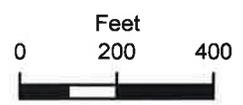


**SUBJECT TRACT**

**CBOA-2791**

**5.1**



19-11 06



**BOARD OF ADJUSTMENT  
CASE REPORT**

**STR:**9106

**Case Number:** CBOA-2791

**CZM:**34

**HEARING DATE:** 01/21/2020 1:30 PM

**APPLICANT:** Melissa Torkleson

**ACTION REQUESTED:** **Special Exception** to allow Use Unit 20, Commercial Recreation, to allow indoor and outdoor Amusement Activities not elsewhere classified (NEC), in a CS zoned district (Sec. 1220); and a **Special Exception** to allow Use Unit 2, Area-Wide Exception Uses, to allow a pumpkin patch and Christmas tree sales in a CS district (Sec. 1202); and a **Variance** from the all-weather parking surface requirement (Sec. 1340.D).

**LOCATION:** 17516 W 8 ST S

**ZONED:** CS

**PRESENT USE:** Seasonal Sales

**TRACT SIZE:** 2.49 acres

**LEGAL DESCRIPTION:** LT 4 BLK 4; LT 5 BLK 4; LT 3 BLK 4; LT 2 BLK 4, WEKIWA HILLS

**RELEVANT PREVIOUS ACTIONS:**

**Subject Property:** None relevant

**Surrounding Property:**

**CBOA-2648 January 2018:** The Board **approved** the request for a *Use Variance* to permit a landscaping business (Use Unit 15) on an OL zoned lot; and a *Use Variance* to permit storage, not elsewhere classified (NEC) (Use Unit 23) on an OL zoned lot (Section 610), on property located at the southwest corner of West 8<sup>th</sup> Street South & South 174<sup>th</sup> West Avenue.

**CBOA-2231 September 2006:** The Board **approved** a *Special Exception* to permit automotive repair, Use Unit 17, in a CS district, on property located at 17628 West 8<sup>th</sup> Street.

**CBOA-2114 July 2004:** The Board **approved** a *use variance* to allow storage in a portable building as principal use in an OL zoned district to function as accessory to the adjacent residential use; located North of the NE/c W 8<sup>th</sup> St and S 176 W Avenue.

**ANALYSIS OF SURROUNDING AREA:** The subject tract is located in a CS zoned district with commercial uses. It abuts Highway 412 on the south. Just north of the CS district is a residential neighborhood with AG-R zoning and properties zoned OL including the property approved for a Use Variance to permit a landscaping business and storage (CBOA-2648).

**STAFF COMMENTS:**

The applicant is before the Board requesting a **Special Exception** to allow Use Unit 20, Commercial Recreation, to allow indoor and outdoor Amusement Activities not elsewhere classified (NEC), in a

5.2

CS zoned district (Sec. 1220); and a **Special Exception** to allow Use Unit 2, Area-Wide Exception Uses, to allow a pumpkin patch and Christmas tree sales in a CS district (Sec. 1202); and a **Variance** from the all-weather parking surface requirement (Sec. 1340.D).

The applicant proposes to have indoor and outdoor amusement activities, such as inflatables, on the property. The amusement activities fall under Use Unit 20, Commercial Recreation: Intensive. A Special Exception is required as the proposed amusement activities are uses which are not permitted by right in the CS district because of potential adverse affects, but which if controlled in the particular instance as to its relationship to the area and to the general welfare, may be permitted.

The applicant also proposes to have a pumpkin patch on the property for a temporary time period around Halloween and possibly sell Christmas trees on the property for a temporary time period around Christmas. A Special Exception is required as the proposed pumpkin patch and Christmas tree sales are considered temporary open air activities within Use Unit 2 and are uses which are not permitted by right in the CS district because of potential adverse affects, but which if controlled in the particular instance as to its relationship to the area and to the general welfare, may be permitted.

A portion of the existing parking lot is an unpaved gravel area. The Code requires all parking areas be paved with an all-weather material to maintain a minimum level of aesthetics, and to control air-borne particulates like dust. The applicant has requested a variance to allow a gravel parking area on the site

The applicant provided the following statement: "Hardship request for gravel lot on 3 sides of building. Located in rural area with no adjoining businesses. Concrete handicap parking and handicap approach is in place already."

