Wiele, Chair
- Mr. Austin Bond, Vice Chair
- Mr. Dwayne Wilkerson, Tulsa Planning Office
- Mr. Austin Chapman, Tulsa Planning Office
- Ms. Janet Sparger, Tulsa Planning Office

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MINUTES

On **MOTION** of **BOND**, the Board voted 4-0-0 (Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the June 23, 2020 Board of Adjustment meeting (No. 1253).

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OTHER BUSINESS

Election of Secretary due to Ms. Briana Ross's retirement from the Board.

On **MOTION** of **BOND**, the Board voted 3-0-0 (Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; Radney "abstaining"; none absent) to **APPROVE** the **Ms. Burlinda Radney** to the position of Secretary for the Board of Adjustment.

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UNFINISHED BUSINESS

22945—Wallace Engineering

Action Requested:

Variance to reduce the build-to-zone requirement along Lewis Avenue and 11th Street (Section 10.030, Table 10-4); Variance to reduce the ground floor ceiling height from 14 feet (Section 10.030, Table 10-4); Variance to reduce the minimum transparency required along a street facing building facade (Section 10.030, Table 10-4). **LOCATION:** 2311 East 11th Street South **(CD 4)**

Presentation:

The application has been withdrawn.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

LT 19 BLK 1; LT 2 BLK 1; E 40 LT 1 BLK 1; LT 3 BLK 1; W. 77. 3' OF LOT 1 BLK 1; LTS 4 THRU 18 LESS S5 W40 LT 14 & LESS E5 S5 LT 15 & LESS S5 LTS 17 & 18 BLK 1, HILLCREST ADDN, HILLCREST PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Mr. Van De Wiele explained to the applicants and interested parties that there were only four board members present today, due to a Board member moving outside the city limits of Tulsa. So, as a requirement that necessitated Ms. Ross's retirement from the Board and the Mayor is in the process of finding a new Board member. Normally when there is less than five Board members in attendance the Board would entertain a request for continuances but given the time involved in the search and appointment process there may be a few meetings where there are only four Board members, so cases will be dealt with as the Board comes to them if there is an issue. Most motions the Board makes it will require an affirmative vote of three of the remaining four members.

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NEW APPLICATIONS

22982—Greg Hollinger

Action Requested:

Variance of the required 25-foot rear setback (Section 5.030, Table 5-3); Special Exception to increase the permitted driveway width (Section 55.090-F).

LOCATION: 2103 East 37th Street South (CD 9)

Presentation:

Mr. Chapman stated the applicant is going to withdraw the Special Exception request regarding the permitted driveway width. The applicant has requested a continuance.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-0-0 (Bond, Radney, Shelton, Van De Wiele "aye"; "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Variance of the required 25-foot rear setback (Section 5.030, Table 5-3); Special Exception to increase the permitted driveway width (Section 55.090-F) to the September 8, 2020 Board of Adjustment meeting; for the following property:

PRT LT 2 BEG 112.80SW NEC TH SW155.70 W53.3 CRV RT 66.8 NE106.80 E92.80 POB & PRT VAC TERWILLEGER BLVD BEG 53.3W SECR TH W45.41 CRV RT 82.88 NELY98.05 E52.87 SLY TO POB BLK 6,HIGHLAND PARK EST, LEWIS ROAD ESTATES PRT B6-9 HIGHLAND PARK EST AMD B6-9, City of Tulsa, Tulsa County, State of Oklahoma

Ms. Radney informed the Board that she will need to recuse on Item #7. Mr. Van De Wiele informed Ms. Jones that it will be necessary for all three Board members to vote in favor of her request given there is one recusal, and he asked Ms. Jones if she was comfortable with proceeding with her request today. Ms. Jones answered affirmatively.

Ms. Shelton informed the Board that she will need to recuse on Item #8. Mr. Van De Wiele asked Ms. Back if she was comfortable with proceeding with her request today. Ms. Back answered affirmatively.

22976—Perla Zamora

Action Requested:

Variance to allow the total aggregate floor area of all detached accessory buildings to exceed 40% of the floor area of the principal residential structure (Section 45.030-A). **LOCATION:** 8923 East 15th Street South **(CD 5)**

Presentation:

Perla Zamora, 8923 East 15th Street, Tulsa, OK; stated she would like to have a play house for her children; she has three children and she wants space for each child have a quiet place to be able to study on their computers.

Mr. Van De Wiele asked Mr. Chapman if the 50 x 50 shop under consideration today. Mr. Chapman stated the applicant included it on the site plan but the Letter of Deficiency was written specifically for the 30 x 30 structure that the applicant is calling a

play house, and he thinks it would be appropriate for the Board to speak to that because he does not believe they are pursuing the other proposed building at this time.

Mr. Van De Wiele asked Mr. Chapman how big is the principal residence and how much of a Variance is being requested? Mr. Chapman stated that per Code the applicant would get more allotment based on the minimum; it is 750 square feet or 40% whichever is larger. In this instance the applicant will get 750 square feet, and the applicant is seeking a total of 1,760 square feet total for accessory structures.

Mr. Van De Wiele asked Mr. Chapman what the difference is. Mr. Chapman stated that 900 square feet is for the proposed building, there is an existing 864 square foot structure for a combined total of 1,764 square feet. Mr. Van De Wiele asked Mr. Chapman if the detached garage is the 864 square foot structure. Mr. Chapman answered affirmatively. Mr. Chapman stated the Variance request would grant the applicant an additional 1,014 square feet.

