

BOARD OF ADJUSTMENT CASE REPORT

STR: 9201

Case Number: **BOA-23032**

CZM: 36

CD: 4

HEARING DATE: 12/08/2020 1:00 PM

APPLICANT: Lou Reynolds

ACTION REQUESTED: Special Exception to permit Low-Impact Medical Marijuana processing (Low-impact Manufacturing & Industry Use) in the CBD district. (Sec. 15.020, Table 15-2)

LOCATION: 621 S KENOSHA AV E

ZONED: CBD

PRESENT USE: Commercial

TRACT SIZE: 19501.89 SQ FT

LEGAL DESCRIPTION: See Attached.

RELEVANT PREVIOUS ACTIONS:

Subject property:

BOA-22647: On 05.28.2019 the Board accepted a verification of spacing for a medical marijuana dispensary from another medical marijuana dispensary.

Surrounding Properties:

BOA-22679: On 07.23.2019 the Board approved a variance of the spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary. Property located 810 East 6th Street. The variance granted was to be located within 1,000' of the subject property.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of the "Downtown Core" and an "Area of Growth".

Downtown Core is Tulsa's most intense regional center of commerce, housing, culture, and entertainment. It is an urban environment of primarily high-density employment and mixed-use residential uses, complemented by regional-scale entertainment, conference, tourism, and educational institutions. Downtown Core is primarily a pedestrian-oriented area with generous sidewalks shaded by trees, in-town parks, open space, and plazas. The area is a regional transit hub. New and refurbished buildings enhance the pedestrian realm with ground-floor windows and storefronts that enliven the street. To support downtown's lively and walkable urban character, automobile parking ideally is located on-street and in structured garages, rather than in surface parking lots

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

7.2

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.

ANALYSIS OF SURROUNDING AREA: The subject tract is located along Kenosha Ave. immediately North of the exit ramp from U.S. Highway 75.

STAFF COMMENTS: The applicant is requesting a Special Exception to permit Low-Impact Medical Marijuana processing (Low-impact Manufacturing & Industry Use) in the CBD district. (Sec. 15.020, Table 15-2)

Chapter 15 | Office, Commercial and Industrial Districts
Section 15.020 | Use Regulations

USE CATEGORY	OL	OM	OMH	OH	CS	CG	CH	CBD	IL	IM	IH	Supplemental Regulations
Subcategory												
Specific use												
INDUSTRIAL												Section 40.180
Low-impact Manufacturing & Industry	-	-	-	-	-	S	S	S	P	P	P	
Moderate-impact Manufacturing & Industry	-	-	-	-	-	-	-	-	S	P	P	Section 40.225
High-impact Manufacturing & Industry	-	-	-	-	-	-	-	-	-	S	P	

Per conversations with the applicant they are seeking to use the space for the production of medical marijuana products using low impact manufacturing methods. Medical marijuana products are subject to the supplemental regulations of Sec. 40.225.

Section 40.225 Medical Marijuana Uses

The supplemental use regulation of this section apply to medical marijuana uses.

40.225-A A medical marijuana grower operation must be located inside an enclosed building.

40.225-B A medical marijuana processing facility, whether moderate-impact or high-impact, must be located inside an enclosed building.

40.225-C A medical marijuana dispensary must be located inside an enclosed building.

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

40.225-E Drive-through windows and drive-through lanes are prohibited for medical marijuana grower operations, processing facilities, dispensaries and research facilities.

40.225-F Medical marijuana grower operations, processing facilities and dispensaries must provide the following:

1. A ventilation/air filtration system that prevents odor from being detectible at the boundaries of the lot within which the building housing the medical marijuana grower operation, processing facility or dispensary is located, except that if such use is located in multiple-tenant building, the ventilation/air filtration system must prevent odor from being detectible outside the tenant space housing the use.
2. An electronic security system and surveillance camera.

40.225-G Medical marijuana grower operations, processing facilities, dispensaries and research facilities must be conducted and maintained in compliance with the license issues by the Oklahoma State Department of Health and in compliance with Oklahoma law, including but not limited to all applicable statutes, rules and regulations.

40.225-H No medical marijuana grower operation, processing facility, dispensary or research facility shall be permitted or maintained unless there exists a valid license, issued by the Oklahoma State Department of Health for the particular use at the particular location.

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.

SAMPLE MOTION:

Move to _____ (approve/deny) a **Special Exception** to permit Low-Impact Medical Marijuana processing (Low-impact Manufacturing & Industry Use) in the CBD district. (Sec. 15.020, Table 15-2)

- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions (including time limitation, if any):

_____:

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.



