

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1303
Tuesday, September 27, 2022, 1:00 P.M.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Bond, Chair Radney, Vice Chair Wallace Brown Barrientos		D. Wilkerson S. Tauber J. Banes A. Chapman	A. Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on September 21, 2022, at 2:59 p.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. Bond noted that they are a 5-person board, and that Ms. Radney was arriving late. Ms. Radney arrived at 1:05 p.m.

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

UNFINISHED BUSINESS

23411 – Encino’s 3D Custom Products & Signs

Action Requested:

Variance to allow signs within 50-feet of Residential Districts (Sec. 60.040-B.3);
Variance to increase the number of allowed drive-through signs and to allow the drive-through signs to be within 50-feet of residential zoning districts (Sec. 60.030-B) **Location:** 1244 S. Harvard Ave. **(CD-4)**

Presentation:

Christian Ortiz, 1244 East Harvard Avenue, Tulsa, Oklahoma, 74112 stated that he was here with Encino's 3D Custom Products & Signs to request the Variance for the for the minimum relief required to satisfy a non-self-imposed hardship to the unique property located at 1244 South Hartford Avenue. The topographical conditions and the unique shape of the property located, or the property has created a non-self-imposed hardship is the literal enforcement of the city code 60.040-B-3 referencing the required setback of fifty feet from residential zoning, we request a special exemption to allow signage within fifty feet of residential zone. This property is unique in the fact that it is located a quarter mile from the Historic Route 66. These commercial parcels were platted at a time when businesses were built up to the street frontage. The zoning code is no longer consistent with the size of the lots platted in the past. This line is you 250 feet of street frontage along South Harvard Avenue and 125 feet to the east in depth. There is a fifteen foot right away and the code and code call for required 35-foot building setback. This leaves of section of eighty-five foot by 240 feet to build. This is a unique situation particularly law classifies a commercial property adjacent to a residential zone. The purpose of the code is to minimize the possible adverse effects of signs to nearby public and private to properties. If the variance is granted it will not cause a substantial detriment to the public good or impair the purpose and intent of the zoning code. Commercial properties with street frontage are platted with much more than 100.5 feet in depth. This has created a non-self-imposed hardship to the current property owner that requested the Variance. The requested variance is a minimum required to release the non-self-imposed hardship created by the unique size and shape of this historical parcel with the code. The variance will not alter the essential character of the neighborhood or impair the use of development or adjacent properties will impair the intended purpose of the code or cause detriment to the public good.

Mr. Bond stated that we have the right of way issue ad will you recap that quickly for me.

Mr. Ortiz stated that, there is a 15-foot right of away that did not exist at the time on the lot was platted. Code now requires a 35-foot setback for buildings from the main street to just south of Harvard. If that is the case, leading from the property line that pushes the property line itself is the property is only 125-feet wide. So that puts us back then we have the 15-foot setback. And we have the 35-foot building performance, which adds up to forty feet, which brings us back to 85-feet and then minus the other 5-feet to the other property once those only leaves 80-feet technically have space to build the building. The building itself is 25-foot by 50-foot. In any other placement that the building could have been placed, we still would have run into this issue of being within fifty feet of residential zone in one way or another with our signage. If we would have placed, it where we would have eliminated most of them being outside the residential zone. We could have created a public safety issue by placing parking on the other side of the drive thru lanes where customers would have been required to walk through both drive thru lanes to be able to get to the building. He did bring a rendering to indicate the alternative who would have done that.

Mr. Wilkerson stated that one thing he would like to point out is that this is the CH zoning district, and that 35-foot building line is not true. He did not know where that came from there

may be an additional fifteen feet for the play right-of-way. He could not speak to that but there is zero setback in the CH district.

Mr. Ortiz stated not even the required fifteen foot right away said you said there is no setback in that district. The one on the right is the current location of the building and setup and the one on the left would have been if we would have placed the building outside the 50 foot residential zone it would have required parking to be along the west property line, which would require plus customers walk from this section along here across the drive thru lanes in order to come to the front entrance of the building to the side adjacent to South Harvard. There would be no room for parking on this side. He was not entirely sure how that would have fell into ADA requirements either with you know handicap parking and all that sort of stuff. I have not done that much research to be honest. We have also reconfigured a few things on the signage that he could provide some artwork for that indicating that. This is the original sitemap with all the original signage. The main observations and questions as well as elevation, which originally had the three wall signs along the front along as identification some Dutch Bros. and logo. We have since then minimized the relief required, eliminated most of that signage and made a change to minimize the request where we eliminated most of the signage and reduce that to two signage, which then allows us to fall within the limit of numbers of drive thru signs we are allowed by code. We are only requesting to be allowed to place the drive thru signs within the fifty foot of the residential zone. We are no longer requesting to have additional signage. He will provide another site map.

We have also reduced one of the other free standing menu boards that we had here. There was originally three one on this side, one in the middle island and one along this edge. We eliminated one and place one and two here, which are twenty-five feet within the from the property line. That eliminated one which could put us within the maximum required to drive through signs are allowed drafter signs by code. We eliminated all that signage, and we also moved the signage that was located here, that was within the fifty foot of the residential zone. We have reduced the number of signings requested to be placed within the residential zone. He feels that the intended purpose of the code is not required to meet the standards the purpose of the code. The purpose of the code is to limit any sort of adverse effect to any sort of public or personal business, people, or anything like that. The purpose of this would be to eliminating the ambient light or light pollution going to residential property. Dutch Bros. has decided to erect the fence along the property line that is to the west, which will also limit to the any light pollution traveling in that direction. The property does sit at a higher grade than the residential zones in the rear. So once the privacy fence is in place, this should block everything above any sort of window or anything like that the residential zone. Code requires to have a maximum of seventy candle feet measured from the sign. With LED lighting, they use an optic lens on the front of them which has a 170-degree angle. This allows for minimal light pollution and for maximum efficiencies of the LEDs do minimum IPs and such like that and the signage. And most signage now is a much shallower depth. So, these lines are designed to only travel about three to four inches from the face, they are losing intensity as they travel out now, they are not recommended to be used for anything deeper than eight inches. So that means that the point of about a foot, this light is so diluted that it is no longer considered bright enough to be even registered as lighting. Now lighting is considered one foot candle is considered 10.75 lumens. At two feet that means that they allowed twenty-one and a half lumens at two feet.

These lumen are at two feet when he was doing the calculation a moment ago but then we got caught up. I was at .0014961 or lumens so essentially there is no light from these menu boards past the two-foot mark just because of the type of lights being used and he can also provide a spec sheet from the LED manufacturer indicating how the light travels from this module to you know clarify the information that is provided.

These lights are design travel no more than about sixteen inches where the point of diminishing no longer really consider light. Their light is designed to go wide and not out.

Mr. Bond asked Mr. Ortiz to recap for him quickly how many signs are you talking about. Mr. Ortiz stated that they are looking at four drive thru signs and we are permitted four maximum. We are allowed one primary and one secondary, per ordering lane or ordering here.

Mr. Bond asked what the restriction within fifty feet of a residential district. Mr. Ortiz stated that you cannot have any signs as permitted within fifty feet of residential zoning. That is a restriction that we are up against.

Mr. Bond asked how many feet are between the drive thru ones in the lanes. Mr. Ortiz stated the drive thru lanes are twenty-five feet from the property line. The ones on the wall one is thirty feet, and one is thirty-five feet, the larger one is thirty-five feet from the property line, the others thirty.

Mr. Bond asked him to recap the hardship. Mr. Ortiz stated that the hardship is the unique shape and topographical condition of the property, which was plotted in the early times of Tulsa, and it's located within a historic district, which the commercial lots are just not built with the same depth in consideration today's code applied in the same depth, which makes it difficult in the situation for anyone to really develop that land. The land has been sitting as a parking lot since 1993. He was not sure what was on it before that. But that was the last thing on there with the county assessor's office. And he personally used to live near and whenever I was younger, 10 years or so back. And he always remember that parking lot being a place for vagrants. It sat undeveloped for a long time. A lot of the reasons it sat there and developed is because it's an issue develop on it, you're limited on how much you can build, you're limited on where you can build, you have the residential concern behind you and the one business directly to the north of it, the building that sitting there is, goes from one end to lot to the other. If you think of the corner of 11th and Harvard, traveling towards 13th, every building is placed right up against Harvard St. This has created an undue hardship on this property owner, unfortunately eliminated the location of the building, no matter where they would have placed it for the most efficient and safe use of it, one way or another signage would fell within the fifty feet of the residential zone. This is required signage that is necessary for the business to operate. At this point, we have a parking lot sitting there and not a coffee shop, there is a drive thru coffee shop and then the drive thru signs. It is in a condition it is a property that is just unique. There are not a lot of properties in Tulsa, that you are going to fall into this issue where you have residential directly behind it. And it is so narrow and thin, where it limits what you can do with it. He personally thinks it is a terrific addition to the city right there in that area. It is a lot that sat empty back there in the corner for people to hide out. And you have bars and stuff right there by the corner where and at night you find all sorts of weird stuff out there.

Mr. Brown stated that he thought the property used to be shops.

