

**BOA-22933**

21.1



**BOARD OF ADJUSTMENT  
CASE REPORT**

**STR:** 9310

Case Number: **BOA-22933**

**CZM:** 38

**CD:** 5

**HEARING DATE:** 06/09/2020 1:00 PM

**APPLICANT:** Joseph Puckett

**ACTION REQUESTED:** Verification of the 1,000' spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary or in the alternative a Variance of 1,000' spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D)

**LOCATION:** 5805 E 15 ST S

**ZONED:** IM

**PRESENT USE:** Vacant

**TRACT SIZE:** 44357.33 SQ FT

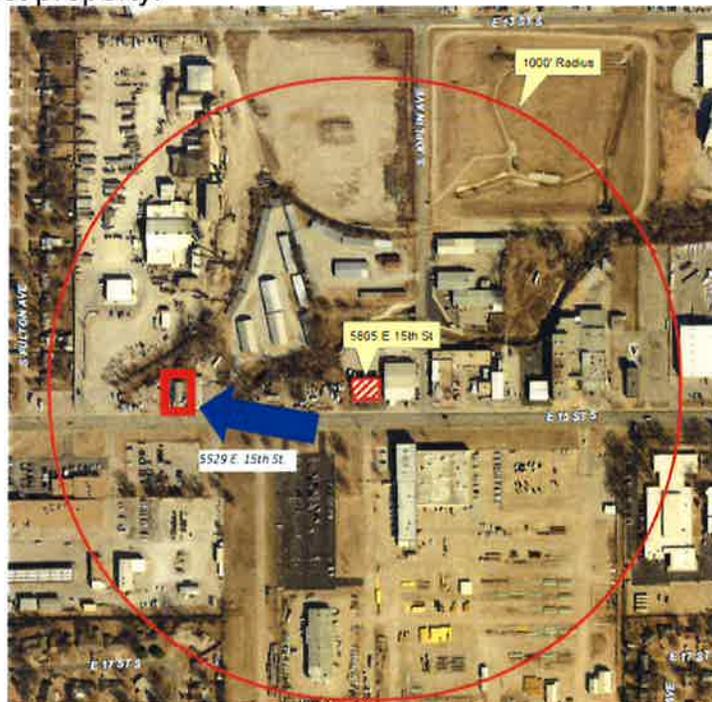
**LEGAL DESCRIPTION:** PRT SW NE BEG 527.60E & 40N SWC NE TH W100 NW315.97 E195.72 S108.98 SE41.17 S150 POB SEC 10 19 13 1.02ACS,

**RELEVANT PREVIOUS ACTIONS:**

**Subject property:** None.

**Surrounding properties:**

**BOA-22923:** This request is currently pending as of the writing of the staff report, though it will appear on the agenda prior to the subject case being heard. The applicant in this case is requesting a **Verification** of the 1,000' spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary. Property located 5529 E. 15<sup>th</sup> Street. This property is approximately 570' away from the subject property.



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**BOA-22784;** On 11.12.2019 the Board **denied** a variance of the 1,000' spacing requirement for medical marijuana dispensary from another medical marijuana dispensary. Property located 814 S. Sheridan Road.

**BOA-22725;** On 8/27/2019 the Board **denied** a variance of the 1,000' spacing requirement for medical marijuana dispensary from another medical marijuana dispensary. Property located 6545 East 11<sup>th</sup> Street S.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:** The Tulsa Comprehensive Plan identifies the subject property as part of a area of "Employment " and an "Area of Growth".

The purpose of **Areas of Growth** is to direct the allocation of resources and channel growth to where it will be beneficial and can best improve access to jobs, housing, and services with fewer and shorter auto trips. Areas of Growth are parts of the city where general agreement exists that development or redevelopment is beneficial. As steps are taken to plan for, and, in some cases, develop or redevelop these areas, ensuring that existing residents will not be displaced is a high priority. A major goal is to increase economic activity in the area to benefit existing residents and businesses, and where necessary, provide the stimulus to redevelop.

**Employment** areas contain office, warehousing, light manufacturing, and high tech uses such as clean manufacturing or information technology. Sometimes big-box retail or warehouse retail clubs are found in these areas. These areas are distinguished from mixed-use centers in that they have few residences and typically have more extensive commercial activity. Employment areas require access to major arterials or interstates. Those areas, with manufacturing and warehousing uses must be able to accommodate extensive truck traffic, and rail in some instances. Due to the special transportation requirements of these districts, attention to design, screening and open space buffering is necessary when employment districts are near other districts that include moderate residential use.

**ANALYSIS OF SURROUNDING AREA:** The subject tract is located West of the NW/c of S. Joplin Ave. and E. 15<sup>th</sup> St. S.

**STAFF COMMENTS:** The applicant is requesting a **Verification** of the 1,000' spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary or in the alternative a **Variance** of 1,000 spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D)

**40.225-D A medical marijuana dispensary may not be located within 1,000 feet of another medical marijuana dispensary.**

**40.225-I The separation distance required under Section 40.225-D must be measured in a straight line between the nearest perimeter walls of the buildings (or portion of the building, in the case of a multiple-tenant building) occupied by the dispensaries. The separation required under Section 40.225-D shall not be applied to limit the location of a medical marijuana dispensary for which a license was issued by the Oklahoma State Department of Health prior to December 1, 2018 for the particular location.**

The applicant did not provide the nearest operating dispensary but to staff's knowledge it is Red Eye 420, located 1525 S. Sheridan, approximately 2,344' away.

**STATEMENT OF HARDSHIP:** Applicant indicated on the application that he would provide a statement of hardship regarding the variance request at a later date.

**SAMPLE MOTION:**

***Verification:***

I move that based upon the facts in this matter as they presently exist, we **(accept/reject)** the applicant's verification of spacing to permit a medical marijuana dispensary subject to the action of the Board being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary.

***Variance:***

Move to \_\_\_\_\_ **(approve/deny)** a **Variance** of 1,000' spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D)

- Finding the hardship(s) to be \_\_\_\_\_.
- Per the Conceptual Plan(s) shown on page(s) \_\_\_\_\_ of the agenda packet.
- Subject to the following conditions \_\_\_\_\_.