Mr. Van De Wiele asked Ms. Zamora to state her hardship for the Variance request for the additional 30 x 30 building. Ms. Zamora stated the purpose of the building would be a school learning area and it will be divided into four sections inside. There would be a mini library for her daughter, a very quiet place for her children when they have free time, for her older daughter there would be an area for her to study, and an area for the X-Box and TV. Mr. Van De Wiele stated the Board has to have something unique about the property that would grant that much of additional square footage; is there something about the property? Ms. Zamora stated she would like to have the building in the back to stay away from the street.

Mr. Bond asked Ms. Zamora when her house was built. Ms. Zamora stated that it was built in 1955.

Mr. Van De Wiele asked Ms. Zamora why she would not build this as an addition to the main house. Ms. Zamora stated that she wants the building to have some space from the house so it can be a relaxing place for the children and have no worries about cars.

Mr. Van De Wiele asked Ms. Zamora if this was intended to be a rental unit or a second residence in the future. Ms. Zamora answered no.

Ms. Radney asked Ms. Zamora if her children were going to be experiencing remote learning. Ms. Zamora answered affirmatively.

Interested Parties:

Sandra Brandt, 8937 East 15th Street, Tulsa, OK; stated her husband is the President of the Mingo Valley Homeowner's Association, and the Association sent in an e-mail opposing this request. Currently the people that live in the house seem to be operating a business from the house; there is a lot of heavy equipment in the back yard. As far as the comment about wanting to keep the children from the street, she has seen the children numerous times riding on their four-wheelers and crossing the street so she

cannot see that would be an issue. This is a residential neighborhood and the residents would like to keep businesses out of the neighborhood. This area is supposed to be single family houses and most of them are on 1-acre lots. If the applicant sells the property, after building this structure, then the new owners would possibly rent out the structure because there will be electricity and water. Some of the residents in the neighborhood have turned their accessory structures into little houses, and the City has said they cannot do anything about that unless there is a kitchen in the structure, and they cannot go into the structure to see if there is a kitchen.

Mr. Van De Wiele confirmed the Board did receive the e-mail from Mr. Brandt and there is also a four-page submission from Mr. Stead regarding this subject.

Rebuttal:

Perla Zamora came forward and stated there was a picture taken of her property last Friday and the cars were her visitors. Ms. Zamora stated there are people that live in the neighborhood and have business cars at their houses, so she does not understand Ms. Brandt's comment about a business. Mr. Van De Wiele asked Ms. Zamora if anyone that lives in the house, including herself, operate a business out of the house. Ms. Zamora answered affirmatively. She stated her husband removes snow off 15th Street and they have a concrete business that is five years old; there is only one truck. Ms. Zamora stated that since she has moved in there have been a lot of complaints about the truck.

Comments and Questions:

Mr. Bond stated these are long narrow lots and it appears that there are multiple out buildings in the aerial. If he were going to support this, he would be inclined to do so based on a restriction of use for any commercial gain or an additional residence. He does not have an issue with someone wanting to build a structure for their children.

Mr. Van De Wiele stated, depending on where the Board goes with the motion, there needs to be discussion in the motion about the 50 x 70 proposed future shop. Mr. Bond agreed.

Ms. Shelton stated that she likes the conditions that Mr. Bond mentioned and agreed with Mr. Van De Wiele's comments about the other structure. She is not inclined to support that, and she knows that is not in front of the Board today. Ms. Shelton stated that she thinks the hardship could be that the structure is a detached space for learning. Even though the property is not unique the Board is not granting a Variance to the location, they are giving a Variance to the size of the accessory structure.

Ms. Radney stated she supports Ms. Shelton's comments.

Mr. Van De Wiele stated that based on the plan depicted on page 4.14, there is an existing home, there is an existing detached garage, a planned 30 x 30 play house, and then there are two more buildings, a 50 x 70 shop and a 15 x 15 shop. That is all collectively too much in his opinion. He knows the Board is not discussing the 50 x 70 or

the 15 x 15 buildings, but he thinks whoever makes the motion needs to specifically reference both of those buildings as being not approved or not a part of this motion. Mr. Van De Wiele stated that a hardship could be the size of the property can be the basis. Mr. Van De Wiele stated that if the motion were crafted carefully enough, he could support the request.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-0-0 (Bond, Radney, Shelton, Van De Wiele "aye"; "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to allow the total aggregate floor area of all detached accessory buildings to exceed 40% of the floor area of the principal residential structure (Section 45.030-A), subject to conceptual plans 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20 and 4.21 of the agenda packet. The Board has found the hardship to be that the house predates the Comprehensive City Zoning Code as well as the width and breadth of the existing lot. The relief requested in no way grants or conveys any relief other than that for the proposed 30 x 30 playhouse and the existing detached garage. The 30 x 30 playhouse is not to be used for any commercial or residential use. 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:

BEG 293E & 40N SWC NE TH E128 N290.93 W128 S290.91 POB SEC 12 19 13, City of Tulsa, Tulsa County, State of Oklahoma

22977—James C. Winn

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:** 5123 South Peoria Avenue East **(CD 9)**

Presentation:

Ryan Kuzmic, Viridian Legal Services, 1602 South Main Street, Tulsa, OK; stated he represents the applicant, James and Melissa Winn.

