

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1281
Tuesday, September 28, 2021, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
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Bond, Chair
Radney, Vice Chair
Brown, Secretary
Barrientos
Wallace

Wilkerson
Chapman
Sparger
D. Siers

Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on September 23, 2021, at 11:15 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

The City Board of Adjustment was held by videoconferencing and teleconferencing via, an online meeting and web conferencing tool. Members of the public were allowed to attend and participate in the Board of Adjustment's meeting via videoconferencing and teleconferencing by joining from a computer, tablet or smartphone using the following link:

<https://us02web.zoom.us/j/82448910944>

312-626-6799 Meeting ID: 824 4891 0944

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

- Mr. Austin Bond, Chair
- Ms. Burlinda Radney, Vice Chair
- Mr. Steve Brown, Secretary
- Mr. Tomas Barrientos
- Mr. Tyler Wallace
- Ms. Audrey Blank, City Legal
- Mr. Dwayne Wilkerson, Tulsa Planning Office
- Mr. Austin Chapman, Tulsa Planning Office
- Mr. Dylan Siers, Tulsa Planning Office
- Ms. Janet Sparger, Tulsa Planning Office

MINUTES

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **DEFER** the **Minutes** of the August 24, 2021 Board of Adjustment meeting No. 1279 for additional comments on the work session.

NEW BUSINESS

23188—Jonah Hall

Action Requested:

Special Exception to permit a self-service storage facility in a CS District (Section 15.020, Table 15-2). **LOCATION:** 1601 North Peoria Avenue East (**CD 1**)

Presentation:

The applicant has withdrawn the request.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

A PART OF LOT TWO (2), BLOCK ONE (1), GATEWAY PLAZA, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, AND LYING IN THE SOUTHWEST QUARTER (SW/4) OF SECTION 30, TOWNSHIP 20 NORTH, RANGE 13 EAST OF THE INDIAN BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT TWO (2); THENCE NORTH 01°10'19" WEST ALONG THE WEST LINE OF SAID LOT TWO (2) A DISTANCE OF 83.41 FEET; THENCE NORTH 88°49'41" EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT TWO (2) A DISTANCE OF 214.52 FEET; THENCE NORTH 01°10'19" WEST PARALLEL WITH THE WEST LINE OF SAID LOT TWO (2) A DISTANCE OF 287.55 FEET; THENCE SOUTH 88°49'41" WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT TWO (2) A DISTANCE OF 220.75 FEET TO A POINT ON A NON-TANGENT CURVE, SAID POINT BEING ON THE BOUNDARY LINE OF SAID LOT TWO (2); THENCE ALONG THE BOUNDARY LINE OF SAID LOT TWO (2) IN A CLOCKWISE DIRECTION, THE FOLLOWING 16 COURSES:

1) NORTHERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 5,785.00 FEET (SAID CURVE SUBTENDED BY A CHORD WHICH BEARS NORTH 04°21'09" WEST A DISTANCE OF 105.01 FEET) FOR AN ARC DISTANCE OF 105.01 FEET;
2) NORTH 02°25'26" WEST A DISTANCE OF 61.07 FEET;
3) NORTH 88°49'41" EAST A DISTANCE OF 186.19 FEET;
4) NORTH 01°10'19" WEST A DISTANCE OF 39.11 FEET;
5) NORTH 88°49'41" EAST A DISTANCE OF 301.50 FEET;
6) NORTH 01°10'19" WEST A DISTANCE OF 7.00 FEET;
7) NORTH 88°49'41" EAST A DISTANCE OF 79.60 FEET;
8) NORTH 01°10'19" WEST A DISTANCE OF 214.69 FEET;
9) NORTH 88°02'12" EAST A DISTANCE OF 84.91 FEET;
10) SOUTH 01°10'19" EAST A DISTANCE OF 560.93 FEET;
11) SOUTH 88°02'00" WEST A DISTANCE OF 110.02 FEET;
12) SOUTH 74°02'30" WEST A DISTANCE OF 82.73 FEET;
13) SOUTH 45°30'57" WEST A DISTANCE OF 44.39 FEET;
14) SOUTH 45°31'32" WEST A DISTANCE OF 158.99 FEET;
15) SOUTH 01°10'19" EAST A DISTANCE OF 75.78 FEET;
16) SOUTH 88°49'41" WEST A DISTANCE OF 300.80 FEET TO THE POINT OF BEGINNING.
LESS AND EXCEPT THE SOUTH 83.41 FEET OF LOT TWO (2), BLOCK ONE (1), GATEWAY PLAZA. A SUBDIVISION IN THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.; City of Tulsa, Tulsa County, State of Oklahoma

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UNFINISHED BUSINESS

23167—Louis Fernandez, Jr.

Action Requested:

Appeal of the Administrative Decision issued by a Neighbor Inspector that the subject property is in violation of Sections 45.100 (Home Occupations) and Section 45.130 (Parking and Storage of Commercial Vehicles) of the zoning codes (Section 70.140).

LOCATION: 9239 South 86th East Avenue (CD 7)

Ms. Blank stated that in appeal cases the City usually presents their findings first.

Presentation:

Michael Ryder, Zoning and Sign Official, Working In Neighborhoods Department, 175 East 2nd Street, #480, Tulsa, OK; stated he issued a notice for the appeal that is before the Board and the case was continued from a previous meeting where a partial Board was present. In the notice there were two sections included in the violations, Section 45.130 which is parking and storage of commercial vehicles. It seemed at the initial meeting that that violation was agreed to across the Board based on size and weight of the vehicle being prohibited under that section of the Code. The issue where there may not have been a unanimous consensus was the citation of Section 45.100. Since the last meeting he has submitted to the Board a photograph that was taken when he posted the property with the notice. An open recycling bin showed box being shipped from Cornwell Tools to the subject address. In his investigation he determined that there is no other place of business where the subject vehicle is stored, using the section for home occupation. He would consider this to be a Type I Home Occupation so it would otherwise be allowed but for the vehicle being there, which would be under Section 45.100.F, prohibited uses. That section requires any equipment, vehicles, machinery, etc. that is associated with the home occupation to be stored inside of an enclosed building, so that is why that section of the Code was also provided. Mr. Ryder stated that his initial submission was deficient in support of those sections. Hopefully with the new submission the Board can see the basis that he was following to determine that this is a home-based occupation, which would otherwise be allowed except for the parking of storage of the vehicle outside of an enclosed building. Mr. Ryder stated that he has never seen evidence of customers coming to the subject property and that is not under dispute. The homeowner conducts his administrative affairs of his business which is like a franchise type business, but he is an independent contractor; the sales take place off premises but this is just about the storage of the large vehicle at the subject property which he thinks violates both sections of the Code.

Mr. Brown asked Mr. Ryder if he had met with Mr. Fernandez after the case had been deferred at the last meeting. Mr. Ryder stated that other than speaking outside of the meeting briefly, but there has been no other inspection or official action of any type. Mr. Brown stated that in other words no solution has been decided. Mr. Ryder answered no, stating the Zoning Code grants a stay until this matter is heard by the Board of Adjustment.