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."*





*Facing East on 15<sup>th</sup> Street*



*Facing West on 15<sup>th</sup> Street*



***Subject Property***

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PRT LTS 7 & 8 BEG 54.66W & 5S NWC LT 7 TH E280.72 S126.81 SW78.21 W78.21 S200 TO PT ON SL LT 7 CRVLF 26.65 SW125 TO SWC LT 7 CRVRT 41.15 NLY367.75 POB BLK 1, WOODY-CREST SUB, City of Tulsa, Tulsa County, State of Oklahoma

**22784—Anthony Smith**

**Action Requested:**

Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 814 South Sheridan Road East (CD 5)

**Presentation:**

**Brad Fuller**, Attorney at Law, 20 East 5<sup>th</sup> Street, Suite 200, Tulsa, OK; stated he represents the applicant, Mr. Anthony Smith. Mr. Fuller stated he is the owner of the subject property and has personal knowledge of the property. Mr. Fuller presented a petition of the neighbors that do not object to the request and presented photographs. Mr. Fuller stated the subject property is located at 814 South Sheridan, and the Route 66 Dispensary is 735 feet away and is located on 11<sup>th</sup> Street. To access the property by bird's eye you would have to go through the apartment building, their privacy fence, through the trees, across the creek and across another fence that has barbed wire on the top. To drive to the property, you must drive down Sheridan and that route makes the distance 1,538 feet and the second driving route makes it 2,856 feet. This is very similar to a Variance the Board granted at 6702 South Lewis, BOA-22736. Mr. Fuller thinks this case is better for a hardship and the uniqueness to the topography. Mr. Fuller stated the Board granted another case, BOA-22741, but he thinks there were licensing issues in that case. There was 600 feet and 400 feet distance between dispensaries in the two cases. Mr. Fuller stated this project will improve the neighborhood; the area is under distress. Mr. Fuller believes there is a topographical hardship. Mr. Fuller stated that City Councilor Cass Fahler called in support of this project. This is also an area of growth designation and this will increase economic development. Based on prior precedents and based on the hardship he asks the Board to grant the Variance request.

**Interested Parties:**

**Anthony Smith**, 7121 East Latimer Place, Tulsa, OK; stated the proposed project will definitely upgrade the area, because there is a heavy homeless presence in the area. He would like to give back to the community and improve the area. Mr. Smith stated that if he is given the chance to get into the building, he can upgrade it and there will not be homeless sleeping behind the building.

**Comments and Questions:**

Mr. Van De Wiele stated that the couple of cases that were cited in downtown, one was a licensing confusion and another Variance was granted downtown but it was very early in the process and the City nor this Board had fully worked through the nuances of the

regulations. The business on Lewis is probably closer to this case, but it was over 900 feet in distance, and this is only a little over 700 feet.

Ms. Ross stated that she is not necessarily opposed to this request, but she does not want to set a precedent of whether the walking or driving distance makes it a 1,000 feet, because that reasoning will be heard in future cases.

**Board Action:**

On **MOTION** of **ROSS**, the Board voted 5-0-0 (Bond Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **DENY** the request for a **Variance** of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) due to the lack of a hardship; for the following property:

**W165 E180 OF TR 59 LESS N200 THEREOF, GLENHAVEN, City of Tulsa, Tulsa County, State of Oklahoma**

**22785—Cindy Davis**

**Action Requested:**

Verification of the 300-foot spacing requirement for a family home daycare from another family home daycare (Section 45.070). **LOCATION:** 7415 East 83<sup>rd</sup> Street South (CD 8)

**Presentation:**

**Cindy Davis**, 7415 East 83<sup>rd</sup> Street, Tulsa, OK; no formal presentation was made but the applicant was available for any questions from the Board members.

Mr. Van De Wiele asked Ms. Davis if she was a licensed daycare facility through the state. Ms. Davis answered affirmatively.

Mr. Van De Wiele asked Ms. Davis if she was aware of any other day care facility within 300 feet her subject site. Ms. Davis stated the closest day care facility is 4,000 feet away.

Mr. Van De Wiele asked Ms. Davis if she was not taking care of more than seven children. Ms. Davis answered affirmatively.

Mr. Van De Wiele asked Ms. Davis if she was the only employee. Ms. Davis stated that her retired mother volunteers to help her. Mr. Van De Wiele asked Ms. Davis if her mother lived with her. Ms. Davis answered no.

Mr. Van De Wiele asked Ms. Davis if she had any signs advertising her day care. Ms. Davis answered no.

being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary; for the following property:

**S30 LT 1 & ALL LT 2 & N20 LT 3 & E5 VAC ALLEY ADJ ON W BLK 1, LIBERTY ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22725—Mary Cooper**

**Action Requested:**

Variance of the 1,000 spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 6545 East 11<sup>th</sup> Street South (CD 3)

**Presentation:**

**Ronald Durbin**, Attorney at Law, 1602 South Main, Tulsa, OK; stated he currently represents hundreds of medical marijuana businesses across the State of Oklahoma; he has been involved in this process since it started. Mr. Durbin stated that he worked with the City of Tulsa on the Zoning Ordinances related to these issues; he worked with INCOG, Susan Miller, Janine VanValkenburg, City of Tulsa Attorney and one of the issues that was brought out at the start of this process was that what would be done when a business received their license first but did not apply for a Certificate of Occupancy, and a business gets their license secondary but applies for a Certificate of Occupancy first. That is exactly the situation in this case today. Mr. Durbin stated that his client was licensed by the State of Oklahoma in January 2019, they obtained their Bureau of Narcotics license on January 29, 2019 which gives them the right to possess medical marijuana. In that interim and after that period Bloomers dispensary obtained their license in April 2019. Mr. Durbin stated his applicant is asking for a Variance for the first licensed business, that truly when they applied for their OMMA license and their OBN license there was no other dispensary within a 1,000 feet of the subject location. This is a situation where neither party acted in bad faith, there was no issue in regard to Bloomers, neither party was trying to usurp the other because his client did not know that Bloomers was going to apply for anything. Pharmacies are allowed to be located across the street from one another. This will have a disparate impact on what his clients are attempting to do and what they have done. They have spent a lot of money on obtaining licenses and have done everything they have been required to do to be a license business under the laws of the State of Oklahoma. What the applicants are trying to avoid is the necessity of going to Court on this issue because it can have a detrimental impact to either party; he does not want to get to that point. He asked and hoped for the City of Tulsa to account for who came first in their Ordinances, but they did not do that, and there is nothing in the Ordinance that he is aware of that specifically says whoever applied for the COO first. In this particular instance, the only fair resolution to this matter is to allow both parties to continue. His client's family has owned the subject property for more than 40 years, so they have been there a long time and they want to continue to operate a business at that location, and this is the most conducive business for them to engage in.

