

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1293
Tuesday, April 26, 2022, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Radney, Vice Chair Barrientos Wallace Brown, Secretary		D. Wilkerson S. Kelvington K. Davis A. Chapman	A. Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on April 20th, 2022, at 2:32 p.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 1:04 p.m.

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

MINUTES

None.

Ms. Radney announced that the Chair is not present and there will only be a Board of 4 and directed applicants to speak with Mr. Chapman if they would like to request a continuance.

UNFINISHED BUSINESS

23297- Happy Hour Medicinals

Action Requested:

Appeal of the Administrative Decision by a Neighborhood Inspector in Case NUZO-054682-2022 that the subject property is in violation Sec. 40.225.F of the City of Tulsa Zoning Code

LOCATION: 147 S 122 AV E (CD 3)

Presentation:

Michael Ryder- City of Tulsa Working in Neighborhoods

Mr. Ryder stated the following: I'm the zoning and sign official presenting on behalf of the city for this case. This case really is quite simple. It is about an ongoing issue of the odor of marijuana emitting from the lot lines of this property and our inability to resolve the issue through voluntary compliance, like courtesy visit education, that sort of thing. More specifically, it's about whether or not our department can show you that we smell the odor of marijuana and determined that it was unquestionably coming from the property of 147 South 122nd East Avenue in violation of the supplemental use regulations. You're going to hear a lot more than just that today. You're going to hear a lot of things that this case is not about. You're going to hear that the city is picking on this business, that city officials have a personal vendetta for the business even, you'll hear claims that it's impossible to comply with this ordinance as it's written, and then you'll hear claims that compliance was achieved because this business did in fact install some filtration systems, but I would submit to you and we'll lay out for you, that that's not the case and the efforts they had made were not adequate and the property remains in violation regularly.

We'll start with a little bit of background about the case just briefly so you understand, we began receiving citizen complaints in February of 2020 at this property. I responded to the first one. I initially started like a lot of these just with a verbal discussion. Many people don't know about these and you just kind of show them, educate them and then problem solved. It did not go that way on this one. There was some disagreement at that time. And so I issued a notice and the notice was not appealed. It was for the same violation. Efforts were made. There were some filters brought in. I went out there at least one time and did not smell it. So the case was closed. It wasn't too long after that we started receiving additional complaints. We made additional courtesy visits, both myself, our supervisor, Tim Cartner, and the other zoning and sign official, Aaron McPherson.

We have also visited the property separately prior to the issuance of a notice. Then, in January of 2022, more complaints came in, and we were aware of the history and all we determined at that time that the property ownership had changed. So inspector McPherson responded to the citizen complaint that we had that day in January and issued a notice without having smelled the odor himself. So subsequently, that notice was rescinded because of the fact that the inspector

did not confirm that violation on that day. We began to anticipate that there will be an appeal, when we do issue a notice. And so we decided that the next time we had the complaint, we would both go together and we would verify the smell both of us, so that there was two of us there saying that we both smell it. That happened. That complaint came in on February the 7th. We received a citizen complaint and it said that they are harvesting. My understanding is when they're harvesting the marijuana, this smell is much greater. And then other times when they're just doing normal grow activities, the smell may not be so pungent at that point. So my understanding is there's a 30, 40, 40 day cycle where it kind of ebbs and flows, the odor. And some of this depends on the wind speed and direction as well. So back to February the 7th, we received the citizen complaint. We were assigned it on the next day.

It was near the end of the day on February the 8th, Inspector McPherson and I went out to the location. Before getting close to the location, we searched the wind speed and direction, and we determined that, through the National Weather Service, that the winds were blowing from the southwest at 15 miles an hour, gusting to 30 miles an hour. And that information's contained in your packet on 1.38, there's a little cut-out of the PDF that we downloaded into the case. So, with that in mind, we started our inspection from the downwind position. If you don't mind, Austin, will you go to that map that shows the wide shot of the property, with 123rd East Avenue.

We are not aware of any objective measurable way to detect the odor of marijuana. So that's why we both wanted to go and having smelled it. We have done work in other dispensaries. We are familiar with the... Or other growth facilities and dispensaries, you quickly become familiar with the smell. Inspector McPherson had an advantage of having been a Tulsa police officer, where during the academy, they would've field tested some in front of them, let 'em all smell it, burned some, let 'em smell it, so that they are exactly familiar with that. So he had even a higher level of training in determining that. Mine has been sort of from inspections in the industry, and so on.

Mr. Brown asked "Were the complaints the second time from the same people?"

I am not 100% certain on that. I'm aware of at least two complaints. Two different complainants, involved in the case. On this particular day, I think, and the reason why I'm hesitant is because Inspector McPherson was the one that got the witness statement from that individual, but I believe that that person was a different person than in 2020, who was the subject of my complaint. You'll find that online.

Mr. Wallace asked "Let me ask you, based on what you've seen in other places like this, what do you think this one is missing that is causing the smell?"

Mr. Ryder responded with the following: So, and I did plan to kind of get into that. If you don't mind, let me just take you there and then I'll wrap this up. It's not too

much more from here. If you can see on this map here on the screen, this is the subject property here. There's a big vacant lot right here with no use. Not pictured on the map is First Street, which turns into 123rd East Avenue and then circles back around to the West. We park our vehicles along 123rd East Avenue. And immediately, from getting out of the vehicle, you could smell the odor of marijuana. I mean, it was strong, it was there, pungent, hit me in the face. We start, we get out of our vehicles, walk on foot towards the subject property. As we are going towards the building, the smell intensifies and gets stronger and stronger as we go.

The wind was blowing from the southwest. So in this direction here. And everything fit perfect. When I stood right here, no smell. When I stood here, I could smell it. When I stood here, it's worse. There was, when we left there there was absolutely no question... Oops, sorry. In either one of our minds that that odor was coming from the use there at 147 South, 122nd East Avenue. Again, from the truck all the way to the building, it just continued to get more and more intense. And then as soon as you got even with that building and booked it to the South a little bit and got upwind from that southwest wind, nothing. Nothing at all. So based on that, we both agreed, and you'll see in the photo, we took some photographs and I would stand there and give a thumbs up if I could smell it, and a thumbs down if I couldn't smell it.

So we determined then that Inspector McPherson would prepare a notice. The owner, as I mentioned before, had changed. We believe the same parties involved, the same players, just different company. So, due to that kind of technical reason, we had to reissue the notice, because it was a new entity that owns the property from 2020.

So if you're in a multi-tenant building and you have a dispensary or and it would usually most commonly be a dispensary versus like a grow facility. But there are a few, just depending on the district. They have to keep the smell from leaving their tenant space either. So then that leads to how does a business solve the problem like this? I personally have worked about 10 of these, two to three of them have resulted in official zoning notices being issued before they were resolved. The rest of them were just education, some people want to see, we really do have this ordinance and I get that. That's totally understandable, but my understanding based on those that have resolved this issue is that you solve this problem with a three-step approach.

The first one is you insulate and seal the building so that it's air tight, no air in no air out. Secondly, you put in an air handling system that creates negative air pressure, so if I open a door outside air is sucked into the business rather than into your inside air getting pushed out or allowed to escape the business. And then finally you have filtered exhaust, it's usually you will see carbon filters or air scrubbers there, and then they are filtering that air that's being discharged from the building and that creates that vacuum pressure. That's how this has been solved in cases where this has been resolved. There have been no known efforts of that

scale here that we have seen. We were provided with some receipts showing some regular can-type filters and things that were just kind of put in with building here and there. But this needs an engineering solution.

This is a little bit more complex than that. You'll notice the zoning code is not say how you accomplish it, it doesn't say you have to have this many fans, these many filters per square foot or anything like that. But it's totally unequivocal in what it requires. So the smell cannot escape the lot lines or the tenant space in those cases. All in 8th of February, the two of us inspector McPherson and I, we have lawfully have collected the evidence that they were in violation of the supplemental use regulations. We issued a notice, and now we are here before you all today. We have exhausted any hope of voluntarily obtaining compliance here. This is the last stop is the board of adjustment. If there's any hope of resolving the issue, resolving the complaints that we are receiving, it is that you all uphold this notice. I respectfully request that the appeal be denied and that the board find that the administrative decision is affirmed. And I'll answer any questions if you guys have any.

Ms. Radney asked "What is the penalty for non-compliance?"