Louis Fernandez, 9239 South 86th East Avenue, Tulsa, OK; stated he does not operate the business out of his house. The truck is a mobile showroom, and he goes to different independent shops or dealers and present opportunities. Nobody comes to his house to purchase product, he does not do any sales from his house, the only thing that is done on the

property is cleaning and straightening the truck. Mr. Fernandez stated he interprets the Code to say that the truck is not to be parked on his lot, so he is willing to park the truck on the street. He is trying to keep the truck out of the way for the neighborhood and the truck is no louder than a lawn mower when it is running in the neighborhood. Mr. Fernandez stated the latest he gets home is 8:00 P.M. and when he pulls into the driveway, he shuts the truck off. Mr. Fernandez stated that he did the letter complaining about the lights spilling out into the street, and he did leave the running lights on one night which was an honest mistake. The lights on the truck are no brighter than the streetlight that is directly across from his driveway, and that streetlight cancels out any low light that may be coming from his driveway. Mr. Fernandez stated the commercial vehicle rating on the truck is less than 26,001 pounds he is not required to have a CDL, so he does not understand why the City says the truck needs to be registered as a commercial vehicle when Federal says no commercial driver's license is required. Mr. Fernandez stated there is a pest control vehicle parked on the same block, there is a KRMG vehicle parked on the same block, and there are numerous other commercially branded vehicles on the same block but yet he is being singled out. Mr. Fernandez stated that his legal counsel is on Zoom if the Board has any questions for her.

Sherry Eastham, 210 East Dewey Avenue, Sapulpa, OK; stated that she would echo what Mr. Fernandez has already said except she would go above and beyond. She does not believe that he is operating a home occupation at all, he simply has a truck that he drives to and from not unlike a pest control truck or a heating and air truck. There are going to be things stored on the truck that Mr. Fernandez would use for his business, but he is not conducting any business at his home. The previous gentleman that spoke, and she missed his name, spoke about her client doing administrative types of things from the vehicle but the reality is that Mr. Fernandez does the administrative type of things when he is out on the road working with customers directly. She is sure the Board has had some knowledge or dealings with trucks like Cornwell or Mac that go to specific mechanic shops or other places, sell their goods, give receipts, then make the orders. That would be her first argument, that it is not actually a home occupation. If the Board is inclined to find that it is a home occupation her argument would be that all of the tools are completely enclosed inside of a structure. The home occupation statute or the Code is really designed to prevent a lot of coming and going in a neighborhood, excessive noise, added traffic, things of that nature. This truck does not add any of those nuisances to the neighborhood nor is it something noisy that runs all day long. It is not unlike anyone else's work truck. Ms. Eastham stated that her husband has a work truck parked in front of her neighborhood and never uses the work truck except to leave the house and go to work and use his truck. Ms. Eastham stated that as for the code violation cited, Section 45.130, this vehicle is not required to be registered as a commercial vehicle and therefore she does not believe that Code could be violated simply based on the plain language of the Code.

Mr. Bond asked Mr. Fernandez where he keeps his trash can. Mr. Fernandez asked Mr. Bond if he was referring to the trash can on the truck. Mr. Bond answered no, stating there is a picture in the agenda packet showing something that had been mailed and then placed in the recycling bin, where is the recycling bin kept? Mr. Fernandez stated that would have been placed in the trash just like everyone else. Mr. Fernandez stated that he thinks Mr. Ryder came by the house on a trash pickup day and went through the trash because if it is placed near the curb the trash is free access, that is what he has been told.

Mr. Bond asked Mr. Fernandez if he spoken to any of his neighbors. Mr. Fernandez answered affirmatively, stating that he has spoken with the neighbors at 9233, 9243, 9238, 9247 and 9246 and maybe another six or so that he spoken to personally. All of these neighbors stated they had no problems with the truck.

Mr. Barrientos asked Mr. Fernandez how long the truck is parked in the driveway. Mr. Fernandez stated that it is there long enough for him to go to sleep and then get up in the morning, from 7:00 P.M. until he starts the day between 6:30 A.M. to 8:00 A.M. Mr. Barrientos asked Mr. Fernandez about the weekend. Mr. Fernandez stated that on Saturday the truck will be gone for a couple of hours and Sunday it is parked all day.

Mr. Bond asked Mr. Fernandez if he had any neighbors that are in opposition to this request. Mr. Fernandez stated that he knows of at least two.

Interested Parties:

Anna Marie Birkett, 9226 South 86th East Avenue, Tulsa, OK; stated she lives across the street from Mr. Fernandez two houses down. She does not have a problem with Mr. Fernandez running a business because there is a KRMG truck and other trucks in the neighborhood, and they run their business outside of their houses just like Mr. Fernandez. It is the sheer size of the truck that is the problem, it is huge. It goes right to the edge of the street, so people have to walk around the truck. There are times when the truck can be heard running all through the night, at least past midnight. Mr. Fernandez stated that he had discussed the truck with his realtor, and she used to be realtors, and the one thing she knows for sure is that realtors never discuss this type of issue with clients, they are told to go to the City and find out what the by-laws of the covenants are. Ms. Birkett stated there is no HOA for the neighborhood like other neighborhoods, but the covenants are still there, and they still need to be upheld. This truck is different because of its size and its size only, it is absolutely huge. This will change the whole neighborhood and it will lose value. The real estate prices of homes are going to lose value when people become aware of this, and that is her point.

Ms. Radney disclosed that she is familiar with Ms. Birkett and her husband in her former life as a realtor. Ms. Radney asked Ms. Birkett about the covenants for the neighborhood. Ms. Birkett stated she spoke with Carol Brown, who is the realtor that Mr. Fernandez used for the real estate, and she laughed and said realtors are not supposed to have this type of conversation with clients. Ms. Birkett stated that Mr. Fernandez's vehicle is completely out of character compared to all the other commercial vehicles in the neighborhood.

Ms. Radney asked Ms. Birkett what sort of things are covered in the covenants for the neighborhood. Ms. Birkett stated it is things like adding onto the home, landscaping issues, the type of vehicles, and that is why people do not see huge commercial vehicles.

Ms. Radney asked Ms. Birkett if the neighborhood was built without sidewalks. Ms. Birkett answered affirmatively.

Douglas Birkett, 9226 South 86th East Avenue, Tulsa, OK; stated he read the minutes from the first meeting, and he agrees with Mr. Ryder. Mr. Birkett stated he has an engineering background, so he is used to commercial equipment. Mr. Birkett stated that the diesel truck Mr. Fernandez has can be heard at least five properties away. Mr. Birkett stated he was surprised to hear Mr. Fernandez say he shuts the truck down at night because there are lights all over the truck, and those lights were turned off after the first meeting. The lights are an eyesore. Mr. Birkett stated he researched the truck, and it appears to be a Freightliner M2 106 Series; 66,000 pounds is the maximum for the truck, and he believes Mr. Fernandez's truck is 33,000 pounds and over 12 feet. The truck does cross over into the City property. There are very large signs on the very large truck, the diesel engine noise is loud and can be heard several properties away and that engine runs a lot of the evening. Mr. Birkett stated there is also a very thick large power cable that runs from the truck into the house. Mr. Birkett stated there are other homeowners in

the neighborhood that do not like the truck, and everyone understands that the value of the houses is already depressed and when the appraiser sees that truck in the neighborhood, he will devalue property values. This is a residential neighborhood with children around and boys love trucks, a person cannot see a child behind one of the wheels of that truck.

