

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1244
Tuesday, February 11, 2020, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

| MEMBERS PRESENT | MEMBERS ABSENT | STAFF PRESENT | OTHERS PRESENT |
|---|-----------------------|---|-----------------------|
| Van De Wiele, Chair Ross, Secretary Radney Shelton | Bond, Vice Chair | Wilkerson Chapman Sparger K. Davis | Blank, Legal |

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on February 6, 2020, at 11:58 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

MINUTES

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the **Minutes** of the December 10, 2019 Board of Adjustment meeting (No. 1241).

NEW APPLICATIONS

22845—James Watson

Action Requested:

Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D).

Presentation:

The applicant has withdrawn the application.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

**BEG 50N & 1164.5W SECR SE TH N265 E227 S265 W227 POB LESS W40 S140
THEREOF SEC 15 19 13 1.252ACS, City of Tulsa, Tulsa County, State of Oklahoma**

Mr. Van De Wiele explained to the applicants and interested parties that there were only four board members present today; Mr. Bond is home sick. Most motions the Board makes it will require an affirmative vote of three of the remaining four members. When there is less than a full Board, the Board will entertain a request to continue agenda items to a later meeting date, at which all five members of the Board may be present. Mr. Van De Wiele asked if there were any applicants or an interested party would like to postpone his or her hearing until the next meeting he or she could do so. Ms. Radney will recuse herself in Item #7 on the agenda, this item will require all three remaining members to vote affirmatively to pass. The audience nodded their understanding and no one came forward to request a continuance.

UNFINISHED BUSINESS

22844—John Wyrick

Action Requested:

Special Exception to permit a fence in the street setback to exceed 4 feet in height (Section 45.080-A). **LOCATION:** 4141 South Zunis Avenue East **(CD 9)**

Presentation:

John Wyrick, 9913 South 87th East Avenue, Tulsa, OK; stated he is a remodeling general contractor and he is representing his client, Mr. King. His client would like to have a fence installed on their property for security reasons due to the health condition of Mr. King. The fence will be a wrought iron fence and eight feet tall. The fence will not obstruct the view of the house unlike some others in the neighborhood. The fence

is ornamental in nature and sits well back from the street; 40 feet. The owners have visited with their neighbors to the south and the immediate neighbors and no one has any objections. Mr. Wyrrick stated that he had also visited with Ms. Robi Jones at INCOG, and she said there had been no applications for a Special Exception up to that time.

Mr. Van De Wiele asked Mr. Wyrrick if he had visited with Ms. Jones before construction started. Mr. Wyrrick stated that there were a couple of posts already in the ground.

Mr. Van De Wiele asked Mr. Wyrrick what caused him to go to INCOG at that point in time. Mr. Wyrrick stated the neighbors to the south had expressed concern about the fence.

Mr. Van De Wiele asked Mr. Wyrrick if on his visit to INCOG that a fence over four feet tall required a Special Exception approval? Mr. Wyrrick answered affirmatively.

Mr. Van De Wiele asked Mr. Wyrrick if he knew that a Special Exception was going to be required why continue construction prior to making an application? Mr. Wyrrick stated he was finishing a remodel and the fence was already delivered.

Mr. Wyrrick stated there are four or five properties that have fences that not only are they closer to the road one of the fences is six to eight feet tall, solid masonry and is 15 to 20 feet back from the street; 2120 East 46th Street. The fence located at 4222 South Victor Avenue is a solid fence that is five feet tall with six-foot tall posts, and about 26 feet back from the street. The fence located at 4111 South Wheeling has a six-foot privacy fence that is about ten feet back from the street.

Mr. Van De Wiele asked Mr. Wyrrick if the gate would be no taller than eight feet. Mr. Wyrrick answered affirmatively.

Mr. Wyrrick stated the Kings would like to have the fence because they have a couple of large German Shepherds and Mr. King has very poor eyesight and imbalance when walking.