There is a wide range, I mean, most commonly, what we are going to do is issue a criminal citation that would be booked before the Municipal Court. The judge would set a fine of up to \$1200 and or six months in the municipal jail for violating the zoning code. Other options, we can withhold permits, revoke permits. Sometimes we'll file a caveat notice with the Tulsa County court clerk that lets everyone, the public know that there are zoning violations here. In this case, I don't really think that would fit or matter help. The only real tool that I would see is some type of fine like a criminal citation. We don't have an administrative fine, that would be the next step, if compliance was not achieved.

So at the time that the certificate of occupancy for this use was approved, what steps would have been involved in the permitting process in order for this use to have been approved in that location?

They would have only looked at is that zoning use allowed in that district. And they issue a certificate of occupancy or a permit often. And it will have a little caveat that says, "You're not allowed to violate title 42." And that's sort of, that's the way of dealing with this on the permitting side, when we are talking about a non-new construction type situation. To figure out the best way of complying. Typically, we are going to engage like a mechanical engineer perhaps or something like that too. And that's typically where it lands. Seal the building, negative air pressure, filter discharge here.

Mr. Brown asked "Is that certified by someone?"

Mr. Ryder replied "No."

Ms. Radney stated the following: Because I guess we can talk about it more in discussion, we can also hear the other side. But I'm curious about your methodology for detection, it just seems like there ought to be a more precise way for the city to be able to regulate the standard that they've set about not having any orders that have extended beyond the unit. And again, a multi unit building or the property blinds. We get a lot of of people who come before us asking about how the orders are going to be handled and I wasn't aware that we don't that permitting does not actually have much more specific guidelines.

Mr. Ryder replied with the following: Some sections maybe not even criminally enforceable, not this one, I don't see this one that way, but that happens, it relies on honesty. Unless and until a notice of issued and then we can engage in some pretty serious enforcement action. My hope would just be that we achieve compliance with the notice upheld, and that doesn't count necessary. And just to elaborate slightly on how that process is or plays out for the order, just so that we are clear, it always begins with a citizen complaint. So we are not taking lists of permits and dispensaries and going and seeing if we can smell anything or anything like that, so this always begins with a citizen complaint, oftentimes as you see in this, we have to protect that person. So I can't have the name shown right there, I know there was at least one citizen letter that was provided to the board, but a lot of times people don't want to get involved in stuff like this publicly with their neighbors.

Trevor Henson- 110 W. 7th St. S., Suite 900 Tulsa, OK 74119

Mr. Henson stated the following: I'm with the law firm, Barrow & Grimm here in Tulsa, 110 West 7th Street, Suite 900. There were a handful of things that were addressed by Mr. Rider where he tries to imply the standard of what he believes occurred and Mr. McPherson isn't here to talk about it. That's for a variety of reasons, I believe. For whatever reason, this started, our issues started last Summer with a violation that was provided to us by Mr. McPherson. Mr. McPherson has never once sought out to investigate the inside of our building, to investigate what scrubbers are in place, to investigate what we have done to prevent the smell from escaping the building.

Upon this most recent notice, after the two previous ones were rescinded when Mr. McPherson became aware that my client was going to appeal to this board, the violation that he had filed, I reached out to the city, Ms. Blank here. I volunteered to her and Mr. Stevens, to come out and investigate the properties, so that we could show them exactly what we have done, to show that there was a filtration system in place, my client had spent a substantial money on it, regularly maintains it, takes all the steps they can including keeping their on-going marijuana grow inside of the exterior walls, it's basically self-contained. All of these scrubbers do not inject air into the general atmosphere, they're all a closed loop system. I've tried an affidavit for the group to look at that establishes that. The fact that the city sets out that

they've exhausted all of their remedies, anything that they can get us to do to comply is absurd, they never once reached out to us, they just kept filling notices and violations and forcing us to try to defend it ourselves, and that's because as Mr. McPherson told my client, he said down over here that, "Nobody wants you hear and he's going to the steps that he can to get rid of you."

That's concerning to me, that shouldn't happen. Now, Ms. Radney had the same question that I had whenever I first heard about this, I was like, "Well, what are they doing to determine the smell's too strong?" Because anything that's subjective as subjective as this is, it is not proper under Oklahoma law. Now, my understanding is you guys are a volunteer board, you're not attorneys, you're not determining what the law is, but you can see it the same way that I can see it, which is very simple, if they're going out there and they say, "Well, thumbs up, thumbs down, I can smell it, I can't." Then it's no different than me looking this picture and scratching it, I can't smell it. I've been out there, Ms. Blank said, "Well, I can smell something when we are on property," I said, "I can't smell anything." And that is literally the definition of a subjective standard, which can be applied here. Now, as far as the specific statute is concerned, we are in compliance, because the statute requires very simple and I'll read it to you...

That a medical marijuana grower or operation processing facility and dispensary must provide the following: A ventilation or air filtration system that prevents odor from being detectable at the boundaries of the lot within which the building housing the medical marijuana operation processing facility or dispensary is located. There's no question in my mind that my clients have done that. They are preventing any smells from the interior of the building escaping to the boundary lines. If you...

Now, the fact that there's a complainant, and my client believes they know who the complainant is, but the fact that that's not disclosed is a little questionable to me. That this Board would be tasked with chartering potentially my client's right to do business, based on an anonymous email, which is what the City is asking. Now the City's inspectors are going in here and saying, "Well, we went out there and where I could smell it, thumbs up, and where I couldn't smell it, thumbs down." And, Mr. Ryder made the statement that, to his knowledge only two or three of these notices have been issued against a party in the City since he's been around. And, he's only been aware of 10 of them. My client's received three notices of the violation, without ever once, anybody from the City coming to them and saying, "Hey, we want to see inside and see what you've done to comply with this obligation. We want to see if you put scrubbers in place." And the receipts indicate that every single time my client got a notice, they put another scrubber in.

Up until this most recent notice in February, we basically came to the City, hat in hand, and said, "Look, what do you want us to do?" And I don't think this is proper. I don't think the way that this has been gone about has been proper at all. I think the statute itself is arbitrary and capricious. It's effectively unenforceable, but all of

that is beside the point. The intent is to allow... And for this Board, my understanding is the intent is to allow for the reasonable use of business to go without harming other citizens, and allow the business that are able to proceed as fit while doing their business.

That's what my client's done. My client's not seeking to take any steps to harm anybody, they don't want to cause any problems. In fact, they took the steps that we provided it in that packet... In our packet. They took the steps to reach out to their neighbors and say, "Hey, if you're okay with what we have done, all the steps we have taken, you can't smell the odor of marijuana on your property, please sign this petition." And all of the directly adjacent owners signed it. The guy that's objecting is three doors down, I assume. I mean, his objection is anonymous, but... We have taken all of the steps that we can. One of the things that was most concerning to me is, from the packet that was provided to the City are two different things. One, the inspector spent three days in or around my client's property, going as far as rooting through my client's trash to try to find a violation. Which they provided, a violation for trash and debris, which ultimately we agreed to clean up even though it was trash and debris that was not on our property. It was on the back side of our fence in the open lot.

And the most concerning thing in total is on January 26th, Mr. McPherson provided a letter that sets out, "To whom it may concern. This letter confirms that the Notice of Violation of Zoning, dated January 6, 2022 regarding your property was issued in error. There has already been a notice issued regarding the same violation. Accordingly, the Notice of Violation of Zoning is hereby rescinded. I sincerely apologize for any inconvenience this error may have caused. Please do not hesitate to contact me if I can be of further assistance." This letter was issued in response to my previous appeal because we were trying to get this heard before the Board, because we were at a loss as to what to do. That's not the concerning part. The concerning part is that Mr. Ryder stands up here and makes reference to the Board that honesty is the most important thing, and all we are trying to do is get these people to be honest.

Well, it's concerning to me because on January 25th, the day before Mr. McPherson sent this email, he indicates to the anonymous neighbor, "As we have spoken on different occasions about the odor of marijuana emitting from the business blank North of you, I am rescinding the notice I sent to them for the odor due to not smelling it outside the lot the day of the notice." So, he's telling us, "Well, I've written the notice before, I can't get issue another one." He's telling the landowner, "Well, I can't smell it, so I'm not going to do anything." Which tells me that we are doing what we need to do. Nobody ever raised anything. So that's, that's questionable issue number one. He proceeds, "We have spoken about when the odor is strongest and you advise it is the week of the harvest about once a month and increase the vehicles on the location. Email me about a week before you recognize the pattern of their harvest. And I will come out the following week document everywhere that I can smell the odor of marijuana outside their lock-line

and then trace it back to their building. I will also have you fill out a witness statement to assist with the new notice. They also came under new ownership recently. So that is why a new notice needs to be submitted for the enforcement to proceed."