Ms. Radney asked Mr. Birkett if he could explain where the other commercial vehicles are located in the neighborhood. Mr. Birkett stated that right next to his house there is a KRMG vehicle, there is a detective for Sapulpa Police on the other side of his house that brings a Sapulpa Police vehicle home, there is a termite vehicle which is a regular sized truck, and they are not a problem. This truck is like comparing a giant to a dog, the subject truck is very big. The truck is sold by Freightliner as a medium duty truck and is the most popular truck sold in the United States and it is used for heavy duty service according to the Freightliner website. Mr. Birkett stated he completely disputes the fact that the truck is not very noticeable in the neighborhood, it is an eyesore.

Tim Noteboom, 9245 South 85th East Avenue, Tulsa, OK; stated he lives one block away from Mr. Fernandez. He does not have a problem with Mr. Fernandez keeping his truck in his driveway. The truck is clean, and it makes very little noise. The truck is always in the driveway in the evening but during the day it is gone. The truck does not obstruct traffic and does not cause any difficulties for him. Mr. Noteboom stated that he walks his dog twice a day and when the truck is there, he has never had to go around it, he walks in the street. The truck does take up half of the driveway. The lawn is mowed, and the house is clean, and he thinks the Fernandez family are good neighbors to have. He has never seen any of the lights other people have spoken about. Mr. Noteboom stated he has no issues with Mr. Fernandez.

Ken Haynes, 9215 South 86th East Avenue, Tulsa, OK; stated lives down the street from Mr. Fernandez. When he goes out in the morning to get the newspaper that truck is like a giant billboard, and it is lit up. This truck would not pass the sign ordinance as a mobile sign. He appreciates Mr. Fernandez working hard but he and the neighbors have an investment in the community. If this request is approved for this one house it will have the potential of allowing more in the neighborhood in the coming years. It is hard to approve one request and not allowing another person to do the same thing. This is a unique situation and everyone else that has a business truck like that finds a place where it can be parked in a secure place. Mr. Haynes stated the covenants for the neighborhood are filed at the County Court House with the deed, it clearly states a business cannot be operated out of the neighborhood, a commercial truck cannot be parked there, and this is clearly a commercial truck. The City Ordinance does not allow this, and the truck needs to be moved.

Rebuttal:

Louis Fernandez came forward.

Mr. Bond asked Mr. Fernandez about the gross weight of the truck. Mr. Fernandez stated the gross weight of the truck is about 17,000 pounds.

Mr. Fernandez stated he checked with his original realtor and with another realtor about property values in the neighborhood, and until about a month ago property values in the neighborhood have gone up 14%. The value of the truck and the contents are worth another whole house. The argument of how this brings the property values down, he believes it brings the values up. Mr. Fernandez stated he has a need to have the truck close by to help prevent theft. The large cable going to the truck is so that he does not need to idle the truck, it keeps the battery charged. The truck has an excellent back-up camera system, and he takes every

precaution when he moves the truck; he does not want to hurt anyone ever and does want to cause any damage.

Ms. Radney asked Mr. Fernandez if he maintains that he does not operate a home occupation business out of the subject property. Mr. Fernandez answered affirmatively.

Ms. Radney asked Mr. Fernandez to address the comments about the engine idling. Mr. Fernandez stated that if it is more than 90 degrees inside the truck, he will let the truck idle for about 30 minutes to keep the truck cool so he can straighten up the truck. Ms. Radney asked Mr. Fernandez if he considered that work related activity. Mr. Fernandez answered no, stating that it is not commerce related because he is not selling any products out of the house. Moving items from one shelf to another or picking up something is just cleaning the truck.

Mr. Bond asked Mr. Fernandez if he had stated that he is not required to register the truck as a commercial vehicle in the State of Oklahoma. Mr. Fernandez answered affirmatively stating that he is also no required to have a commercial driver's license because the truck is under weight.

Michael Ryder came forward and stated the vehicle is not a structure, so the items stored inside the truck does not circumvent the section under home occupation. Mr. Ryder stated that Mr. Fernandez does not think he operates a home occupation because he does not think of the activity that he does at the house as a home occupation activity; there is no change of hands, no sale, no transaction, and he does not dispute that. Mr. Ryder stated that he is submitting that the repeated act of storing the truck at the subject property overnight and during off hours is a business activity in and of itself. Receiving mail at the subject property from the parent company is a business activity in and of itself.

Mr. Bond asked Mr. Ryder if he went through Mr. Fernandez's garbage. Mr. Ryder answered no, stating that when approaching a property an inspector starts taking pictures starting from the street and work inward. There are a lot of violations as a Code Official that he sees at the property and the two sent to the Board are the best suited to address the issue, but the Board has also heard issues about right-of-way obstruction which is also a nuisance violation. Mr. Bond asked Mr. Ryder what the recycling bin has to do with right-of-way obstruction? Mr. Ryder stated an inspector takes pictures from the street working inward, and the inspector approaches an open bin which is also a nuisance violation to have a trash can open so a picture is taken of that violation, the same as the picture of the cord going into the garage which is a property maintenance violation to produce power underneath any door or window. Mr. Ryder stated he took a picture of the side of the driveway where the regular vehicles were parking on the grass a little bit, but good discretion told him that he did not need to issue a notice for parking on the grass. He did not need assume the issue for open trash can. Mr. Bond asked Mr. Ryder if a lot of citations are issued for open trash cans. Mr. Ryder answered affirmatively stating that it is a nuisance violation; he personally does not issue that type of citation regularly because he is a Zoning Official, but the day-to-day inspectors issue them all the time.

Mr. Bond asked Mr. Ryder if he knew how much Mr. Fernandez's truck weighs. Mr. Ryder stated that he submitted the best he could guess from the manufacturer's information, about 26,000 pounds is what he estimated which is well over the 15,000 pounds that the Zoning Code limits a truck to.

Ms. Radney asked Mr. Ryder if the matter before the Board today is predicated on Mr. Fernandez operating a home occupation out of the site? Mr. Ryder stated that it is predicated on a citizen complaint. Ms. Radney stated she understands that, but on the agenda, it indicates

that there is a request to appeal an administrative decision issued from a neighborhood inspector that the subject property is in violation of Section 45.100, Home Occupation, and Section 45.130, Parking and Storage of Commercial Vehicle, and the Zoning Code Section 70.140, but the violation of the storage of the commercial vehicle is directly related to the home occupation. Mr. Ryder answered affirmatively, stating they are certainly connected. Mr. Ryder stated that if he had obtained information or when he spoke to Mr. Fernandez when he was initially reaching out to him and asking him to comply, that was one of the questions he asked, is there an office at the subject property? So the lack of any type of business location was part of that, this is a home occupation whether in whole or in part. It is like the Police Officer, there is a Police Station, and the Officer brings the Police car home but there is another location so that is how this came to that determination; yes, the truck is connected to the home-based business. Mr. Ryder stated that Mr. Fernandez admitted to him, although he will not agree because of the way he is defining the business.