The approval of a special exception will trigger the requirement to conform to the Subdivision and Development Regulations. Issues related to Right-of-Way dedication and storm water management would be addressed during the platting stage.

If inclined to approve, the Board may consider any conditions it deems necessary and reasonably related to the request to ensure that the proposed uses in the CS zoned district are compatible with the surrounding area.

If inclined to approve the Board may consider the following conditions:

- Limiting the number of onsite events per year.
- Limiting the day and hours of operation.

**Sample Motion:**

***"Move to \_\_\_\_\_ (approve/deny) a Special Exception to allow Use Unit 20, Commercial Recreation, to allow indoor and outdoor Amusement Activities not elsewhere classified (NEC), in a CS zoned district (Sec. 1220); and a Special Exception to allow Use Unit 2, Area-Wide Exception Uses, to allow a pumpkin patch and Christmas tree sales in a CS district (Sec. 1202); and a Variance from the all-weather parking surface requirement (Sec. 1340.D).***

***Finding the hardship to be \_\_\_\_\_.***

***Approved per conceptual plan (if any) on page \_\_\_\_\_ of the agenda packet.***

***Subject to the following conditions (including time limitation, if any): \_\_\_\_\_.***

***Finding the Special Exceptions 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.***

***Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan.”***

CBOA-2648

FILE COPY

Presentation:

**Eric Engel**, 243 South 176<sup>th</sup> West Avenue, Sand Springs, OK; stated he spoke with Mr. Lily and has the site plan as the Board requested at the last meeting. Mr. Engel presented the site plan to the Board for review. Mr. Engel stated that he spoke with Mr. West to determine how best to place the proposed building on the subject property, so Mr. Lily would only see the 25 foot side instead of the longer 100 foot side. Mr. Engel is proposing to have a living fence on the property screening Mr. Lily's property.

Mr. Charney asked Mr. Engel if he had reviewed the presented site plan with Mr. Lily. Mr. Engel stated that he has not, because he just picked up the site plan from the engineering firm.

Mr. Charney asked Mr. Engel if he was committing to erecting a six-foot privacy fence along the southerly border for 168 feet in length. Mr. Engel answered affirmatively. Mr. Charney asked Mr. Engel if he would commit to erecting the 25 x 100 proposed building as shown on the presented plan. Mr. Engel answered affirmatively. Mr. Charney asked Mr. Engel if the 25 x 100 building would be enclosed on all sides. Mr. Engel answered affirmatively. Mr. Charney asked Mr. Engel if all storage for the landscaping business and the related storage would all be within the proposed building or would there still be storage outside. Mr. Engel stated there would be some outside storage for the sheer fact of the use of equipment, but he would have under a carport type structure.

Mr. Hutchinson asked Mr. Engel if there would also be a 24 length of privacy fence erected as shown on the site plan. Mr. Engel answered affirmatively.

Mr. Johnston asked Mr. Engel to elaborate about the covered storage area he had mentioned. Mr. Engel stated it would be located on the south corner of the proposed building. Mr. Johnston asked Mr. Engel if it would extend from the end of the building to the property line as extension of the building. Mr. Engel stated that it could possibly be that. Mr. Johnston asked if that structure would be open on all sides. Mr. Engel answered affirmatively.

Mr. Johnston thought the building would back up to the fence and that all the storage would be behind the building. Mr. Engel stated that the topography makes that difficult, because there is an approximate 36-foot drop off. Mr. Johnston asked if the building would be going onto a flat area of the property. Mr. Engel stated that it will be a flat area, but right now it is heavily wooded yet the flattest spot on the property. Mr. Johnston asked Mr. Engel how much fall he thought there is across the length of the proposed building. Mr. Engel stated that he estimates six feet. Mr. Johnston asked Mr. Engel if he would be losing the trees by placing the building in that area. Mr. Engel stated there would still be a line of trees on the north side, because he is only going to excavate the area where the building will be erected. Mr. Johnston asked Mr. Engel if the trees offered a visual block at this time of year. Mr. Engel stated the trees do because they are that thick.

CBOA-2648

FILE COPY

Mr. Charney asked Mr. Engel if Mr. Lily had a copy of the site plan that was presented to the Board at this meeting. Mr. Engel stated that Mr. Lily did not. Mr. Charney stated that it is critical that Mr. Lily receive a copy. Mr. Engel presented Mr. Lily with a copy.