Interested Parties:

Bucky King, 4141 South Zunis Avenue, Tulsa, OK; stated he moved into his house five years ago and there have been more problems than someone would think possible for that neighborhood. His property backs up to a bus stop, there are a lot of transients, he has had his car broken into, and the house on the corner was a meth house that caught fire but people still came to the house in the night. He did not know his front yard was a stormwater basin. The neighbor to the south did not know what type of fence was being constructed but once they saw it, they were relieved and stated that the fence would help them keep their St. Bernard in their yard. Mr. King stated the fence sits backs 40 feet from the street and is not obstructing any views. There are similar fences in the area, and he asked his contractor to copy the fence he saw near Edison.

Ms. Shelton asked Mr. King if his dogs would have jumped a four-foot fence. Mr. King stated they probably could. Mr. King stated he chose the fence for security reasons and did not see a major difference in a six-foot to an eight-foot fence.

Comments and Questions:

Ms. Radney informed the audience and Board that she is a local realtor as is Mrs. King and they have known each other over the years and have done business together on occasion. She does not have any particular interest in this site or this application.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Special Exception to permit a fence in the street setback to exceed 4 feet in height (Section 45.080-A), subject to the fence being "as constructed" as shown pages 2.4, 2.5, 2.8, 2.10, 2.11, 2.12 and 2.13 of the agenda packet. The fence is to remain as constructed and where located. 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 3 BLK 1, BOLEWOOD ACRES, City of Tulsa, Tulsa County, State of Oklahoma

22847—Ken Kelly

Action Requested:

Special Exception to permit a fence in the street setback to exceed 4 feet in height (Section 45.080-A); Special Exception to allow a barbed-wire fence in a Residential District (Section 45.080-C). **LOCATION:** 6238, 6302, and 6312 East Virgin Street North (**CD 3**)

Presentation:

Ken Kelly, 2408 Autumn Avenue, Memphis, TN; stated he is here to work with his brother on their properties. Mr. Kelly stated that he and his brother purchased five quadplexes, three that are in consideration for today's request. He has no desire to build in the setback from the street; the fences that have been erected are 32 feet away from the street. The inspector that visited the subject site cited him for the barbed wire; the fencing was not the issue, just the barbed wire.

Ms. Ross asked Mr. Kelly if the barbed wire caused the fence to be over four feet in height or is the fence already four feet in height. Mr. Kelly stated the fence in place is not in the street setback, it is on his property. The fence is six feet in height and the barbed wire takes the height to seven feet.

Mr. Chapman stated the fence is on Mr. Kelly's property, but it is within the street setback. There is a 25-foot street setback from the property line starts to inside the

subject property per the Zoning Code. That is why a Special Exception is required to exceed four feet in height.

Mr. Van De Wiele asked Mr. Kelly how tall is the fence and how tall is the barbed wire? Mr. Kelly stated that in total it is seven feet.

Mr. Van De Wiele asked Mr. Kelly why he needed a six-foot fence and why the need for a foot of barbed wire on top of that fence? Mr. Kelly stated four years ago he purchased the first two buildings along Virgin; there are five of them. He erected a six-foot chain link fence to cover the back area. Dawson has a lot of industrial and residential areas. There are six-foot fences protected by barbed wire all over the neighborhood, so he followed suit. When a person climbs a six-foot chain link fence, they step on the fence prongs and bend them over. He saw a lot of the fence prongs bent over so he knew people were climbing over his fence. His tenants were having items stolen from their back porches. When he purchased the other three buildings, he installed the same six-foot fence and installed barbed wire. Since that fence has been erected there has been no signs of anybody climbing over the fence, and none of his tenants have had anything stolen. Barbed wire works to keep his tenants safe. Mr. Kelly stated that he and his brother are working hard to make Dawson a better and safer neighborhood. He has spoken with Councilor Patrick several times, and he has purchased 60 doors in the neighborhood, around Hamilton Elementary School and the junior and senior high school. Very close to his property is a homeless encampment, behind Hamilton Elementary School. There are many boarded up houses that have squatters. It is not the safest neighborhood in Tulsa. He wants to attract tenants and he has to offer them some level of security, and the barbed wire helps afford that. Mr. Kelly read a letter from one of his tenants about the fencing and the safety of the property. Mr. Kelly stated the properties that he and his brother purchased were in foreclosure or boarded up. He does not like the look of chain link so he planted climbing roses but that did not work. He now plans to plant Cannas which grows like bamboo, they proliferate, they spread, and they will be pretty. Mr. Kelly stated that he believes the barbed wire has proven effective for the added security of the current and future tenants.