Ms. Radney asked Mr. Ryder if, when he first appeared before the Board, did he assert that if it were a home occupation that it wasn't a legal one, and today it sounds like you (Mr. Ryder) are saying that it would have been or might be. Mr. Ryder stated that it would be a legal home occupation but for the outside storage of the vehicle and any other equipment that is on the vehicle. Ms. Radney stated that at the time the citation was written it is the intention to cite Mr. Fernandez for a home occupation which is not allowed, and she asked Mr. Ryder if she was remembering that correctly. Mr. Ryder stated the way the Zoning Code reads, its groups in two types of home occupations, there is the type that basically says, "no one can tell", in a summary and that is Type I and that is not required to come before the Board of Adjustment. Type II requires a Special Exception, and in Section 45.100.F the Code says, "regardless of whether it is Type I or Type II here is a list of home occupation types and characteristics that cannot be done, period. Ms. Radney stated that what she is trying to clarify is that today your (Mr. Ryder) remarks began with a reclarification that the current understanding now of the business type that Mr. Fernandez operates as an occupation would be an allowed use but for the vehicle. Mr. Ryder answered affirmatively. Ms. Radney stated that is different than what was said before. Mr. Ryder stated that if it is different then he has done a better job of communicating it today. Ms. Radney stated that what the Board has to do is to decide that at the time the citation was issued that you (Mr. Ryder) were in error. Ms. Radney stated that what was said previously is that Mr. Fernandez could not have the home occupation, so it is hard to get there. At the time the citation was written, what was represented, was that it was not a legal occupation. Mr. Ryder stated it is an unlawful home occupation because of the vehicle stored outside, that is what makes it unlawful. Had the vehicle not been outside, or anything else that is listed in Section 45.100.F, no one would have known of the home occupation because no one could tell from the street. Ms. Radney stated that she would agree with that, if between the time it was first presented and today if Mr. Fernandez had been able to park the vehicle in an enclosed structure, then this would be moot. Mr. Ryder agreed, stating that he does not know, in theory, without some special approvals build an accessory structure large enough to do that. Ms. Radney stated she is sensitive to that.

Comments and Questions:

Mr. Bond stated that the way he reads this, if Mr. Fernandez is guilty of running a home business, he will say that in a post COVID world 95% of us are. Mr. Bond stated that his trash cans are regularly open on trash pick-up day, and he understands there is a criminal exception to go look because of exception of privacy does not mean a person has to. The issue he does have with Mr. Fernandez is the gross weight of the truck. In Section 45.130 and Oklahoma Administrative Code 710:60-3-9, states a gross weight of 15,000 pounds, and he thinks the truck is over that and that causes him concern based on the Code.

Ms. Radney stated her concern is that she believes that the first time the Board saw this case Section 45.100-F was being looked at, that this is a prohibited use per se. And accordingly the commercial vehicle is in violation. She thinks this is a commercial vehicle, but she thinks it is wrongly cited. Ms. Radney stated that she will be voting that an error was made at the time the citation was made but not because she is not sensitive to the fact that it is a commercial vehicle. Ms. Radney stated that, as a realtor, she makes her living out in the world and there are all kinds of Code violations that relate to the size of vehicles all over the City, whether they are recreational vehicles, work vehicles. COVID has exacerbated this, but it has become so common place that while she does agree that there are some neighborhoods where commercial traffic really has a debilitating effect on value. She also sees that this behavior has become so ubiquitous that it does not have the impact that it once did.

Mr. Brown stated that he can only relate to a truck in the neighborhood that he lives in of that size and how he would feel if he lived near there. Mr. Brown stated that he is less concerned about the business being there because there is no outward sign, but the truck is outward sign that there is a business. The size of truck is totally out of character with the residential neighborhood. Any other work-related vehicles that are in the neighborhood are not the size of the subject truck. Mr. Brown stated that he tends to affirm the administrative decision.

Mr. Bond asked Mr. Brown if he would affirm the appeal in part or in whole, there is an appeal is the Code requires the 15,000-pound weight limit and the other appeal is the home business. Mr. Brown stated that this appeal is not split, and one feeds the other.

Mr. Chapman stated the Board can vote separately on this appeal if that is the Board's question.

Mr. Barrientos stated that he too is having the issue of the weight of the truck. Otherwise, there is no evidence that Mr. Fernandez is operating a business there because he too does get boxes at his house.

Mr. Tyler stated that the main thing is the 15,000 pounds that is the classification in the Zoning Code. As far as a business in a residential neighborhood, Mr. Fernandez does run power to the truck and works out of it, but he sees no evidence of the operation going into the evening with the lights on, it is just what the Board is being told. If that is true that is different. Ultimately, per the Code, he thinks there should be no commercial vehicle.

Ms. Radney asked Ms. Blank, it is in front of the Board written with an and as though the two have to go together. Ms. Blank stated she agrees with Mr. Chapman, that these could be separated, they are cited separately, they are two separate items on the notice of violation which is the document decision. She thinks the Board can always split this, there is an "and" but because of the way it is on the violation it is two separate items, two separate Code citations. The Board has the discretion to take them on individually.

Mr. Bond asked if there had been any fines issued. Mr. Chapman stated the case has not gotten to that point.

Mr. Bond stated he cannot get past the gross weight. He will vote to affirm that decision but as far as a home occupation, Section 45.100, he would not vote to affirm that.

Ms. Radney stated that she will be a no for both, and it really is a huge technicality. She does not think the Board would be in this position if there had been a substantial effort to demonstrate that there was an illegal occupation. She thinks that was a big part of the focus of the

investigation, so she considers it to be wrongly cited. She thinks it is a problem, it is a commercial vehicle stored in a residential neighborhood, but she thinks it is wrongly cited. Ms. Radney stated she is not going to uphold on either.

Ms. Blank stated the Board can have two different motions. Vote on the home occupation first. Someone can make a motion to approve and then take up the same thing about the issue of the truck.

Ms. Radney stated that Mr. Fernandez has Counsel online, if the Board makes the motion in two separate motions is it germane for the Board to find out if Counsel has anything to weigh in or is this beyond that at this point? Mr. Bond stated that he does not mind.

Sherry Eastham stated that she does not really have an opinion about whether the Board can vote on one or the other of the violations generally speaking. But if the appeal were simply about whether or not this is a home occupation, she thinks the standard would be that is what is specifically addressed, because what she understood is that there was not a finding at the last setting about a commercial vehicle.

Ms. Radney stated that is correct and stated the Board asked for the applicant and the inspector to bring in more information about whether it was a commercial vehicle.

Ms. Blank stated that the Board made no findings, either regarding the occupation or the truck at the first meeting. There was less than a full Board in attendance and the case was continued for information.