**Interested Parties:**

**Hugh Lily**, 311 South 176<sup>th</sup> West Avenue, Sand Springs, OK; came forward and presented new pictures of the subject area to the Board. Mr. Lily stated that there are eight vehicles parked on the grass, on the street and in Mr. Engel's driveway that he can see as he pulls into his driveway. Mr. Lily stated there are still ten vehicles parked behind the fence. Mr. Lily stated after the last meeting he and Eric spoke about the six foot privacy fence, and Eric agreed to have the fence completed by the 15<sup>th</sup>, but it is still not there. Mr. Lily stated that he has been going through this with Mr. Engel for the last six years.

Mr. Charney asked Mr. Lily if the six-foot privacy were erected and the 25 x 100 building were built in the area designated on the site plan, and the remaining storage was contained within a storage shed would he still object to the proposed use. Mr. Lily stated that will work as long as it gets done. Mr. Charney stated that if the Board approves this request and places conditions on the approval and the conditions are not satisfied Mr. Engel would be back in violation. Mr. Lily stated that he has been dealing with this for ten years. Mr. Charney stated that it is important to the Board that you and Mr. Engel speak like gentlemen should to each other and reach an agreement. The Board has been trying to get to that for 90 days now.

**Rebuttal:**

**Eric Engel** came forward.

Mr. Charney stated if the Board were to approve the Variance requests, it is important that the fencing be erected as described in the exhibit, which is a 24-foot section and a 168-foot section, and the four sided building be constructed and actually used for storage. Mr. Engel agreed.

Mr. Charney asked Mr. Engel he intends to build another building south of the currently proposed building. Mr. Engel stated that he plans a lean-to so that in the evening he can pull vehicles under. Mr. Charney stated the Board may condition an approval that the storage be placed underneath a structure instead of left haphazardly in the lot. Mr. Engel stated that is a fair request.

Mr. Johnston stated that he would specify the lean-to be the same width as the building depicted on the site plan, and that it not be built beyond the building set-back line, and be of similar roof open on the eastern side for ingress and egress. Mr. Engel stated the only side of the lean-to that would be open would be to the street side.

Mr. Charney stated that if outside storage becomes the norm again there will be another citation, and the Board has the ability to revoke the approval. Mr. Charney asked Mr. Engel if he understands this. Mr. Engel stated that he does understand.

CBDA-21648

FILE COPY

**Comments and Questions:**

None.

**Board Action:**

On **MOTION of CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a **Use Variance** to permit a landscaping business (Use Unit 15) on an OL zoned lot; **Use Variance** to permit storage, not elsewhere classified (NEC) (Use Unit 23) on an OL zoned lot (Section 610). The approval is subject to the construction of a six-foot privacy fence for 168 feet on the southerly boundary and a 24-foot privacy fence on another boundary with the neighbor as depicted in the exhibit submitted by the applicant at today's meeting. There is to be construction of a storage building 25 x 100 feet enclosed on all four sides and doors for ingress and egress as located and depicted on the site plan provided by the applicant. There is to be no outside storage related to the landscape business, and any outside storage would only be permitted in an additional building, an open lean-to shed, located south of the four-sided building depicted on the exhibit provided by the applicant. There is a general prohibition of outside storage attached to this approval; the storage is to be located within one of the two structures. The Board finds the hardship to be the topography and neither the infrastructure, sanitary sewer, or roadways were designed for a more standard office use; for the following property:

**LT 2 & LT 3 BLK 2, WEKIWA HILLS, OF TULSA COUNTY, STATE OF OKLAHOMA**

**2654 - Richard Kosman**

**Action Requested:**

**Variance** of the minimum frontage requirement in the IM District to permit a lot-split (Section 930). **LOCATION:** South of the SW/c of West 51<sup>st</sup> Street South and South 49<sup>th</sup> West Avenue

**Presentation:**

**Richard Kosman**, R K and Associates, 4815 South Harvard, Tulsa, OK; stated he represents the Tulsa Industrial Center. The Center has approximately 29 acres in Tulsa County and the only access to that property is with a City of Sapulpa right-of-way. The Industrial Center would like to set this land in two tracts with a common property line in the center. The existing right-of-way is 82.42 feet wide, and normally there is a fifty-foot right-of-way.