Ms. Radney asked "So in your reading, I think that I've gathered from it, that what you're saying is that if when is to come out, it is supposed to be precipitated by a citizen's notice or a complaint by a citizen that's contemporaneous with the time that they're actually coming out to investigate. Is that what you're saying?"

Mr. Henson replied with the following: I think that to be inferred in part the point here is twofold. One, I'm telling us one thing that we couldn't properly have provide that notice. They're telling this guy that made the complaint, "Let me know again so I can come out and get him this time."

Ms. Radney asked "And so that's what I'm asking you. So what you are saying is that the previous notice that was rescinded is at that point a dead notice?"

Mr. Henson replied "Correct."

Ms. Radney asked the following: You're saying there was further communication with the person who issued the complaint stating that basically the investigation would continue beyond that time period, at some point in the future given a heads up from the person who made the complaint?

Mr. Henson replied "Correct."

Ms. Radney asked the following: So, because I'm not really sure exactly what is under dispute here, is the dispute that there was no odor? Are you disputing that there was an odor?

Mr. Henson replied with the following: Yes, we have maintained the entire time that any odor that exists at our boundary line, isn't from us. There are three other grows on this stretch of road, including one that went before the board, I believe two weeks ago.

Ms. Radney asked "So that would be one of the things that you would say and especially given the strong winds and etc.?"

Mr. Henson replied "Correct."

Ms. Radney stated the following: The reason I'm stopping you is that I think and Audrey you can weigh in. But I think that all we can decide is whether the citation is valid and the citizen or the investigator, inspector either erred or did not err on the date that the citation was there. And one of the things that you are saying is that at least one of these citations was dead and yet an investigation was continuing?

Mr. Henson replied "Correct."

Ms. Radney replied: "So that would be an error?"

Mr. Henson replied with the following: That is indeed an error. And there's another point that I hadn't quite got to yet. Very simply there was not a change in ownership, that's in your packet that they provided to you on 1.28. So the fact that he's saying "I can't issue a notice, there's already been one issue". And then he's saying, there's a change in ownership. There wasn't a change in ownership. This is from the city of documents. It's from the assessor's record. The last change in ownership was June 16, 2020.

Ms. Radney asked "And I was going to ask you, you are representing the business owner not the property owner is that correct?"

Mr. Henson replied with the following: That's correct, business owner. And the business owner has extended considered amounts of money to develop the interior of the property which I don't know what it consisted of before, but is providing lots of jobs and lots of work for people around here.

Ms. Radney stated the following: So I think that you're getting to then that the fact that there eventually was another citation that came after this trail of events.

Mr. Henson replied "Correct."

Ms. Radney replied with the following: "It was a continuation of the previous error, which was that they were creating a nuisance of themselves by continuing to investigate this particular violation or a violation that you actually disputed."

Mr. Henson replied "Correct."

Ms. Radney asked the following: So just for my purposes and I don't know if the rest of the board members have questions, but what affirmative actions has your client taken to control odor? What are those things?

Mr. Henson replied with the following: So they have four separate carbon scrubbers in place and the different things that were delineated by Mr. Ryder as did the three-step process to be taken to prevent odor from escaping, my client's done all of those things. They have exterior walls of the building. All of the grow is contained within insulated interior walls of the building. They have scrubbers all outside in the common space between the exterior wall and the interior wall that generally creates a fully scrubbed situation of any air outside of the grow rooms being completely scrubbed. And it does not eject that air into the atmosphere. It doesn't bend it anywhere so that air is on a closed loop. And it's constantly being scrubbed by these carbon scrubbers to prevent air or the odor from escaping.

Ms. Radney asked "And do you have a negative air pressure system?"

Mr. Henson replied with the following: I don't know that I can say that's necessarily an all the time negative air pressure system. We have large garage doors that if the garage doors become opened, they would allow probably the negative air pressure to change. And that's usually only for the disposal of waste as required by the OD and DB and they required that certain waste byproducts to be disposed off in containers. We keep those locked up because we have had problems with vagrants breaking through the fence, getting into the dumpster and trying to get marijuana byproducts that are there. So we have taken the step, we have these airtight containers that we dispose off as the OD and DB requires. And we try to dispose of all of our byproducts there.

What was interesting to me and my clients told me, we don't even know how they got there is in the pictures provided by the city, there were some families who are involved some byproducts that were disposed off, that are allowed statutorily to be disposed of there, but they would smell, and that's not part of, I think what the statute contemplates because we have got to be allowed to access our property and move product and dispose of things as necessary and reasonable. But to the extent that there could have been a smell that day, it may have come from that, and there were some byproducts that was out there, but that's not a common thing. My client was curious as to where that came from, but to answer your question, they have taken all of the steps that can reasonably be taken within reason to make sure that this odor doesn't scan.

Ms. Radney asked "So from your perspective to the extent that there was a nuisance which you dispute?"

Mr. Henson replied "Correct."

Ms. Radney asked "It's been resolved and the affirmative steps that your client has taken are inconsistent with what one would do at a grow facility to control odor? "

Mr. Henson replied "Correct."

Ms. Raney asked "Do you have any suggestions about ways that this could actually be an enforceable rule beyond people sniffing and I mean, when we are post-COVID that seems highly subjective to me. So if I may, what would you recommend?"

Mr. Henson replied with the following: I've had all three COVIDs and I can still smell, I couldn't smell anything when I was out there, now, how can we... How can we take steps to enforce this entirely arbitrary and subjective rule? I don't know, my wife smells all sort of things that I swear aren't there, so that's... Without some type of scientific methodology, I don't think that it's possible. And I've raised this issue with the city attorneys is my belief is that this statute and ordinance the way

that it's written is arbitrary and capricious. That you can say, well, if I stand here and I can smell it, but if I stand here, I can't smell it, that I'm violated if I can smell it while I'm standing here, but not here. This is not a speeding law, this is not an encroachment requirement, this is something that the general public may have to have a little bit of a nuisance of, but it's to be expected, you have horses that live within the city limits and operate and those horses kind of smell, but there's nothing that I can do about those horses smelling, even when I'm downwind from it... And this is no different, this is an agricultural product that is being farmed within the city, and it has a bad connotation because it had 100 years of stigma attached to it.

Now, I don't think that I answered your question, I probably went around it a little bit, but if I knew of some specific scientific method that you could go out and determine, hey, the scent is too strong here. I would inform you that. I had the same fight with the city of Mustang several years ago about drilling wells when they were trying to come up with a standard for volume on the drilling of oil and gas wasn't what was reasonable, ultimately, we came to a decibel level at a specific distance, away that you could stand there with your iPhone even and say, Alright, the decibels are too right, you just can't do that here. The molecules that exist that create the odor that you smell... You can't... I don't think you can measure them, maybe you can. There may be a scientist that is smarter than me, but this ordinance isn't captured in there, ultimately, my clients want Mr. McPherson to stop harassing them and trying to get rid of them because that's concern number one. Two they want to just be able to operate their business, if the city has some requirement for them, do you do something else, we are happy to entertain that, but we have had three of these violations notices without anybody from the city ever reaching out to us and saying, hey, you guys need to do something different. That's the biggest concern. Those two things.

Ms. Radney asked "Just on background, how far away are those that, those other growth facilities?"

Mr. Henson replied: 200 yards in either direction, that's what he said. So there's one to the North, one to the South.

Mr. Ryder provided the following rebuttal: 0:44:40.3 Michael Ryder: Thank you. I'll be brief. We do not have a need to go inside of a business, if our objective is to see if the smell is detected at the property line. I don't even dispute that additional air scrubbers were installed, I've seen pictures that... I believe those are honest, legitimate pictures that that has been done, but I don't think that you can have a negative pressure in a closed loop system. That's what I would ask for you all to look into a little bit, if more research is needed there, with a closed loop system, you only need one week...