Board Action:

On **MOTION** of **WALLACE**, the Board voted 2-3-0 (Brown, Wallace "aye"; Barrientos, Bond, Radney "nays"; no "abstentions"; none absent) to **AFFIRM** the administrative decision issued in the notice of zoning violation Case #WIN20051-2021, finding the neighborhood inspector acted appropriately in the administrative decision issuing the notice of zoning violation Case #WIN20051-2021, and that the subject property is in violation of Section 45.130, Parking and Storage of Commercial Vehicles, of the Zoning Code Section 70.140; for the following property:

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

On **MOTION** of **WALLACE**, the Board voted 2-3-0 (Brown, Wallace "aye"; Barrientos, Bond, Radney "nays"; no "abstentions"; none absent) to **AFFIRM** the administrative decision issued in the notice zoning violation Case #WIN20051-2021 finding that the neighborhood inspector acted appropriately in the administrative decision issued in the notice zoning violation Case #WIN20051-2021 and that the subject property is in violation of Section 45.100, Home Occupation; for the following property:

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

23175—Christopher Wadleigh

Action Requested:

Variance to reduce the number of required vehicle parking spaces from 23 required spaces to 13 spaces or fewer (Section 55.040-B, Table 55-1); Variance of the required interior parking lot landscaping standards (Section 65.050); Variance of the required street frontage buffer requirements (Section 65060-C); Variance to allow a drive-through lane on a street-facing side of a property (Section 55.100-C. 2). **LOCATION:** 1905 East 21st Street South (**CD 9**)

Presentation:

Christopher Wadleigh, 29801 Santa Margarita Parkway, Rancho Santa Margarita, CA; stated that since the last meeting the site plan building has been moved north and east and lessened the landscaping to the north and to the east to create larger landscape buffers on both of the street frontages; trees and shrubs have been added. The by-pass lane has been increased by two feet so cars that are exiting outward have an opportunity to circle back onto the side and people coming in from Wheeling can circle around to the drive thru. So, the primary improvements made from the last hearing is the addition of landscaping and trees, the increase of landscaping on the site, the buffers were added to the street frontages to a large degree and the building has been shifted farther away from the corner. What could not be done was the turning of the building to 90 degrees because the drive thru would not function safely.

Mr. Wilkerson stated the staff did a quick study in house to get an idea of how the site would look like as shown on page 3.9. In this instance, the site would still not meet the parking requirements.

Ms. Radney appreciates this illustration because it demonstrates the operational challenges of this site.

Mr. Wadleigh stated the way the stack functions is that typically there is a two-car stack between the pay window and the order board, so the order board has to come farther down in order to be functional otherwise there is nothing gained between order and pay. Right now there is a four-car stack and then everything is in the street. The front of the now faces the adjacent building across Wheeling and the trash enclosure and the walk-in coolers are seen from the main entry point; that is a minor issue. The improvements that were made from the previous submittal were increased landscape buffers, the addition of the trees, increased the total landscaping on the site, the building was pushed north to pull away from the turn radius and the exit on the corner, and the by-pass lane has been increased around the front of the building which is the main dining room by two feet. From a traffic standpoint it is felt that the building can be stacked and function the building much better without impeding 21st Street.

Mr. Brown asked Mr. Wadleigh about the main entry. Mr. Wadleigh stated that there are two entry points on the right-hand side of the building.

Mr. Bond asked Mr. Wadleigh if there had been any input from any of the neighbors. Mr. Wadleigh answered no. Mr. Wadleigh stated that he has contacted the hospital amount leasing parking spaces from them for employee parking.

Mr. Bond asked Mr. Wadleigh about the number of employees per shift. Mr. Wadleigh stated that during a rush a total shift is eight employees.

Interested Parties:

Ginger Sexton, Parking Manager for St. John Hospital, 1923 South Utica Avenue, Tulsa, OK; stated that she has contacted the hospital liaison, Lucky Laymans, and he will contact Mr. Wadleigh for a meeting. The main concern the hospital has is that they do want the entire drive thru traffic to go onto Wheeling because the entrance to the hospital is across the street from the subject property. Ms. Sexton stated the plan on page 3.9 is much better and it is similar to the plan that is already in place where there is an exit onto Wheeling but the drive thru traffic can exit on to 21st Street; the hospital is happy with that plan. Ms. Sexton stated that a lot of the traffic that visits the location is foot traffic because its people that are visiting the medical facility for various reasons so the parking spaces for this location would be different than for others.

Mr. Bond asked Ms. Sexton if emergency vehicles ever used Wheeling as a route to the hospital. Ms. Sexton stated emergency vehicles do not use Wheeling, they use 21st Street. The entrance for ambulances is on the corner of 21st Street and Utica Avenue on the Utica side; the public enters in from Wheeling.

Ms. Radney asked Mr. Wadleigh about the bicycle parking racks. Mr. Wadleigh stated the bicycle parking has been added on the corner.

Ms. Radney asked Mr. Wadleigh if the dining space is reduced in the site plan. Mr. Wadleigh answered affirmatively, stating that is because the new site will have two kitchens.

Comments and Questions:

Mr. Wilkerson stated the applicant will need to go through a right-of-way process as they move forward, and he does not know if there will be additional challenges.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to reduce the number of required vehicle parking spaces from 23 required spaces to 13 spaces or fewer (Section 55.040-B, Table 55-1); Variance of the required street frontage buffer requirements (Section 65060-C); Variance to allow a drive-through lane on a street-facing side of a property (Section 55.100-C. 2), subject to conceptual plan 3.35 of the agenda packet. The Board has found the hardship to be the constraints of an existing commercial lane with pre-existing traffic flow patterns that restrict the redevelopment of the site. There is to be no fewer than 13 automobile spaces and two bicycle spaces to be programmed for the site, and all future improvements will conform with the City Engineering review for right-of-way for driveway access. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical

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

**LTS 13 THRU 15 LESS BEG SWC LT 15 TH N14.88 E1 S8 SE8.08 W5 POB BLK 2,
REDDIN THIRD ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

23182—Jack In The Box – Dawn Bennyhoff and Shaun Steen

Action Requested:

Variance to allow a drive-through facilities to be located on the street-facing side of the property (Section 55.100-C. 2); Variance to allow drive-through signs that exceed the maximum area of 36 square feet for the primary signs and 15 square feet for the secondary signs and to allow two secondary drive-through signs (Section 60.030-B.2).

LOCATION: 8112 East 11th Street South (CD 5)

Presentation:

Dawn Bennyhoff, Jack In The Box Corporate Construction Manager, 2804 Crooked Creek Drive, Carrollton, TX; stated this will be a brand-new building style and will be a walk-up unit only with a dual drive-thru lane and an express lane converging at the drive-thru exit upon exit of the building. This will be the first building like this in the system for Jack In The Box. The drive thru traffic is approximately 80% pre-covid and post-covid it is about 95% drive-thru traffic, hence the walk-up building. This is a drive-thru only store, but it does have a walk-up window, and there will be a patio area. The issue before the Board is that the drive-thru lane is against the 11th Street roadway. If the drive-thru is moved next to the adjacent property it will create a back-up of traffic onto Memorial Drive which would cause problems with the intersection, and this would reverse the entire building plan; that put the view from the street of nothing but cars. With this site there is no good route for deliveries because deliveries come to the back of the building. With the trash enclosures is preferred to have a front pull in and the reversing of the plan would not allow this, and trash pickup would block the drive-thru lanes.

Interested Parties:

Mark Holmes, Franchise Operator, 20008 Champion Forrest Drive, Spring, TX; stated the site is very challenging and the COVID era changed all QSRs and casual dining. Today the UBER eats, the drive-thru business, is the new wave. The reason for the three lanes is that the outside lane is UBER eats because people are not going out to eat like they did. This leads to a building of this design, and he thinks Tulsa would be the perfect place to try the newly designed building. The building does have expansion room for a dining room if it is decided a dining area is needed. Traffic has to be moved to get sales and many cities have the double menu boards. Tulsa allows the double menu boards, but the square footage allowed for second lane is not enough to accommodate the design. Mr. Holmes stated he would be willing to give up square footage on the pole sign to have the square footage applied to the menu board, not trying to increase what the City allows per square footage just reapplying the footage to applicable areas.