Mr. Charney asked if there is a current dedicated right-of-way. Mr. Kosman stated there is a current dedicated street right-of-way, though the roadway is not there.

**Board Action:**

On **Motion of Charney**, the Board voted 4-1-0 (Walker, Dillard, Hutson, Charney "aye"; Tyndall "nay"; no "abstentions"; no "absences") to **APPROVE** a Modification of an existing Special Exception to increase the permitted number of residents from 150 to 289 in an existing treatment center, with conditions: no co-ed occupancy; no increase in the footprint; up to a maximum occupancy of 289, finding it 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, on the following described property:

SW NW LESS W/2 NW SW NW & LESS W50 THEREOF & LESSS30  
THEREOF FOR RD SEC 1 20 12 33.368ACS, Tulsa County, State of Oklahoma

\*\*\*\*\*

**Case No. 2230**

**Action Requested:**

Special Exception to permit a mobile home in an RS district (Section 410), located: 1417 East 61<sup>st</sup> Street North.

**Presentation:**

**Jane Lewis**, 324 West 92<sup>nd</sup> Street North, Sperry, Oklahoma, stated she owns the subject property. She proposed to demolish the existing home and move in a single-wide mobile. She informed the Board she has City sewer.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On **Motion of Walker**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a mobile home in an RS district (Section 410), with conditions for paved parking, skirting and tie-downs, finding it 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, on the following described property:

LTS 11 & 12 BLK 1 EAST TURLEY ADDN AMD B1&4-5&8 Tulsa County, State of Oklahoma

\*\*\*\*\*

**Case No. 2231**

**Action Requested:**

Special Exception to permit automotive repair (UU17) in a CS district, located: 17628 West 8<sup>th</sup> Street.

FILE COPY

CBOA-2231

**Presentation:**

**Eric Engel**, 243 South 176<sup>th</sup> West Avenue, Sand Springs, Oklahoma, pointed out the elevation changes and drainage easement. He stated they would not have wrecked vehicles and outside storage. He added that it is a well-built facility. He stated there would not be any auto-body work at this site.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On **Motion** of **Walker**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit automotive repair (UU17) in a CS district, with conditions to allow maximum of eight vehicles parked overnight, and no outside storage, finding it 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, on the following described property:

LT 1 BLK 4 WEKIWA HILLS Tulsa County, State of Oklahoma

\*\*\*\*\*

There being no further business, the meeting adjourned at 3:15 p.m.

Date approved: 11-21-06



Chair

**Presentation:**

**Dick McNair**, 2005 N. 167<sup>th</sup> E. Ave., proposed to mine dirt in an IM district. After the mining project they plan to convert it to a commercial development. He stated they have an easement from 49<sup>th</sup> W. Ave. and they access through Bowers Oil Company.

**Comments and Questions:**

In response to Mr. Hutson's questions, Mr. McNair replied they would obtain all permits and meet all requirements; estimate the project to last two to three years; and estimate the 300,000 to 500,000 yards of dirt. This will also improve the drainage directing it away from 21<sup>st</sup> Street rather than to 21<sup>st</sup> Street.

**Interested Parties:**

There were no interested parties present who wished to speak.

**Board Action:**

On **Motion** of **Hutson**, the Board voted 4-0-0 (Walker, Tyndall, Dillard, Hutson and Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to allow mining of dirt in an IM district, per the application.

**Amended Motion:**

On **Motion** of **Hutson**, the Board voted 4-0-0 (Walker, Tyndall, Dillard, Hutson and "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** a **Variance** of street frontage from 50' to 0', the second by Dillard stands, finding there is a road easement to access the property, on the following described property:

BEG 755.04S & 717.77E NWC NW TH E601.72 S565.32 W6 01.72 N565.51  
POB SEC 16 19 12 7.81ACS

\*.\*.\*.\*.\*.\*.\*.\*

**Case No. 2114**

**Action Requested:**

Use variance to allow storage in a portable building as principal use in an OL zoned district to function as accessory to the adjacent residential use. SECTION 610. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS, located: 403 South 176th West Avenue

**Presentation:**

**Tom Gudgel, III**, 2250 E. 73<sup>rd</sup> St., Ste 600, stated he represented the owner, Hugh Lilley, who was also present. There is a storage building on Lot 4 for the home on Lot 1. He submitted photographs (Exhibit C-1). He also owns Lot 1 to the south of the subject property in the CS zoned district. He purchased all three lots together. He pointed out the elevation from the street and that the storage building is on the same level as the house. He was told by the seller of the storage building that he

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CBDA-2114 (cont.)

did not need a building permit. There are no other buildings. He could not place the building on the same lot with the house because of the topography. He noted that other neighbors have storage buildings. It is used for personal items and lawn care equipment. The applicant would be willing to tie the lots together.