Mr. Bond asked if Mr. Ortiz would show him the design of what it would look like if it conformed to present code. Mr. Ortiz stated that he was uncertain it will conform the present code, but it will put the building outside of the 50-foot residential zone. He was not even 100% chance of course I am on a building contractor. It would mean all other data requirements that

Mr. Bond stated that the alternative drawing needed for us that involves moving the building. Mr. Ortiz stated it would be moving the building. This is the current location of the building in the highlight blue section is a 50-foot mark of the residential zone. If we would not place anything within that space, we would not be allowed to put any sort of signage or anything like that. Now if they would have moved the building a little bit further to the west, he will show you what that would look like. He also was able to get the other one so the one on the left will be the URL that will be an alternative placement for the building moving into the East and outside of the 50 foot residential zone that would require that the parking spaces be adjacent to the west property line, which would then potentially create a public safety detriment by forcing customers to essentially travel in between the drive thru lanes in order to get to the front of the building.

Interested Parties:

Joanne Parvin, 5346 North Rosalia Avenue, Fresno, California, 93725, stated that she was with Encino's 3D Custom Products and Signs as well. One of the things that she wanted to convey is a six-foot fence that's going to be put between the two properties between the commercial and the residential, Dutch Bros. and the requirement was six foot we are happy to do an eight-foot fence if that was something that you would be interested in doing to get the signs. She also wanted to indicate that the signs that we initially wanted to do on the south elevation we have completely removed, which it shows here was a logo in channel letters because it is within that fifty feet, we have removed those. We have removed the wall signs as he indicated on the west elevation and relocated one of the signs on the north elevation to the outside of the fifty foot. So as Christian explained, what we are trying to do is we are trying to make this parking lot into a drive thru. And without the drive thru signage, it makes it difficult. That is what we just wanted to convey that we are trying to keep the traffic flowing. But every car that goes through more taxes for Tulsa and so that is our goal.

Comments and Questions:

Mr. Wallace stated that he appreciated the information you all brought today and going back and reducing the signage. He was still struggling with the hardship. He knew there was a site plan produced there is still a lot of extra space available. But that is unimportant in the buildings is there. He was liking what he was hearing about the light traveling, making sure that the fencings the screening is in place where it is going to be block. Honestly, he was more concerned about cars high beams that is not due to the signage. He thought that would be a good faith thing. In addition to this, you reduced the drive thru sign. The drive thru on the north side where the double lane is that double sided, are those freestanding signs?

Mr. Brown asked double sided meaning the North and South side Mr. Ortiz stated that they were East and West.

Mr. Wallace stated that he still was trying to wrap his head around the hardship. But maybe some of the Board members can articulate better than he can.

Mr. Ortiz stated that he is only requesting a Variance to install the allowed permissible menu boards within a 50-foot residential zone. And then one exit sign that is located at the exit of the property. Yes, we are limited you notice where it says exit where the entrances like two feet tall and provide a copy of it too.

Mr. Chapman stated that if he understands correctly, it would just be a Variance to allow signs. Within 50-feet of residential and variance to allow drive thru signs. There are two portions that code that you cannot have signs within 50-feet.

Ms. Parvin stated that on this drawing, it shows drive thru that is at the entrance, what you are asking for is that the exit is at the exit and so the copy would read "Thank you." So as the traffic is leaving, it would read Thank you. But as the traffic comes toward it, it says "Do Not Enter" or "Exit" just so there is no traffic coming into the exit of the drive. This is the correct size, just a copy is not correct.

Mr. Bond stated that he liked the changes, he just was having trouble with the hardship as well.

Ms. Radney stated that the lot is long and narrow, and it is an adapted use. She would agree that if the building had been cited with a little bit more insight, we would not be here debating this. She also suggests that the applicant will never do this again.

Mr. Bond stated that he tells you that you got one of the absolute best in the business. You are working with you on this. So, it is I know it is a problem. It has been a headache. It is to make the motion on this and do not let the person articulate the hardship. He did have some suggestions for some requirements.

Ms. Blank stated she was not sure that you have an exhibit that shows the number of signs that are going to be in the 50-foot area because there has been various information from applicants today. If we do not have an exhibit that shows the number of signs, they are putting in the 50-foot area, then think we she thought she would suggest that you find out from the applicant the maximum number of sites that were approved to use.

Mr. Ortiz stated that it was the 1,2,3,4,5 yellow highlighted boxes along the left of the sheet or are the five signs, if you count the exit sign that we are going to be installed. The top two are within the twenty-five feet residential was a property line. They are the freestanding double sided menu board size that we showed you which saying that believe five foot in height.

It stands five foot six in height. So now exceed over the fence that is going to be installed. It will not project over that. So that we have those two that are along that island. If you look at the

sitemap, on the other two, which are the two yellow boxes indicated up top and that little island with a drive through there. Two lanes and converge to one. Then the second yellow box is the double menu board sign. Also, the small one next to the window. You have a total of four to all signs or menu boards along the building, the two three standing menu boards along the island in the drive thru lanes that stand that will stand below the fence. Then the exit sign, which is nonilluminated, located on the south exit of the property on to 13th Street.

Ms. Radney stated that we do not need to make any reference to the to the additional screening about which they are talking. She did not see that in front of us on the site plan.

Mr. Bond stated that he would offer that as a requirement.

Mr. Chapman stated that the code would require a six-foot screening fence, but if you want eight foot, but you can put that in.

Mr. Wallace stated that what we are trying to debate is what are the grade is. We just want to make sure that it is covering the sign.

Mr. Chapman stated that he would typically if you want it to be eight feet from the grade of the property line to the neighbors, you can say that, but typically if you said eight feet that would be measured from the grade of their property.

Mr. Wilkerson asked Mr. Chapman if he would show that picture of the building under construction on 1.4. The building several feet higher.

Mr. Ortiz asked if he could make a comment. Along the west towards a residential zone, the property does drop off. The grade of the parking lot itself is higher than the residential zone. If you notice that it to the left there is a six-foot privacy fence and the parking lot is can you see he guessed that trailer box next to it, it has about a three foot drop off in that six-foot section. And he thought what they are suggesting they do place to the fence will be placed at the eight foot along the grade of the parking lot. At that point, you should have about an eleven-foot barrier from the residential zone. Along that residential zone, the closest structure is the garage apartment on the backside and there are no windows along that side. There should be a total of eleven feet of barrier at the grade of their backyard of the residential zone.

Mr. Wilkerson stated that that is fine, but we do not have a site plan that shows that.

Mr. Ortiz asked if he could indicate on the site map that along the west elevation there will be an eight-foot privacy fence.

Mr. Wallace stated that it was more along the parking lot not the property line.

Mr. Ortiz stated that the parking lot and the concrete is about a three to five-foot section of grass before it starts to drop off and there is a retaining wall there. We can indicate that fence line is built within three to five feet of the curb. This would allow space to the West which help eliminate any sort of ambient light or light pollution created by cars driving through. He will do

an indication site that shows a barrier eight-foot-high fence along the entire length of the West property line at the grade of the parking lot. We can insure that creates a barrier to the residential zone.

Mr. Wallace stated that to Mr. Wilkerson's point, it is what is the fence, and where is it.

Mr. Wilkerson stated that there are so many things that we do not have any information on. The grading plan has obviously been established, so if you put a six-foot fence on the property line and there is three-foot of elevation change, you only have a three-foot screening buffer. Then we have limitations of a maximum height of eight-foot on fencing, so if it is going to go above that they must get a Variance for fencing above that height. We do not have enough information. If you are comfortable with the signage as presented, that is fine, but if there are supplemental standards that you are contemplating, we do not have enough information to design that up here.

Mr. Wallace stated that was where he was with the supplemental standards before we can get to then next point.

Mr. Ortiz stated that to recap, the concerns are not having enough information of the fence would be built with and the height, and the grading information of the property line.

Mr. Wilkerson stated that it was speaking from his perspective. He did not want to put words into the Boards mouth.

Mr. Bond stated that he would want to know how tall the fence was going to be and tied to what elevation. Not just the fence, but screening.

Mr. Ortiz stated that he knew that this whole properties elevation does sit at a higher grade than the residential property behind it. The six-foot property fence would be along the same grade as the signage and as the building. All these signage will be underneath the privacy fence no matter where it is in the parking lot. If he must come back again, he wants to bring back the correct information that he may need. He understood at this point, you would like more details on fencing and the indication of the heights along the entire length of the property. And a description of the privacy fence.

Ms. Parvin stated that she could show them completion photos showing the grade and we are happy to add this photo. The general contractor contacted her on Friday and stated that they would go as high as eight feet on the fencing. She has photos that show the parking lot grade is higher than the bottom of the residential. If we are eight feet from that, there is no way that the light is going to shine upon these homes. Some of these homes are two-story and the grade of the parking lot is at level with the bottom of the second story. We are trying to indicate a six to eight fence and we will plant trees and flowers to please the Board. They cannot open with a drive through that is just a parking lot. It is not safe for the employees and the clientele without signage.