James C. Winn, 7120 South 385th West Avenue, Mannford, OK; stated he is the applicant.

Ryan Kuzmic came forward and stated this is a situation where two dispensaries began the process of operating a business and opening a business around the same time. Both of which were before the City of Tulsa passed the Ordinance requiring the 1,000-foot spacing. He knows from the application packet that Nirvana, the separate and second dispensary in question, had obtained theirs beforehand and the Winns obtained theirs just after. Both of the businesses began the process of obtaining license and picking out the locations without notice of each other and without notice that there was going to be an Ordinance coming in. The City of Tulsa passed the 1,000-foot requirement on December 1, 2018. He provided two additional documents for the Board's review, which were sent to Austin; the first page of the executed lease that the Winns signed with their current commercial location, signed on October 1, 2018 which was two months before the Ordinance went into effect; and the second is the OMMA license from last year, which was obtained January 24, 2019 approximately 45 days after the Ordinance went into effect. The Winns looked carefully for an appropriate location that would be suitable for their new business. When they selected the property and began the application process there was no 1,000-foot restriction and there was no dispensary across the street at that time either. The Winns opened their doors April 1, 2019; both of these businesses have been operating in the same and current sites for approximately a year and a half with no issues. They have been able to develop their own clientele, they have been operating with no issues, and they have been properly licensed the entire time. This part of town is one in strong need of economic redevelopment. It is designated an area of growth by the City. The shopping center where the Winns are located has had three tenants leave in the past year, including two that are included in the photo on page 5.7. Those businesses cannot continue operating in the pace of the current economic downturn. If the Winns are forced to move their business after occupying the site for one and a half years, the space will likely sit unrented in the near and immediate future. It would also result in reduced foot traffic for the other for the other tenants, which includes a Hispanic supermarket and a thrift store that has been in that location for a couple decades. The dispossession of this business would have a cascading effect on the neighborhood area, not just on the two dispensaries in question, but on the surrounding businesses as well. It is worth noting that the two dispensaries are three quarters practically of the 1,000-foot restriction as it

is, so it is not like they are next to each other. They are not visible from each other's doorway or directly out front of the property. To ask the Winns to move location after a year and a half would present an unfair hardship and logistical impossibility. When they were looking for a suitable location there were not a number of other dispensaries in the Peoria area. Since that time, the market has filled in around them. Peoria, north and south, has dotted with dispensaries; it only takes effectively two dispensaries within a one mile area to basically to zone out or box out another dispensary from being able to move in the area due to the 1,000-foot restriction. There are now dispensaries on either side of them such that they would not be able to locate a nearby location to allow them to service their customers in the same area or to continue to employ their employees. The Winns employ 14 people working at the location, all of whom live within a half mile of the store. Those employees would not have physical access to another location, and they may be faced with a prospect of not being able to get transportation to a prospective location. Mr. Kuzmic asks that the Board apply the zoning rule with basic fairness to the Winns. They acted in good faith. They began this process before the zoning ordinance had passed. They had no notice of the other dispensary. They had made several calls to the City of Tulsa, spoke with several employees in the months of August and September 2018 as part of their preparation for this site. At that time, the City employees told them, quite rightly, that there was no other restriction or zoning consideration beside being in CH to consider. Subsequently, the ground moved from underneath them. It would be unfair to apply this Ordinance to them and its literal enforcement. He asks the Variance to be granted pursuant to the application.

Mr. Van De Wiele asked Mr. Chapman to display the lease on the overhead projector, and he asked Mr. Kuzmic what piece of property was the lease for? Mr. Kuzmic stated that it is for the subject property which the Winns have their dispensary located. Mr. Van De Wiele asked Mr. Kuzmic if that was the release that was signed in October 2018. Mr. Kuzmic answered affirmatively. Mr. Van De Wiele asked Mr. Kuzmic if the Winns have leased the property that they are still sitting in since October 2018. Mr. Kuzmic answered affirmatively. Mr. Van De Wiele stated if the Certificate of Occupancy depicted on page 5.6 is the Winns Certificate of Occupancy. Mr. Chapman stated that is Nirvana and they do not have a Certificate of Occupancy for a dispensary.

Mr. Van De Wiele thought he had heard that the Winns had a license. Mr. Kuzmic stated that is the OMMA license. Mr. Van De Wiele asked when that license was obtained. Mr. Kuzmic stated that it was January 24, 2019. That was granted to them approximately 45 days after Tulsa implemented the 1,000-foot restriction. It had been in process from before that time but that was the date it was granted. Mr. Van De Wiele asked when was it submitted? Mr. Kuzmic stated that it was submitted December 2018. The submission order had been affected by other municipal things they had to apply for. It is worth noting that if the Winns had apply for these things in a different order he may not even be before the Board today.

Mr. Van De Wiele asked Mr. Kuzmic if he knew how long Nirvana had been in their location. Mr. Kuzmic stated it was about the same time. Mr. Van De Wiele asked if it was pre-November 1, 2018? Mr. Kuzmic stated he does not have exact notice of that,

but he understands that Nirvana had received the OMMA license before the December 1st cut off. It is his understanding that both shops opened their doors in approximately spring of 2019, and they have been physically operating and taking customers from around that time. Mr. Kuzmic stated that he knows the Winns opened on April 1, 2019; that is when they actually began taking customers.