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Ms. Ross asked Mr. Durbin why his client chose to wait so long to apply for a Certificate of Occupancy. Mr. Durbin stated that his clients had a previous existing business at the subject location and they already had a Certificate of Occupancy related to that business, so they did not think there was going to be an issue. Mr. Durbin stated that the City Ordinance was put on and taken off the agenda many times, and his client missed the last time it was placed on the agenda and ultimately passed. There were quite a few people who were oblivious, and the word did not get out to some people. His clients were operating under an existing COO and they did not realize that there would be a requirement to receive a new COO. After his clients received their licenses, they started working to get everything ready, then applied for their COO and that is when the issue came up with Bloomers Dispensary. He thinks this is a reasonable request from his clients.

Mr. Van De Wiele stated that from the prior hearing the Board understood that the applicant had applied for the Certificate of Occupancy on May 21, 2019. Mr. Durbin stated that the date is May 20, 2019. Mr. Van De Wiele asked Mr. Durbin if that had been issued yet. Mr. Durbin stated that it has not. Mr. Van De Wiele asked Mr. Durbin if the spacing was the only issue hanging his clients up. Mr. Durbin answered affirmatively. Mr. Van De Wiele asked Mr. Durbin what his understanding is of to the Certificate of Occupancy date for Bloomers Dispensary. Mr. Durbin stated that Bloomers was licensed by the State of Oklahoma in April 2019 and they received their Oklahoma Bureau of Narcotics and Dangerous Drugs license on May 2, 2019. Unfortunately, OMMA website does not allow anyone to search for existing businesses which is another problem and why this is going to come up again. OMMA had the search website up and then they took it down, so there is no way of knowing about spacing. It is a flaw in the system, and it is something that needs to be resolved.

Mr. Bond asked Mr. Durbin to explain his hardship in this case. Mr. Durbin stated that his clients would not be allowed to engage in the commercial business for which they have obtained a license, and they were the first to obtain a license. They will be commercially impacted in not being able to engage in a lawful business for which they have been licensed by the State of Oklahoma.

Mr. Van De Wiele asked Mr. Durbin if that was a financial hardship. Mr. Durbin stated that it is a financial hardship, but it is a hardship in relationship to the building. That building is not conducive to a whole lot of other enterprises currently; it is an old building. To allow his clients to do this it will put the building back into viable economic use, so it is an important thing for the City of Tulsa. Mr. Van De Wiele stated the Board has to articulate a hardship that is neither financial nor self-imposed. Mr. Durbin stated that he does not think it is self-imposed. When his clients applied for their OMMA and OBNDL licenses Bloomers did not exist; they had not applied and obtained any licenses. This burden is not self-imposed. If the Ordinance would say to obtain the COO first and then obtain licenses the City would have given clear guidance to business owners; his clients did it in reverse and he does not think that is self-imposed.

Most people make sure they are clear through OMMA first and then ask for their Certificate of Occupancy.

Ms. Ross stated that she understands what Mr. Durbin is saying. The Board has had this discussion for hours, what the Board ultimately discussed was that the way for the Board to navigate this is the first to receive their license but to also apply for the COO which puts the person in the process of receiving their spacing verification and that would determine who established their business first. Otherwise, people could just sit on their license and prevent others from moving into the area and yet the first party never opens a business.

Mr. Van De Wiele stated that the Board is beyond who is established first. This is not a verification of spacing, this is a Variance request. In order for the Board to support this the Board needs a hardship. Certainly Mr. Durbin's client did not impose the Ordinances on themselves, but it is their order of behavior. The Board cannot say because this is going to cost somebody a lot of money the Board grants the Variance, the Board is legally prohibited.

Mr. Durbin stated that his client has owned the building and have owned it for over 40 years. They do not have the ability to locate elsewhere. They have the facility for which they can operate and conduct this business, it is not a self-imposed burden. It is not something they created because of waiting. The same situation could have arisen had they applied for the COO; there is nothing in the Ordinance for the City of Tulsa that says it is whoever applies for the COO first is the first legitimate established business.

Mr. Van De Wiele and Mr. Bond both agreed with that statement. Mr. Bond stated in his mind he has settled on the fact that it didn't matter as long as the business were legal and that includes the Certificate of Occupancy. Mr. Bond stated that he needs a hardship that is unique to this, such as the geography.

Mr. Durbin stated that he will allow his client to speak to the hardship because he believes they can speak to that on a more personal level than he can. Mr. Van De Wiele stated that he wanted to make sure that it is clear, that it is not how this is going to damage the applicant, it is what is unique about the property, this application that presents a hardship such that the Board should grant relief from the 1,000-foot radius.

**Mary Cooper**, 6545 East 11<sup>th</sup> Street, Tulsa, OK; stated she is the owner of Mother Road Extracts. Included with her application she answered the hardship questions required for a Variance. Ms. Cooper stated the property is located within a 1,000 feet of another dispensary; a unique hardship is created to said property because of the ambiguous undefined dynamic laws, regulations, and ordinances enacted by the State and local governments causing the physical surroundings being the nearest licensed medical marijuana dispensary to be a hardship and a practical difficulty. She believes that City Council enacted the 1,000-foot ordinance due to security concerns; the subject property is secured with solid iron bars, steel doors, and live recording surveillance as well as physical 24-hour security presence. Ms. Cooper stated that a

1,000-foot spacing verification is the reason for the Variance request, most generally, CH zoned businesses are not required to perform spacing verifications in order to obtain a Certificate of Occupancy. Ms. Cooper stated that no adjacent property will be impaired and a commercial business on the subject property will encourage new retail business in the corridor. She believes that the granting of this Variance will result and benefit the public good of this area and seeks to repair the purpose, spirit and intent of the Comprehensive Plan. She also obtained all of her adjacent neighbors, both commercial and residential, letters of support of the medical marijuana dispensary opening. She believes this presents a valid hardship for this request.