Ms. Radney stated that if the city permitting is already on board with the location and placement of fence, she is ready to accept it verbally at an eight-foot fence. She is happy with the changes that they have made. She appreciates the reduction of the number of signs. She likes the technology with light pollution. We really are just grappling with that they put the building where they put it and that is not going to change. She is ready to approve it today. Just add the verbiage about the fence. She would strongly have preferred a site plan that they could point to with no confusion in any way about where the signs are, how many signs, what the signs are, and where the fence is located. She thought the record is going to be clear what they expected it to be. The hardship is the narrowness of the lot to the extent that city has approved this use in this location. She thought that the city has given the nod to suggest that we are going to take something that was either office or light mercantile and turned it into a car-based business. They need these lanes to operate the business that we have already condoned with building permits. It is the topography of the lot as it pertains to this specific type of use. The Chair had a concern about if this structure and use were to change over time and we would want them described as drive thru signs.

Mr. Bond stated that we would want the same dimensions and illumination which is designed to travel no more than sixteen inches. He would tie the fence to eight feet from the highest elevation and make it a screening fence which is designed to screen illumination.

Ms. Parvin stated that the type of sign was indicated by the city of Tulsa when they told them to do a six foot, so now we are going with eight feet. Mr. Wallace stated that was not correct, that is a different situation. That is because you are a commercial property next to a residential property. This is because you have signage within fifty feet of a residential property. We are trying to tighten that up.

Mr. Wilkerson stated to make it clear, the city does not dictate what type of fence, it just says the height needs to be opaque, you cannot see through it. It could be masonry, wood, metal, or many types of material.

Mr. Bond stated that the location, illumination characteristics, and size as shown on the Conceptual Plans.

Ms. Radney asked if he could label that exhibit that the Chair is referring to. Can we give it a designation, so we make sure we know we are referring to the right Conceptual Plan. Let us put it on the screen and give it an exhibit number so we know which one we are talking about.

Mr. Ortiz stated that through the sign package that he provided with all the drawings, there are individual pages that give the details of each of the signs, and they are labeled with that N-17 and such, and that site map that Mr. Chapman had up does indicate all the signage to be placed in that location. He could also indicate where the fence will be placed. He did a rough draft on the site map showing where an eight-foot height from grade light screening fence to be installed at the parking lot grade. The signage will be limited to drive-thru signage within the 50-foot zone.

Ms. Radney asked how she could word the light diminishing for the motion. Mr. Ortiz stated illumination limited to LED modules with optic bat-wing lens technology calculated to illuminate no further than sixteen inches.

Ms. Blank stated that she would recommend against having two different site plans that show different numbers of signs.

Mr. Ortiz stated that there were not multiple site maps. One was the one that we originally suggested and the second one was where we limited it down. He only brought the original one to indicate all the stuff that we have eliminated from it.

Ms. Blank stated that the result is that you are going to get a sign permit and building approvals and if we attach two site plans with a different numbers of signs to it is going to confuse the daylighters out of them.

Mr. Chapman asked if this is what the Board wants. He has named it A1, A2, and A3 and Mr. Ortiz can write all the information that he had on the other site map on A1 before we leave.

Mr. Bond stated that his concern is that in thirty years this becomes something else, it would be better if we say what it does and not what it is. Lighting design to illuminate no further than sixteen inches.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-1 (Barrientos, Brown, Radney, Wallace all "ayes", no "nays", Bond "abstention") to **APPROVE** a Variance to allow signs within 50-feet of Residential Districts (Sec. 60.040-B.3); a Variance to increase the number of allowed drive-through signs and to allow the drive-through signs to be within 50-feet of residential zoning districts (Sec. 60.030-B) finding the hardship to be the long and narrow shape of the commercial lot, per the Conceptual Plans shown on the supplemental drawings submitted labeled A1, A2, and A3 of the Agenda packet; subject to the following condition that the location, size, illumination characteristics as described on those supplemental drawings and further that opaque fencing is to installed on the entire length of the West property line, per the city permit that currently has been issued at a height of eight-feet above grade and subject to the specification that any installed lighting on the West side of the building will illuminate no further than sixteen inches from the menu board and that the number of signs be limited to five on the within 50-feet of the Residential district.

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 described property:

**LTS 8, 9, 10, 11 & 12 LESS E15 THEREOF & LESS S20 W20 LT 12 BLK 4, EAST LAWN
ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

23427 - Hemphill, LLC, c/o Faulk & Faulk

Action Requested:

Special Exception to permit a guyed communications tower in the IL zoning District (Sec. 40.420-E.2.b) Special Exception to waive the landscaping requirements for a communications tower within 300-feet of residential zoning districts or lots occupied by a residential uses (Sec. 40.420-F.4) **Location:** 1388 N. New Haven Ave. **(CD – 3)**

Presentation:

Ralph Wyngarden, with Faulk & Foster, 678 Front Ave. NW, Suite 255, Grand Rapids, Michigan, 49504, stated that he was representing Hemphill. They are here to request a guyed communications tower and to waive the landscaping requirements. It is an one hundred-five-foot guyed tower, and on its industrial zoned property with US Cellular at the top. It is designed to allow for colocation by at least three different additional providers on the tower. Currently, our drawings that are in your packet sheet C 31-1, which is packet page 2.16. That shows the US Cellular location on the top, and then proposed antenna center lines for future carriers at 170, 150, and 130. Those are adjustable depending upon those future provider's needs. But the tower will be designed with the capacity and structural capacity to handle that colocation. This is an IL light industrial district. And your ordinance does allow monopoles as by right, so we would just need a building permit to do a monopole. However, we are requesting today, Special Exception approval to allow us to do a guyed tower design. The reason for that is Hemphill is proposing that the guyed tower would accommodate tower crew training for climber rescue certification.

Scott Tinker was going to be here today but could not make it. He is the Director of Design and build for Hemphill, and they partner with outside trainers. He also oversees internal training to ensure that not only tower crews that work on sites that Hemphill is doing but also training for additional crews can take place on the property. A monopole design has just step bolts that stick out the side. That is how you climb up. With a guyed tower, they can train not only climbing like the lattice type towers, but also trolley rescue where they use the guy wires to kind of run people up and down as necessary. And they can train crews on checking tension of guy wires and looking for any issues with anchors of the guy wires. It also provides like a fuller scenario of all the different possibilities with tower operations. We feel that this this request is in harmony with the spirit intent of the zoning code and would not injure the neighborhood with it is within an existing industrial storage yard for Hemphill where they have already got tower, and other equipment just kind of laying in the yard. It is buffered by a bakery on the east side of New Haven. The railroad tracks run across the north part of the property. There is additional Hemphill industrial property to the south and to the east. There is not really any close by residences or sensitive uses. We are asking for the first item today that you approve by special exception, the ability to do a guyed tower design, rather than just the monopole design.

The second request concerns the landscape buffer requirement. You have a landscape buffer required when there is residentially zoned or use property within three hundred feet. In this case, there are no residences within three hundred feet. But there are two instances of residentially zoned or used property. If you look to the north of that circle, highlighted area where the parcel is the 300-foot buffer does not extend all the way to that subdivision to the

north. It encompasses the part of Dawson road and the railroad right-of-way. The residential zoning district makes like a square corner there. The portion of residential district that is within three hundred feet is the right of way of the railroad and Dawson road, there are not any houses within that 300-foot buffer. The right of way cannot be developed for homes in the future so that the spirit of protecting residential homes is met if we are allowed to forego the buffer for that area.

The other area is to the lower right of that parcel area to the southeast. There is a longer treed parcel with a home on it. the first parcel he was talking about this, this corner right here is zoned residential, but it is the right of way. Then the other parcel is right here. This 300-foot buffer just kind of clips this corner of the parcel, but the only home on the property is over here at Pittsburg Avenue. There is no home on New Haven, and this is all mature trees in here. That parcel is also zoned light industrial (IL) as well. The interest of protecting residential we feel is still met just by leaving the storage area as is without trying to put additional plantings in that kind of dusty storage lot. Respectfully our request today, our special exception to let us do a guyed tower instead of the monopole that we would otherwise be entitled to as of right. To let us forego the landscape buffer and just keep the industrial storage space, the way that it is currently today. He was happy to entertain any questions, or address any concerns from the public at the appropriate time.

Mr. Bond asked if he had any feedback from any of the neighbors or surrounding stakeholders. Mr. Wyngarden stated that they had not.

Mr. Brown stated that the airport, takeoff, and landing is two miles to the east. Have you checked with airport? Mr. Wyngarden stated that the FAA process is underway. We always make sure we get a determination of no hazard for the FAA, and we will abide by that. If that requires any kind of height reduction.

Interested Parties:

No interested parties were present.

Comments and Questions:

Mr. Brown stated that he found it highly unusual that a tower this tall even near a residential neighborhood.

Ms. Radney stated that tended to support it as well. She thought the arguments regarding the particularly for the landscaping makes sense. She understands the logic behind moving forward with asking to build it as a guyed communication tower as opposed to a monopole. It is a Special Exception.

Mr. Barrientos stated that he also agrees to support it. He was concerned about the airport location to be so close to it. He responded.

Mr. Wallace stated that with the landscape requirement, the city said it is within three hundred feet of residential area. He was not following that part. Is everything in that red circle within three hundred feet? Mr. Chapman stated that he thought it would be within three hundred feet.

He thought for the applicant, he did not believe the tower necessarily, would be within three hundred feet.