Interested Parties:

Elaine Cooper, 8129 East 11th Street, Tulsa, OK; stated she opened Nirvana April 1, 2019 and received the OMMA license September 26, 2018. She had banners and a sign up well before she had opened. Banners were up September 2018 stating, "Coming Soon". She applied for her food license June 2018 which was right after she opened. Secretary of filing was August 2018. She had secured the location beforehand. She made sure that everyone in that location knew she was coming and even her website let everyone know. Ms. Cooper stated she applied for her Certificate of Occupancy on May 5, 2019 and she does have a Certificate of Occupancy.

Mr. Van De Wiele asked Ms. Cooper if that was the Certificate of Occupancy seen on page 5.6. Ms. Cooper answered affirmatively.

Ms. Cooper stated she drove by the site this morning and dispensary can be seen from the parking lot. Walking is probably the longest way to get to each location and it is a four-minute walk.

Jaga T. Welikanna, 7102 South Utica, Tulsa, OK; stated he has been a patient for both locations, but he protests this. The 1,000-foot spacing is in place for a reason, to secure the business and business opportunities for anyone who runs a legitimate business. He thinks it is unfair to break the law and give the opportunity to another person. Mr. Welikanna stated that one dispensary can see the other dispensary across the parking lot. Mr. Welikanna stated he strongly opposes this request.

Lynn Bennett, 2612 Rawson Street, Oakland, CA; stated she supports Mr. Winn's request for the Variance. Ms. Bennett stated that Mr. Winn's business is an asset to the Brook Plaza Shopping Center, and the business provides a diversity for the tenant base. They are a tenant in good standing because they always pay their rent on time. The store is always clean and maintained in a professional manner, and they have developed their own base of local clientele. The employees are well trained and will be able to knowledgeably assist customers with the product. Ms. Bennett stated she would encourage to grant the requested Variance.

Rebuttal:

Ryan Kuzmic came forward and stated that it is his understanding that Ms. Cooper stated that it was put up in September, but at that time the Ordinance was not in existence. That would not have provided notice and the property they were looking at would be non-conforming.

James Winn came forward and stated that he noticed early on that Nirvana had a sign hanging on their door stating the store was permanently closed and would not be opening. So, he thought that was the case and he was surprised when he opened his store that Nirvana opened. Mr. Winn believes that Ms. Cooper purchased the property before 788 even passed because they have other businesses in Tulsa that sells glassware; it is a head shop basically. He assumes that when 788 passed Ms. Cooper's plans changed.

Ryan Kuzmic came forward and stated that one other aspect he would like to reiterate is that he is not necessarily asking the Board to make a decision about who won the race. The argument is that the Winns did not know they were in a race when they began looking at the property. They did not have notice that the Ordinance was going to pass when they selected the property. Frankly, both of these businesses developed their businesses in good faith, they obtained all the state licensure they needed, and they both have been operating at the same site for a year and a half. His request is that the Board grant the Variance due to basic fairness, due to the nature of the property itself, and the fact that the Winns were operating in good faith, and taking care of every piece of accreditation they knew or had reason to know about. The market and the zoning changed after they had already taken economic steps to secure the property and invested in it. From a broader perspective, this is an area of town which would benefit from the redevelopment. Aside from the 1,000-foot zoning requirement this is a good conforming location for either of the businesses or both. This is an area of town that could use economic redevelopment. He knows that allowing both businesses to stay in place is not going to affect the neighborhood. Both businesses are existing healthily. They have their own sets of clientele, which they have carefully developed over the past year and a half. The business will continue to support the developer that owns the piece of property and could use the support. The Winns were not breaking the law at any point, they were conforming as well as they understood how to in good faith. Mr. Kuzmic asks for these reasons that the Variance be granted.

Mr. Van De Wiele asked Mr. Kuzmic to recap the hardships for the requested Variance. Mr. Kuzmic believes there are several. One, it is a uniquely conforming property. There are no other areas in that immediate area that could house a dispensary because of the newly imposed restriction. The market grew up around that piece of property. Additionally, he had submitted a separate piece of documentation to Mr. Chapman, which is a street view, a street view from Peoria showing they are barely visible. The Winns do not have their name on the Brook Plaza sign. The parking lot is enormous, but the two dispensaries are not visible to each other from the front doors. There is no signage to distract or divert other dispensary's customers to them. It is not a business that has a negative community impact.

Comments and Questions:

Ms. Shelton stated that by the applicant's own accord they are not disputing who was established first. For her that takes the date discrepancies out of the argument, but she does think this is the first dispensary Variance that she thinks checks all the boxes. She does think there is something unique about the location, mainly because of what I-44

did when it plowed through the area. There is not another commercial property where the Winns could locate if a 1,000-foot circle is drawn around the property. They have existed together peacefully up until this point. Ms. Shelton stated she is in favor of this request.

Ms. Radney stated she is in favor of this request.