Subject property

Action Requested:

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

LOCATION: 621 South Kenosha Avenue East (CD 4)

Presentation:

Gabe Palacios, 1420 East 4th Street, Tulsa, OK; stated the business location is an abandoned building and used for storage for about 15 years; our charge is to go in there and revitalize and revamp the area. He has received his demolition permit and outcropping buildings have already been demolished to create more parking. Mr. Palacios stated that he has verified that there are no dispensaries within a 1,000 feet that are operational. He then applied to come before the Board for verification. Since that time and since he has applied for the permit the next-door neighbor has put up a sign that says there is a dispensary coming soon. He went back and looked at all the records and could not find where that neighbor has applied for a building permit nor a Certificate of Occupancy or any business license, though they do have an OMMA license for 806 East 6th Street under the name "Greenwood Wellness Dispensary, LLC". Again, this is right next door, but they are not operational, and they have not submitted for a building permit nor a Certificate of Occupancy. Mr. Palacios stated that to him it seems he is first in line.

Ms. Radney asked Mr. Palacios if he knew when the Greenwood Wellness Dispensary license was issued. Mr. Palacios stated that OMMA does not give out that information. There is another dispensary within the zip code, and it is 1,800 feet away.

Mr. Van De Wiele asked Mr. Palacios to present his timeline. Mr. Palacios stated he submitted for an application for a permit on March 5th. The Letter of Deficiency (LOD) was received on April 3rd requesting a copy of the Board of Adjustment acceptance of separation. He then called the City to say he had verified the separation not realizing that he needed to come before the Board of Adjustment for verification. Had he known he needed to come before the Board he would have scheduled back in early April when he first submitted for a permit for construction.

Mr. Van De Wiele asked Mr. Palacios when he received his OMMA license. Mr. Palacios stated that he received it in January 2019. Mr. Van De Wiele asked Mr. Palacios when he saw the sign go up at the neighbor's location. Mr. Palacios stated that it was Thursday.

Mr. Van De Wiele asked Mr. Palacios if he believed the neighbor has an OMMA license. Mr. Palacios answered affirmatively and stated that according to weed maps and his verification they do have an open dispensary, but it is located on North Apache. He thinks they have an office at this building and that they have applied for a permit with the 806 East 6th Street address, and was Thursday that they put up a sign on the

building with the same name as the North Apache establishment, but they are not operational at the 6th Street location.

Ms. Back asked Mr. Palacios if he is ready to open the doors. Mr. Palacios answered affirmatively and stated his client has already invested \$30,000. Ms. Back asked Mr. Palacios how soon would he be ready to open the doors. Mr. Palacios stated that it will be 90 days or less that the construction will be complete; it will be a 100% complete gut and redo with a new parking lot, new roof, new HVAC, new electrical, etc.

Ms. Radney asked Mr. Palacios if he would be able to open and operate his business if he were not going through the complete remodel of the subject building. Mr. Palacios answered affirmatively.

Ms. Ross asked staff what the word "established" exactly means in the finding that the Board recites in their motion. Mr. Van De Wiele stated that it is his understanding that INCOG is either working on or has an internal policy as to what that means. Mr. Swiney stated that there has been a conversation about a dispensary that is in operation but is not legally in operation. This case is a little bit different. The sign has gone up announcing that a competitor is going into operation but there is no dispensary that is active right now. The common-sense definition to "establishment" would be something that is up and running, something that is in operation, and that is how he would define it. Ms. Ross asked if that meant the doors were open. Mr. Swiney answered affirmatively. Mr. Van De Wiele stated that the applicant is gutting and remodeling and there is a facility right next door that needs no gutting, or a person could just pop up a card table and put some product out and say I am open for business, does that card table mean the person is established and now the applicant can be shut out because the card table established first? Mr. Swiney stated the competitor would have to have his or her 1,000-foot verification.

Ms. Back asked how the Board can protect the Tulsa citizens that are investing into their businesses? Mr. Van De Wiele stated there has always been this issue with billboards and the same thing with daycare centers and bars. Mr. Swiney stated that by the example, Mr. Palacios and his client better move fast to get established otherwise they are at risk. Ms. Ross stated she does not like that because Mr. Palacios is taking a building that needs investment and repair to be a business, and it is like they are being punished.

Mr. Van De Wiele stated this is a discussion that needs to take place, not necessarily related to this application.