Mr. Wyngarden stated that the type of the tower is 195 feet and the towers certainly not within three hundred feet. We did a buffer on the parcel. And 300-foot buffer from the parcel foundry also does not encroach on that subdivision. That circle there just shows you the general area. But the what the actual buffer runs just outside the wooden fencing. This neighborhood has kind of like solid wood fencing to kind of screen, the street, and the railroad right away from the neighborhood. So, they are already screened off from the busyness of the intersection. But the 300-foot buffer clips just the corner of this property here, and it stays outside of these residential lot.

Mr. Wyngarden stated that there is an existing access off New Haven in the fence if you go to the pictures of the property there are some photos of the property but just a little bit to the side from this photo is an actual rolling access portion of the fence with kind of wheels on the bottom that opens to let trucks get in and out to the storage yard. So access uses that existing access through the fence from New Haven. But that is already present there. And then can go back to the site.

Mr. Bond asked if there were any new entrances or no hindrances through the fence or egress.

Ms. Radney asked if it was gravel and Mr. Wyngarden stated that it was. On page 2.19, it is a compacted base gravel driveway; the detail is on the upper left-hand corner there. So, there is not going to be any additional paving, or anything proposed that would change the current setup as it is right now.

Ms. Radney asked Mr. Chapman if under the current code, they there would be the expectation that either they asked for variance on the dustless surface or that it would comply correct. Mr. Chapman stated that the point was is just to make it clear that we are not dealing with that I think it might be legally non-conforming, which might be a possibility. It is just on future applications to this, he did not want to imply that the Board gave any relief from, or any gravel or anything out there. At least from what I can tell all the approaches are gravel onto that property. It was not necessarily for the Board to act, but just to make clear that if they go in for more building permits or anything like that, if they get hit with that requirement on a new building permit a new driveway to make clear that the board has not granted relief on that.

Ms. Radney stated that typically in a situation like this, especially where there is going to be like greater intensity of activity, at least while this is being constructed, we will be talking about at least a concrete apron. Mr. Wyngarden stated that he would say in terms of intensity, once this is constructed, usually there's only maintenance visits a couple of times a month. And most of these, it is not a use that is staffed or staffed in any way, it is not going to generate a lot of daily traffic. So, in terms of duster, entrance in and out of there, it is very negligible just a couple of times.

Ms. Radney stated the motion today is going to be silent about that, but we just want to be sure that you understand that we would ordinarily be expected to be expecting to talk about it.

This is also indicating that there, we should be inquiring of you about the number and size of antennas will there just be the one. Mr. Wyngarden stated that at this point, it will be an array of antennas for U.S. Cellular. That is the only interest that we have right now. But Hemphill is in the business of soliciting actively colocation by other providers. And so that is why they designed it to allow for future carriers. We will be marketing that and in seeking to have additional carriers on there. It could potentially have up to four different antenna arrays as shown there.

Mr. Bond asked if this tower compatible with FirstNet uses. Yes, that would be AT&T usually does the FirstNet thing. We are interested in having them.

Ms. Radney stated the total height is the 195 that we saw already in the drawings. Mr. Wyngarden stated that was correct. That is what is proposed subject to of course, the FAA approval if they require a lower height, we will bring the height down to make sure we are compliant with all FAA requirements.

Ms. Radney stated that by her read, we have complied with the evaluation of these eleven points. Mr. Bond agreed.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-1-0 (Barrientos, Bond, Brown, Radney all “ayes, Wallace “nay”, no “abstentions”) to **APPROVE** a Special Exception to permit a guyed communications tower in the IL zoning District (Sec. 40.420-E.2.b) and a Special Exception to waive the landscaping requirements for a communications tower within 300-feet of residential zoning districts or lots occupied by a residential uses (Sec. 40.420-F.4) per the Conceptual Plans shown on pages 2.13 through 2.26 of the Agenda packet and subject to the following conditions that relief is not granted on any non-conforming improvement on the property.

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. The Board also finds that that the following factor have been considered in this decision :

1. Height of the proposed tower;
2. Proximity of the tower to residential structures, residential district boundaries and existing towers;
3. Nature of uses on adjacent and nearby properties;
4. Surrounding topography;
5. Surrounding tree coverage and foliage;
6. Design of the tower, with reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
7. The total number and size of antennas proposed and the ability of the proposed tower to accommodate co-location;
8. Architectural design of utility buildings and accessory structures to blend with the surrounding environment;
9. Proposed ingress and egress;

10. The need for a tower within the immediate geographic area to provide an acceptable level of communications service to the area.
11. The size of the tract and the most likely future development as indicated by the comprehensive plan, planned infrastructure, topography, and other physical consideration; for the following described property:

LT 13 BLK 1, ACME ACRE ADD , CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

DRAFT

23430 - Amy Wightman

Action Requested:

Special Exception to permit Moderate-Impact Medical Marijuana processing (Moderate-impact Manufacturing & Industry Use) in the IL district (Sec. 15.020, Table 15-2) **Location:** 905 S. Hudson Ave. **(CD-3)**

Presentation:

The applicant was not present.

Interested Parties:

Comments and Questions:

Board Action:

On **MOTION** of **BROWN**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace all “ayes”; no “nays”; no “abstention”) to **CONTINUE** the requested Special Exception to permit Moderate-Impact Medical Marijuana processing (Moderate-impact Manufacturing & Industry Use) in the IL district (Sec. 15.020, Table 15-2) until October 11, 2022; for the following property:

BLK 67 & S30.43 VAC ST ADJ ON N THEREOF LESS S200 THEREOF BLK 67, GLENHAVEN , CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

23432 - Marketta Rowe

Action Requested:

Special Exception to allow a manufactured housing unit in the AG District (Sec. 25.020-D, Table 25-1.5); Special Exception to extend the one-year time limit to allow the Manufactured Housing Unit permanently (Sec.40.210-A) **Location:** 1710 E 48th St N. **(CD-1)**

Presentation:

Applicant requested a Continuance.

Interested Parties:

None.

Comments and Questions: None.

Board Action:

On **MOTION** of **BROWN**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace all “ayes”; no “nays”; no “abstention”) to **CONTINUE** the requested Special Exception to allow a manufactured housing unit in the AG District (Sec.25.020-D, Table 25-1.5); Special Exception to extend the one-year time limit to allow the Manufactured Housing Unit permanently until October 11, 2022; for the following property:

BEG NWC SW SE TH E TO EL W/2 W/2 SW SE TH S712.11 W304.44 N737.43 POB LESS N25 &E25 FOR ST SEC 7 20 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

23433 - Charles Maddox

Action Requested:

Variance to reduce the required 35-foot arterial street setback in the RS-3 District (Sec. 5.030-A, Table 5-3); Variance to reduce the 60-foot minimum lot width for a duplex use in the RS-3 District (Sec. 5.030-A, Table 5-3); Special Exception to permit a duplex in the RS-3 District (Table 5.020, Table 5-2, Table 5-2.5)

Location: 4143 S. Riverside Dr. **(CD-9) Application has been withdrawn.**

23434 - Charles Maddox

Action Requested:

Variance to reduce the required 35-foot arterial street setback in the RS-3 District (Sec. 5.030-A, Table 5-3); Variance to reduce the 60-foot minimum lot width for a duplex use in the RS-3 District (Sec. 5.030-A, Table 5-3); Special Exception to permit a duplex in the RS-3 District (Table 5.020, Table 5-2, Table 5-2.5)

Location: 4153 S. Riverside Dr. **(CD-9)**

Presentation:

Charles Maddox, 1139 South Gary Place, Tulsa, Oklahoma, 74104, stated that he was representing the property owner who is Scott and Vanessa Robinson. The Robinsons have bought this surplus property the city of Tulsa had for years, about a year and a half ago and they wanted to develop it. There are some unusual things about this has come up because of the city's ownership previously. In the site plan, this parcel right here in the front, when the city sold this property, they maintained that parcel right there, which is fifty feet deep. So now they want us to go from there another thirty-five feet to the front of our structure. So that puts us over at eight-five feet from the roadway. The reason they did this was that they wanted to maintain that property for widening Riverside Drive at some point. That really does not make any sense if you look at it, or what the city has approved, several developments in the last year alone there that are much closer. The Discovery Lab building is sixteen feet off the curb. There is at 38th street, there is a condominium project, which is twenty feet off the curb. But adjacent to this property there is another property that is owned by the Robinson is the oldest tree in Tulsa, which is 450 years old. And that would have to be removed to widen the road. He did not really think the city of Tulsa has any desire to do that. Also, when they built the Gathering Place, they build tunnels that are two lanes wide. If they were going to widen a little bit after those structures and widen them out. The fifty feet is more than enough room for anything that cities would ever want to do with the front part of that property. All we are asking is not to make us go another thirty-five feet back, which puts us behind all the other properties along the street as far as the distance. We do not mind being back further in the lot than normal because that offers a little extra privacy for anyone that would be occupying this space as far as looking out their windows into their neighbor's windows. But that is our main reasoning for wanting to get away from the 35-foot setback.

Mr. Bond asked if they had any conversations with your neighbors or other stakeholders of others. Mr. Maddox stated that No. In fact, the Robinsons I am most of the property

around there, there are some neighbors on Cincinnati that would back up to the property and there may be one or two others on Riverside. He had not heard anything from anybody at this point.