Mr. Van De Wiele stated that he has a struggle with the fact that there is not another spot that is outside of the 1,000 feet, that that is the hardship. That seems to be a rather twisted form of circular reasoning. The very reason a Variance is needed is because one dispensary is within a 1,000 feet of another dispensary. He has seen a similar situation with billboards which has to be 1,200 feet. Mr. Van De Wiele stated he does not disagree with Ms. Shelton's comment about this being different in that both of these have been there for a year and a half. He is not typically sympathetic with the idea that a person did not know there was a law. He thinks that most people, especially if they were in this business, knew this was coming. Mr. Van De Wiele stated he is struggling with the hardship.

Mr. Bond stated the only hardship he hears is that they did not know. The discussion is not about a shop that sells Tic-Tacs, this is a shop that legislators said can sell medicine as a dispensary. A person has to have a prescription to receive the medicine because it is a highly regulated industry and highly regulated enterprise. These are people that are spending a lot of money to get into a professional and heavily regulated industry. That requires research. Mr. Bond stated that it is not a hardship to say, "I didn't know". Mr. Bond stated he does not see a hardship in this case.

Ms. Radney stated that she sees that they were established essentially at the same time and it really it comes down to the luck of the draw in terms of the processing of these documents. At the time they both secured their locations she is convinced by the applicant's representative that they had developed their businesses in good faith with all the knowledge they had at the time. To the extent that Nirvana can be praised for the process that they followed to establish their business, she does not see any material difference between Nirvana and the applicant. Ms. Radney believes that this actually is a change in a business landscape that they could not have anticipated and that in itself is the hardship.

Board Action:

On **MOTION** of **SHELTON**, the Board voted 3-1-0 (Radney, Shelton, Van De Wiele "aye"; Bond "nays"; no "abstentions"; none absent) to **APPROVE** 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), subject to conceptual plans 5.13 and 5.14 of the agenda packet. The Board finds the hardship to be the two dispensaries developing at the same time as well as no other commercial sites being available outside of 1,000 feet from the first established dispensary. 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:

BEG NWC LT 1 BLK 1 CANTRELL ADDN TH N132.30 NE45.94 N100.86 NE151.53 NE251.08 N133.60 NW69.36 NE323.84 S639.32 W580 POB SEC 31 19 13 6.772ACS, City of Tulsa, Tulsa County, State of Oklahoma

22978—Bobby Patterson

Action Requested:

Special Exception to allow a Commercial/Assembly & Entertainment/Small Use (up to 250-person capacity) (axe-throwing venue) in an MX-1-P-U District (Section 10.020, Table 10-2). **LOCATION:** 1306 East 11th Street South **(CD 4)**

Presentation:

Bobby Patterson, 22770 Grimes Road, Haskell, OK; stated he would like to allow a tenant into a building located on the corner of 11th and Peoria for an axe throwing venue. The City of Tulsa building permit center has designated this to be an A3 use group which is similar to a bowling alley. There is an occupancy load of 48 people in the facility. When the case went to zoning that department kicked it back as MX1 use group which does not allow assembly in small groups, less than 250, without a Special Exception.

Ms. Shelton asked Mr. Patterson what the parking situation for the proposed use. Mr. Patterson stated the Zoning Code states zero is the required amount, but there is a total of 53 spaces on the lot and the adjoining lot which is tied together.

Ms. Shelton asked if the proposed events will be held after hours. Mr. Patterson stated this not actually an axe throwing competition venue, it is a training and practice facility.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to allow a Commercial/Assembly & Entertainment/Small Use (up to 250-person capacity) (axe-throwing venue) in an MX-1-P-U District (Section 10.020, Table 10-2), subject to conceptual plan 6.11 of the agenda packet. This approval is for the axe throwing venue only. 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:

LTS 45 - 52 LESS N2.5 LT 52 BLK 4, ORCHARD ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22979—Molly Jones

Action Requested:

Special Exception to permit alternative compliance parking ratios in an RM-2 District to reduce the required number of parking spaces for an apartment use (Section 55.050-K & Section 55.020, Table 55-1). **LOCATION:** 7131 & 7141 South Quincy Avenue East (**CD 2**)

Ms. Radney recused and left the meeting at 2:23 P.M.

Presentation:

Molly Jones, 5103 South Sheridan Road, Tulsa, OK; stated she is the architect for the project. The project is the first Co-Housing Project in the City of Tulsa; the only other co-housing project in the state is located in Stillwater called the Oak Creek Community. This is a 55+ community and will remain so for the duration of its lifetime. It is developed by the owners who will live there. The site plan is laid out to encourage walking and encourage mobility and discourage reliance on a single or multiple occupant vehicle. There is a significant number of bicycle parking capabilities. The development totals 4.88 acres of land and the parking will be located on the north side to get it outside of the development. The garages that will be on the development will all be detached from the homes. The subject property is north of the Ascension St. John's property just off Quincy Avenue. There is a total of 52 spaces on the site and this would fall between a

condo project and a senior housing facility; the average of which would be 48 spaces. Ms. Jones stated the request would be to allow only 43 parking spaces.

Mr. Van De Wiele asked Ms. Jones if the site plan depicted 52 parking spaces. Ms. Jones answered affirmatively. Mr. Van De Wiele asked Ms. Jones why she wanted to eliminate nine parking spaces. Ms. Jones stated she is requesting what is the average of what is being seen between an apartment condo complex and a senior living facility complex.