Ms. Radney stated she is very uncomfortable that a transaction is required to be an establishment. When another verification was before the Board at the last meeting, it was discussed that when a person went to the State to receive their OMMA they had to have an address, and there is a date stamp on that, so there is at least legal right to claim a particular space or address. In her opinion, there should also be some sort of lease or purchase agreement that has been fully executed. To her the next step in

receiving a Certificate of Occupancy is about satisfying the City in terms of the ability to conduct business.

Mr. Swiney asked Ms. Radney if she was saying that Mr. Palacios and his client have done everything they need to do to begin. Ms. Radney stated that to conduct business under the auspices of the City of Tulsa, but as far as the State is concerned Mr. Palacios is entitled to do business because he has a license and an address. Mr. Van De Wiele stated that part of the problem is there have been instances of people getting OMMA licenses on addresses that they either don't lease, own or even have any intention of leasing. Ms. Radney stated that it is important to her that the applicant has something executed that says the person is entitled to occupy.

Mr. Wilkerson stated that any new dispensary in Tulsa is going to be a new use in context with the Building Permit Office. If everyone is playing by the rules, then they should come to the Board of Adjustment to receive their spacing verification before they start operating their business. Then it ends up in people asking for a Variance if someone had previously started their building permit application and received an occupancy permit, so there is an extra layer of protection at the Building Permit Office.

Mr. Swiney stated that the other scenario is if a competitor comes in and wants a 1,000-foot verification, in the same area, Mr. Palacios and his client would have notice of that and they can come to the meeting as an interested party. Mr. Van De Wiele stated that the problem is the notice is for a 300-foot radius.

Interested Parties:

Mario Freeman, 4108 North Lions Place, Broken Arrow, OK; stated he represents the Greenwood Wellness Group. The reason Greenwood put up the sign is because their license is from January 18th, so according to the rules there was no other qualifying contentions on Greenwood being able to get into the building. It is his understanding that it is who has the license first. Greenwood received their license on the 18th and the other party received theirs on the 29th. Mr. Freeman stated he already has an operating business, actually three businesses.

Ms. Radney asked Mr. Freeman if his license is for 806 East 6th Street. Mr. Freeman answered affirmatively. Ms. Radney asked Mr. Freeman if he had a license for the Kenosha facility. Mr. Freeman stated that he is not affiliated with the facility on Kenosha, but it is less than 200 feet from his 6th Street address. Ms. Radney asked Mr. Freeman the date he received his license for the 6th Street address. Mr. Freeman stated that it was January 18th.

Mr. Freeman stated he already has an established business model. He has over 150 patients a day at his current location, which is 1216 East Apache, so he has all the structural setups internally as well as being operational.

Ms. Radney asked Mr. Freeman if he had applied for his Certificate of Occupancy for the 6th Street address. Mr. Freeman stated that he has not, but he plans to do that

today, but he didn't feel that he had to because he already has multiple projects going on at one time and has his license for that location. Therefore, the Certificate of Occupancy was in his step two. His plan is to have this business operational which he can do by July 4th easily.

Ms. Ross asked Mr. Freeman if he had to receive a license for each location. Mr. Freeman answered affirmatively. Ms. Ross asked Mr. Freeman why it has taken so long. Mr. Freeman stated there are financial implications that go into these businesses therefore, this is phase 2 and the second location. He already has growing, and processing set up and felt no need once he received his license to do anything to the building on 6th Street. That building is owned by one of his partners.

Ms. Back stated that Mr. Freeman had not done his spacing verification. Mr. Freeman stated that he has not, but it is not a requirement. Ms. Back stated that by the Tulsa City Zoning Code it is a requirement. Mr. Freeman stated that it is a requirement to start the business, but it is not a requirement to have an operational business. Ms. Back stated that it is a requirement to apply to the City of Tulsa Board of Adjustment for the spacing verification, and to get the Board of Adjustment to accept the spacing verification, that is a part of the process. Mr. Freeman stated that is true, but to establish a business at a property according to the OMMA guidelines a person has to have a license so the next step is to do this process which, again, since he already has the license for the 6th Street property he can wait and that should be in his time frame whether we want to operate that property now or not.

Mr. Van De Wiele stated that no business can be operated without a Certificate of Occupancy. Mr. Freeman stated that once he received his license, even if he wanted to wait a year, he has a license for the property and no other dispensary should be able to operate within a 1,000 feet according to the rules.

Ms. Back informed Mr. Freeman that his application was in for the license not for the spacing verification with the City of Tulsa. It specifically states that the action of the Board being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary. So, there in lies the challenge, Mr. Freeman's phase 2 that he chose to put on hold has now complicated things for him because he does not have his spacing verification in before today's applicant. Mr. Freeman stated that at the time he read the rules he did not think that it was totally necessary. Mr. Freeman stated that he plans to open the 6th Street business by July 4th; everything is in place and it will require minimal setup and there is an operational plan in place.