Mr. Brown stated that by asking for two variances, you are asking us to change the law as it applies. You need to have a hardship. What is the hardship is the city of Tulsa the first fifty feet.

Mr. Maddox stated that the Robinsons did not even know that that was the case when they were purchasing the property until they went to close and they said oh, we are going to hold on to this parcel for right away. That is what they had told him and is deeded to the city. So, it is not even a right-of-way. So, if it were just a ride away, we would be able to build them in that area.

Mr. Brown stated that they were also asking for a Special Exception also to permit a duplex. In the site plan that was submitted on 6.12, where do you park the cars? Mr. Maddox stated that if you look to the bottom of the site plan, the garage is on that side. There are garages for both these units right there. And then there is a turnaround right here. There are the places to park in that area right there according to the parking garage.

Mr. Brown stated that parking requirements for duplexes for two per unit. If it is two spaces per unit, he did not see how you can get four cars in the time space. Mr. Maddox stated that they have a two-car garage and a one car garage and then this area here is wide for two cars. He stated that it is a two story with one unit on the bottom and one on the top.

Mr. Brown stated that he was not convinced and wish you were able to submit a floor plan to show me.

Mr. Bond stated that he too would like to see this on the layout. You can walk me through. Mr. Maddox stated and showed with the pointed where it would start. This is the property line between the Robinson property in the city of Tulsa this part right here is fifty feet city owned. The setback is thirty-five feet from here, which is this dotted line on the drawing.

Mr. Bond asked how many feet you are asking for into that. Mr. Maddox stated it was around fifteen.

Ms. Radney asked if the city has for granted that right away across their property. Where do you will have your driveway installed. Mr. Maddox stated that the city says they will grant us a ride away. It was divided when the Robinson's purchased the property.

Ms. Radney asked did not their lot does not already have a right of way easement that is running with the city's land. They sold them a landlocked parcel.

Mr. Maddox stated that yes that is exactly what we did. The city so the Robinson was a parcel that you could not get to. They have since agreed to cross easement. If you look here, this is what the city sold them right here with no access. We did not have access to exist until did plans for a building permit in fact, we did not know that the city on the front of the parcel until the we applied for a building permit. The city provided us in closing the survey as a property and showed it all in one parcel.

Mr. Bond stated that assuming you had a survey before you closed. Mr. Maddox stated that the city engineer surveyed it.

Mr. Bond asked to reduce the six-foot minimum lot width for a duplex how much are we talking about reducing that. How wide is this law right now? He asked if it is fifty-six feet wide?

Mr. Chapman stated that he would say there originally was a comment related to frontage requirement. And he did talk to the permit center and, and we are treating this as though it is frontage. They will be able to cross it is still owned by the city, but they are treating it in the terms of permits, like it would be any right of way. They do need reduction in a lot with which it was planted at that width and then a special exception for the duplex.

Interested Parties:

Donald Latandres, 4127 Riverside Drive, Tulsa, Oklahoma, 74105 stated that he is a neighbor and that he has contacted this guy. He does not want to condominium or duplex in my area right next door. He stated that the lot is so narrow. The only option would be two-story. He did not understand how he would fit four cars. It is tiny. He bought the other lot next to it and is that lots too small because that one is even smaller, and they are trying to put a duplex in there too. He was worried about my security, my property values with just random renters been in that area. There is a lot of factors. They are even narrower than this driveway. The tree is huge, and he figured he was going to make it is like bigger yard or something, but not throw in duplexes. Just think about how much square foot if he is going to do a double duplex or how much would you charge them rent? I mean, that is going to affect my value as well. He just did not want people walk in from that area because there is not a sidewalk all the way over to my house and then crossing the streets. There is the Riverside and 41st all that trail area right there. He could see a lot of foot traffic coming in.

Ron Lewis, 215 East 42nd Street, Tulsa, Oklahoma, 74105, stated he lived there pointing with the pointer. He has a disabled son in my house and that is a rental of mine there. He would object to this because of increased traffic Riverside Drive, a lot of fast traffic. There would be cars going in and out of there. More so than there are now turn around. If you cannot turn around, if you back out into Riverside Drive, it is very unsafe. There is already a lot of traffic, as he mentioned, because of the park there. That is at the end of 41st and Riverside, it is a high-density area for a lot of traffic morning and

night. There are not any sidewalks on that side. Crossing the street becomes more hazardous. He did not think it is an innovative idea to have higher density, more traffic in that area.

Comments and Questions:

Mr. Bond stated that this may be an impossible question. What is the history behind the setback here? Is it for widening? Is it for flood control? Do we know about just even decade was when it was done?

Mr. Wilkerson stated that the short answer is no. The little bit longer answer is that Riverside Drive has a variable width defined in the major street and highway plan. It is not specific like it is on many streets. He was not aware of any substantial changes to Riverside Drive coming that would have precipitated that thought process. But there is the sign of floodplain it is he was not aware of why that was there was nothing provided to us that would have given us any idea of why that would have been needed. I think the other the other part of that conversation that was touched on was just the idea that along an arterial street which this is considered an arterial street, there is that 35-foot building setback if it were multifamily which you were touching on also that thirty-five feet does not apply. But frankly on the way these all these houses are here that was all platted back in the forties sometime and that thirty-five feet would typically have been set back from the platted lot line, which because it is not. But then it is a little bit undefined on the on the actual planned right of way.

Mr. Bond asked if there were any thoughts on this. He stated that he is getting stuck on we have gotten here two Special Exception and a Variance. He was struggling with a hardship. He was of the mind that at some of these were talking about changing density. He did not feel that comfortable. He felt like that is not our job. Somebody else sits in these chairs, they can do that. But he was certainly open to your thoughts on this topic.

Mr. Barrientos stated that he was not convinced of the hardship. If he had he thought, they could have gone a different route. If they were using a rezoning. Currently, it is a no vote for him.

Mr. Bond stated that it sounds to be a one no, one likely no. He stated that he was kind of looking at this section by section. The duplexing, he though makes it complicated. Just for argument's sake, in my mind, he could ask himself if this was just a permitted house, and it did not get any further relief. How would he feel about it there. Going into on this law, even though it is narrow, but going into that setback, he just did not see a non-self-created, non-self-imposed hardship there.

Ms. Radney stated that looking at the layout of other lots that front to Riverside, those two that are owned by the city are exceptions. You cannot see it from there, probably but you see these two little boxes. From the standpoint of the hardship in terms of the setback, she did find that that lot in the end, the vacant lot to the north are exceptional, in terms of the fact that they their property lines don't extend all the way up to Riverside

and the lay of the constructed residences along that corridor that do conform with a setback on up about what appears to be 35 feet, or so. She thought she could get there on the hardship in terms of the waiver of an additional thirty-five fee, and they request for ten or so. From the western edge of this lot based on the topography, it is unique in that regard. She did not know that she thought it is unique in terms of she did not have a good sense of why they need to put a duplex there. She was convinced by the fact that fifty feet would be the minimum or would be a conforming lot size for a duplex if it were zoned to multifamily or more dense, single family. The width of the lot is, although they have not enunciated a hardship. She could get them for both Variances. Is it a promising idea, though? That is the that is the point around which it all hinges.

Mr. Bond stated that as far as where it is built, you know. He was just not comfortable going into that right-of-way. If that is the case, it just seems self-imposed. If they were here, and this was already built on the bottom, it was already built. If they wanted to do, you know, addition or alteration? He could understand that. But we are, in my mind. We are doing something that has not been built yet.

Ms. Radney stated state she thought the argument that they are making is that it was that this hardship was imposed on them by the city when the city took first took the land that of abuts Riverside before they sold them the land, the remaining land to the interior. If it is going to be buildable at all anything that they build a right now would still have to have another thirty-five feet from the property line.

Mr. Bond stated they bought this from the city and again we are not dealing with the house which is already there. We're dealing with the lot that was purchased from the city knowing at the time and I understand the position of not knowing, but he guessed when you go to the county clerk you know when you go to closing you know those issues will be there so I'm probably the more to talk myself into probably a no on this.

Ms. Radney stated that she was a yes on the first Variance, she was flexible on the second, and unconvinced on the Special Exception. She did not know that she knew the answer. If it had been in a flag lot that extended to Riverside Drive, would they still have this problem. If your property touched with the side drive which is what properties immediately to the south do.

Mr. Bond stated that if that were the issue before us it may be what they are going to need to do to get access to this thing . If that was before us, it might be a little different deal. This is a self-imposed hardship. His take was that conforming to city code into City's zoning in and of itself does not our job any more than that.

Mr. Wallace stated he agreed with the hardship statement because he was just looking at the county assessor's website purchased in 2020 as is. You could put a single family on that on that parcel by right there you there's still things that can be done with the property it is not like it is pigeonholed into the situation. He did not see the hardship and he was not convinced.

Mr. Brown stated that he was not convinced either.

Mr. Bond stated that they had three no's.