Ms. Radney asked Ms. Cooper if she was aware of Bloomers application for their verification of spacing. Ms. Cooper stated that she was aware of Bloomers spacing verification application when they personally came to visit her and told her, until then she was not aware. And as of that time she had already applied for her Certificate of Occupancy. Ms. Cooper stated that her timeline was a flurry of activity between November and January; she stopped because she thought she had received everything necessary in order to open a business. The only thing she thought she needed differently at the time was the Fire Marshal's inspection.

Ms. Cooper stated that she obtained the City of Tulsa's Guide To Doing Business in Tulsa, the Commercial Building Permit Process, the Certificate of Occupancy, the application process; all of these she started researching in March. Not once did she find that told her she needed to stop and file for a Certificate of Occupancy to receive her spacing verification. Even after speaking with the permitting office she really does believe that she has tried to follow every letter of the law.

Mr. Van De Wiele asked Ms. Cooper what caused her in May to get back on the process and file for the Certificate of Occupancy. Ms. Cooper stated it was because her opening date was June 1<sup>st</sup>, and she thought she needed an inspection from the Fire Marshal.

Mr. Bond asked Ms. Cooper how far she is from the other dispensary. Ms. Cooper stated she is 450 feet away from the nearest dispensary, and 1,050 feet away from the dispensary that is not within the 1,000-foot radius.

**Leta Carmona**, Bloomers Dispensary, 6733 East 11<sup>th</sup> Street, Tulsa, OK; stated she is opposing the requested Variance due to the fact that the other dispensary is a little over 400 feet away. Ms. Carmona stated that she is aware that the other dispensary has a processing and a grower's license, so to state that it would be a hardship, even financially at best, they have the opportunity for two other businesses within the subject building to be a viable business. In researching, she believes the actual Certificate of Occupancy that the other dispensary filed in May is actually done on a residential property. The subject building is actually zoned residential. The area may be a commercial area but that particular address is zoned residential; Ms. Carmona stated she has the paperwork from the County Assessor's Office showing that zoning and she did call to verify that. Mr. Van De Wiele stated that the Board's zoning map shows

differently. Ms. Carmona stated that there was Homestead Exemption filed on both addresses; the subject property faces south and the home that is attached to it faces the east. Those were both, in 2018, had residential taxes paid on both.

Mr. Van De Wiele asked Ms. Carmona how that impacts things. Ms. Carmona stated she does not know the rules regarding a commercial Certificate of Occupancy being granted on a residential property.

Ms. Carmona stated the City Ordinance states that there needs to be a 1,000 feet between dispensaries. Obviously, she was able to find her way through the system and she obtained a lot of her licenses in April; started the process with the City in May. Ms. Carmona stated she has her health department, Oklahoma Bureau of Narcotics, two agricultural licenses, everything that is needed to go along with that so she was able to muddle through the process without any guidance, so does not know why it was hard for other party to do so.

Ms. Ross asked Mr. Wilkerson what the residential rules are in relation to what Ms. Carmona is speaking about. Mr. Wilkerson stated that he is not sure what database the County uses but he knows the staff does see things in the Assessor's office that are not consistent with the Zoning Code. Mr. Van De Wiele asked Mr. Wilkerson if that was possible because this was a former residence at some point. Mr. Wilkerson stated that it possible; the land use opportunities that are available are based on the Zoning Code not the Assessor's designation.

Mr. Van De Wiele asked Ms. Carmona if she had her shop open for business and selling to the public. Ms. Carmona answered affirmatively.

Mr. Van De Wiele asked Ms. Carmona when she received her Certificate of Occupancy and when did she open for business. Ms. Carmona stated that she was before the Board on the 23<sup>rd</sup>, she obtained all of her Code Enforcement on July 31<sup>st</sup>, and her first sale was on August 7<sup>th</sup> or August 10<sup>th</sup>, she is not sure.

**Rebuttal:**

**Ronald Durbin** came forward and stated that the opposition has just admitted that they applied for their OMMA and OBNDD licenses before they came to the City and applied for their Certificate of Occupancy. That would be rewarding one party for doing it that way and penalizing another party who did it first that way. He thinks this would create a situation where it is disparate treatment. When looking at the 1,000-foot radius from other dispensaries and schools there is a situation created where there is no other property in the City of Tulsa, it is used up. There is no other opportunity for his client to find any other property. Mr. Durbin stated that his client filed for her growers and processing license on a CH zoned property; that is not permissible in the City of Tulsa and that is why he is not asking for a Variance on the property related to those issues. Processing has to occur in industrial, heavy or medium, under certain circumstances. He is only asking for the Variance related to the spacing distance. Again, both parties acted in the same manner. They both received licenses first. The process has to be

that the party gets their OMMA license first because there are so many other things that OMMA is looking at, and what they are going to determine and classify as a school and what is not a school; before a person can obtain a fully executed lease that is really the first step a person has to go through in this process. If there is not a way for a person to determine what is a City resource, to say there is another dispensary and this will not get through, it does not exist. It does not exist for Bloomers and it does not exist for his clients.

Mr. Van De Wiele asked Mr. Durbin if he was aware that OMMA is going to reverse that process at the end of this week. Mr. Durbin answered affirmatively. Mr. Durbin stated they also completely redefined the definition of what constitutes the entrance to a school, the entrance to any piece of property in which a school sits so they have broadened the definitions even farther with regards to that under 2612. Under 1030 they changed completed the ability of cities and counties to zone; there are a lot changes. That makes it very difficult for any business to relocate themselves right now. It would penalize his clients for trying to do what was right when there was no clear guidance from the City of Tulsa that a person needed to get the COO before obtaining licenses.

Mr. Van De Wiele stated that the Board is not here today to establish, using the word establish in the motions, the Board is not here to argue about who established first it is really just a question of whether the applicant should have a Variance. Mr. Durbin stated that he understands that.

Ms. Radney asked Mr. Durbin if he would like to restate the hardship one more time. Mr. Durbin stated that he thinks Ms. Cooper went through the list of all the hardships that she would incur as a result of this. Again, the hardship is there would be no other suitable properties, that he is able to locate and he does this every single day, in the City of Tulsa for dispensary location that would now comply with the school distance issue and the zoning issue related to who received Certificates of Occupancy first. This puts the building in good use. He knows economic impact is not necessarily a factor, but his clients have already done the work to remodel the building so they would lose all that time, energy and effort to engage in this business. Again, it would be penalizing his clients for trying to do what was right and not applying for a COO first.