One air leak can cause the odor of marijuana to permeate everywhere. I worked near 46th Memorial area where the cause was a large garage door and you couldn't even really tell it until you got up on a ladder and saw that the top of that

door was bent just a little bit and letting air escape the building. So I would submit there's something, some air is leaking from that building still, at least as of February the 8th. Whenever appeal is file, we don't do another inspection, we have been out there sniffing to see if they fix it or if the new efforts have resolved it. If they have, that's great, but on the 8th, we smelled it. And because of the proximity of the other grows, because of the fact that we know that there's an appeal going to be filed of the notice, we wanted to bring before you the best evidence. We wanted be able to say for sure, we smelled on that day, and we definitely didn't want to say, "We didn't smell it, but a citizen reported that they did." That was sort of Aaron's way and inspector McPherson way of giving them a heads up before an enforcement action. But it was not proper to do so, and that was why the notice was rescinded.

We need to smell it on the day that we issue the notice or on the day that the notice was subjective. We need to verify the violation on any of these issues. It's not uncommon one thing that I've noticed at first I'll be honest, I did not believe this, but it's not uncommon for employees in the medical marijuana industry not to smell this. There is some kind of a tolerance that's developed, and I literally thought somebody was just absolutely lying to me because it was so overpowering to me, but that person talking to me legitimately could not smell that same odor simply because they work around it every day. Kind of like my step-father worked at the refinery, he can handle the nasty sulfur smell, but none of us couldn't, even on his clothes when he'd come home from work. So just so you understand why that notice was rescinded, the notice was issued, because we received the citizen complaint. We didn't want to write a will file ticket where you have a citizen sign it, that wouldn't be appropriate. So inspector McPherson, being relatively new in the position, thought the best course of action was to issue that notice.

We determined though, "You need to smell it. When you issue a notice, you'll probably lose your appeal because you didn't smell it that day." That's what we discussed and I don't mind sharing that. So that's why it was rescinded. The investigation went on because we know that it is smelling, we just didn't have good evidence that day for that notice. So then when we received the next complaint again and I go in the next day and the next day trying to smell it, but we have to respond to these complaints and they're legitimate. So I just want to point that out why that was rescinded. There was certainly a change to the ownership that should be reflective down at the bottom Tulsa county assessors page if that's in question at all. And I think that was all that I wanted to just mention to you all. Any questions?

Ms. Radney asked "One thing that was in the appeal form that no one has addressed is something about an altercation with Mr. McPherson. Did you have anything to share on that? "

Mr. Ryder replied with the following: I was not there. I heard that there was an... A verbal altercation between McPherson and one of the employees of the

dispensary. This, according to my knowledge was on that vacant lot not on the actual property. This was on that vacant lot where we had initially went to go smell and see if we can collect that evidence down there. The citation was issued by Mr. McPherson, based on what we had both discovered that day. It's not unusual for us to kind of share in the workload and pass one case to another wherever the workload needs the mandate.

Interested Parties:

Mr. Henson stated the following after a request form the Vice Chair for additional comments: I'm going to contradict myself a lot here. But it's an industrial area, I thinks it's permitted to grow there. So I think it's probably one of the better locations to have this, but on the other hand, the way that they code reads, if someone says that they can smell something, then actions need to be done. So, I'm not sure how to enforce that, but that's just what the code says, and that's what we are here to determine.

Mr. Brown stated the following: Listening to the owner and representatives, I hear a strong intent to alleviate the problem was not to the city official. I hear the problem still exists to some of the neighbors. And some had mentioned it before. So I tend to, go with what the neighbors smell. Where my wife works, there's a similar issue, which of course doesn't apply here, but she continues to say, "It's annoying. It's annoying. It's annoying." And I tell her to called inspection people and as of yet, she has not. So she became too distracted. So...

Mr. Ryder stated the following: Briefly. To Mr. Brown's comment. In our packet, and I mentioned this, Mr. Brown, I think it is relevant to your comment. We provided signatures in support of the, the work fact that we could not, or it was not smellable by our directly adjacent neighbors. And those are...

Ms. Blank asked "Would you read the date that they signed please?"

Mr. Ryder replied "That is, 2020. 6/23/2020."

Interested Parties: None.

Comments and Questions:

Mr. Wallace stated the following: I believe, the smell still exists that it still comes from the business. And if you can smell it, it's in violation. How it happens, I can't say... But I would guess that it's smelled by more than one person. I don't think that it's contagious. And the client has shown a good faith effort to fix it, but I also hear that it still exists from the narrative. So that's my thought.

I tend to support the owner in this case. I mean, I fill the location is perfect to harvest marijuana, and I don't know if there's any system that will 100% filter everything. I don't know if there was some residue marijuana outside that time or the doors were open or closed that time. Have any thoughts?

Ms. Radney stated the following: I don't know how w, based on what's in front of us, know whether it was or was not detectable on the date of the citation. And especially since the person who authored the citation is not here. And also did not submit anything to us. I mean, even a statement could give us a little bit of insight into what he experienced at the time. We don't get a whole lot of these that come before us. But if you are persistently concerned enough about this to stay in touch with the neighborhood inspector. I mean, at some point in time, I think you also need to come and as a citizen complainant, I think that you should be here to defend what has become of the complaint.

So, in this case, I am prepared to vote to reverse the decision because I do think that we have seen evidence that the property has that there are installed systems to mitigate the nuisance. I mean, it does say is in violation. I agree with Mr. Brown, it's, the odor isn't going to be detectable every day of the month. It is the harvest period when it's likely to be most intense. But we also have to acknowledge that we have contributed to this becoming a more intense, growing area. And, so there's going to be more ambient smell of marijuana in this area than there might be in other places in the city. And in the absence of being able to have some objective measure of knowing from whence that odor is emanating. I think it makes it hard for me to affirm it, but I certainly respect any other opinions.

Ms. Chapman stated the following: I believe the code would refer you to grant the official's decision and presumption of correctness, and the burden is on the appellant, that is how the code reads.

Ms. Radney state she still was still persuaded by the appellant.

Board Action:

On **MOTION** of **Barrientos**, the Board voted 4-0-0 (Barrientos, Brown, Wallace, Radney, , "aye"; no "nays"; no "abstentions"; Bond absent,) to **REVERSE** the **APPEAL OF THE ADMINISTRATIVE DECISION** by a Neighborhood Inspector in Case NUZO-054682-2022 that the subject property is in violation Sec. 40.225.F of the City of Tulsa Zoning Code. Finding that the Neighborhood Inspector erred in the Administrative Decision by a Neighborhood Inspector in Case NUZO-054682-2022, and that the subject property is not in violation of Sec. 40.225.F of the Zoning Code; for the following property:

LT 6 BLK 3, EASTGATE INDUSTRIAL PARK THIRD ADDN RESUB

23301- Lori Worthington

Action Requested:

Variance to increase the permitted sign display area from 88.5 square feet to 144 square feet in the OM District (Sec. 60.060-C)

LOCATION: 5314 S YALE AV E (CD 9)

Presentation:

Chris Krohn, A-Max Signs- 9520 E. 55th Pl. S., Tulsa, OK 74145.

Mr. Krohn stated the following: Well, we are here to see if the board will allow us to modify. I was looking at what we have got down here. It says increase the permitted sign display where we were at last time I was here. We are not trying to increase the square footage of the sign that's currently there. We didn't build that sign previously, just an existing sign that we were trying to modify and would still be within those 144 square feet, I guess, in filing the permit, we realized that the sign is over square footage. That might be a another issue, but we are only trying to modify what is currently there and not increase the physical size, just the shape. And I heard it, maybe I misheard last time we were here, there was a comment made about there being another sign. There is a building sign. I know this is a, an OM district where we were allowed one or the other, I think, but both of these signs have been there a long time. AMAX, wasn't involved in those projects. I don't know, the city's even seen applications for permits on that. There are no other ground signs though at this location, case does have a realtor sign by the sign location that's out by the road. But it's my understanding, it's a realtor sign that doesn't require permits. So they're using that for their leasing information. Like we are only talking about the monument sign, trying to modify it.

Mr. Krohn further went though the existing conditions of the site and confirmed multiple time that he is not wishing to increase the size of the existing sign.

Interested Parties: None.

Comments and Questions:

All present board members indicated their support of the relief.