Ms. Shelton asked Mr. Kelly if the Cannas would be as equally effective as not having the barbed wire? Mr. Kelly answered no. There is nothing obstructive about Cannas.

Ms. Radney asked Mr. Kelly if his purpose in planting the Cannas is to provide a landscaping screen without providing any kind of security. Mr. Kelly stated the Cannas do not provide any security at all, strictly aesthetic.

Interested Parties:

There were no interested parties present.

Mr. Wilkerson entered the meeting at 1:39 P.M.

Comments and Questions:

Ms. Ross stated that based on what she has heard today, the owner cares about the tenants and the property. He has presented evidence that safety was a problem. In learning that the Code does allow for barbed wire upon approval of a Special Exception she is inclined to vote in favor of this request.

Mr. Van De Wiele stated he is of the same opinion. Mr. Van De Wiele stated that the ultimate goal is to transition, improve the neighborhood does the Board to approve barbed wire in perpetuity?

Ms. Radney stated she would not be inclined to support this request without landscaping; Virgin is an arterial street.

Ms. Shelton stated she is against this request all together. She subscribes to the idea that other crime prevention can be used through environmental design methods before resorting to barbed wire. She thinks this feels like a detention center even with the landscaping.

Board Action:

On **MOTION** of **ROSS**, the Board voted 3-1-0 (Radney, Ross, Van De Wiele "aye"; Shelton "nay"; no "abstentions"; Bond absent) to **APPROVE** the request for a Special Exception to permit a fence in the street setback to exceed 4 feet in height (Section 45.080-A); Special Exception to allow a barbed-wire fence in a Residential District (Section 45.080-C), subject to "as shown" in photos 4.4, 4.5 4.6 4.7, 4.10 and the site plan 4.9 of the agenda packet. There is to be a ten-year limitation on the barbed wire portion of the Special Exception; February 2030. The applicant is required to plant and maintain landscape vegetation screening that grows to at least six feet in height on all the street facing sides of the fence; Virgin Street, Norwood Place and Norwood Avenue. 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 3; LT 1 & 2 BLK 4; LTS 27 & 28 BLK 3, HOUSTON ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22848—William Farmer

Action Requested:

Variance to allow a detached accessory building to exceed 40% of the size of the principal residential structure in an RS-3 District (Section 45.030-A). **LOCATION:** 14557 East 13th Street South (**CD 6**)

Presentation:

William Farmer, 14557 East 13th Street, Tulsa, OK; stated he would like to have a larger to store his drag cars and drag boats. The little shop he has currently is not

adequate and would add this proposed building to his existing garage. Mr. Farmer stated there are other shops of this size in the neighborhood.

Ms. Radney asked Mr. Farmer if some of the buildings were actually horse stables. Mr. Farmer stated that he did not know. He knows there are horse stables located on 11th Street but his area is all residential.

Mr. Farmer stated the addition would be 24'-0" x 28'-0" and it would not look out of place for the neighborhood.