Board Action:

On **MOTION** of **WALLACE**, the Board voted 4-1-0 (Barrientos, Bond, Brown, Wallace all "ayes", Radney "nay", no "abstentions") to **DENY** a Variance to reduce the required 35-foot arterial street setback in the RS-3 District (Sec. 5.030-A, Table 5-3); a Variance to reduce the 60-foot minimum lot width for a duplex use in the RS-3 District (Sec. 5.030-A, Table 5-3); and a Special Exception to permit a duplex in the RS-3 District (Table 5.020, Table 5-2, Table 5-2.5); for the following described property:

**PRT LT 15 & S.2 LT 16 BEG SECR LT 15 TH W144.66 NE3.39 CRV LF53.27 E136.40
S56.06 POB BLK 3, PECAN TERRACE , CITY OF TULSA, TULSA COUNTY, STATE
OF OKLAHOMA**

DRAFT

23435 - Josh Miller

Action Requested:

Special Exception to permit a Day Care Use in the RS-3 District (Table 5.020, Table 5-2) Variance to reduce the 12,000 square-foot minimum lot size and 100-foot minimum lot width for Special Exception uses in the RS-3 District (Sec. 5.030-A, Table 5-3); Variance to reduce the 25-foot setback for non-residential Special Exception uses from R-zoned lots (Sec. 5.030-B, Table note [4])

Location: 2742 N. Boulder Ave. (CD-1)

Presentation:

Cindy Decker, 2216 East 26th Place, Tulsa, Oklahoma, 74114, stated that she was representing Tulsa Educare and one of their addresses is 2511 East 5th Place in Tulsa, 74104. She is here representing Lisa Fuselier. Lisa has been operating in Oklahoma State Department of Human Services, family childcare home at this address for 11 years. It is licensed by the state in what is called a large family childcare home. When the state licenses family childcare homes, they allow these large ones to be licensed to serve up to twelve kids. And when you go through that process, our state does not give you any indication that you need to get permitted in your city. Lisa's business operates at the very highest of standards for childcare. She knew that because Tulsa Educare works in childcare too. We partner with Lisa, through the office of Head Start the Federal Office of Head Start childcare partnership opportunity, and we have been doing that since 2019. So, Lisa has the highest star rating of our state, childcare, childcare standards, she also meets the office of Head Start the federal program, performance standards. And she is also accredited by the National Association of Family Childcare. Ms. Decker wanted to say it is extremely unusual for a family childcare to be operating at that high of a level. It is unusual not just in our city, not just in our state and even in our nation. Tulsa Educator has partnered with the University of Oklahoma to examine our impact on the children that we serve, using robust research, specifically like a randomized control trial. And through that work, we have learned that Tulsa Educare kids are doing better even in grades K through third grade than they would have otherwise. She says that because that means that what Tulsa educator is doing is making long term impacts on kids and leases meeting the same standards to which we are and therefore I feel very comfortable saying that Lisa's program is making a long-term impact on the kids that she serves, and also due to what she does, she's allowing the families of those children to go to work further benefiting our community. So, there is the city permitting requirement only allows family childcare homes to go up to seven children. And again, our state allows you to go up to twelve children. And it would just not be economically feasible for Lisa to go down to serving only seven kids, especially if she were to maintain the same quality standards. The fewer kids you serve you decrease revenue by one to one, so revenue would decrease, but the expenses do not decrease like that. So, it just makes it not economically possible. I would also add that in 2019, Tulsa Educare made an investment in the property of \$40,000. And when you make an investment like that you expect to get a return in some time, and we assumed that we would have the return of twelve children being served on that property. So, we are asking today for a special exception for the property to be permitted as a daycare

instead of a family childcare home and then to be permitted as a daycare that would require some variances. In the PowerPoint that she hoped that you have on slides seven and eight are some pictures of the property showing that it looks like a well-kept home. You can see the front of the home, the back yard, which is nicely fenced off. And then on slide eight are all the pictures of the inside of the home.

She also argued that her business is not injurious to the neighborhood. She has had some complaints of one or two neighbors that are often focused on parking, and on signage. She has listened to these concerns and worked to mitigate them. Regarding parking, she is asked that people park on her side of the street, that they do not stay long, and that parents would arrive at staggered times. So, there is no parking issues. In terms of signage, those have all been removed. There are some rumors of other things that have been going on the property. Tulsa Educator has a Staff person visit the property the business, at least every week, and we can attest that we are only seeing a childcare, family childcare home operating out of there. Slide ten is showing you that family childcare homes are a common, frequently chosen place to put place your infant and toddler, they are more likely to be chosen than centers. And these are a key component, an important option for parents, often they are residing in communities serving those communities, often the Staff of the home know the families for generations, and it is really a very trusted choice for many people. She ended by just saying Tulsa County is considered a childcare desert, she hoped that you have seen the headlines of how difficult it is to get your child and a quality childcare out at this time. And so, we are asking for this Special Exception for Lisa to continue operating as a daycare serving twelve kids.

Mr. Brown stated that we are being asked to make a ruling on two variances. To do that in an affirmative way one changes the law. We require a hardship to consider that. What is the hardship here?

Ms. Decker stated that Variances, are just not possible to meet the 12,000, minimum lot size, for example, her lot sizes 6,875. So, to meet the daycare requirements would require buying more properties and expanding that lot size in that they are owned by others, it would be difficult to do so.

Mr. Bond stated that we need something that is based on the physical characteristics of the slot that you need to do you have anything like that do not let it because what we must do to grant relief here is to reduce the 1200 square foot minimum lot size. And the one hundred minimum lot width for special exception. So that is what we are asking about what the hardship is there is not self-created or self-imposed.

Ms. Decker stated that she did not understand because to me her lot sizes fixed. She did not understand we cannot meet that lot size without buying properties around it.

Ms. Radney stated that she wanted to go back to the beginning to make sure that she is understanding how we got here. So, the license is for a family home. Is that correct? Ms. Decker stated it was a state licenses for a large family childcare home. Ms. Radney

stated that allows for twelve children to be in care. Correct? Up from seven. Yes, and so, from the state standpoint, a large family childcare center does not require a certificate of occupancy to get the license. That is correct. So, what is in front of us, it is a request for a change in use to so that she can in fact get a certificate of occupancy from the city, because there's a mismatch between the city standards for what a daycare uses in a residential neighborhood, and what the state licenses is, as, as a viable neighborhood daycare center. Ms. Decker stated that she has been operating it with twelve children for 11 years that on property, and for 18 years in total, but some of that time was at other properties.

Ms. Radney asked what has happened that has precipitated this need to change the zoning,

Ms. Decker stated that neighbor concerns have come to the city, and then the city has gone out to visit the property, seeing that there are more than seven children there. And that is how we got here. The neighborhood concerns were on parking, different cars and how they were parked. Some of it is legal, just on the street, and then signage.

Ms. Radney stated that there is a complicated matter that she saw in our notes that there is not anyone who currently lives at the house now. So now it is, though it is a family style setting. There, it is not an actual occupied family home. Ms. Decker stated that it is not required by the state either.

Ms. Radney stated that the property owner is stuck in a demanding situation, because they are operating a family style childcare center, according to state law. But it is a mismatch between our current zoning standards. She did not know when the current code was adopted. She did not know whether this facility was operating as a large family home and would have been legally operating as a large family home prior to the current code. So, if they have been operating as a childcare home as a family home childcare center for 18 years, and as a large family childcare center, which means twelve children instead of seven for the last 11 years? Does that home occupation do that predate our current code in any way? Mr. Chapman stated that the current version of the zoning code was approved in 2015. He was almost positive we had almost verbatim rules in the previous version of the code. This property was in front of Board previously when the Board heard spacing verifications for family home daycares. The Board only verified there was not another one within 300-feet. At that time, it was treated as a family home daycare. The state may be different definitions of family home daycare, but the city of Tulsa it is you must live there, and it is an accessory use limited to seven children.

Ms. Radney asked if she was remembering correctly that the family home daycare? That 12-child daycare center is a fairly innovation. It that it was not originally twelve. She vaguely and you know, for the record, I will state that I have owned a childcare center in the past. She thought I recalled that they were originally licensed for seven. And at some point, in time. Twelve was allowed but that was not. But when that designation was first created, it was something less than 12.

Ms. Decker state that she has not ever heard that. The only thing related to what you are saying is she was looking up in other states, what other states allow, and she saw that all of them allow up to twelve also. She did not know if a limit of seven that was an entirely new idea to me.

Ms. Radney stated that the problem is that, that the bureaucratic confusion, in terms of the licensing for the family home is not necessarily specific to this lot. It does not make this this law is indistinguishable from the ones that are adjacent to it. But she does understand the nuances of how it can get confusing for a licensee because it is a family home business that does not require a certificate of occupancy. And if you are up against that, now, that is a tough spot to be in. But the hardship is going to be a lift because the hardship does require us to look at something unique to this property, or this lot, is not even the building. It is the lot. That is unique to you.

Mr. Bond stated that if there was a change in the law, which was allowed before, it is not now I would be great. He would let the other opposition talk first. But that is if you can think about that for us. But the uniqueness of this, that creates a hardship, because that that is the threshold for us.

Ms. Decker stated that for her the hardship applied to trying to meet the family childcare home requirement of seven. So that is where she was applying the word hardship, that is not possible to do to be economically feasible. She was applying it to meeting that category.