**Interested Parties:**

There were no interested parties present who wished to speak.

**Board Action:**

On **Motion of Tyndall**, the Board voted 4-0-0 (Walker, Tyndall, Dillard, Hutson and "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** a **Use Variance** to allow storage in a portable building as principal use in an OL zoned district to function as accessory to the adjacent residential use, finding the owner will tie the Lots 1 and 4 of Block 2 together, and there would be no other structures built on this lot, and the unusual shape of the lot, on the following described property:

LT 4 BLK 2, WEKIWA HILLS

\*\*\*\*\*

**Case No. 2117**

**Action Requested:**

Variance of land area per dwelling unit from 2.1 to 1.1 acres to permit two dwelling units. SECTION 330. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS, located:13106 N 129th E. Ave.

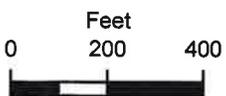
**Presentation:**

Mr. Beach informed the Board that due to a change in the processing of new applications, this case was not advertised in time for this meeting even though the application was made in time. The applicant asked that the Board hear the case today even though they would not be able to make a decision until the next meeting.

**Chris Himebaugh**, 13106 N. 129<sup>th</sup> E. Ave., Collinsville, Oklahoma, proposed to use an existing mobile home on 2.2 acres while he builds a stick built home on the same property. The mobile would then be used for a family member. He obtained support from his neighbors and out of state property owners for this application. He plans to use an aerobic system for the two homes. He would be willing to remove the trailer when his father no longer lives there.

**Interested Parties:**

There were no interested parties present who wished to speak.