Board Action:

On **MOTION** of **Barrientos**, the Board voted 4-0-0 (Barrientos, Wallace, Brown, and Radney "aye"; no "nays"; no "abstentions"; Bond absent,) to **APPROVE** a **VARIANCE** to increase the permitted sign display area from 88.5 square feet to 144 square feet in the OM District (Sec. 60.060-C), finding the hardship to be that

the building was planned for a single tenant, and now is turning to a multiple tenant building, per the conceptual plans 2.11 and 2.12 of the agenda packet. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

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

LT 1 BLK 1, LA FORTUNE PARK PLAZA,

23303- Pedro Quintero

ACTION REQUESTED:

SPECIAL EXCEPTION to permit a fence or wall exceeding 4-feet in height inside the required front street setback (Sec. 45.080-A)

LOCATION: 10109 E 4 PL S (CD 3)

Presentation:

Pedro Quintero- 10109 E. 4 Pl. S. Tulsa, OK 74128

Mr. Quintero explained that the fence has been built and was done so for security. Mr. Quintero confirmed with the Board that the pictures provided in the agenda packet the fence that he is trying to get permitted.

Interested parties:

None.

Comments and Questions:

Ms. Radney indicated she appreciate folks asking for permission rather than asking for forgiveness, but she does appreciate that he is here today.

Mr. Brown indicated his support for the relief as built.

Board Action:

On **MOTION** of **Barrientos**, the Board voted 4-0-0 (Brown, Radney, Wallace, Brown, "aye"; no "nays"; no "abstentions"; Bond absent,) to **APPROVE** a **SPECIAL EXCEPTION** to permit a fence or wall exceeding 4-feet in height inside the required front street setback (Sec. 45.080-A) subject that it remains as built on page 3.10 of the agenda packet. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 16 BLK 8,ROSEWOOD ADDN

23309- Ryan Neurohr, Image Builders

Action Requested:

SPECIAL EXCEPTION to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c) **SPECIAL EXCEPTION** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots (Sec. 60.100-F) **LOCATION:** 3909 E 5 PL S (Rogers) **(CD 4)**

Presentation:

Mr. Chapman explained the applicant is requesting a continuance until the July 12th Board of Adjustment Hearing.

Interested Parties:

No interested parties.

Comments and Questions:

Board Action:

On **MOTION** of **Radney**, the Board voted 4-0-0 (Barrientos, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **CONTINUE a SPECIAL EXCEPTION** to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c) **SPECIAL EXCEPTION** to

permit a dynamic display sign within 200-feet of Residentially Zoned Lots (Sec. 60.100-F) to the July 12, 2022 meeting; for the following property:

**BEG 1219.4E & 25S NWC OF SW TH S791 SW40.03 E1437.1 N826 TH
W1417.08 POB LESS S35 FOR ST SEC 4 19 13,**

NEW APPLICATIONS

23319- Jason Evans

Action Requested:

Variance to allow the floor area of a detached accessory building to exceed 500 square feet and 40% of the floor area of the principal residential structure (Sec. 45.030-A.2) **Variance** of the 35-foot setback from an arterial street. (Sec. 5.020, Table 5-2)

LOCATION: 4217 E. 15th St. **(CD 4)**

Presentation:

The applicant was not present, Mr. Chapman explained that there was additional relief needed for this application and would need to be continued and re-noticed.

Interested parties:

None.

Questions and Comments:

None.

Board Action:

On **MOTION** of **Brown**, the Board voted 4-0-0 (Barrientos, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; Bond absent) to **CONTINUE** the request for a **Variance** to allow the floor area of a detached accessory building to exceed 500 square feet and 40% of the floor area of the principal residential structure (Sec. 45.030-A.2) and a **Variance** of the 35-foot setback from an arterial street. (Sec. 5.020, Table 5-2)

to the May 24, 2022 meeting; for the following property:

LT 10 BLK 4,ELECTA HGTS ADDN,

23320- Lektron Branding Solutions

Action Requested:

Variance to allow two freestanding signs on one lot with only minor street frontage (Sec. 60.080-C.2.a)

LOCATION: 7400 AND 7418 E 42 PL S (CD 5)

Presentation:

Candi Franks- 4111 S. 74th E. Ave., Tulsa, OK 74145

Ms. Franks stated the following: Our customer Aquestia USA a long time Tulsa company would like to update and change their existing V mount identification sign to a single sided monument sign through the permitting process was brought to our attention that we would need to apply for a variance in order to update their existing sign. This is that's the second sign. This is because there are two different companies with two different addresses located on one property. And because it's on a minor street, that's not allowable. We are, that's why we are asking the variance to allow the two freestanding signs of two different companies, two different addresses on the same lot.

Ms. Franks confirmed for the Board the sign that would remain and the sign that would be replaced.

Interested parties: None.

Questions and Comments:

Mr. Wallace stated that he believed the hardship is it is one large lot with multiple addresses.

Mr. Brown stated the following: My preference with the smaller sign of, for this 42nd at the junction, and, this is big, this sign itself will visually block the building, but I understand the purpose of what you're trying to do, so I will support the two signs.

Ms. Radney indicated she was persuaded by the fact that they were within their sign budget.

Board Action:

On **MOTION** of **Wallace**, the Board voted 4-0-0 (Barrientos, Wallace, Brown, and Radney "aye"; no "nays"; no "abstentions"; Bond absent,) to **APPROVE** a **VARIANCE** to allow two freestanding signs on one lot with only minor street frontage (Sec. 60.080-C.2.a) finding finding the hardship to be one large lot with multiple buildings and tenants, per the conceptual plans 6.9 through 6.13 of the

agenda packet. 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:

**PRT NW NE BEG 896.29NW NWC BLK 4 INDUSTRIAL EQUIPMENT
CENTER TH NW290 CRV RT 115.54 CRV LF 71.88 CRV LF 195.33 S231
E418.69 NE289.97 POB SEC 26 19 13 3.841ACS,**

23321- Ryan Neurohr, Image Builders

Action Requested:

Special Exception to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c) **Special Exception** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots (Sec. 60.100-F)
LOCATION: 3613 S HUDSON AV E (Zarrow International School) **(CD 5)**

Presentation:

Walter Moore- 11410 N. 145th E. Ave. Owasso, OK 74055

Mr. Moore explained this is a similar request that has been requested at several Tulsa Public School site. The sign allows the school to display any language they would like without manually changing the signs.

Mr. Moore further stated the following: We did have a letter that was emailed to us from us a concerned citizen and everything in that letter was about the light pollution of the sign. And as stated before the city ordinances that the sign must be

turned off at 9 o'clock at night, and it cannot resume operation until 7 o'clock in the morning. Also the display, once it becomes dusk, it turns from the 6500 NIT Mr. Brown to the 500 NIT. So it's substantially reduced in light output after dark. And I believe we... Mr. Neurohr responded to this neighbor and informed her of these operation parameters and he never got an email back. So I don't know whether his information satisfied her. She did say at the bottom of her letter that if it happens that it affects the resale of her property, she wants to be compensated for it. So I don't know where that compensation would come from, but that was her concern was the light pollution.

Mr. Brown asked for a definition of NIT.

Mr. Moore defined it as a candle power output per square meter of the sign, that is easily measurable.

Mr. Moore confirmed the dimensions of the provided exhibits.

Ms. Radney stated that she is a former resident and that the improvements that have been made across the way at the Montessori school and at Bishop Kelly are really appreciated by those students and families, but it really has changed the light pollution in that neighborhood. There's just a lot more activity going on at night than there once was.

Mr. Moore confirmed that they would abide by the city regulations for these signs.

Interested Parties:

Tom Neal- 2507 E. 11th Pl, Tulsa, OK 74104

I'm really here to speak on something else. And also there's a sign in my neighborhood and impacted by my neighborhood... Will be impacted by my neighborhood associated, excuse me, but I want to speak now because I'm concerned that you go through several of these before you hear the concerns that we have that may be equally relevant to this particular one. And the ones in between, which is we at least in Renaissance had no communication with TPS, no communication from the sign company. And I am concerned that the neighbors, other than the lucky folks within 300 feet may not have any awareness of what's going on here. I know, again, not to jump ahead, we are going to be asking for continuance in another case. Thank you.

Questions and Comments:

Ms. Radney indicated her preference that the sign only be operational between 7:00 am and 8:00 pm.