Mr. Van De Wiele asked Mr. Farmer about the items that are seen in the aerial shot of his property. Mr. Farmer stated those items are a 20'-0" x 20'-0" concrete pad that has two boats on it, there is a portable building that will be taken out, and there is a 27'-0" Fountain boat. Mr. Van De Wiele asked Mr. Farmer how he would get all of this to and from his building. Mr. Farmer stated he has removed three of the existing boats. Mr. Van De Wiele asked Mr. Farmer about access to the street. Mr. Farmer stated that when he purchased the property there was a gravel drive that he drove his truck on that to park things on his property. He would like to concrete or asphalt the area to the street in the future.

Mr. Van De Wiele asked Mr. Farmer if the existing house is 1,996 square feet. Mr. Farmer stated he thought the house is 1,499 square feet but he could be mistaken.

Mr. Van De Wiele asked Mr. Farmer to state his hardship for his request. Mr. Farmer stated that there are many buildings in the area that are similar to what he would like to do and there are security issues. Mr. Farmer stated that he has had vandalism and his cars have been broken into.

Ms. Shelton asked Mr. Farmer if his property was a half-acre lot. Mr. Farmer answered affirmatively.

Ms. Shelton asked Mr. Farmer what the plate height of the building would be. Mr. Farmer stated the side wall of the building will be 12 feet high and will meet all codes.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Radney stated that she sold a house at the corner of 12th Place and 149th and sold another one on 145th which also had a large shop. She will agree that the neighborhood has really large shops that are being used for all sorts of purposes. In keeping with the character of the neighborhood there are a lot of outdoor vans, campers, boats and sports cars. The culture of the neighborhood is to use the land and not just look at it.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a **Variance** to allow a detached accessory building to exceed 40% of the size of the principal residential structure in an RS-3 District (Section 45.030-A), subject to conceptual plans 5.10, 5.11, 5.12, 5.12 and 5.14 of the agenda packet. The Board is not granting approval on the height Variance. The Board has found the hardship to be the character of the neighborhood is one that permits large shops. 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-12-BLK-4, CAROL ACRES, City of Tulsa, Tulsa County, State of Oklahoma

22849—Robert Walenta

Action Requested:

Special Exception to permit moderate impact manufacturing in the IL District (Section 15.020); Variance of the required 75-foot building setback between IL and AG/R Districts (Section 15.030). **LOCATION:** 2315 North Yale Avenue East **(CD 3)**

Presentation:

Robert Walenta, 3409 East Haskell Street, Tulsa, OK; stated this request is for moderate impact manufacturing, and the intent is to use CO2 extraction process. The CO2 process would essentially be the same as any low impact processing and it would be in an enclosed room in an enclosed building. There will be no retail at this site. The Variance request is essentially against himself because the subject parcel has two

different zoning attached to it currently. Mr. Walenta stated that he hopes to get the portion zoned RS rezoned to AG, and if that does happen, he would like to have a continuous greenhouse as opposed to having a 75-foot break for a setback against himself. If he is unable to get the rezoning to AG, he would end up getting the property replatted in the event of a sale or any future activity on the eastern portion.

Ms. Shelton asked Mr. Walenta if he would be erecting a fence around the property. Mr. Walenta answered affirmatively. Ms. Shelton asked Mr. Walenta what kind of fence would be erect. Mr. Walenta stated that it is his understanding that the fence would need to be opaque so he would erect a wooden privacy height fence around the entire perimeter. Ms. Shelton asked Mr. Walenta what surrounded the property currently. Mr. Walenta stated there is a chain link fence on the south portion of the property.

Ms. Shelton asked Mr. Walenta if he planned on keeping the trees or will he be taking them down? Mr. Walenta stated the trees would be removed.

Mr. Van De Wiele asked Mr. Walenta to state his hardship for the Variance request. Mr. Walenta stated the hardship is the unique situation of having two different zonings on the same parcel; the primary issue is the setback between the two sides of the property. Mr. Van De Wiele asked Mr. Walenta if he was aware of another hardship, other than the fact that the property has two zonings? Mr. Walenta answered no.

Interested Parties:

Sheila McGaughy, 2250 North Yale (Canton) Avenue, Tulsa, OK; stated she lives on the south side of the subject property and there is a chain link fence. There has been a lot of effort put into the property to make it nice and she would request a privacy fence be erected on that side.