Subject Tract

**CBOA-2791**

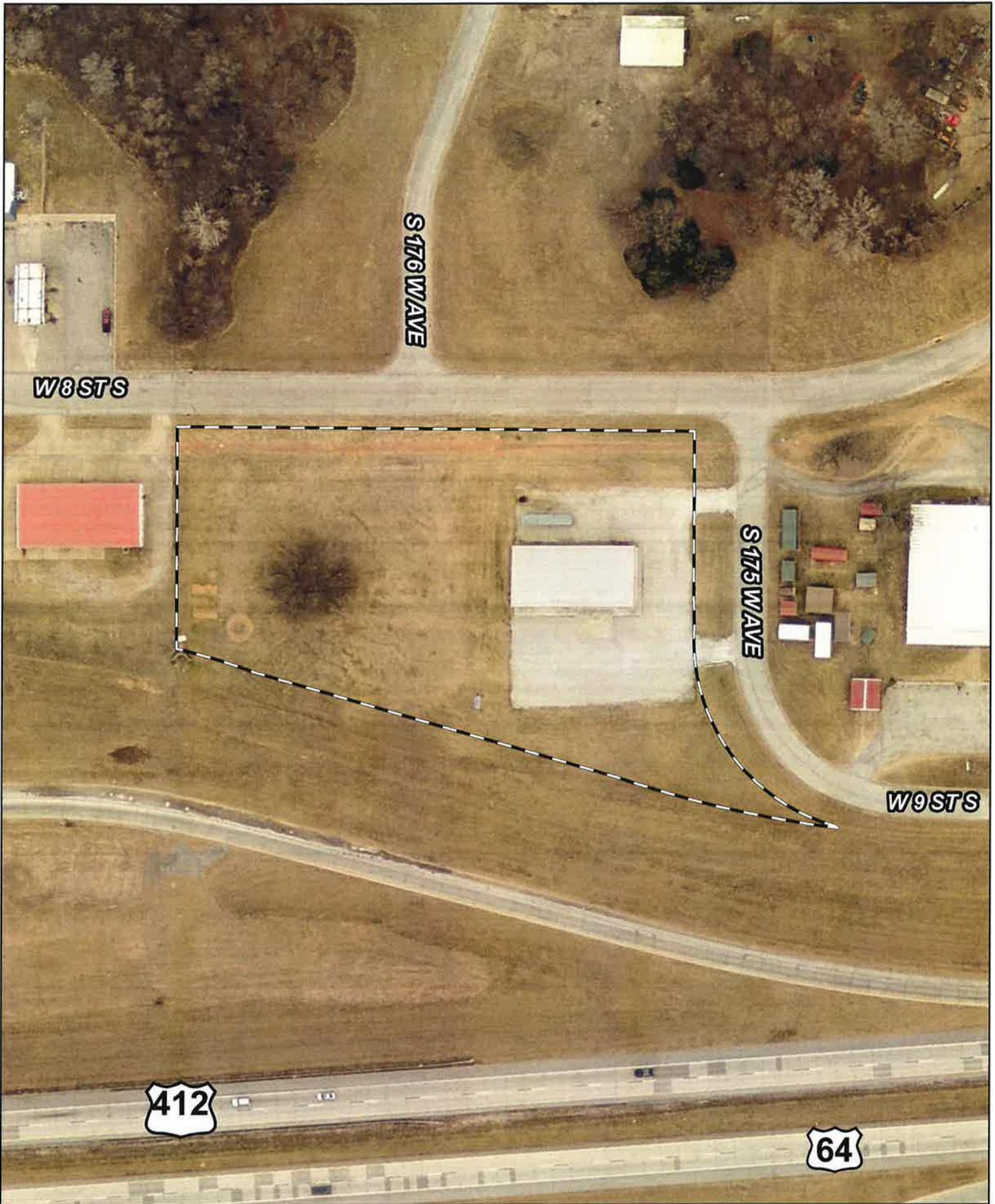
19-11 06

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2018

5.12



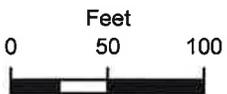


W8STS

S176 WAVE

S175 WAVE

W9STS



Subject Tract

**CBOA-2791**

19-11 06

Note: Graphic overlays may not precisely align with physical features on the ground.