Ms. Radney asked what a QSR is. Mr. Holmes stated it is a Quick Service Restaurant.

Ms. Radney asked Mr. Holmes if there is pedestrian traffic planned for the subject location. Mr. Holmes answered affirmatively.

Ms. Radney asked if there is a plan to have a preview board. **Dawn Bennyhoff** stated currently there is a proposed preview board. What is proposed is to have two menu boards and two preview boards, the applications submitted were for the menu boards only minus the extenders because that is what was allowed in the current square footage. What is being asked is to get the Variance to add back in the preview boards and the extenders on the menu boards.

Mr. Brown asked about the preview board. Ms. Bennyhoff stated a preview board is essentially a mirror image of the menu board so it allows the car behind the car that is ordering to preview the menu and when they pull up, they can order more efficiently to help speed up service.

The newer menu board system is a cabinet style so they can lock and prevent wind damage or theft to the display on the board.

Ms. Radney asked Ms. Bennyhoff if the preview board is the same as the menu board but the preview board does not have a microphone. Ms. Bennyhoff answered affirmatively. Ms. Bennyhoff stated the reason the menu board is the size they are is because there is quite a diverse menu; serving breakfast all day and there is a late-night menu.

Mr. Brown asked Ms. Bennyhoff how many square feet does this total for all the signage. Ms. Bennyhoff stated that it is 42 square feet total for one menu board if the extenders are not included.

David Gregory, DCG Engineering, Inc., 1668 Keller Parkway, Suite 100, Keller, TX; stated the menu boards are 42 square feet and the preview boards are 42 square feet it would total 168 square feet, and the Ordinance allows 102 square feet.

Mr. Bond asked staff about what the intent is in the City Code for traffic flow for a drive thru. Mr. Chapman stated it is to prevent the clustering of cars on the street-facing side. It does make a challenge for corner lots, but the idea is that the car would go around the building, in this instance coming from Memorial loop around and go out 11th Street. The Code doesn't address a two or three land wide service order. Mr. Chapman stated that on the alternative site plan he does not believe that the curb cuts would meet current access management standards, and he does not think they could put them there. He thinks if they were to abide by Code it would be moving the building farther south and loop in from Memorial and exit onto 11th Street. Mr. Chapman stated that he understands the applicant has corporate standards, but the Board has to look for a hardship that is related to the subject property, what about this property is unique not what is unique about Jack In The Box when they come to a community.

David Gregory came forward and stated the site is unique by the City Code and the way it is written. Any time a QSR is done anyone will have a similar problem like what Jack In The Box is facing on this southeast corner. American cars have the steering wheel on the left side and when the property is on the southeast corner a car does a counterclockwise movement around a building, and when the property is on a southeast corner the depth runs east to west instead of north to south. That automatically tries to rotate the building towards the north. The site is limited to space because of the southeast corner, by good engineering practices which the City has adopted driveways are taken as far away from the signalized intersection as possible. To get the drive thru lane away from 11th Street the entire site had to be rotated. The problem with that is that it pushes the back edge of the drive thru along Memorial Drive. This is a very constrained site. There are other multiple restaurants in Tulsa, Burger King down the street, has this exact situation and they have the drive thru along the 11th Street frontage. With the proposed site plan, the drive thru does face 11th Street, but the menu boards face the back of the site, the trash enclosure is interior, and he has tried to meet as many criteria as possible. He believes this is the best site plan for the property and it will get the driveways farther away from traffic.

Ms. Radney asked Mr. Gregory about the curb cuts. Mr. Gregory stated the subject property is a former used car lot and the existing curb cut is about the middle of the lot, there is another that they will propose to close, and there is a third curb cut on 11th Street which will be moved farther away from the intersection. Mr. Gregory stated that City Engineering has not given any negative feed back on the driveway placements.

Ms. Radney asked Mr. Gregory to state a hardship for the proposed plan. Mr. Gregory stated the hardship is based on the shape and depth of the property. The building will not lay out north

to south and work efficiently in that layout, so it pushes the building into an east to west orientation.

Ms. Radney stated that she understands the constraints of the site, but the hardship cannot be self-imposed. If the site is not suitable to do what you want to do with it then it is self-imposed. The stated hardship can be construed to be a site that is not appropriate.

Mark Holmes came forward and stated that if this application is not approved, he will have to walk away from the project and he does not want to do that. He sees struggles in the engineering department and they are the advisors. There are other examples in the City, the same hardship came up on the other projects that are similar to this project which led to this hearing.

Comments and Questions:

Mr. Bond stated he does not see a hardship in this case. The sign is not as much as an issue as is the routing of the traffic.

Ms. Radney stated she can live with the routing of the traffic, but the hardship does not meet the bar of not being self-imposed. She tends to think that all business-related Variances are self-imposed but this one is not there yet. She concurs on the signage; she thinks the signage is necessary for the model that is being proposed. This business has a lot of auto-based traffic so focusing on the nuances of the site plan it does not seem immaterial. Ms. Radney stated that she would be willing to reconsider this request if the applicant was willing to review their site plan more, but if she had to vote today, she would likely vote no.

Mr. Bond asked the applicant if they would be willing to review their site and ask for a continuance. Mr. Holmes stated that he would be willing to do that.

Board Action:

On **MOTION** of **BROWN**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Variance to allow a drive-through facilities to be located on the street-facing side of the property (Section 55.100-C.2); Variance to allow drive-through signs that exceed the maximum area of 36 square feet for the primary signs and 15 square feet for the secondary signs and to allow two secondary drive-through signs (Section 60.030-B.2) to the October 12, 2021 Board of Adjustment meeting; for the following property:

A PART OF LOTS SEVEN (7) AND EIGHT (8), BLOCK TWO (2), AMENDED PLAT OF LOTS ONE (1) TO EIGHT (8) INCLUSIVE, IN BLOCK ONE (1) AND LOTS ONE (1) TO EIGHT (8) INCLUSIVE, BLOCK TWO (2) FOREST ACRES ADDITION TO THE CITY OF TULSA, OKLAHOMA, ACCORDING TO THE RECORDED PLAT NO. 1 063:

TRACT A

COMMENCING AT THE NORTHEAST CORNER OF LOT 7; THENCE SOUTH 01°17'06" EAST ALONG THE EAST LINE OF LOT 7 A DISTANCE OF 137.47 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 01°17'06" EAST ALONG THE EAST LINE OF LOT 7 A DISTANCE OF 45.00 FEET; THENCE SOUTH 88°44'27" WEST PARALLEL WITH THE SOUTH LINE OF LOT 7 AND LOT 8 A DISTANCE OF 290.04 FEET; THENCE NORTH 01°09'43" WEST A DISTANCE OF 93.49 FEET; THENCE ALONG A NON TANGENT CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 106.65 FEET, WITH A RADIUS OF 155.90 FEET, WITH A CHORD BEARING OF NORTH 43°46'53" EAST , WITH A CHORD LENGTH OF 104.58 FEET; THENCE NORTH 88°43'14" EAST A DISTANCE OF 175.91 FEET; THENCE SOUTH 01°17'06" EAST PARALLEL TO THE EAST LINE OF LOT 7 A DISTANCE OF 122.72 FEET; THENCE NORTH 88°21 '14" EAST A DISTANCE OF 39.89 FEET TO THE POINT BEGINNING;; City of Tulsa, Tulsa County, State of Oklahoma