Mr. Van De Wiele stated that he has heard the comment from some of the billboard companies that there are virtually no spaces left, and they are 1,200 feet apart, in highway frontage within the City in which a billboard can be placed, so the Board sees very few billboard spacings. He does not know if a map were produced showing no more spaces for billboards, he does not know if that would be justification for letting a billboard being placed 800 feet away. Likewise, if there is a bar every 300 feet and a bar wanted to open in between two other bars 150 feet away that in of itself gets a person to a hardship. Mr. Durbin stated that in this instance those entities are not needing to obtain State licenses for having the billboards. We are dealing with a situation where a person is going to construct a billboard, can readily access the information to find out if there is dispensary located in the 1,000 feet. In this particular

case, even is Ms. Cooper had gone to the City of Tulsa and asked to verify that there are not other dispensaries within a 1,000 feet of her location she would have been told no, there are not because Bloomers did not exist when she was doing her applications.

Ms. Ross stated that Ms. Cooper had from January to May to apply for her spacing verification and she didn't do it, she only did half the process. Mr. Durbin stated that if the City had told Ms. Cooper to apply for the COO and get the spacing verification done. Ms. Ross stated that Ms. Cooper is not asking for a Spacing Verification today she is asking for a Variance, and the Variance requirement is that Ms. Cooper has to have a hardship that is not financial or self-imposed. Mr. Durbin stated that this is not a self-imposed hardship. Ms. Cooper already had a pre-existing Certification of Occupancy to occupy the premises, she had applied for her OMMA licenses and did the work to get the facility up to the standards of what it should be, and then she applied for her new Certification of Occupancy for the dispensary.

Mr. Bond stated that for zoning purposes the Board cannot make a ruling which would abrogate a City Zoning Code. The Board can simply give exceptions or variances in a specific instance, case by case instance which is specific to the applicant. The Board considers things like the geography of the location, the structure of the building, things like that. To say hardship in dealing with this Variance that is what is asking about. Is there something that is unique to this situation other than the ambiguity of law. Mr. Bond stated that he does not have the power to vote any other way than what the Codes provides the Board.

Mr. Durbin stated that as it relates to the building, the building is not conducive to very many other uses; it is a very old building that is not conducive to other type of commercial heavy operations that can relocate there without essentially scrape the building and rebuild something new. There is not much else this building can be utilized for given its location, given the property layout, etc. That is why the owner has not done anything with it in 20 years, because it is not conducive for engaging in any other kind of business.

He would argue that the first licensed dispensary was his clients. They were licensed from the State of Oklahoma, and that is the only way a person can become a license dispensary is to be licensed by the State of Oklahoma, they were there first. If anything he thinks it was a mistake being granted to Bloomers, authorization that they were 1,000 feet from another dispensary, because the only way you can be licensed dispensary in the State of Oklahoma is to have obtained a dispensary license from the State of Oklahoma which his clients did first.

Mr. Van De Wiele stated he is not going to let the Board get into discussion on that because the time for appeal for that has passed. Whether or not the Board should have or should not have, and he would defend the Board's action, the time to appeal the Verification of Spacing Bloomers ten days after the Board's ruling in that matter.

Mr. Durbin stated that his clients do not want to shut out Bloomers, that is not what they are trying to do. It is not Bloomers fault either.

Ms. Radney stated the applicant had a legal license for a specific address that had a Certificate of Occupancy that the applicant was unaware would not apply even though it was appropriate by right to operate that type of business out of the building, but what the applicant was not aware of is that she did not have the right type of Certificate of Occupancy because of involving legal landscape in which the Ordinances coming from the City that would determine whether she could establish that business and conduct a transaction there were evolving at the time. What is unique about this particular applicant is that she held up a license prior to the nearest licensed established business. Mr. Durbin agreed that is absolutely unique.

Mr. Durbin stated that was something he begged the City to address when it adopted the Ordinances because he felt he would here in this situation at some point. Ms. Radney stated that they are unique in that they hold a license to operate out of a building that is less than a 1,000 feet from another licensed building, and its unique that they held a Certificate of Occupancy at the time they applied, and its unique that the business district the building is in is evolving into a unique business atmosphere in terms of the relative concentration of marijuana related businesses. Mr. Durbin agreed.

Mr. Durbin stated that it is unique in that there is no other way for each of them to know. There is nothing that Bloomers could have done because OMMA had removed the listing long before either of these parties had applied. There is this quagmire of having no way to determine if there was going to be an issue.

Ms. Radney stated that in so much that the applicant had possession of the property, had a Certificate of Occupancy though not for this particular use, and if they had obtained their license 38 days earlier they would not have to be here at all because it would not have been subject to the 1,000-foot spacing.

Mr. Van De Wiele asked Mr. Chapman if the OMMA listing could still be obtained, though it has been modified. Mr. Chapman stated that he was able to get the list, with addresses, and when he was dealing with the applicant, he was able to look at specific addresses for licenses that were listed. It is not true that it was not available at the time the applicant made an application. Mr. Durbin stated that the listing was off, it came back on, it is off again and the only way a person can fully verify an existing business is to use OBND; it is the only site that is consistent. Mr. Chapman stated at the prior Board hearings he was able to access and use the information; to his knowledge it was just last week that OMMA began removing addresses.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Ms. Radney stated that it is very difficult for applicants to be able to, in real time, know that they have complete and accurate information, or at least has been. Ms. Radney believes the hardship would be to deny the applicant the legal right to use the license that was properly secured, but that have not been able to move forward with the business because of the uncertainty.

Ms. Ross stated that she is on the fence. She has heard some things that were convincing, and she does think that it was very confusing to a lot of people, so much so, that the Board had to have a special work session to discuss it for two hours. She is still struggling with the hardship; she does not believe the building cannot be used for any other purpose.

Mr. Van De Wiele stated there may be 50 other place holder licenses sitting out there, who knows there may be two next door to each other that was received in December 2018, and they have literally done nothing with them. They come in two or three months from now and space and they are rejected because they are ten feet away. On that basis, would they all be qualified for a Variance?