Rebuttal:

Gabe Palacios came forward and stated that he thinks there are two separate things happening. The dates on the OMMA license are only significant in as much as a person has two dates, the pre-December 1st date and the dates beyond that which put everyone in the same ballpark basically. Beyond that a person gets into the City of Tulsa regulatory area which is what he is in right now. Now he has established himself

as the first to the table in that regard, which puts him in first place. It is his understanding that Mr. Freeman would have to seek a Special Exception or some other means or method to be able to open his business by July 4th. Mr. Palacios stated that Mr. Freeman cannot get a Certificate of Occupancy today, as he stated, because he has to come to the Board of Adjustment to receive the spacing acknowledgement and move forward from that point. Mr. Palacios stated that he and his client started this process in December 2018 and have already paid a significant amount of funds in architectural engineering fees, invested close to \$35,000 in demolition costs, the entire project scope is over \$500,000 to the building and the property, so there has been quite a lot of time and funds invested up to this point and are following every letter of the law and rule to have him standing before the Board today. Mr. Palacios hopes the Board will take that into consideration. Mr. Palacios stated that he does not think his client would have any objection to Mr. Freeman coming in later and applying for any kind exemption to allow him to operate on 6th Street. He thinks the free market economy is a good thing. Two people side by side operating the same kind of business encourages more business and traffic to the area. Mr. Palacios reiterated that having an OMMA license and the dates versus coming before the Board of Adjustment are two completely different things, and he is the first in line now in that regard.

Comments and Questions:

Mr. Van De Wiele stated that Board does need to address this from a City standpoint, and the only parallel that he can draw is the billboard situation. Before this it was the most single thing that the Board verified spacing for, and those have always been subject to being void if another billboard is constructed before your billboard is constructed. In the same line of thinking, he assumes there has to be a permit from Oklahoma Department of Transportation (ODOT) to erect a billboard on a highway, a person has to come to the Board of Adjustment and space it but that has never been the end of the equation. There has been only a few of these cases, but there has been a situation where billboard company A does all of that and for whatever reason and billboard company B comes in, gets their ODOT permit, gets their spacing from actual constructed billboards, and they company B gets their billboard built and causes the first billboard to be void even though they have spent money on a permit, on a spacing verification. Mr. Van De Wiele does not remember how far the Board went with it, but there actually was an attorney suggesting that the spacing ought to be from permitted location to permitted location. That decision was appealed to this Board, and we agreed with the appellant, the applicant, saying that the spacing should be from proposed location to actually physically constructed billboards. If that is an inappropriate parallel, he is ok with that, but it is the only one that he can think of. He is comfortable with the conclusion that he is drawing based on what is being presented from INCOG and City Legal that the medical marijuana dispensary business has not been established at the 806 East 6th Street location. He would vote to accept the spacing verification before the Board today.

Ms. Back agreed with Mr. Van De Wiele.

Ms. Radney and Ms. Ross stated they cannot concur with that. Ms. Ross stated she needs a concrete definition of what "established" means; it can be argued two different ways. There is the State licensing. There is the City process. Ms. Ross was concerned about someone not being able to open a business at a given address, then they are blocking somebody else from opening another business around that given address. Even if a person has a license and a deed or a lease and open business the next day, it takes time to get inventory; there is more to opening a retail space.

Ms. Back stated the Board can only govern and regulate by what is in front of them. The Board of Adjustment makes adjustments to the City of Tulsa Zoning Code based on what is given to them to govern by. This particular applicant is before the Board, has gone through the process, has made application for the spacing verification, has provided the Board with the verification that there is no other business within the 1,000-foot radius and actually disclosed to the Board that there has been a sign placed there. However, that entity has not made application per the Tulsa City Zoning Code to proceed in their path to establish their business. What is before the Board today is to verify that there is not another established, by the City of Tulsa Zoning Code, dispensary.

Ms. Ross stated that she thinks that the word "established" in the Zoning Code is the problem. It does not define what established means.

Ms. Back stated that is not what she is focusing on now, she is focusing on the fact that this person has been told by INCOG that they have to make application for spacing verification, and he has provided that while the other party has not. The Board should grant the applicant his spacing verification so he can move forward in the process because he is in a race right now.

Mr. Van De Wiele stated that today is May 28th, the idea of opening by July 4th is not a reality. The next application cut off date is June 6th and those applications will be heard July 9th.