Mr. Van De Wiele asked Ms. Jones if the site plan the Board is seeing is indicative of a conceptual site plan that the developer would like to construct. Ms. Jones answered affirmatively.

Ms. Jones stated she included a study from the Victoria Transportation Institute out of Victoria, British Columbia, Canada, and that study showed a table that shows credits and adjustment factors that can be applied to parking. If she applied the applicable adjustment factors to this project, it would reduce the density down to 42% or 30 parking spaces.

Mr. Van De Wiele asked Ms. Jones how many dwelling units are in the project. Ms. Jones stated there are 36 dwelling units in this development. One of the things that co-housing developments do is that they share resources, including vehicles. Co-housing communities offer vehicles that the homeowner's association will own and maintain that owner's turn over for use by the community as well.

Ms. Jones stated the homes will be privately owned but the garages will be owned by the homeowner's association, and if a home owner wants to have a garage they will pay a one-time fee for the unlimited right to use the garage. The homes are priced above the market value for the area and it is intentionally based. Home owners that buy into the community understand the values that the community is built around and how their behavior affects the community. The home owner is also given an option to opt in for a garage as well.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SHELTON**, the Board voted 3-0-1 (Bond, Shelton, Van De Wiele "aye"; no "nays"; Radney "abstaining"; none absent) to **APPROVE** the request for a Special Exception to permit alternative compliance parking ratios in an RM-2 District to reduce the required number of parking spaces for an apartment use (Section 55.050-K & Section 55.020, Table 55-1), subject to conceptual plan 7.9 of the agenda packet allowing a reduction to 43 parking spaces. The development is to be restricted to 55+

co-housing use. The other allowed parking alternative of Section 55.050 are infeasible or do not apply or the reduced parking ratios proposed are not likely to cause material adverse impact on traffic circulation and safety, or in the general welfare of property owners and residents in the surrounding area. 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:

Lots Two (2) and Three (3), Block One (1), River Grove Subdivision, City of Tulsa, Tulsa County, State of Oklahoma

Ms. Radney re-entered the meeting at 2:45 P.M.

22980—Back Land Use Planning – Carolyn Back

Action Requested:

Variance of the front street setback from 25 feet to 15 feet (Section 5.030, Table 5-3); Variance of the side street setback from 15 feet to 10 feet and of the setback for a street-facing garage door from 20 feet to 18 feet (Section 5.030-B, Table Note [3]). **LOCATION:** 1609 East Oklahoma Street North (**CD 1**)

Ms. Shelton recused and left the meeting at 2:45 P.M.

Presentation:

Carolyn Back, 632 East 3rd Street, Tulsa, OK; stated she represents Tulsa Habitat for Humanity. The subject property was donated, and they are aiming for the highest and best use to honor the donors wishes. The proposed lot split will revert the lot dimensions to the original plat reversing a previously approved lot combination. The Board approved other Variances for Tulsa Habitat for Humanity in the immediate area addressing the same issues, BOA-22789 on North Trenton and BOA-22550 on North Rockford. These are old plats that predate the Zoning Code and the sub-division regulations, and the rights-of-way are platted too narrow. The requested Variance on the setbacks is to extend the continuity of the neighborhood and accommodate fitting the two small single-family houses for the subject lots. The standard floor plan has been modified to best accommodate for the lots; they are modified to as small as possible.

Ms. Back presented two surveys to Mr. Chapman for the record.

Ms. Back stated that neighboring lots have structure that sit way forward and that is confirmed on the aerial shot in the agenda packet. Ms. Back stated the Variance is requested for the front to help meet the context.

Mr. Van De Wiele asked Ms. Back if her proposed line is not as close as the neighboring properties. Ms. Back answered affirmatively.

Ms. Back stated the hardship for the Variance request is that the subject property is located in an old sub-division that predates the Zoning Code and the sub-division regulations, and the Major Street and Highway Plan. The surrounding streets have less than the required right-of-way dedication by today's standards, so they are trying to match the surrounding context on Trenton and obtain minimum required relief to split the lot back as originally platted.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 3-0-1 (Bond, Radney, Van De Wiele "aye"; no "nays"; Shelton "abstaining"; none absent) to **APPROVE** the request for a Variance of the front street setback from 25 feet to 15 feet (Section 5.030, Table 5-3); Variance of the side street setback from 15 feet to 10 feet and of the setback for a street-facing garage door from 20 feet to 18 feet (Section 5.030-B, Table Note [3]), subject to conceptual plan 8.7 of the agenda packet. The Board finds the hardship to be the plat and home predating the Comprehensive Zoning Code as well as the proposed layout being in keeping with the neighboring properties. 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 7 & 8 BLK 3, UTICA ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Ms. Shelton re-entered the meeting at 2:52 P.M.

22981—Cody Webb

Action Requested:

Special Exception to permit moderate-impact medical marijuana processing (Moderate-impact Manufacturing & Industry Use) in the IL District (Section 15.020, Table 15-2). **LOCATION:** 165 South 122nd Avenue East, Suite B **(CD 3)**

Presentation:

Cody Welch, 2878 East 34th Street, Tulsa, OK; no presentation was made, and he deferred to Mr. Logan Jones.