Mr. Van De Wiele asked Ms. McGaughy how much of the property is covered by the chain link fence. Ms. McGaughy stated the entire length of the property going from Yale to Canton has chain link fencing. Mr. Van De Wiele asked Ms. McGaughy how tall the chain link fence is. Ms. McGaughy stated that it is either seven or eight feet tall.

Ms. Radney asked Ms. McGaughy what her intentions were for her portion of the land that is zoned IL. Ms. McGaughy stated there are no future plans for the property. Ms. Radney asked Ms. McGaughy if she had an intention of asking for a rezoning to residential for her property. Ms. McGaughy answered no.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Radney, Ross, Shelton, Van De Wiele "aye"; "nay"; no "abstentions"; Bond absent) to **APPROVE** the request for a Special Exception to permit moderate impact manufacturing in the IL District (Section 15.020); Variance of the required 75-foot building setback between IL and AG/R Districts

(Section 15.030), subject to conceptual plan 6.6 of the agenda packet. The use is to be limited to medical marijuana processing or related used for the IL use. A privacy fence is to be installed on the south side of the property and is to always be 10'-0" past the last building or structure built on the property regardless of zoning. The Board finds the hardship for the Variance to be that the subject property has two different zoning classifications on the same tract. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

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

LT 5 BLK 2; LT 1 BLK 1; LT 2 BLK 1, S R LEWIS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22851—Flavio Monteil

Action Requested:

Special Exception to permit a carport in the street setback; Special Exception to reduce the required 5-foot side yard setback for a carport in a RS-3 District (Section 90.090-C.1). **LOCATION: 2623 North Quincy Avenue East (CD 1)**

Ms. Radney recused at 2:54 P.M. and left the meeting.

Presentation:

The applicant was not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 3-0-1 (Ross, Shelton, Van De Wiele "aye"; no "nays"; Radney "abstaining"; Bond absent) to **CONTINUE** the request for a Special Exception to permit a carport in the street setback; Special Exception to reduce the required 5-foot side yard setback for a carport in a RS-3 District (Section 90.090-C.1) to the February 25, 2020 Board of Adjustment meeting; for the following property:

LT 1 BLK 3, MARTIN ROLL ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Ms. Radney re-entered the meeting at 2:55 P.M.

22852—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to permit a High-Impact Medical Marijuana Processing Facility in the IM District (Section 15.020). **LOCATION:** 2976 North Florence Avenue East (CD 1)

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated he is representing Global Clinical Research Management Group. The project has a 44,000 square foot building that was built in 1988 and is located in an IM District. The property abuts the Southern Kansas and Oklahoma Railroad line and Highway 11; the intersection of Highway 11 and Highway 75. The building across the street is a fin tube company, Webco.

Mr. Van De Wiele asked Mr. Reynolds about the property located between the railroad line and the highway. Mr. Reynolds stated there is nothing there and he thinks the State of Oklahoma owns it.

Mr. Reynolds stated the entire property is fenced in and had photos of the subject property and the area placed on the overhead projector for viewing. There is a highway on the north side, the railroad on the west side, Budweiser on the east side and Webco on the south side of the subject property.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Radney, Ross, Shelton, Van De Wiele "aye"; "nay"; no "abstentions"; Bond absent) to **APPROVE** the request for a Special Exception to permit a High-Impact Medical Marijuana Processing Facility in the IM District (Section 15.020), subject to "as constructed". 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:

N75 LT 4 & ALL LT 5 BLK 3, SANTA FE INDUSTRIAL DISTRICT, City of Tulsa, Tulsa County, State of Oklahoma

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OTHER BUSINESS

None.

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NEW BUSINESS

None.

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BOARD MEMBER COMMENTS

None.

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There being no further business, the meeting adjourned at 3:00 p.m.

Date approved: _____

Chair