23183—Wallace Design Collective – Mark Capron

Action Requested:

Variance to allow parking inside the City of Tulsa planned Right-of-Way (Section 90.090-A). **LOCATION:** 4008 West Charles Page Boulevard (**CD 1**)

Presentation:

Mark Capron, Wallace Design Collective, 123 North Martin Luther King, Jr. Boulevard, Tulsa, OK; stated this request is to allow a parking structure to be built within the ultimate right-of-way. This is a unique situation, this is an old plat of things that were residentially zoned and now it has been rezoned to commercial, so the lots do not have the size and the depth of a typical lot. There was an original platted right-of-way with the original plat and the street has been designated as a primary arterial, and the line that cuts through the back of the parking spaces is the ultimate right-of-way. Everything has been moved to the south as much as possible, but the lack of depth presents a problem for a viable commercial property. Mr. Capron stated that he has spoken with the City of Tulsa, spoke with the Tulsa Planning Office staff and there is a thought that the primary arterial is not the correct designation for this street. There is a residential development to the west of the subject property and the primary arterial cuts through the middle of the houses. It is not likely that the City is going to get the ultimate right-of-way. Mr. Capron stated that he understands the Tulsa Planning Office staff will be meeting with the City of Tulsa to discuss whether this is an appropriate designation for this street. If this request is approved today there will be a license agreement to allowed to build the parking lot inside the ultimate right-of-way. There are existing sidewalks on the site already. Mr. Capron stated that it is his understanding that the City has no plans to widen Charles Page Boulevard.

Mr. Brown asked Mr. Capron to state the hardship for the request. Mr. Capron stated that the hardship is the inappropriate classification of the street and the lack of depth to the lot for redevelopment, going from residentially zoned property to commercial.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BARRIENTOS**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to allow parking inside the City of Tulsa planned Right-of-Way (Section 90.090-A), subject to conceptual plan 5.12 of the agenda packet. The Board has found the hardship to be the lack of depth of the lot and the improper classification of the street. 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:

A TRACT OF LAND THAT IS PART OF LOT NINE (9) AND ALL OF LOTS TEN (10) AND ELEVEN (11), BLOCK ONE (1), HOME GARDENS SECOND ADDITION, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 1, HOME GARDENS SECOND ADDITION;

THENCE SOUTH 89°00'53" WEST ALONG THE NORTH LINE OF BLOCK 1 A DISTANCE OF 404.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 01°03'36" EAST 140.00 FEET TO A POINT ON THE SOUTH LINE OF LOT 9, BLOCK 1;

THENCE SOUTH 89°00'53" WEST ALONG THE SOUTH LINE OF LOTS 9, 10 AND 11 A DISTANCE OF 146.00 FEET TO THE SOUTHWEST CORNER OF LOT 11, BLOCK 1;

THENCE NORTH 01°03'36" WEST 140.00 FEET TO THE NORTHWEST CORNER OF LOT 11, BLOCK 1;

THENCE NORTH 89°00'53" EAST ALONG THE NORTH LINE OF LOTS 9, 10 AND 11 A DISTANCE OF 146.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 20,440.0 SQ. FEET OR 0.47 ACRES

BEARINGS ARE BASED UPON THE OKLAHOMA STATE PLANE COORDINATE SYSTEM, (3501OK N), NORTH AMERICAN DATUM 1983 (NAD83) USING THE NORTH LINE OF BLOCK 1, HOME GARDENS SECOND ADDITION AS N 89°00'53" E., City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

23184—Lenora Bustos

Action Requested:

Special Exception to allow a fence greater than 4 feet in height within the required street setbacks (Section 45.080-A). **LOCATION:** 6339 East 7th Street South (CD 5)

Mr. Brown left the meeting at 3:45 P.M.

Presentation:

The applicant was not present.

Mr. Bond moved this item to the end of the agenda.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time.

Mr. Brown re-entered the meeting at 3:48 P.M.

23185—Vincent Paul Fortner & Brandi Carol Holland

Action Requested:

Special Exception to allow a manufactured housing unit in an AG District (Section 5.020, Table 5-2); Special Exception to extend the one-year time limit to allow the manufactured housing unit permanently (Section 40.210-A); Variance of the dustless, all-weather parking surface requirement to permit the use of gravel (Section 55.090-F). **LOCATION:** 18227 East 11th Street South **(CD 6)**

Presentation:

Brandi Carol Holland, 18227 East 11th Street, Tulsa, OK; stated she would like to replace the manufacturing housing unit that had been there since 1975, which was destroyed by fire in April. She has the new manufactured home and is on hold in Tulsa. She would like to have the new manufactured home to be granted permanency since the other manufactured home had been on the property for 46 years. The gravel is existing and has been in existence since 1975. The driveway is 719 feet long and 20 feet wide; there are other gravel drives in the neighborhood.

Mr. Bond asked Ms. Holland if the manufactured home would be visible from the road. Ms. Holland answered no, stating not in the spring or summer but it is still difficult to see in the autumn and winter.

Mr. Bond asked Ms. Holland if she had heard from any of the neighbors. Ms. Holland answered affirmatively, stating that the neighborhood association president visited, and he had no issues.

Mr. Bond asked how long the former manufactured home had been on the property. Ms. Holland stated that it had been there since 1975; it was actually there before that time, but she has no proof through the City. Mr. Chapman stated that to the best of his knowledge the manufactured home was non-conforming, so it was there before the Zoning Code or at least it had no approval.

Ms. Radney asked Ms. Holland if the new manufactured home would be set on concrete piers. Ms. Holland answered affirmatively, stating the concrete is existing.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to allow a manufactured housing unit in an AG District (Section 5.020, Table 5-2); Special Exception to extend the one-year time limit to allow the manufactured housing unit permanently (Section 40.210-A); Variance of the dustless, all-weather parking surface requirement to permit the use of gravel (Section 55.090-F), subject to conceptual plan 7.15 of the agenda packet. The new manufactured home is to be set upon a concrete foundation and the wheels are to be removed. The Board has found the hardship to be the property is located in an AG District and the pre-existing manufactured home existed in a context that predates the current Zoning Code. An all-weather dustless surface is to be installed as an apron at the point where the driveway meets the road and is to be installed no later than 36 months from today's

date. 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:

The E/2 of the W/2 of the SE/4 of the SW/4 of Section 1, Township 19, Range 14 East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the US Government Survey thereof, Less the South 25 feet for Roadway, City of Tulsa, Tulsa County, State of Oklahoma

23186—Britt Walker

Action Requested:

Special Exception to permit a Wholesale, Distribution and Storage / Wholesale Sales and Distribution and Warehouse use in a CS District (Section 15.020, Table 15-2). **LOCATION:** 6645 South Peoria Avenue East **(CD 2)**

Presentation:

David Lewis, 5228 Northwest 177th Street, Edmond, OK; stated he would like to have a wholesale distribution and warehouse on the subject property. The property was purchased in April 2021, and he has been working with City staff for six months. When he purchased the property, the building was being used as a commercial wholesale distribution and sales office so he thought it would be in compliance, but he came to realize that he would need the Board's consent to have the same use on the subject property.