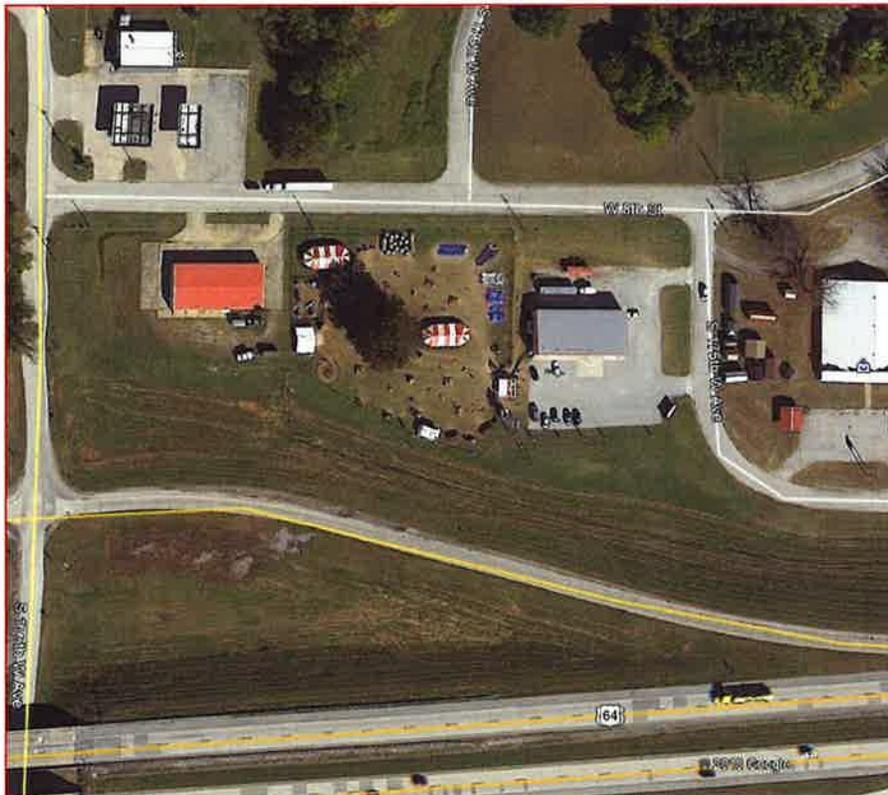
Aerial Photo Date: February 2018

5.13





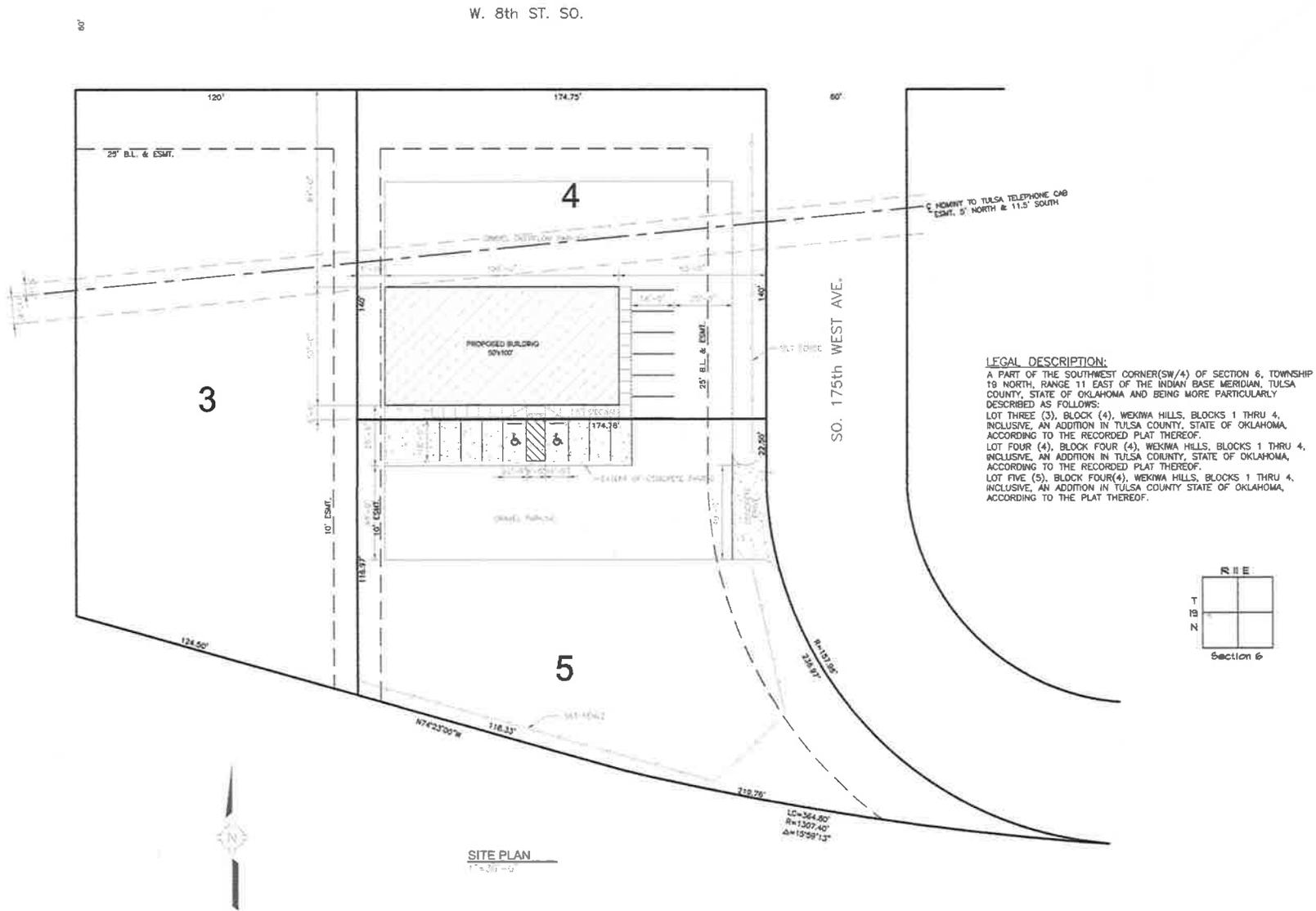
Google Earth close-up aerial from October 2018



Google Earth aerial from October 2018

17516 W. 8th St. Sand Springs, OK

5.15



**NEW BUILDING FOR:**  
 BIG BLAST FIREWORKS  
 LOTS 3, 4 & 5 BLOCK 4 WEKIWA HILLS ADDITION  
 17516 WEST 8th STREET  
 SAND SPRINGS, OK