Board Action:

On **MOTION** of Barrientos, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **SPECIAL EXCEPTION** to permit a Dynamic Display sign in a Residential District containing a School Use (Sec. 60.050-B.2.c) **SPECIAL EXCEPTION** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots or Residential Development Area (Sec. 60.100-F). Per the conceptual plans 7.11-7.17 of the agenda packet and that the hours of operation on this sign is going to be from 7:00 AM to 8:00 PM. 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:

BEG 85E NWC SE TH S500 E670 N500 W670 POB SEC 22 19 13,

23322- Ryan Neurohr, Image Builders

Action Requested:

Special Exception to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c) **Special Exception** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots (Sec. 60.100-F)

LOCATION: 3924 N LANSING AV E (Whitman Elementary School) **(CD 1)**

Presentation:

Walter Moore- 11410 N. 145th E. Ave. Owasso, OK 74055

Mr. Moore explained this is a similar request that has been requested at several Tulsa Public School sites. The sign allows the school to display any language they would like without manually changing the signs, and the sign is placed closer to the bus ingoing and outgoing drives and also where the parents pick up their school children ingoing outgoing, it's going in the same exact place as the existing sign. It will be basically as the sketch shows.

Mr. Moore confirmed the height of the sign and indicated he is not in opposition of a 7:00 AM to 8:00 PM operational limit on the sign.

Ms. Radney indicated she thought the white acrylic background would cause too much light pollution per the conceptual plans.

Mr. Moore indicated that the final artwork will need to be approved by Tulsa Public Schools and their final background will not be white.

Questions and Comments:

Ms. Radney requested that the motion include a provision restricting the white background shown on the plans.

Board Action:

On **MOTION** of Brown, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **SPECIAL EXCEPTION** to permit a Dynamic Display sign in a Residential District containing a School Use (Sec. 60.050-B.2.c) **SPECIAL EXCEPTION** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots or Residential Development Area (Sec. 60.100-F). Per the conceptual plans 8.16-8.17 of the agenda packet and that the hours of operation on this sign is going to be from 7:00 AM to 8:00 PM and that the sign will not have a white background. 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:

PRT NW SE BEG 365.3E NWC S/2 NW SE TH E766.19 SLY511.85 W768.42 ON CRV TO RT72.44 NELY338.52 N190 POB LESS S30 THEREOF SEC 13 20 12 8.54AC,

23323- Ryan Neurohr, Image Builders

Action requested:

Special Exception to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c) **Special Exception** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots (Sec. 60.100-F)

LOCATION: 2721 W 50 ST S (Robertson Elementary) **(CD 2)**

Presentation:

Walter Moore- 11410 N. 145th E. Ave. Owasso, OK 74055

Mr. Moore explained this is a similar request that has been requested at several Tulsa Public School sites. The sign allows the school to display any language they would like without manually changing the signs.

Mr. Moore confirmed the height of the sign is from street surface and indicated he is not in opposition of a 7:00 AM to 8:00 PM operational limit on the sign.

Ms. Radney indicated she thought the white acrylic background would cause too much light pollution per the conceptual plans.

Mr. Moore indicated that the final artwork will need to be approved by Tulsa Public Schools and their final background will not be white.

Questions and Comments:

All board members indicated support for the request.

Board Action:

On **MOTION** of Brown, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **SPECIAL EXCEPTION** to permit a Dynamic Display sign in a Residential District containing a School Use (Sec. 60.050-B.2.c) **SPECIAL EXCEPTION** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots or Residential Development Area (Sec. 60.100-F). Per the conceptual plans 9.11 of the agenda packet and that the hours of operation on this sign is going to be from 7:00 AM to 8:00 PM and that the sign will not have a white background. 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:

ALL BLK 1, OAK GROVE ADDN - CARBONDALE

23324- Ryan Neurohr, Image Builders

Action Requested:

Special Exception to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c) **Special Exception** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots (Sec. 60.100-F) **LOCATION:** 2940 S 90 AV E (Skelly Elementary) **(CD 5)**

Presentation:

Walter Moore- 11410 N. 145th E. Ave. Owasso, OK 74055

Mr. Moore explained this is a similar request that has been requested at several Tulsa Public School sites. The sign allows the school to display any language they would like without manually changing the signs.

Mr. Moore also stated the following: I do have a letter of opposition to this. You'll see it. You should see it in your packet. We talked about it and I don't know how you would respond to this letter. If you've read it, I can read it for you if you haven't read it. The neighbor said that those schools are not casinos and the elementary schools do not need this type of signage. The signs they have now are sufficient. We really didn't know how to respond. I'll leave it at that. And also this, it depicts white background, but this will be school colors again two school colors on this, on the graphics on this the static board.

Mr. Moore indicated that the final artwork will need to be approved by Tulsa Public Schools and their final background will not be white.

Interested parties: None.

Questions and Comments:

Ms. Radney stated her appreciation for the letter received from the neighbor and requested a condition that the background not be white.

Mr. Moore came back to speak and explained the sign would be directed toward 31st St.

Board Action:

On **MOTION** of Brown, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **SPECIAL EXCEPTION** to permit a Dynamic Display sign in a Residential District containing a School Use (Sec. 60.050-B.2.c) **SPECIAL EXCEPTION** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots or Residential Development Area (Sec. 60.100-F). Per the conceptual plans 10.11-10.12 of the agenda packet and that the hours of operation on this sign is going to be from 7:00 AM to 8:00 PM and that the sign will not have a white background. 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:

**BEG SWC SE TH N1644.24 E599.94 SE140.48 CRV RT 386.81 S1168.9 W800
POB LESS S50 FOR ST SEC 13 19 13 29.08ACS,**

23325- Ryan Neurohr, Image Builders

Special Exception to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c) **Special Exception** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots (Sec. 60.100-F)

LOCATION: 1127 S COLUMBIA AV E (Mayo Demonstration Academy) **(CD 4)**

Presentation:

Walter Moore- 11410 N. 145th E. Ave. Owasso, OK 74055

Mr. Moore explained this is a similar request that has been requested at several Tulsa Public School sites. The sign allows the school to display any language they would like without manually changing the signs.

Mr. Moore explained the sign would be located where the existing sign and be based on the recommendation of the school on where it would most be visible to traffic.

Interested parties:

Leta Wilcox- 1124 S. Columbia Ave. Tulsa, OK 74104

Ms. Wilcox stated the following: I live across the street. I would like to disagree with the principal on where traffic is in front of the school as someone who lives there. And is there every day during drop off and pick up? My main concern is, and I know that this has been addressed with other things. The letter that we received did specifically say that it would be white. The school colors are red and gold, which is not a whole lot better to me, if I'm honest. We get a lot of light pollution off 11th street with the hotel and various other things that occur there. So I don't understand why they want to essentially extend the light pollution further into the neighborhood, by having it basically at the corner of 12th, which is where they're talking about now. I understand that they feel the need to have more dynamic information with parents, but it's not a neighborhood school. It's a magnet school. We have a few students who walk, but it's not a lot. It's pretty small. The traffic is interesting. [laughter] Neither here nor there, but I don't see that a lot of parents are getting their information off of the billboard. It's not like a neighbor. It's not like it was when it was Wilson when it was a neighborhood school and everyone was from the neighborhood. And that's how you got a lot of it. So the idea of the amount of light pollution that it's going to cause it's, I just, I can't say I'm happy about it.

Tom Neal- 2507 E. 11th St. S.

Mr. Neal stated the following: I'm wearing two hats here. I'm speaking both as an individual and as a board member of Renaissance Neighborhood Association, with whom I've been in communication this afternoon during this hearing and I currently have 10 out of 12 board members requesting a continuance from you all, so that we can have the opportunity to discuss this with TPS, with the signed guys and so forth. A little disappointed that we have only been around since 1996 and one of the strongest neighborhood associations that somehow it never occurred to TPS or anybody else to come and talk with us. I just happen to see Leda here who's a friend. I do think that changing from the sign's current location, which is well into the neighborhood at 12th in Columbia to a lighted dynamic sign is a serious diminution of the quality in the neighborhood.

It would be visible from about 20 houses up and down between 13th and 12th, and 12th and 11th street. My own sense wearing my hat is I think given all the commercial development on 11th street, the sign would be much better located at the North end of the campus, near the Campbell hotel, it's right across The Bama. Would probably increase visibility for the school's programs and with due respect,

to Leda, most of the parental traffic comes in from the South of Columbia on 12th street and goes through North to exit the neighborhood. So it would still wind up being visible to the users. So I don't think we are diminishing the needs of the school, that's certainly not our intention. And then, yeah, excuse me. I think that's actually all the points I would make, you know, thank you. The school is kind of bifurcated, you know, it's got the teaching center which is off the Wilson Teaching Center, off the North parking lot and that's very intermittently busy. And then so really all of Mayo traffic is coming in off of that big grand entrance on Columbia Avenue. And that is where the parents who don't actually park there park in the parking lot, walk their kids over. They were parking in the Campbell parking lot until the Campbell put signs up saying they don't park in at our lot.