Mr. Van De Wiele asked Ms. Radney if she could state a hardship for this case. Ms. Radney thinks the evolving landscape of Ordinances is a real issue. Ms. Ross stated the Ordinances have been the same all year long. Ms. Radney thinks that within this new industry it is a new and burgeoning industry, so it is very difficult for them to know where to go to receive accurate information in real time. Even the way and the manner in which it rolled out of the City was confusing; that was not a linear process. It sounds like these people were engaged with the permitting office about their existing Certificate of Occupancy; someone at the City should have at least suggested to them that if an Ordinance were coming down that it would obviate the validity of the old Certificate of Occupancy. The applicant had to have the address to get the license, so she always comes back to that as a starting point. There was a clear intentionality to establish a business on the day they received the license. The rest of this is somewhat subject to interpretation.

Mr. Van De Wiele asked staff, he knows the City has taken the position that any new medical marijuana business has to have a new Certificate of Occupancy; that is a true statement, right? Mr. Chapman stated it is a true statement, but it is not limited to medical marijuana use; when the use on a building is changed a person is required to get a new Certificate of Occupancy.

Mr. Bond stated he has sympathy for the applicants, and he is trying to think of something that is uniquely situated in this case. The problem is what will the Board do when someone appears saying that they too were confused about the law.

Ms. Radney stated the Board granted the Variance for the dispensary in the CBD and there were less grounds than this. Mr. Van De Wiele stated there are some parallels between the two, and those dispensaries were closer than this. Mr. Van De Wiele

asked if Route 66 impacts one way or another? This is a unique area of town, but he cannot say it is so unique that there should be dispensary every 500 feet.

Ms. Shelton stated she is leaning toward a no. She does not think there is anything unique about this case. She does not think the confusing process should even be a part of this discussion. She does not think there is anything unique about this property, and a line has to be drawn somewhere and this application falls on one side of the line.

Ms. Radney stated that she appreciates the fact that right here at this particular juncture on Route 66, the Board has approved a lot of interesting marijuana businesses. There is extraction, there is edibles, there are dispensaries, there is a grower in the area, there has been a lot of intensity of interest in this corridor. This is a blue-collar corridor.

Mr. Van De Wiele stated this is certainly a concentrated business area, but there are houses in the area. Ms. Radney stated that it is a concentrated commercial district, but this is a hard-commercial corner. There is a vacant lot on the corner of 10<sup>th</sup> Street and 67<sup>th</sup>, and the other houses along 10<sup>th</sup> Street are not in good repair and most of the others going to the west along 10<sup>th</sup> Street are also vacant lots. It is definitely a neighborhood in transition, and she advocates strongly for neighborhoods that need energy to bring them back. There is a considerable setback where the residential district takes off. This segment of 11<sup>th</sup> Street is not terribly different than the Pearl District, and she can respect all the objections, but she is for the Variance.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 3-2-0 (Bond, Ross, Shelton "aye"; Radney, Van De Wiele "nays"; no "abstentions"; none absent) to **DENY** the request for a **Variance** of the 1,000 spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) due to the lack of a hardship; for the following property:

**LTS 21 & 22 BLK 36, SHERIDAN HILLS, City of Tulsa, Tulsa County, State of Oklahoma**

\*\*\*\*\*

**OTHER BUSINESS**

None.

\*\*\*\*\*

**NEW BUSINESS**

None.

\*\*\*\*\*

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5805 E 15th St  
Tulsa, OK 74112  
36.14°N, 95.91°W

5805 E 15th St

21.20

# 5805 E 15th St

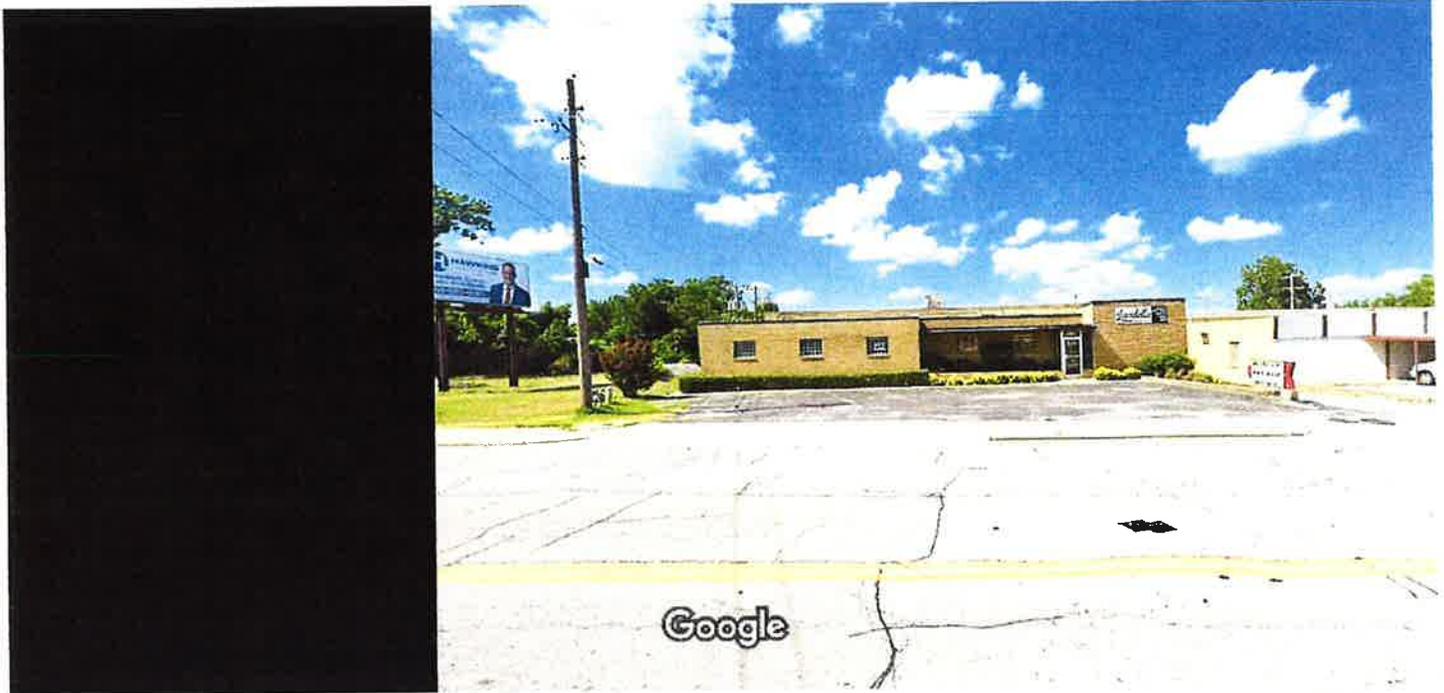
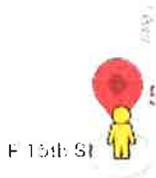