Ms. Ross asked if the Board is saying that "established" means an entity is open for business? Ms. Radney stated that she does not agree with that. Mr. Van De Wiele stated that it may not be fair and that is why he is suggesting that INCOG and the City need to fix this. The Board is not drafting Ordinances. If a person is selling marijuana without a license, they are breaking the law. Ms. Radney stated that if the Board uses that threshold of a transaction, a transaction has occurred. In order to have a medical marijuana dispensary, at a bare minimum a person has to have an OMMA license, a Certificate of Occupancy which necessarily requires a person has legal right to be where they are, and that Certificate of Occupancy requires the spacing verification from the Board. Ms. Radney stated that her concern is, as it is written and without the interpretation the Board is asking for, the spacing verification is saying that both of these parties would need to go out and confirm that there is not an established business, a business that is any more or less established than they are, asking for the spacing. Ms. Radney thinks the Board is being asked to confirm that there is not an established

dispensary within the 1,000-foot envelope. Ms. Back stated that the Board is not being asked to confirm, they are being asked to accept.

Mr. Van De Wiele stated that one of the litany of things that the Board does, and it is not done very often, is to interpret the Zoning Code. At some point there needs to be a policy or a Board interpretation adopted. This is now two meetings in a row that this has come up, and in the last two weeks there probably has been ten dispensary spacings. This is only going to become more frequent and more of a problem. The Board needs an interpretation, and it has to start at the INCOG and legal level. These type of requests is always going to involve a race, and it is a race to what? Is it to the sale of the first unit of product? At some point it is just the inherent nature of doing business.

Ms. Ross stated that the Board needs from INCOG and or City Legal a definition as soon as possible, a tangible date of what "established" means.

Mr. Van De Wiele stated that the Board heard something similar two weeks ago, the Code says to verify that there is not another dispensary within 1,000 feet. That seems odd to him, but if he read that and he were new to zoning that might mean I would do a circle and look to see who is within 1,000 feet of my site. Mr. Van De Wiele stated that the Code may need some language clean up.

Mr. Swiney stated that in a verification of distance, unlike Variances and Special Exceptions, a verification of distance only needs two votes for a majority. If someone were to recuse or abstain from the vote, two votes out of three would be enough.

Board Action:

On **MOTION** of **BACK**, the Board voted 3-1-0 (Back, Ross, Van De Wiele "aye"; Radney "nay"; no "abstentions"; Bond absent) I move that based upon the facts in this matter as they presently exist, we **ACCEPT** 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; for the following property:

PRT LTS 13 THRU 20 BEG NWC LT 13 TH E200 NEC LT 20 S85 SW TO WL LT 13 N110 POB BLK 7, BURNETT ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Gabe Palacios came forward and asked about a possible scenario. In scenario one, out of his \$538,000 bid package he has completed \$300,000 of it and in those 45 days Mr. Freeman shows up trying to get a verification, there is a sign up that says "Coming Soon – To be open August 1st" what is the interpretation of "established" at that point? Mr. Van De Wiele stated that he does not want to give legal or City advice, frankly both Mr. Palacios and Mr. Freeman are at risk of a third unknown being in that circle. Mr. Van De Wiele encourages Mr. Palacios to reach to INCOG for if and when that issue comes up. Mr. Wilkerson stated that INCOG is well aware of the conflicts that occur,

and INCOG can make some interpretations but ultimately it will take a change in the Zoning Code.

Mario Freeman came forward and stated that he too has over \$300,000 invested in this matter. There are lists where a person can actually see every single dispensary that is in a particular zip code, go into INCOG and look at the distance between a person's proposed site and the next one. That is exactly what he did; that is how he knew Mr. Palacios was there and that is why he put the sign up.

22648—Tom Beverage

Action Requested:

Variance to allow a non-all-weather parking surface material (Section 55.090-F).

LOCATION: 5615 West Young Street North (CD 1)

Presentation:

Tom Beverage, TC Dirt Works, 8605 East 116th Street North, Owasso, OK; stated he is the General Contractor for the project. Young Street is the street that goes back to the property and it is a gravel road, and the Zoning Code states that the owner has to have a dustless all-weather surface. There was a trailer house on the property that burned down, and his client purchased the property and want to re-establish the house on the property. The original septic system will be used, but they are going to add a water tap off Young Street and not use the existing water well. The owner would like to have the same layout as what previously existed.