Mr. Moore stated the following: I'm not opposed to a continuance, I just wanted to bring up the fact that to resorting... The part of the school he was talking about Wilson Teaching Academy... Teaching and Learning Academy is actually talking to the principal, it's this parking lot, this portion of the building, plus part of it goes into Wilson, I mean into Mayo Academy. So all of this is the Teaching and Learning Academy, and if I'm not mistaken, there is a sign right outside this parking lot, so if we were to move the sign down to that northwest corner, it would create... Happen to have a variance for having two signs on the same street frontage, so that would be my opinion on moving the sign from where it's at.

Questions and Comments:

Mr. Radney entertained a motion for a continuance.

Board Action:

On **MOTION** of Brown, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **CONTINUE** the request for a **SPECIAL EXCEPTION** to permit a Dynamic Display sign in a Residential District containing a School Use (Sec. 60.050-B.2.c) **SPECIAL EXCEPTION** to permit a dynamic display sign within 200-feet of Residentially Zoned Lots or Residential Development Area (Sec. 60.100-F) until the May 10th, 2022 Board of Adjustment Hearing, for the following property:

NE NE NW SEC 8 19 13,

23326- Ryan Neurhor, Image Builders

Action Requested:

Special Exception to permit a Dynamic Display sign in an Residential District containing a School Use (Sec. 60.050-B.2.c)

LOCATION: 1727 S HARVARD AV E (Lanier Elementary) **(CD 4)**

Presentation:

Walter Moore- 11410 N. 145th E. Ave. Owasso, OK 74055

Mr. Moore explained this is a similar request that has been requested at several Tulsa Public School site. The sign allows the school to display any language they would like without manually changing the signs.

Mr. Moore stated the following: This sign would have to be moved away from the street, a small amount to satisfy the 20-foot setback from the street edge. We would be moving it back about... I think it's about 7 feet. And this, we did get a letter on this, it was from a neighbor, and I'm a little bit confused because the sign is actually on the West side of the property, and everything across the street is commercial, but she is stating that she didn't... She was against the sign because of the potential light pollution.

Mr. Moore indicated the sign would be obscured from the Residential property abutting the school.

Mr. Moore indicated that the final artwork will need to be approved by Tulsa Public Schools and their final background will not be white.

Interested parties: None.

Questions and Comments:

All board members indicated support for the application.

Board Action:

On **MOTION** of Wallace, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** a **SPECIAL EXCEPTION** to permit a Dynamic Display sign in a Residential District containing a School Use (Sec. 60.050-B.2.c), per the conceptual plans 12.9-12,17 of the agenda packet and that the hours of operation on this sign is going to be from 7:00 AM to 9:00 PM and that the sign will not have a white background. 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:

W/2 NW SW SW SEC 9 19 13,

23327- OSAGE- Damon Ousley

Action Requested:

Special Exception to permit a duplex in an RS-3 District (Table 5.020, Table 5-2, Table 5-2.5); **Special Exception** to increase the permitted driveway width in a Residential District (Section 55.090-F.3)

LOCATION: 1327 N. Olympia Ave. (CD 1)

Presentation:

Damon Ousley- 1202 N. Main St. Tulsa, OK 74106

Mr. Ousley explained that he is trying to get permission to build a duplex and to have two driveways. He confirmed that is he served by city sewer and that the driveway would be 40-feet wide.

Mr. Chapman confirmed that they would be limited to 26-feet inside the right-of-way at this property and 30-feet on the lot and that measurement is taken taken together and confirmed the parking requirements.

Interested Parties: None.

Questions and Comments:

Ms. Radney stated the following: So I am going to speak to some aesthetics that really are not going to affect my vote because I'm going to support it. But I'm a realtor, and so as a realtor, there are some duplexes that were built, I think it's on the old homestead for The Bama family, The Bama Corporation fa. And a lot of people have objected to the way that those duplexes are just basically look like, skinny little doors and a bunch of garages. And so when you combine that with an extra wide driveway, so much of the front of your property is just a bunch of doors, a bunch of garage doors with an extra wide driveway. And I am fully in support of duplexes, but I would just personally aesthetically prefer to see a domicile for people rather than first thing that I see as parking storage and garage doors. But I also recognize that you're limited in terms of this lot, but that would be my preference. You didn't get a lot of public comment about it here, but this particular layout might be more problematic in a different location. But I think it's great and I think the info building in this neighborhood is way overdue. So I will support the motion, both of the motions.

Board Action:

On **MOTION** of Wallace, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** a **SPECIAL EXCEPTION** to permit a duplex in an RS-3 District (Table 5.020, Table 5-2, Table 5-2.5); **SPECIAL EXCEPTION** to increase the permitted driveway width in a Residential District (Section 55.090-F.3) per the conceptual pans 13.8 through 13.13 of the agenda packet The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. For the following property:

L8 B1 DE VOL, CITY OF TULSA, OSAGE COUNTY

23328- Damon Ousley

Action Requested:

Special Exception to permit alternative compliance parking ratios in an RM-1 District to reduce the required number of parking spaces for a multi-unit house (Section 55.050-K; Section 55.020 Table 55-1)

LOCATION: 2423 N PEORIA AV E (CD 1)

Presentation:

Damon Ousley- 1202 N. Main St. Tulsa, OK 74106

Mr. Ousley explained he is requesting to reduce the number of parking spaces required because his development is interested in marketing toward families that would only have one car.

Mr. Chapman confirmed the property is not inside the Neighborhood Infill Overlay and that the code would not allow them to count on-street parking toward their required parking.

Interested Parties:

None.

Questions and Comments:

Ms. Radney indicated she would be in support of the application and noted the property is along the BRT line.

Mr. Wallace indicated support for the project because of the location on the access road to Peoria which lend itself to this type of development.

Mr. Brown indicated support though he does expect there to be parking issues created and that the on-street parking will be a short-term solution.

Mr. Chapman explained that the property would not be able to meet the open space requirements if they added more parking on the lot.

Board Action: On **MOTION** of Wallace, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** a **SPECIAL EXCEPTION** to permit alternative compliance parking ratios in an RM-1 District to reduce the required number of parking spaces for a

multi-unit house (Section 55.050-K; Section 55.020 Table 55-1), per the conceptual plans 14.8 of the agenda packet The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. For the following property:

LT 18 BLK 4 & W 10 VAC ALY,CARVER HGTS ADDN

23329- JB LaCombe

Action requested:

Special Exception to allow a Large (>250-person capacity) Commercial Assembly & Entertainment Use in the CS District to permit a Health Club (Sec.15.020, Table 15-2).

LOCATION: 5313 E. 41st St. (CD 5)

Presentation:

Nathalie Cornett, Eller and Detrich- 2727 E. 21st St. S., Tulsa, OK 74114

Ms. Cornett stated the following: So this is the subject property. It's located this building on the on the right side of my screen This is going to be the Planet Fitness, and then next to it is the Party City. Next photo, please. Here you can get a better sense of the center. This is the Barnes and Noble, and as you go down further West, and then there's some retailers in between those two neighbor tenants. Here is Party City, and then this is the proposed Planet Fitness. And then to the East of that, that's a big tenant's space. And if you go further, not shown here, you'll hit the Joann's Fabric Store and Pooches. This is the rear of the property. There's a drive aisle that goes all the way around it, and some parking spaces, as well. The wall that you see, this is the back wall to Party City. And then when we look at the aerial, you'll see how our space sort of goes in, so it's behind here.

Next photo, please. Okay, so here is the loading docks to the tenant space. This space was previously a Circuit City. I think it's been 15 years almost that it's been, since it's been a Circuit City. Next photo, please. And then this is the back screening fence that runs all along this to the North and the neighborhood that is behind that screen fence. So that screen fence is in place, which is one of the requirements for assembling entertainment uses. Oh, yeah. This is very dark. This is just a conceptual floor plan of what the gym will look like. The sort of round area on the right side of my screen is the reception area, you come in these doors here and then walk in through the gym, and there are the locker rooms and other amenity areas.