Logan Jones, Attorney, 616 South Boston Avenue, Tulsa, OK; stated his client would like to have cannabis processing facility located at 165 South 122nd East Avenue, Suite B. The process his client wants to engage in is something generically referred to as non-combustible. The application that is before the Board is for a building that is currently zoned IL, where the zoning requirements for the City of Tulsa state that any cannabis processing, including this moderate impact, be placed in an IM or an IH zone. Mr. Welch is looking to occupy a floor space of about 200 square feet. The difference between a combustible and a non-combustible process is obviously the use of combustible gases, which is a concern for anyone who has to be in close proximity to this, however, that does not apply to this specific situation. His client will be using a simple heat and force machines to take the cannabis plant, heat and compress it down, extract the oil and that is it. There are no flammable products. There are no toxic gases. The specific requirements for a permitted business in the city limits of Tulsa are going to require that a cannabis processing facility mirror and implement a lot of the requirements which are used for licensing purposes from the State, both the Oklahoma Medical Marijuana Authority and the Oklahoma Bureau of Narcotics and Dangerous Drugs which will regulate the actual presence of cannabis on the subject site. Specific to the Bureau of Narcotics and Dangerous Drugs any commercial cannabis facility in the State of Oklahoma has to abide by a monitored alarm system by a third party, a lock that will segregate access to the cannabis from general access to the facility, and recordable cameras that will track the physical presence of individuals. He understands that since the subject property abuts a residential area there is a concern about the traffic pattern. The reality is that Mr. Welch is not the first cannabis business in the area; there are already two others that exist in the industrial light area, which are cannabis growers. Mr. Welch will be occupying 200 square feet in a portion of a building that a grower currently is permitted to occupy. As for the smell, the City of Tulsa has a ventilation requirement to make this process as indistinguishable to neighbors as possible. The buildings are non-descript buildings in east Tulsa and there is no identification signifying the buildings are commercial cannabis businesses. There is no

signage. There are no additional security protocols. There is nothing to distinguish the building occupants from any other building occupants. The subject building does not actually abut any residential property; there is a corridor or a row of industrial buildings separating the residences in question. Mr. Jones stated the reason Mr. Welch does not have an existing medical marijuana license today is because he is attempting to attach his license to the subject address which requires the consent of the City of Tulsa via the Certificate of Compliance; he is awaiting the resolution of today's decision. There was a question by Mr. Triplett whether the building owner consented to this application and he does. At this point Mr. Jones deferred to Mr. Welch so he can discuss the processing technology in the subject space.

Cody Welch came forward and stated that what he does is mechanical extraction. He has two machines that fit on a 6'-0" x 2'-6" worktable. He applies heat and pressure, and the pressure is about 800 pounds per square inch and the heat does not exceed 200 degrees. There would virtually be zero environmental footprint for what he is doing. The solvent used in the process is water except for the cleaning supplies. He is not interested in using chemicals in the processing because he wants to keep an organic approach to the processing. Mr. Welch stated he hired Mr. Jones to help him get through some of the language of the process and the hearing process. He plans to use the existing alarm that is there for the marijuana farm. He has fingerprint digital wi-fi activated locks to enter the shop. He has two cameras on the interior. The plans are to have an HVAC system and it will have a carbon filtration system.

Ms. Shelton asked Mr. Welch if mechanical extraction without the use of chemicals produce any marijuana odors? Mr. Welch stated marijuana has an odor no matter what a person does to it. The grievances that were written to him, he believes, are grievances more toward the existing cannabis businesses because he has not operated or done anything at the subject site. Mr. Welch stated the extreme pungent smell comes from the harvesting of the cannabis and he will not be harvesting.

Ms. Shelton asked if the applicant decides to not have organic processing in the future would that change his designation and prompt him to come back before the Board? Mr. Van De Wiele stated that it would if it were one of the combustible processes, the ones designated in the high intensity processing.

Interested Parties:

Robert Triplett, 139 South 122nd East Avenue, Tulsa, OK; stated he appreciates everything Mr. Welch has said, and he gave him an opportunity to meet with him, he was very forthright. Mr. Triplett stated he has encountered over the last year a really pungent smell from other marijuana growers, to the point that his employees cannot leave their car windows down. On the day of harvest and/or when the marijuana is squeezed the pungent smell is going to be serious. He and his employees get the smell on their clothes and they are concerned about being stopped for probable cause by the Police because the odor can be that strong.

Mr. Van De Wiele asked Mr. Triplett where his facility is located in relation to the subject building. Mr. Triplett stated that his facility is three doors north of the subject site. Mr. Triplett stated there are at least three other growers along the street and he knows that because of the pungent smell.

Mr. Bond asked Mr. Triplett if he disagreed with the applicant about his process not creating any additional smells. Mr. Triplett stated that he would strongly disagree. It is like a piece of garlic, once you start peeling it there will be more smell. Mechanically the marijuana will have more smell.

Mr. Van De Wiele asked Mr. Triplett if he was aware of the filter ventilation equipment at the other locations? Does he know if the other locations have them or don't have them? Mr. Triplett stated there has been a concentrated effort by the people along that street that are growing to add scrubbers. But on harvest day on a small parcel there cannot be enough scrubbers installed to remove all the odor. Mr. Triplett stated that he knows from a practical standpoint people cannot roll their windows and leave them down because the smell gets really bad. He thinks the City was smart when they wrote the zoning to have the marijuana facility or processing be in IM or IH, because those parcels are larger and farther apart. This area has buildings nested together very closely on the small IL lots.