Image capture: Jul 2019 © 2020 Google

Tulsa, Oklahoma



Street View



21.21

**CHUCK LANGE**  
ZONING OFFICIAL  
PLANS EXAMINER

TEL (918)596-9688  
clange@cityoftulsa.org



## DEVELOPMENT SERVICES

175 EAST 2<sup>nd</sup> STREET, SUITE 450  
TULSA, OKLAHOMA 74103

### ZONING CLEARANCE PLAN REVIEW

LOD Number: 1

April 15, 2020

Joe Pucket  
1618 W 51 ST  
Tulsa, OK 74104

Phone: 918.237.9006

APPLICATION NO: **COO-057977-2020**

(PLEASE REFERENCE THIS NUMBER WHEN CONTACTING OUR OFFICE)

Location: **5805 E 15 ST**  
Description: **Medical Marijuana Dispensary**

#### INFORMATION ABOUT SUBMITTING REVISIONS

OUR REVIEW HAS IDENTIFIED THE FOLLOWING CODE OMISSIONS OR DEFICIENCIES IN THE PROJECT APPLICATION FORMS, DRAWINGS, AND/OR SPECIFICATIONS. THE DOCUMENTS SHALL BE REVISED TO COMPLY WITH THE REFERENCED CODE SECTIONS.

#### REVISIONS NEED TO INCLUDE THE FOLLOWING:

1. A COPY OF THIS DEFICIENCY LETTER
2. A WRITTEN RESPONSE AS TO HOW EACH REVIEW COMMENT HAS BEEN RESOLVED
3. THE COMPLETED REVISED/ADDITIONAL PLANS FORM
4. BOARD OF ADJUSTMENT APPROVAL DOCUMENTS, IF RELEVANT

REVISIONS SHALL BE SUBMITTED DIRECTLY TO THE CITY OF TULSA PERMIT CENTER LOCATED AT 175 EAST 2<sup>nd</sup> STREET, SUITE 450, TULSA, OKLAHOMA 74103, PHONE (918) 596-9601. THE CITY OF TULSA WILL ASSESS A RESUBMITTAL FEE. DO NOT SUBMIT REVISIONS TO THE PLANS EXAMINERS.

**SUBMITTALS FAXED / EMAILED TO PLANS EXAMINERS WILL NOT BE ACCEPTED.**

#### IMPORTANT INFORMATION

1. IF A DESIGN PROFESSIONAL IS INVOLVED, HIS/HER LETTERS, SKETCHES, DRAWINGS, ETC. SHALL BEAR HIS/HER OKLAHOMA SEAL WITH SIGNATURE AND DATE.
2. PURSUANT TO FEDERAL, STATE, AND LOCAL DECLARATIONS OF EMERGENCY ARISING FROM THE COVID-19 THREAT AND AS DIRECTED BY THE ADMINISTRATION, OUR OFFICE IS CLOSED TO THE PUBLIC UNTIL FURTHER NOTICE. PAPER SUBMITTALS (INCLUDING REVISIONS AND ADDENDUM) FOR ANY PROJECT IS NOT ACCEPTED AT THIS TIME. IF SUBMITTING REVISIONS FOR APPLICATIONS THAT PREVIOUSLY UTILIZED PAPER PLANS, EMAIL THE REVISED PLANS TO [COTDEVSVCS@CITYOFTULSA.ORG](mailto:COTDEVSVCS@CITYOFTULSA.ORG) OR SUBMIT ELECTRONIC PLAN REVISIONS ON THE PORTAL AT [HTTPS://TULSAOK.TYLERTECH.COM/ENERGOV4934/SELFSERVICE](https://tulsaok.tylertech.com/energogov4934/selfservice) . YOU WILL NEED TO REGISTER ON THE PORTAL IF YOU HAVE NOT PREVIOUSLY DONE SO.
3. INFORMATION ABOUT ZONING CODE, INDIAN NATION COUNCIL OF GOVERNMENT (INCOG), BOARD OF ADJUSTMENT (BOA), AND TULSA METROPOLITAN AREA PLANNING COMMISSION (TMAPC) IS AVAILABLE ONLINE AT [WWW.INCOG.ORG](http://WWW.INCOG.ORG) OR AT INCOG OFFICES AT 2 W. 2<sup>nd</sup> ST., 8<sup>th</sup> FLOOR, TULSA, OK, 74103, PHONE (918) 584-7526.
4. A COPY OF A "RECORD SEARCH"  IS  IS NOT INCLUDED WITH THIS LETTER. PLEASE PRESENT THE "RECORD SEARCH" ALONG WITH THIS LETTER TO INCOG STAFF AT TIME OF APPLYING FOR BOARD OF ADJUSTMENT ACTION AT INCOG. UPON APPROVAL BY THE BOARD OF ADJUSTMENT, INCOG STAFF WILL PROVIDE THE APPROVAL DOCUMENTS TO YOU FOR IMMEDIATE SUBMITTAL TO OUR OFFICE. (See revisions submittal procedure above.).

(continued)

21.22

## REVIEW COMMENTS

SECTIONS REFERENCED BELOW ARE FROM THE CITY OF TULSA ZONING CODE TITLE 42 AND CAN BE VIEWED AT  
[WWW.CITYOFTULSA-BOA.ORG](http://WWW.CITYOFTULSA-BOA.ORG)

COO-057977-2020

5805 E 15 ST

April 15, 2020

**Note:** As provided for in Section 70.130 you may request the Board of Adjustment (BOA) to grant a variance from the terms of the Zoning Code requirements identified in the letter of deficiency below. Please direct all questions concerning separation distance acceptance and all questions regarding BOA application forms and fees to the INCOG BOA Planner at [918-584-7526](tel:918-584-7526). It is your responsibility to submit to our office documentation of any decisions by the BOA affecting the status of your application so we may continue to process your application. INCOG does not act as your legal or responsible agent in submitting documents to the City of Tulsa on your behalf. Staff review comments may sometimes identify compliance methods as provided in the Tulsa Zoning Code. The permit applicant is responsible for exploring all or any options available to address the noncompliance and submit the selected compliance option for review. Staff review makes neither representation nor recommendation as to any optimal method of code solution for the project.