Mr. Bond asked Mr. Lewis what type of whole distribution would he have on the property. Mr. Lewis stated that it will be a medical marijuana company. He is a wholesale producer, so he supplies dispensaries, and he produces the product in a couple of other counties in Oklahoma and distributes it statewide. He has a number of customers in Tulsa County, and how he fills orders now is that he has to ship trucks up and down the freeway all day. He simply wants to have a wholesale sales office on the subject property in the building to supply the northeastern part of Oklahoma, and simply provide a drop point and distribution for the customers throughout the area.

Mr. Bond asked if there would be any production or extraction on the subject property. Mr. Lewis answered no, stating that it is finished goods that are being stored temporarily until there is a local distribution.

Mr. Bond asked staff if there would be any City or State requirements for ventilation or filtration. Mr. Chapman stated that per City Code the applicant will not, so if the Board wants that they would need to make that condition in the motion to follow the same regulations that processing, and growers are required to have for filtration.

Mr. Bond asked Mr. Lewis if he would be willing to comply with such a condition if this request were approved. Mr. Lewis stated that for clarity, the products that are coming out of the building are packaged or in wholesale containers and there is no smell. He operates a similar facility in Oklahoma City and if someone is five feet away from the product they cannot smell anything. That condition would make this facility to be retrofitted with such a system it would be six figure upgrade and he thinks that would be redundant.

Ms. Radney asked Mr. Lewis if a limitation that the product be prepackaged goods would interfere with his business. Mr. Lewis stated that condition would be many of the products are prepackaged but not exclusively, but they are contained while they are in the facility in storage because any product that is not contained in air-tight containers would ruin, so he has an economic interest to keep everything contained until it is shipped out. Mr. Lewis stated he wants to be a good neighbor and not cause any smells.

Mr. Lewis stated the subject property is located in an area of growth, and the building has sat empty for six months and there has been vagrants and other challenges. This site will have high level security and professional level staff working in the building. He does not want to advertise so it will not be a smelly stinky building which would work against his business interest.

Mr. Brown asked Mr. Lewis about the hours of operation. Mr. Lewis stated the hours would be 8:00 a.m. to 5:00 p.m., Monday through Friday, no weekends, or evenings.

Mr. Bond asked Mr. Lewis if he had heard from any of the neighbors. Mr. Lewis stated he has received one call which was from a dispensary that was a previous customer, and they are located about 500 feet away, they thought the site was going to be a dispensary which it is not.

Interested Parties:

Sterling Stegall, 6610 South Peoria Avenue, Tulsa, OK; stated he owns the dispensary that is located 500 feet away from the subject property. He wants to know what makes this different from a dispensary, and could he do the same process that is being requested today in the future?

Mr. Bond stated that he thinks there would be compliance issues with the City because of the nature of the business.

Mr. Bond asked Mr. Stegall if he had any issues with the request. Mr. Stegall stated that he does because he doesn't know what makes them any different than his distribution at his dispensary. Why do they need a Variance for what they are doing?

Mr. Chapman stated the business would not be a dispensary and the applicant is not required to have a State dispensary license, so there are no retail operations. Mr. Chapman offered his assistance to Mr. Stegall if he would like to contact him in the future in regard to his dispensary.

Comments and Questions:

None.

Board Action:

On **MOTION of RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to permit a Wholesale, Distribution and Storage / Wholesale Sales and Distribution and Warehouse use in a CS District (Section 15.020, Table 15-2), subject to conceptual plans 8.12 and 8.13 of the agenda packet. The goods that are to be warehoused at the site are prepackaged and contained products for ultimate distribution to wholesale customers. The Special Exception would expire 7 years from today's date, September 28, 2028. 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 1 BLK 2, DELL ROSE PLACE RESUB L1-3 B2 L1-4 B1 KEIM GARDENS, City of Tulsa, Tulsa County, State of Oklahoma

23187—Omar Ahmadieh

Action Requested:

Special Exception to increase the permitted driveway width in a residential district (Section 55.090-F.3). **LOCATION:** 5508 South 30th West Avenue **(CD 2)**

Presentation:

The applicant was not present.

Mr. Bond moved this item to the end of the agenda.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time.

Mr. Chapman stated that the applicant for case BOA-23184 has arrived. Mr. Bond stated the Board will hear that case now.

23184—Lenora Bustos

Action Requested:

Special Exception to allow a fence greater than 4 feet in height within the required street setbacks (Section 45.080-A). **LOCATION:** 6339 East 7th Street South (CD 5)

Presentation:

Sophia Aguillar, 804 North Sheridan Road, Tulsa, OK; stated the existing fence had been installed because the homeless population was breaking into the cars and stealing items off the cars. The barbed wire that had been on the fence has been removed so he would like to keep the fence around the property as it is. There is a privacy fence on the property abuts the residential area.

Mr. Bond asked Ms. Aguillar if there were any other fences similar to the existing fence in the neighborhood. Ms. Aguillar answered affirmatively, stating that across 7th Street that business has a similar fence, but they have razor wire on top of their fencing.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BARRIENTOS**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to allow a fence greater than 4 feet in height within the required street setbacks (Section 45.080-A), subject to conceptual plans 6.21 and 6.22 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:

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

23187—Omar Ahmadiyah

Action Requested:

Special Exception to increase the permitted driveway width in a residential district (Section 55.090-F.3). **LOCATION:** 5508 South 30th West Avenue **(CD 2)**

Presentation:

The applicant was not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BROWN**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Special Exception to increase the permitted driveway width in a residential district (Section 55.090-F.3) to the October 12, 2021 Board of Adjustment meeting; for the following property:

LT 1 BLK 8, MOUNTAIN MANOR ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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OTHER BUSINESS

Consider motion and vote to enter Executive Session pursuant to Title 25 O.S. Section 307(B)(4) for the purpose of allowing confidential communications between the Commission and its legal counsel regarding the Tulsa County District Court Case No. CV-2019-1345, Diana W. Capehart, as Trustee of the Robert J. and Diana W. Capehart Family Trust dated July 28, 2009 v. Tulsa City Board of Adjustment, including discussion of plaintiff's settlement proposal, such action to include, but not be limited to, rejection, approval, or offering a counter-offer of settlement.

Exit the Executive Session to discuss and possibly take action on plaintiff's settlement proposal in Tulsa County District Court Case No. CV-2019-1345, Diana W. Capehart, as Trustee of the Robert J. and Diana W. Capehart Family Trust dated July 28, 2009 v. Tulsa City Board of Adjustment, such action to include but not be limited to rejection, approval or offering a counteroffer of settlement.

The Board went into Executive Session at 4:18 P.M.

The Board of Adjustment reconvened from Executive Session at 4:58 P.M.

Mr. Bond stated that nothing was discussed in Executive Session other than matters listed in Agenda Item #12.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) regarding Agenda Item #12, the Board authorizes its agent to reject a settlement offer as presented but to extend a final counteroffer per the discussion that was completed in the Executive Session.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 4:59 p.m.

Date approved: _____

Chair

DRAFT