Rebuttal:

Cody Welch came forward and stated there is an enormous difference in the smell when it comes to processing and harvesting.

Comments and Questions:

Mr. Van De Wiele stated that he has read in the Code, in 9.3, "a ventilation air filtration system that prevents odor from being detectable at the boundaries of the lot within which the building is housing", so who is checking on that? Who verifies that? Mr. Chapman stated the building permit level verifies that there is some type of system. There is no one going to perform a smell check on a business; it would be a complaint-based inspection performed by Code Enforcement.

Ms. Radney stated this one is a tough call for her. This does strike her as being about intensity and through no fault of this applicant, he may be prepared to comply with the Code as it relates to the air scrubbing system, but she cannot get past Mr. Triplett's suggestion that adding additional manufacturing capacity into the space is injurious to the neighborhood. Ms. Radney recognizes that there may be a recourse with the City in the terms of Code Enforcement but what is acceptable per Code to date isn't adequate and adding more manufacturing capacity into this environment seems problematic. Ms. Radney stated that she is leaning toward a no vote, but she will listen to the rest of the discussion.

Ms. Shelton stated that she is struggling the same thing as Ms. Radney, she is not a fan of compounding problems. The last thing the applicant said, that there is a distinct difference in the smell of extraction versus the smell of harvesting so what is being

proposed is extraction not harvesting and that has her favoring a yes vote more than a no vote but that doesn't mean that she is not sympathetic to the odor. Ms. Shelton stated she hates the smell so she can image the pain of working around the odor.

Board Action:

On **MOTION** of **BOND**, the Board voted 3-1-0 (Bond, Shelton, Van De Wiele "aye"; Radney "nays"; no "abstentions"; none absent) to **APPROVE** the request for Special Exception to permit moderate-impact medical marijuana processing (Moderate-impact Manufacturing & Industry Use) in the IL District (Section 15.020, Table 15-2), subject to conceptual plan 9.10 of the agenda packet. This approval is limited to the 200 square foot space identified as Suite B. 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 8 BLK 3, EASTGATE INDUSTRIAL PARK THIRD ADDN RESUB, City of Tulsa, Tulsa County, State of Oklahoma

22985—Christian & Kristen Meyers

Action Requested:

Variance of the minimum lot width in the RE District to permit a lot line adjustment (Section 5.030, Table 5-3); Variance of the minimum lot area and lot area per dwelling unit in the RE District to permit a lot line adjustment (Section 5.030, Table 5-3). **LOCATION:** 2604 East 38th Street South **(CD 9)**

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated he represents Mr. and Mrs. Chris Meyers who own the subject property. In the back of their property there is a square tract that they would like to attach that portion to the neighbor's property to the southeast. The unusual issue is that the northern lot, Tract A, is an RE zone property and Tract B and Tract C where the small portion will be attached is zoned RS-1, and they each have significant zoning requirements. Tract A is supposed to 150-foot width on 38th Street and it has 83 feet of width, that is how it was platted. So, there is not any change in the street frontage for the subject property, it is actually the rear of the property. The north boundary line of Tract C and the south boundary line of Tract A is the zoning line. Everything north of Tract C is zoned RE and everything south of Tract A is zoned RS-1.

Mr. Van De Wiele asked Mr. Reynolds if Tract B was its own separate lot. Mr. Reynolds answered no and stated that it is a piece of Tract A. Tract A and Tract C are a single lot and Tract B is its own lot. Mr. Van De Wiele asked Mr. Reynolds if the goal is to cut C off from A and tie it to B. Mr. Reynolds answered affirmatively.

Mr. Reynolds stated that on Tract B there is a house, a pool and that owner wants to have the small portion of land so they will have a back yard behind the pool. Mr.

Reynolds stated that the neighbors are supportive of this proposal. The hardship is that the lot was never 150 feet wide, it has been 83 feet wide and the Variance will not affect the lot width at all. The lot is almost 400 feet deep and it is too much as a practical back yard because it is not needed, and the neighbor has agreed to purchase it.

Mr. Van De Wiele asked Mr. Reynolds if he knew how all of this came about. Mr. Reynolds stated they are not platted, that is why it looks so odd. The property was broken apart before the Zoning Code.

Ms. Shelton asked Mr. Reynolds when the house on Tract A was built. Mr. Reynolds stated that it was built in 1923.

Ms. Shelton asked if the house on Tract A was on the city sewer system. Mr. Reynolds stated that he thinks it is.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-0-0 (Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; "abstaining"; none absent) to **APPROVE** the request for a Variance of the minimum lot width in the RE District to permit a lot line adjustment (Section 5.030, Table 5-3); Variance of the minimum lot area and lot area per dwelling unit in the RE District to permit a lot line adjustment (Section 5.030, Table 5-3), subject to conceptual plan 11.9 of the agenda packet, as related to Tract A and no other tract. The Board has found the hardship to be the unplatted piece of property, as well as a new plat which will conform better to the existing neighborhood. 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:

BEG 25S NWC SE SW TH E82.16 S255.32 E13.59 S127.226 W95.75 N382.546 POB LESS S1.998 SEC 20 19 13 .756AC, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

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

Date approved: _____

10/13/2020

Chair