- 1. Sec.40.225-D:** A medical marijuana dispensary may not be located within 1000 feet of another medical marijuana dispensary.
- 2. Sec.40.225-H:** The separation distance required under *Sec.40.225-D* must be measured in a straight line between the nearest perimeter walls of the buildings (or portion of the building, in the case of a multiple-tenant building) occupied by the dispensary.  
**Review comment:** Submit a copy of the BOA accepted separation distance of 1000' from other dispensaries. Please direct all questions concerning separation distance acceptance and all questions regarding BOA application forms and fees to Austin Chapman at [Achapman@incog.org](mailto:Achapman@incog.org).

**Note:** All references are to the City of Tulsa Zoning Code. Link to Zoning Code:

<http://www.tmapc.org/Documents/TulsaZoningCode.pdf>

**Please notify the reviewer via email when your revisions have been submitted**

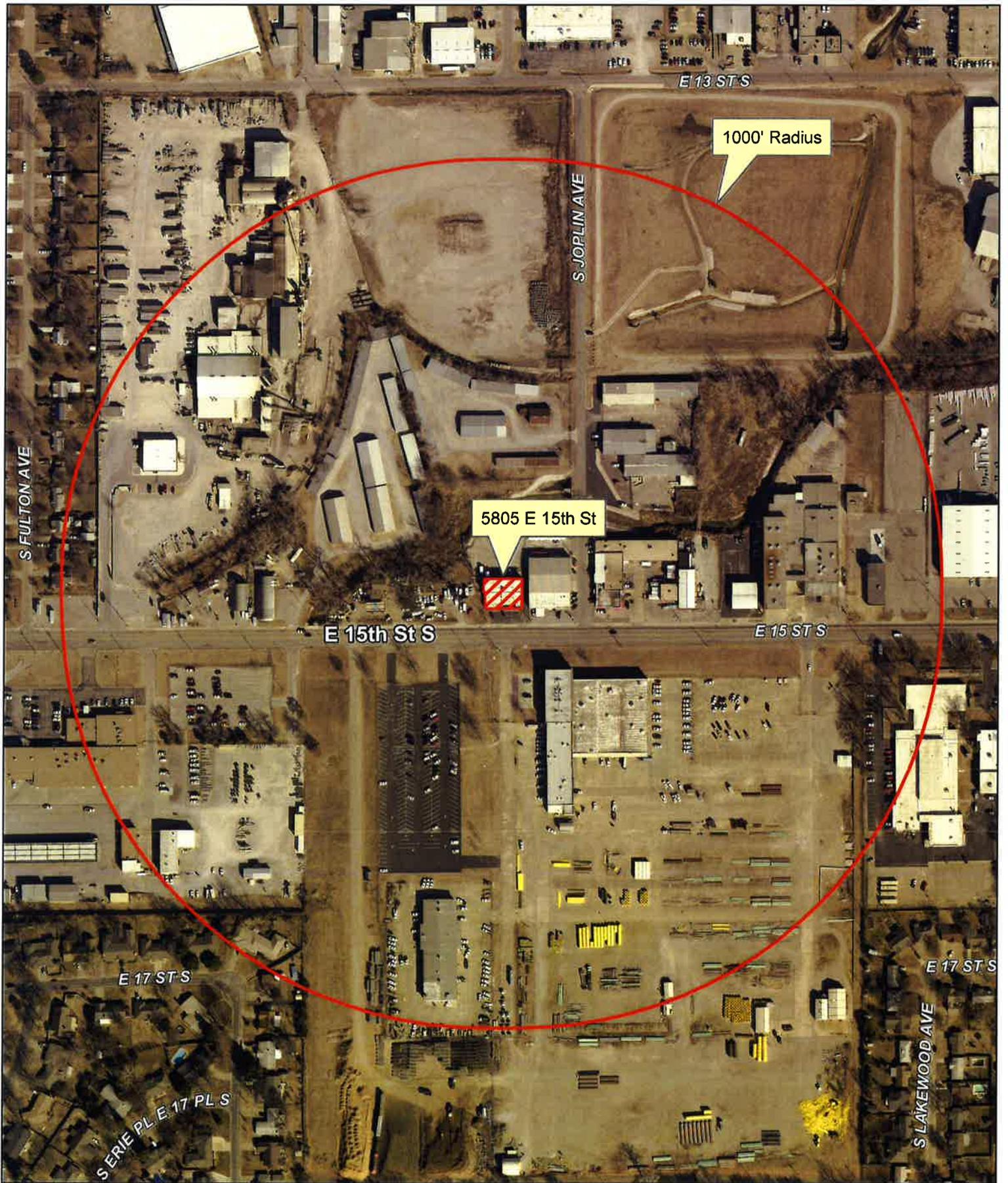
**This letter of deficiencies covers Zoning plan review items only. You may receive additional letters from other disciplines such as Building or Water/Sewer/Drainage for items not addressed in this letter.**

**A hard copy of this letter is available upon request by the applicant.**

## END – ZONING CODE REVIEW

**NOTE:** THIS CONSTITUTES A PLAN REVIEW TO DATE IN RESPONSE TO THE SUBMITTED INFORMATION ASSOCIATED WITH THE ABOVE REFERENCED APPLICATION. ADDITIONAL ISSUES MAY DEVELOP WHEN THE REVIEW CONTINUES UPON RECEIPT OF ADDITIONAL INFORMATION REQUESTED IN THIS LETTER OR UPON ADDITIONAL SUBMITTAL FROM THE APPLICANT.

KEEP OUR OFFICE ADVISED OF ANY ACTION BY THE CITY OF TULSA BOARD OF ADJUSTMENT OR TULSA METROPOLITAN AREA PLANNING COMMISSION AFFECTING THE STATUS OF YOUR APPLICATION FOR A ZONING CLEARANCE PERMIT.



5805 E 15th St

1000' Radius

S FULTON AVE

S JOPLIN AVE

E 13 ST S

E 15th St S

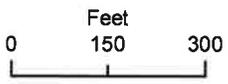
E 15 ST S

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S LAKEWOOD AVE



**BOA-22933**

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

Aerial Photo Date: February 2018



21.24