

June 9, 2020

***VIA EMAIL***

City of Tulsa Board of Adjustment  
c/o Tulsa Planning Office  
Attn: Austin Chapman  
[achapman@incog.org](mailto:achapman@incog.org)

Re: BOA-22957

Dear Members of the Board:

Herbal Junction owns a dispensary located at 7498 E. Admiral Place, just south to the west of the proposed dispensary location at 7839 E. Admiral Place.

Herbal Junction's state dispensary license was issued prior to December 1, 2018 and thus did not require approval a spacing verification pursuant to Section 40.225-I of the Tulsa Zoning Code (the "Code"). Herbal Junction received its Certificate of Compliance to renew its state license from the City of Tulsa on October 18, 2019. Herbal Junction's Certificate of Occupancy was issued by the City of Tulsa on June 12, 2020 and is a lawfully established and operational dispensary.

On June 9, 2020, the Applicant in this case sought a spacing verification from the Board in Case No. BOA-22925. The Board rejected the spacing verification due to the proposed dispensary's proximity within 1,000 feet to Herbal Junction. The Applicant now returns to the Board seeking a variance of the 1,000 foot spacing requirement under Section 40.225-D of the Code. In addition to this variance, the Applicant seeks the same variance in BOA-22958.<sup>1</sup>

As set forth in the staff report, and pursuant to Section 70.130-H of the Code, the following seven (7) criteria must be established by the property owner in order for the Board to grant a variance:

1. 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;
2. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
3. 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;

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<sup>1</sup> Herbal Junction has submitted a separate letter setting forth its objections in BOA-22958.

4. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
5. That the variance to be granted is the minimum variance that will afford relief;
6. 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
7. 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.

The subject property is a ½ acre lot, located in a CH District on East Admiral Place, just west of Memorial Drive, and is designated as a Mixed-Use Corridor under the Comprehensive Plan. The property is similarly shaped and situated to the surrounding lots along Admiral. Moreover, the subject property is nearly identical – in shape, size, location, and topography – to the property down the street at 7435 E. Admiral for which the Applicant seeks the same relief. Simply put, there are no unique physical characteristics of the subject property or the surrounding area that result in a hardship to the property owner.

There previously was a dispensary located at this location. Similarly to Herbal Junction, the former dispensary's license was issued prior to December 1, 2018 and did not require a spacing verification. Importantly, the proposed dispensary is a new tenant, not affiliated with the former dispensary. While the previous dispensary at this location had the benefit of being "grandfathered" and did not require a spacing verification, this benefit does run with the land and does not transfer to new dispensaries that may occupy the space in the future.

The Applicant's stated hardship is that the previous dispensary broke its lease and vacated the space. It is axiomatic that a hardship cannot be financially-based. Furthermore, the Applicant's stated hardship is not unique to the property or to the applicant. Lease disputes arise and tenants vacate. This is simply part of the business of being a landlord. The Applicant is not prevented from entering into a lease with any other business that is permitted in the CH District (for example, prior to the former dispensary, the subject property was the site of a car sales lot). While it may be an inconvenience to the Applicant that Herbal Junction is located nearby, it is not a hardship.

The intent of the spacing requirement of the Code is to prevent clusters of this particular use. The Applicant's request, if granted, will directly impair the spirit and intent of the Code, with potentially three (3) dispensaries located less than 1,000 feet from one another along Admiral. Based on the foregoing, we respectfully request that the Board deny the variance.

Thank you for your time and consideration.

Sincerely,



Randy Hendrix  
Owner of Herbal Junction