Ms. Back asked Mr. Beverage if it was a stick-built house or a mobile home? Mr. Beverage stated that it will be a stick-built house, pole barn style house.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Variance to allow a non-all-weather parking surface material (Section 55.090-F), subject to conceptual plan 12.8 of the agenda packet. The Board has found the hardship to be that this particular area is located in Osage rural area and the zoning is listed as agricultural, and that the street leading to the subject property is West Young Street and it is also a gravel surface. The house is to be a stick-built pole barn style built on the site. The Board finds that the following facts, favorable to the property owner, have been established:

Action Requested:

Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) **OR** in the alternative a Variance of the 1,000 spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 810 East 6th Street South (CD 4)

Presentation:

Marvin Jones, 8616 East 98th Street, Tulsa, OK; stated he represents Greenwood Wellness Group. Mr. Jones stated the goal is to do everything in accordance with the State, OMMA, as well as with the City of Tulsa; he feels that he has done that. Mr. Jones stated the subject dispensary is operating and transacting since July 4th. Mr. Jones stated that the owner of the subject building on East 6th Street is one of the partners in Wellness Group and he has a previous Certificate of Occupancy. In addition, he feels that the dispensary is lawfully operating with all the applications that have been submitted. Mr. Jones stated the Group has one dispensary operating on East Apache and his goal is to make sure that everything is done in accordance to INCOG as well as the City of Tulsa. Mr. Jones stated that there is a license for the first location which was received January 2019 and the license for the second location was received February 2019. Mr. Jones stated he has proceeded to submit for the Certification of Occupancy in early May.

Mr. Van De Wiele asked Mr. Chapman to display page 5.26 on the overhead projector, and Mr. Van De Wiele asked Mr. Jones to identify where any other dispensaries are located within the 1,000-foot radius, and any other licenses.

William Shirley, 1216 East Apache, Tulsa, OK; came forward and stated he is one of the partners in Wellness Group. Mr. Shirley stated that he has been in contact with Mr. Austin Chapman, Ms. Amy Ulmer and Ms. Nicole Gordon for several months, and in this particular circle there is no licensed dispensary; the closest dispensary is 1,700 feet to the North, which is East End located at 202 South Lansing Avenue.

Mr. Van De Wiele asked Mr. Shirley, for clarification, if he was aware of any other licensed dispensary within the 1,000-foot radius. Mr. Shirley stated that he is not aware of any licensed operating dispensary. Mr. Van De Wiele asked Mr. Shirley if he was aware of another license that is not operating within the 1,000-foot radius. Mr. Shirley stated that there is one; it is about 400 feet away. Mr. Shirley stated that at the time his location was established that building was vacant.

Mr. Van De Wiele asked Mr. Shirley if he had one license to cover all of his locations or is it a location-by-location specific license. Mr. Jones stated that it is a location-by-location license. Mr. Van De Wiele asked Mr. Jones if the license for the subject address expires February 2020 and was issued February 3, 2019. Mr. Jones answered affirmatively.

Mr. Van De Wiele asked, for the record, Mr. Jones to confirm that there is a dispensary 1,700 feet away that is open for business, and there is another dispensary that is 400 feet away, is he aware of any other licenses within the 1,000-foot radius? Mr. Jones answered no.

Mr. Shirley came forward and stated that he would like to have noted in the record he would like to one additional piece of information that may bear merit. Mr. Shirley stated that in the previous minutes there was note made about how much was actually spent by the other dispensary and he has invested while operating well over \$55,000 to \$60,000 to get the dispensary operating.

Ms. Ross asked if the dispensary was operating without spacing verification. Mr. Shirley answered affirmatively; just like 70% to 80% of the other dispensaries. Ms. Ross asked Mr. Shirley if he knew that was not lawful. Mr. Shirley stated that was discussion mentioned in the previous minutes and even the previous case today. Ms. Ross stated that if a person has not received their City spacing verification then the dispensary is not lawfully operating; they may have their State license, but they are not operating lawfully without the spacing verification. Mr. Van De Wiele stated that ultimately it is the Certificate of Occupancy, the spacing verification is a hurdle. Mr. Shirley stated that the previous tenant had a Certificate of Occupancy, so there was a case to occupy the building so he could occupy the building because it was retail. Mr. Van De Wiele stated that what throws a lot of these for a loop is if there was a dispensary to open in a building, such as City Hall because there is a Certificate of Occupancy for this building, a new Certificate of Occupancy must be had. Mr. Shirley stated that it was clarified to him and illustrated as a merchant for occupancy. It was determined that there was a previous merchant in the building, and he is applying as a merchant, so the occupancy has not changed even though it is a dispensary; that was determined by the City. Mr. Van De Wiele stated that is news to him, because he has had discussion with the Permitting Office. Mr. Shirley stated the Mr. Berto Morand is the person he spoke to, and he is the one aware of it.