And then the last photo, please. This is what it would look like as you enter in from the parking lot. This is the reception area and the gym area. So, Planet Fitness has five locations in Tulsa, and this will continue to be a fifth location. They're

relocating from 51st & Memorial, and so this would take that place. The reason for the request is that the capacity of that building is 376, and so we exceeded the 250. I think Planet Fitness and all of us would be very shocked if 376 people were ever all in that building at one time. It would be a great business day for them. But I don't anticipate that ever happening. Their hours of operation. So Monday through Friday, they are open 24 hours, and on Friday they close at 10:00 PM. So Monday through Thursday, 24 hours, and Friday close at 10:00 PM And then on the weekends, 7:00 AM to 7:00 PM.

They offer various amenities. Obviously, access to your equipment, to personal training, group classes. They have a massage chair area, which includes sitting massages and a hydro massage machine, which I'm going to need to try, and tanning beds. They do have drinks and snacks for purchase, but there's not a juice bar or anything like that. They have 15 to 18 employees. There's always at least one on site. And at this particular location. If you can put up 15.9, I think it's the last page of the agenda packet. There is ample parking available to the center, and this is just the aerial showing to all that surface parking right now.

Interested parties:

None.

Questions and Comments:

Ms. Radney asked if the applicant had any feedback form the neighbors.

Ms. Cornett responded with the following: We have received no feedback from any of our residential neighbors or our commercial neighbors on either side of us. I think that the neighbors are probably accustomed at this point to living right next to the shopping center. And there are parking spaces on that back alleyway, but I've never seen anyone park in there, so I would anticipate that almost all parking happens on the front side, 41st side of the parking.

Mr. Brown asked about lighting in the back of the building.

It was determined that the lighting would be no change.

Mr. Wallace asked if the public would have access to the gym from the back.

Ms. Cornett responded that they would not.

Board Action:

On **MOTION** of Barrientos, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** a

SPECIAL EXCEPTION to allow a Large (>250-person capacity) Commercial Assembly & Entertainment Use in the CS District to permit a Health Club (Sec.15.020, Table 15-2), per the conceptual pans 15.7 of the agenda packet The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. For the following property:

LOT 3 BLK 1,SOUTHROADS MALL

23330- Tom Neal

Action Requested:

Special Exception to increase the permitted driveway width in a Residential District (Section 55.090-F.3)

LOCATION: 1802 S CHEYENNE AV W (CD 4)

Tom Neal- 2507 E. 11th Pl., Tulsa, OK 74104

Mr. Neal stated the following: I've got a young family here that has a grand old house from 1915 but it's in a very tight urban neighborhood, right across from the council Oak tree. Just a few blocks up from 21st in Riverside and parking is really, really tight in there. They're on a corner lot. They have a historic driveway, which is about eight feet wide with a 12-foot curb cut and they're proposing adding a circular drive in the front lawn, which would be on Cheyenne. And all of the combined width will be above what is allowed under the current zoning code. Hannah Middlebrook has spoken with her neighbors, both in person and electronically. I guess they have a some kind of neighborhood communication page. And so far, she said everybody's been very supportive because it gets several cars off the street and will make things work better for everybody.

Interested parties:

None.

Questions and Comments:

Mr. Radney indicated she was ready to entertain a motion.

Board Action: On **MOTION** of Barrientos, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** a **SPECIAL EXCEPTION** to increase the permitted driveway width in a Residential District (Section 55.090-F.3), per the conceptual pans 16.5 of the agenda packet The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the

neighborhood or otherwise detrimental to the public welfare. For the following property:

LTS 1 & 2 BLK 5, BUENA VISTA PARK

23331- Pool Creations Inc

Action Requested:

Variance to permit a swimming pool within the required 35' side street setback (Sec. 5.030, Table 5-3; Sec. 90.090, Table 90-1)

LOCATION: 1305 E 26 ST S (CD 4)

Presentation:

Jake Powell- 16990 E. Pine St. Tulsa, OK 74116

Mr. Powell stated the following: Going through the permitting process, this one got flagged stating that there needed to be a 35-foot set back off Peoria. So here we are. We have never gone through this before in 24 years. So I have no idea what to expect. Anytime you get in the Midtown area, you are working with a very limited space. Quite frankly, a lot of those properties just weren't designed for the homes that are there now. Given the limited space and the desired project, and we don't... We are just limited on options on where we can place it. The swimming pool will not exceed past the existing structure of the home. In cog originally, I guess told me that this rule was in place in case they wanted to widen the street. There's no possible way to widen the street there. Where the entire property is encompassed in a brick wall fence. Anyhow, there's no visual from Peoria or really anywhere other than an areal view.

Mr. Chapman stated the following: Peoria is an urban arterial, so it's a 70-foot right of way. And so, it's 3- feet on their side of the center and then an initial 35-foot setback from an arterial street is what the relief is.

Interested parties:

None.

Questions and Comments:

Board Action: On **MOTION** of Barrientos, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** a **VARIANCE** to permit a swimming pool within the required 35' side street setback (Sec. 5.030, Table 5-3; Sec. 90.090, Table 90-1), per the conceptual plan 17.10 of the agenda packet. Finding the hardship to be the site location, as on a corner, as well as being on an arterial street corner and existing conditions

prevent the pool being elsewhere on the lot. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

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

LT 17, TRAVIS HGTS SECOND ADDN

23333- Jeremy Perkins

Variance to allow more than 30% coverage of the rear setback by a Detached Accessory Building (Sec.90.090-C.2)

LOCATION: 1003 E 20 ST S (CD 4)

Presentation:

Jeremy Perkins- 20 S. Lewis Ave. Tulsa, OK 74104

Mr. Perkins stated the following: This is a portion of a larger project that we went back and forth with the city permit office deciding what the structure is. We didn't really label it as anything. It is basically a shade structure for the pool that we thought was more like a trellis or an arbor, but it really isn't because it does have a surface, a permanent surface area for the shading. So when looking at the required rear setback, we are in some of it and out of some of it, so we're short on square footage to get this done. We're requesting 325 square feet due to the existing garage structure that takes up most of that required per yard. The printer that reads white is perforated, so that's light through the center structure that you see that's a bit lower, is solid. That's where the mud is. So you could be under that and not to get the elements of rain but not the surrounding piece would be at least 40 to 50% open to let light and water through. So that was where this connect was

when the city told us that you couldn't really call it trellis or an arbor because we do have a solid portion of it. So of the 325 square feet we're asking for, 100 square feet of that is perforated and lets sunlight through. The rest of that would be a solid surface, roofed surface.

Ms. Perking stated the following: The City of Tulsa looked at these two or three times with trying to decide what we were considering it. So, in a required rear yard you are allowed to do a trellis or an arbor, and this blurs those lines I believe. And I think that's where they end up saying "We just need you to go get a variance to approve this". This is a tough one on hardship, this neighborhood most accessory structures are larger than what's permitted in a required rear yard. I know that doesn't necessary to this lot but. I guess the hardship is we see this is an open-air trellis with some covering.

Mr. Perkins confirmed this application does not require Historic Preservation Commission review.

Ms. Radney stated the following: So there is a preexisting garage structure that pre-dates the existing code and a portion of what the applicant is requesting is for covered parking, to accommodate modern vehicles. And the remaining portion, the additional portion, is for recreational use. But I would suggest that the existence of that building and the modifications needed for parking, would constitute a hardship. And this is a creative way that also satisfies the historic, context to be able to use the backyard as well as, accommodate the vehicles

Interested parties:

None.

Questions and Comments:

All Board members indicated their support for the application.

Board Action: On **MOTION** of Barrientos, the Board voted 4-0-0 (Barrientos, Wallace, Brown, Radney "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** a **VARIANCE** to allow more than 30% coverage of the rear setback by a Detached Accessory Building (Sec.90.090-C.2) finding the hardship to be the preexisting garage, and the rear setback that predates current code and does how to accommodate for modern vehicles., per the conceptual plans 18.6-18.10 of the agenda packet. 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:

E50 LT 9 & ALL LT 10 & S10 VAC ALLEY ADJ ON N BLK 6,MAPLE RIDGE ADDN

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 4:40 pm.

Date approved: _____

Chair

There being no further business, the meeting adjourned at 4:40 pm.

Date approved: 06/14/2022

SB
Chair