Ms. Radney stated that unfortunately, it cannot be a financial hardship, we cannot consider that, as a financial hardship is, is inextricably self-imposed. Like cannot be self-imposed either. It might have been the last case, hinged on, they did not have to put the house there, they could have moved it back, they did something within the code that they were allowed to do. And wanting to do something more is a self-imposed hardship. So, think about that for a minute and we will hear from other interested parties

Interested Parties:

Crystal Pearson, 2741 North Boulder Ave., Tulsa, Oklahoma, 74106 stated that she was an affected party. She has had the misfortune of having a front row seat to the daycare center for the last several years. Her statement is most applicable. She would try not to belabor the point and take up too much of your time. She did submit some documents. And she would stand here and go through all of them. But she did feel that these documents needed to be put into the record. She had an opening statement that she thought was perfect. When I went to go print it out it was faulty. What I would like to say. Yes, this is something that was self-created. It was fueled with economic gain; she felt strongly that this application is also a flagrant attempt to subvert the findings of a fact-finding investigation that the working in neighborhoods conducted. It took a year to get that done. The current zoning code is perfectly suitable and is perfectly appropriate for residential neighborhood. With that stated, she would proceed and just state what

she thought needed to be said on that. On behalf of the neighborhood and myself. And we were not given an opportunity to try to discuss this thing, informally, which she would have preferred and thinks that is something that should have been done. So, there has not been a whole lot of good faith here. It has been feeling more like we are going to force this down you. But what is important to state the applicant did not file this application for this Special Exemption voluntarily. Okay, it was not a voluntary effort. But it was pursuant to the investigation, where the applicant was found to be in numerous violations of the city ordinance. Whether or not they were aware of that she thought that is something that you will be able to determine, after speaking, she would like to direct your attention to page three of the investigative summary if she can, and she can make this quick. Based on facts and information, an investigation did take place. She got into the INCOG office yesterday, at the last minute and had a whole bunch of stuff, and it was not a pretty sight. It amazes me that, people can be on one side, but have absolutely no regard or concern for someone else. She lives right directly across the street from the daycare. She has had a front row view here, some of the activities and the things that have been taking place. there were some makers, who, you know, rightfully so had some concerns about what is going on here. This was a fact-finding investigation. And this is what was determined that the daycare was in violation of several of the codes. And the first one as stated was the principal use daycare in the RS three zoning district, they did not have a Special Exception. And that is in violation of Section 5.020. The family childcare home was operating inconsistently with the permit that was approved and granted in 2017, pursuant to a Board of Adjustment Zoning clearance hearing, as Mr. Chapman has stated. It was for space verification; it was back in 2017. Working In Neighborhood divisions and inspectors, cannot just ride around in the neighborhoods and look for violations. Someone must make the effort or have the courage to pick the phone up and say this is getting to be a little uncomfortable. In 2017, the applicant Fuselier did go down and obtain a space verification for a family childcare home, which is required to obtain the certificate of occupancy. When the investigation took place, Ms. Fuselier who is insistent on trying to say that people are trying to get her business closed and causing problems for her and so forth. But the fact of the matter is, the facts were there, you obtain the occupancy, and you gave representations that you were going to run a family childcare home pursuant to the guidelines and the scope of the parameter of that home. Yes, the violations were noted as follows the family childcare home was inconsistent with the permit approval that was granted. It was not being used as an accessory use to an allowed household use as required. Ms. Fuselier or the property owner has never occupied the dwelling as an accessory use. It has always been used as a principal usage. They come in the morning and if they need longer in the evening. Providing supervision of more than seven children. She would like to say that our last speaker, which is a woeful misrepresentation, it states twelve. Or she was stating that DHS authorized twelve. But the applicant advertised on a consistent basis that there was private pay as well. It was not just DHS children, there's also private pay, and just several other advertisements there. Employing persons not residing on the premises, she has also had several employees that were three or four employees that were there and was not in pursuit of the original zoning code, the signage was off the chain, several forms of signage, banners, you know, and so forth.

Mr. Bond stated that she was getting close to over the time limit and asked her to wrap it up.

Ms. Pearson stated that the applicant was very much aware of what this home was supposed to be used for. The certificate of occupancy states that this is a facility as a dwelling unit, no more than seven kids are supposed to be there. She presented that to the inspector. And she also just would like to make some points that she thinks the applicant willfully misrepresented information when she went down and applied at the city, the building permit. If you look at page three, you know, she signs this as a resident, she indicates this is my bedroom. This is what she was going to use this for. So, that is disingenuous, to try to say, you know, well, the state said, 12, but you are reading the documents, and they are saying, this is what you are getting here. She thinks that the purpose of that application that has been filed was just to subvert those findings, not to stay in compliance or get in compliance with fines. Since you are up against time here. She does want to make a point. It is interesting that the property owner is not here, she did not believe is present. The actual applicant that file which was Bonita Thompson. Well, the point is, Ms. Fuselier, took over the property or not take over but started using the property pursuant to Miss Thompson not being able to use it because their license was revoked due to a terrible accident. That information is also in your packet loss would have ensued. And the State of Oklahoma revoked her license in terms of being able to run a daycare. Now, she made that point because it kind of shows how this other applicant became so dominant with the property and just basically kind of took over and it was very economic driven. She was going to ask you to let me take another three minutes here and we my injurious statement if she can remember.

Mr. Bond stated that he was sorry, but we have a full house people here. We must get through the agenda today. Okay. But we were limited when we started.

Ms. Pearson stated that one of the main points of injury, the constant cars from strangers, people are coming and going. The noise is exhausting. It is depressing and starts at around 6:00 a.m.; bad motors and mufflers inappropriate music levels. We have serious noise issue with kids playing in the back. There is a very fancy playground in the back. There is no aesthetic value to the property. It is unattractive appearance, the beautification efforts that we want to endure. It is hard to do that, but a parking lot parked in front of your house all the time. We have inadequate and unsanitary trash containers; cigarette butts and trash were being flung in my yard on a regular basis. There is no quiet enjoyment. It is the constant presence of cars coming in and out. We have Frost Elementary is right on East 28th Street. Our property values being lowered.

Mr. Bond thanked her for her thought and asked for other interested parties.

Tyler Lyons, 2615 North Main, Tulsa, Oklahoma, and he also owns the property at 2746 North Boulder Ave., Tulsa, Oklahoma, stated that he has owned that property for nine years now. And he had never had an issue. No issue at all with the daycare, as in parking, loud noise and mufflers, anything like that is always respectful. She has a

system where people come and pick up their kids at various times. It is never an issue with everybody there at once like it is with a school or some other daycares that, you know, you must be there a certain time. She has always been nice and offering to help with anything he needed to offer to help with her. He had never had an issue with anything. And that is all thanks to parties that can really thank you for letting me speak.

Shirley Tumey, 2742 North Main Street, Tulsa, Oklahoma 74106, stated she was there on behalf of the senior citizens that live on Main Street. She does not live on that street, but she owns property on that street. We have citizens that cannot get out. Who knows for an ambulance needs to come and they will park if they cannot be blocked up. And whoever said they just not blocked up. They do not realize it is blocked up you cannot get through. Her patrons act like they own the place. They take their own time about moving. But it is not good for our neighborhood. I do not agree with the zoning. She does not agree with nothing if they say so. That is it.

Tara Tumey, 2712 North Boulder, Tulsa, Oklahoma, 74106, stated that she lived in the Highland Hills neighborhood for over 50 years. She has resided in this house for 33 years. She was hoping this home would be a quietness in the neighborhood. There is a lot of traffic. We have enough traffic from CAP school in those patrons. Her patrons are grouped from a mom come around; she must sit at corner to wait to come down to street. She must blow a horn to ask them to move. They say rude things . EMSA comes on the regular basis in the fire department to come and help them. It is serious. It is 90% of our neighborhood is senior citizens because they live to here for a long time like me. They came in here with dirty hands, not clean to ask for this grievance. They have told everyone that we are trying to get them closed. We are trying to get them to go by the rules that they submitted to you. Seven kids that is it. They decided to do what they want to do. And they asked him, they come down today like their hands is clean. Do not bring it this here to our neighborhood. We want to live long and enjoy. Thank you.

Lisa Fuselier, 1425 North Xenophon Ave., Tulsa, Oklahoma, 74106, stated the owner of the of the daycare. As of December 2022, she will own this property. She has been in home daycare, about the last 19 years. She has been at this locations for 11 years. She has been licensed as a large childcare home for 11 years. She has put up with traffic. The traffic was unbearable. There is traffic everywhere. The lady just spoke you cannot get past her street because there are cars parked on both sides of the street where you can get down to the south of my house. A lot of the time she comes, and she will stop in the middle of the street and talk to the lady, Ms. Crystal. If they parked on the side of the street, she asked them to move because of the name calling. At no time, had not one of my parents disrespected anyone. My parents would ask somebody be in the street to move. They have been name called. The name calling unbearable. Ms. Fusilier has pulled up to her house on a Sunday morning and my neighbors in my yard telling me that after she out of church, she is telling me I need to wash my trash cans because my trash cans are nasty. The police have had to come, and they requested that she put a protective order because she had showed them everything and they said she did not have to take the red light down. She can have a red, blue, yellow, orange light. At no time has she respected this woman in the traffic. The traffic is unbearable. There has

not been one time that EMSA or anyone had not been able to come down the street because of her parents.