Ms. Blank stated that perhaps the applicant is referring to Building Permits, and what the Board is dealing with is a Use category that is different, so it needs a Certificate of Occupancy.

Ms. Ross stated that at the previous meeting she recalls that the applicant was not open for business at the time, but they had posted a sign for this meeting when they learned that Mr. Palacios was seeking verification of spacing. The argument was made that they will be operating in a week and that it would take Mr. Palacios several months. At that time the Board said that was a risk to take because there was no verification of spacing. Mr. Jones stated that it was his understanding that the risk was stated to Mr. Palacios and that they should hurry up and start operating, because the whole discussion was about an operating business. Ms. Ross stated that the risk was to both parties.

Mr. Van De Wiele asked Mr. Jones if the Board were inclined to lean toward the Variance, what is unique about the property or perhaps the neighborhood the building is located in that would justify a Variance to shrink the 1,000-foot radius to allow both dispensaries within 400 feet. Mr. Jones stated there is easy access from Highway 75 to the location, and the property is not exactly downtown but on the outskirts of downtown.

Interested Parties:

George Palacios, 1420 East 4th Street, Tulsa, OK; stated that it sounds as though the Board remembers the previous meeting well. Both parties were put out to the races; both were told they were at risk and that whoever came forward first with a Certificate of Occupancy would be the one to win. Mr. Palacios stated he was the one that brought to the attention of the Board that there was another dispensary nearby, but that they had not applied for a permit. Ms. Ross is absolutely correct, the other party is operating illegally because they do not have their Certificate of Occupancy, so they have not established a business at this moment in time. Mr. Palacios stated he has received all of his final inspections as of today but has not been able to apply for the Certificate of Occupancy because the final inspections have only been recorded in the field and have not been entered into the system yet. In effect, he has reduced a 90-day construction timeline down to just under 30 days at a significant cost to his client. Mr. Palacios stated that he has met his goal and his timeline, and still his is not opposed to having a neighbor. He believes in a free market economy and does think there is anything wrong with dispensaries being within 1,000 feet of one another and he encourages friendly competition.

Nathalie Cornett, Eller & Detrich, 2727 East 21st Street, Tulsa, OK; stated that Mr. Palacios is her client's architect and he obviously is much more familiar with what is happening in the Permit Center. Ms. Cornett reiterated her request for a continuance. Ms. Cornett stated that she believes that the applicant's license for this location expires February 3, 2020, and her client's license expires January 29, 2020 so it is first in time. The next consideration for application would be an application for a building permit or a Certificate of Occupancy. Ms. Cornett stated that her client applied for a building permit on March 5, 2019 and all the final inspections have been passed so there should be a Certificate of Occupancy within the next day.

Mr. Bond asked Ms. Cornett the name of her client's dispensary. Ms. Cornett stated that it is The Treehouse Dispensary dba The Flower Shop.

Ms. Cornett stated that her client does not have an issue with another dispensary operating within a 1,000 feet, and after hearing the applicant's presentation she is not sure they have articulated a particular hardship for this property. Ms. Cornett stated, again, that she would request a continuance to more thoroughly examine the Variance request.

Rebuttal:

Marvin Jones came forward.

Mr. Bond asked Mr. Jones to state his hardship; is there something unique to the location, unique to the application to grant a Variance? Mr. Jones stated the property is owned by one of the partners and it is a family property, so it was easy to get up and going. Location is key as well. Mr. Bond asked Mr. Jones if he thought the area is commercially dense. Mr. Jones answered affirmatively.

Mr. Van De Wiele asked Mr. Jones if he thought the area was on its way to becoming more commercially dense. Mr. Jones answered affirmatively.

Ms. Radney asked Mr. Jones if he thought this was a unique circumstance in the City of Tulsa, is there another business environment similar to this or is it unique? Mr. Jones believes it is unique, taking into consideration what the City of Tulsa is doing in the new developments that are going in downtown and in the subject location.

Mr. Bond asked Mr. Jones if there was a lot or not a lot of residential housing near the subject site compared to other parts of the City? Mr. Jones stated in terms of the apartments and the demographics of the area it is unique.