Date: Sept. 15, 2010

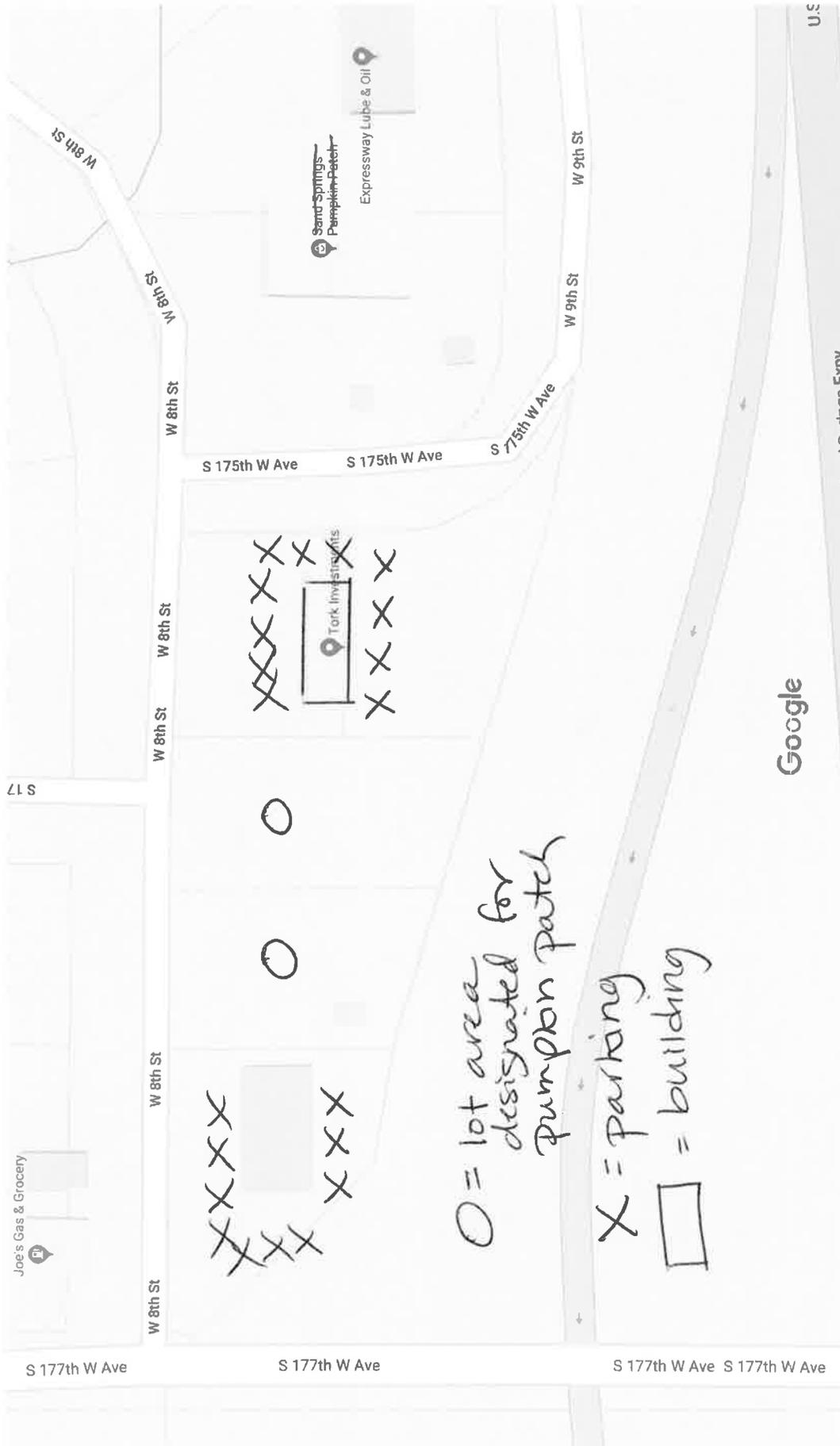
Rev. Date:

First Flr:

**SHEET  
C1**

17516 W- 8th St,  
Sand Springs, OK

9.19



O = lot area  
designated for  
pumpkin patch

X = parking  
[ ] = building