Ms. Radney stated that she needed to ask her a couple of questions. She thought that the portion of this that is in front of us is not so much related to how we how you and your employees are engaging with the neighbors. It is more about how the property. All we can decide up or down is whether the property can legally be used in the manner that is currently apparently is currently being used. Part of the reason why we were here to weigh in on that is to anticipate this these kinds of changes in a neighborhood because when you do have a commercial use in the neighborhood, and particularly have people who are coming and going from a property who don't live in that neighborhood, you can get tensions and I understand from both sides. Here is my question to you. My understanding of the licensing standard for family home is that the expectation is that it that the director lives that property. Do you live at this property? Ms. Fusilier stated that she did not, and the license changed back in 2004 that you have a large childcare home and you do not have the live in it.

Ms. Radney stated that she understands that, but the reason she was stopping you right there though. When she looked through the large packet, and for what she can see is that, that you did receive an approval as a family childcare home that is under eight children. That standard, you do have to have a resident owner. She believed if there are also requirements about who can be the employee that those employees also must either be residents or relatives of that resident owner. Your employees are your family. But no one lives at this house, and the number of children that are served there is more than seven. What we must what we have to decide, and the only thing we must decide, is whether this house, whether there is a suitable reason to find something unique about this property that would allow this a business to be operated in this in this site that would allow could accommodate more than seven children at a time. That is the only thing that we were deciding that did you have anything that you could add to the conversation about why your property is unique that would allow us to say yes, your property and not a property, say a couple of streets over just like yours? What is unique about your lot and this property that we should change the law, as Mr. Brown has described, to allow you to use it for business use in a residential neighborhood?

Ms. Fusilier stated that she thought being at this residence is serving the community. She thought it brings a lot to the community. It is a lot of parents out there that do not have a place to take their kids. You have families that has four, you have a family and might have five might have family has seven. She has two families that have seven and eight kids in there. If she were to serve as both of those as one of those families that, is I can only serve as one family right now is it is one, it is a lot of families after the needs daycare.

Ms. Radney asked a different question. How many children are clients that are cared for in this house? How many children are cared for at this at this house twice. Right now. Ms. Fusilier stated that she has twelve children. It is what is a transition which you can call it a daycare. Daycare has a transition plan. If you do not have a twelve kids in

your center, you are placed at one time that is all it is. You can have a transition plan. She can have four kids coming in and take four kids out. We have school agers that just come in the morning.

Ms. Radney asked what hours she was open. Ms. Fusilier stated that they were open from 5:30 a.m. to 8:00 p.m. if needed.

Angel Williams, 3336 North Atlanta Avenue, Tulsa, Oklahoma, 74110, stated that her boyfriend lives at 2804 North Boulder, Tulsa, Oklahoma, and she is there often. She never have a problem coming up the street. We do not hear anything coming from the daycare. Up the street, there is a lot of chaos, but it is never at that corner or down by the daycare. She does not know where the noise their hearings is coming from. We do not hear them. He does not have kids and we are outside a lot. He works on his cars. Never any problems. No one's ever approached her. She is never approached anyone. None of the parents are never out doing anything crazy. But she knows as she is driving down the street, she does see Ms. Crystal sitting on the street going off on any and everybody who comes up and down the street. She used to have this cart and loud motor noises. It is she had one that she would park in front of Ms. Lisa's house during business hours purposely for no reason. She did not say anything. She told the parents just pull it on the block. That was it. She does not know where all the other stuff is comes from. But now that is not coming from the daycare.

Donesha Johnson, 3111 North Yorktown Avenue, Tulsa, Oklahoma, 74110, stated that her kids go to Ms. Lisa's daycare. She can say anytime she comes, it is normally covered there. She does have two kids that go to the daycare. They are not there all day. She lets me go to work and after work, Ms. Johnson picks her kids up. It is not over twelve kids when I go pick them up is barely twelve kids when she gets there, and she can say when she pulls up, she does not see traffic, she does not hear loud music going on and she does not see a lot of people there. It is the workers that work there and that is all. So that is really all I have to say. She would say the property is beautiful. It is nice looking.

Diane McClellan, 1366 East 54th Street North, Tulsa, Oklahoma, 74126, stated that Lisa has been in daycare for 40 years. Her kids went to her and her grandkids. She has a son that is thirty-seven that went to her have enough of his thirty-three. It would be a disadvantage, to not allow her to serve the community in the capacity that she is serving now. What she has to offer is something that is a calling, and it is love. She loves her parents. She loves the children. She goes above and beyond. The hardship would be up on the families. It really hurts her to sit here and hear people just try to care about her program. Because it is a necessity in the community that she is serving. She would ask the Board to take a good look at her program. She has gone above and beyond. She may stay until 11:00 p.m. if someone needed her to.

Angie Prince Edwards, 3245 South Joplin Avenue, Tulsa, Oklahoma, 74135, stated that she works for Tulsa Educare, and she has been a childcare partnership specialist for Ms. Lisa in the house. Educator wants to help the low-income poverty family.

Mr. Bond stated that he wanted everyone to understand what hardship is. We have a zoning definition of what a hardship constitutes. This Board doesn't decide facts. We do not decide who is right or who is wrong. We do not make policy here. We do not make law here. And that is important because no one here voted for any one of us. That means you cannot vote us out. We are pointing here to be a quasi-judicial body. What we decide is, when there are exceptions, or variances to clearly establish zoning law, we just cannot say we like here, we do not like here, we are going to make this exemption for you, we must base that on something which is in the zoning code. That is very specifically defined. When we say hardship here, there is a standard for it. And it is not whether someone is good, or someone is bad, or what you are doing is good or not for the community. He understands what you are saying, he is a parent of three and he is not going to sit here and tell you that this town has too few childcare programs, because we do. But he just wants you understand, we are not here about right or wrong in the way that think a lot of people are thinking about it, we are here about whether there is a hardship here. As in there is something unique with this lot, because what the relief they are asking us for is not whether she operate or not. But it is if it is over 12 children, then can she go from what it is 6000 something square feet is what a lot is. The zoning code says that it must be at a minimum of 12,000 square feet. Otherwise, if you are going to go from twelve, where you are supposed to be running for twelve, or more kids down to six thousand square feet, then you need a Special Exception, you need the Variance that we are talking about here. That is based on whether this is unique. So, what is unique about this property, that someone something else happened, that the applicant did not cause that someone else did to this property, whether this property has that would lend itself for us to reduce the size by half. And that is all we are here to decide today.

Angie Price Edwards stated that her comment is more of a comment. Until January of this year, she went out every week. There is a lot of traffic, it is not all her house. That is a busy neighborhood, it is a school sit in the back of there is a park in the back of there, that area is exceedingly high in crime as well. So, you are going to have come across all kinds of stuff, leaves up pieces of positive for the families. So, you can take that and decide.

Ms. Radney stated that she was going to comment on what Ms. Edwards was saying, this just to dovetail off what the Chairman said. So, to the extent that there is a mismatch in between with city and the state regards as being viable for a neighborhood, that ability to take twelve children, which is a policy decision that could be taken, you know, to that body in this city that regulates that, and that would be the city council. Because that was what were they also can weigh in on these questions. That is the only thing that she wanted to add is that that we are bound to, to make decisions according to the policies that have been handed to us. But there are policymaking bodies in the city who could address this licensing mismatch better than we can.

Rebuttal:

Cindy Decker stated that she had been pondering on what the hardship is on the law requirements. It is that there are standard lot sizes in that neighborhood. She will have to move outside of that neighborhood. And as we have been talking about family childcare homes, the beauty of them is that they have been operating in neighborhoods with people who have lived there for generations that are serving the people right around them. And if it moves outside of that neighborhood, then it might be more difficult for these families to go to the to the new location. We also feel there is just not a lot of options for relief here. And if you have other thoughts on what the hardship is, we welcome back. We estimate that there are about 150 large family childcare homes operating in Tulsa based on the data from the state. Lisa began operating at this location in 2011. Ignorance is not a good justification for why these large family childcare homes are operating with 12 Despite the city requirements, but it is still there. And Ms. Decker wanted to say with that live state license it can be private pay or subsidy that can be any, either of those options. She ended with if we are allowed this special exception to be permitted as a daycare that fixes all the problems except for the lot requirement. We just want to put forth that is what we would like to have happen here.

Comments and Questions:

Mr. Bond stated that he wanted to say a couple quick things. The vice chair is a key point about how many kids are there, if it is believed the threshold is twelve. And if they are under twelve kids there, if this case came back. and he was not sure if it really comes back to us for appeal, he will look at that. If there are more than seven there than then you would not need to be because it would be used by right. Having said that he did not have an issue with this being here, with the Special Exception for a daycare. He thought it is something that is needed. He understands that it is troublesome for some neighbors. But he certainly thinks that the benefits are we are a court of quasi-judicial body of partial equity here. He did think that benefits far outweigh any negatives have occurred. He did not have an issue with that. It is especially it is the Variances that he had to problem.