Comments and Questions:

Mr. Van De Wiele stated that to him this is a relatively unique area. To him it is the commercial business district; it is not as densely populated residentially as other major thoroughfares in Tulsa. He would vote for a Variance if someone could articulate the hardship.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-0-1 (Bond, Radney, Shelton, Van De Wiele "aye"; no "nays"; Ross "abstaining"; none absent) to **DENY** the request for a Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) and to **APPROVE** a Variance of the 1,000 spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) to permit two medical marijuana dispensaries to be located within 1,000 feet of each other, subject to conceptual plans 5.23 and 5.26 of the agenda packet. The Board finds the hardship to be the unique characteristics of the site as they presently exist; both being in topography, occupancy, and the commercial make up of this site. Additionally, the lack of existing clarity between the present applicant's application and the new Zoning Code. The Variance approval is limited to allow this dispensary to be located within 1,000 feet of the dispensary approved in case #BOA-22647. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;

- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

LT-7 & E20 LT 8 BLK-7, BURNETT ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22680—W Design – Weldon Bowman

Action Requested:

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

LOCATION: 3403 South Peoria Avenue East (CD 9)

Presentation:

Brian Letzig, W Design, 815 East 3rd Street, Suite C, Tulsa, OK; stated he represents Green Country Bud which is at the top of the building. Mr. Letzig stated he is not aware of any other dispensaries within the 1,000-foot radius. Mr. Letzig stated the nearest dispensary, The Treehouse Dispensary, is south and currently located 4,224 feet away.

Mr. Van De Wiele asked Mr. Letzig if that is the closest dispensary that is open for business. Mr. Letzig stated that it is closest operating dispensary that he is aware of. Mr. Van De Wiele asked Mr. Letzig if there were any license holders within the 1,000-foot radius. Mr. Letzig stated that from his research, at least when he applied, he did not see any, but he has not looked within the last two weeks; none that he is currently aware of.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

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) I move that based upon the

Exhibit "A"

All of Lots 13, 14, 15, 16, 19 and 20, Block 7, BURNETT ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the recorded Amended Plat thereof,

LESS AND EXCEPT the following described tract constituting a portion of the above lands:

Beginning at the SW Corner of said Lot 13; thence East along the South boundary of Lots 13, 14, 15 and 16 for 100 feet to the SE Corner of Lot 16; thence North along the East boundary of Lot 16 for 42.5 feet to a point; thence in a Southwest direction to a point on the West boundary of Lot 13, said point being 30 feet North of said SW Corner; thence South for 30 feet to a point and place of beginning

AND LESS AND EXCEPT the following described tract constituting a portion of the above lands:

Beginning at the SW Corner of Lot 19, thence East along the South boundary of Lots 19 and 20 for 50 feet to the SE Corner of Lot 20; thence North along the East boundary of said Lot 20 for 55 feet to a point; thence in a Southwest direction to a point on the West line of said Lot 19 said point being 48.75 feet North of said SW Corner; thence South along the West boundary of said Lot 19 for 48.75 feet to the point and place of beginning

AND

That portion of Lots 17 and 18, Block 7, BURNETT ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the recorded Amended Plat thereof, being more particularly described as follows, to-wit:

Beginning at the NE Corner of said Lot 18; thence West along the North boundaries of Lots 17 and 18 a distance of 50 feet to the NW Corner of said Lot 17; thence South along the West boundary of said Lot 17 a distance of 97.5 feet to a point; thence in a Northeasterly direction to a point on the East boundary of said Lot 18, said point being 91.25 feet South of the NE Corner of said Lot 18; thence North along the East boundary of said Lot 18 a distance of 91.25 feet to the point and place of beginning.

Exhibit "B"

The Applicant requests a Special Exception pursuant to Section 15.020 and Table 15-2 of the Tulsa Zoning Code (the "Code") to permit low-impact medical marijuana processing in the CBD district for property located at 621 S. Kenosha Ave. (the "Property").

The Property is located at the northeast corner of 7th Street and Kenosha, just west of Highway 75, and is currently the site of the Flower Shop Dispensary. The Property is relatively isolated because of its proximity to the highway and the configuration of the 7th Street and Hwy 75 exit ramps. Except for a handful of commercial businesses to the north, including another dispensary, which are all accessed from 6th Street, there are no adjacent buildings or uses. The dispensary desires to add a kitchen to produce medical marijuana edibles and make "prerolls", both of which are considered low-impact processing under the Code.

Due to the location of the Property in relation to Highway 75 and the lack of surrounding businesses, the proposed processing use will not be injurious to the neighborhood or otherwise detrimental to the public welfare and, as a use permitted by special exception, is in harmony with the spirit and intent of the Code.



Subject Tract

BOA-23032

19-12 01

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

Aerial Photo Date: February 2018



7.21



S KENOSHA AVE

S LANSING AVE

E 6th ST S

75



Subject Tract

BOA-23032

19-12 01

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

Aerial Photo Date: February 2018

