



**BOARD OF ADJUSTMENT  
CASE REPORT**

**STR:** 9209  
**CZM:** 35  
**CD:** 1

Case Number: **BOA-23183**

**HEARING DATE:** 09/28/2021 1:00 PM (*Continued from 9/14/2021*)

**APPLICANT:** Mark Capron

**ACTION REQUESTED:** Variance to allow parking inside the City of Tulsa planned Right-of-Way (Sec. 90.090-A)

**LOCATION:** 4008 W CHARLES PAGE BV S

**ZONED:** CH

**PRESENT USE:** Vacant

**TRACT SIZE:** 17500.08 SQ FT

**LEGAL DESCRIPTION:** See Attached.

**RELEVANT PREVIOUS ACTIONS:**

**Surrounding Properties:**

**BOA-22746;** On 10.08.2019 the Board **approved** a Special Exception to allow an Assembly and Entertainment use (less than 250-person capacity) to serve alcohol within 150' of an R district and a Special Exception to permit an Outdoor Assembly and Entertainment use.

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

**Mixed-Use Corridors** are Tulsa's modern thoroughfares that pair high-capacity transportation facilities with housing, commercial, and employment uses. Off the main travel route, land uses include multifamily housing, small lot, and townhouse developments, which step down intensities to integrate with single family neighborhoods. Mixed-Use Corridors usually have four or more travel lanes, and sometimes additional lanes dedicated for transit and bicycle use. The pedestrian realm includes sidewalks separated from traffic by street trees, medians, and parallel parking strips. Pedestrian crossings are designed so they are highly visible and make use of the shortest path across a street. Buildings along Mixed-Use Corridors include windows and storefronts along the sidewalk, with automobile parking generally located on the side or behind.

**ANALYSIS OF SURROUNDING AREA:** The subject tract is located East of the SE/c of Charles Page Boulevard and S. 41<sup>st</sup> W. Ave.

**STAFF COMMENTS:** The applicant is requesting a **Variance** to allow parking inside the City of Tulsa planned Right-of-Way (Sec. 90.090-A)

5.2

**90.090-A Measurement**

Required setbacks are measured from the applicable lot line, right-of-way, planned right-of-way or location referred to below. Building setbacks are measured to the nearest exterior building wall. Minimum setbacks that apply to other features (parking areas, fences, storage areas) are measured from the nearest point of the area or feature for which a setback is required. See §90.090-C for information on structures and building features that are allowed to occupy setback and yard areas in R zoning districts. Unless otherwise expressly stated, no part of any structure may be located within the street right-of-way, nor within the planned right-of-way of streets shown on the major street and highway plan, nor within 25 feet of the centerline of the right-of-way on streets not shown on the major street and highway plan. If a variance of the prohibition against location of a structure within the right of way or planned right of way is granted by the Board of Adjustment, no part of any structure may be located within the street right-of-way, nor within the planned right-of-way of streets shown on the major street and highway plan, nor within 25 feet of the centerline of the right-of-way on streets not shown on the major street and highway plan, unless a license has been granted by the city, in the case of the right-of-way, or a removal agreement has been entered into, in the case of the planned right-of-way.

The Major Street and Highway plan designates Charles Page Boulevard a Primary Arterial which call for 60' of right-of-way on either side of the section line. Currently there is only 25' dedicated South of the Section line. The applicant is seeking to build parking inside the additional 35' prescribed by the Major Street and Highway Plan. If approved the code would require the applicant to execute a removal agreement with the City of Tulsa for the improvements make inside the right-of-way.

**STATEMENT OF HARDSHIP:** The applicant believes that the designation of Primary Arterial is not appropriate for not only the subject property but other properties along Charles Page Boulevard. Such a dedication would take 25% of the property and make many properties very shallow and undevelopable.

**SAMPLE MOTION:**

Move to \_\_\_\_\_ (approve/deny) a **Variance** to allow parking inside the City of Tulsa planned Right-of-Way (Sec. 90.090-A)

Finding the hardship(s) to be \_\_\_\_\_.

- Per the Conceptual Plan(s) shown on page(s) \_\_\_\_\_ of the agenda packet.
- Subject to the following conditions \_\_\_\_\_.
- **Suggested Condition:** Applicant to execute a removal agreement with the City of Tulsa for any improvements made inside the right-fo-way.

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."*

**LEGAL DESCRIPTION  
NEW OVERALL COMBINED TRACT "B"**

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

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

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

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

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

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

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

SAID TRACT OF LAND CONTAINS 20,440.0 SQ. FEET OR 0.47 ACRES  
BEARINGS ARE BASED UPON THE OKLAHOMA STATE PLANE COORDINATE SYSTEM, (3501OK N), NORTH AMERICAN DATUM 1983 (NAD83) USING THE NORTH LINE OF BLOCK 1, HOME GARDENS SECOND ADDITION AS N 89°00'53" E.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond, Radney, Ross, Van De Wiele "aye"; "nay"; no "abstentions"; Shelton absent) to **APPROVE** the request for a Special Exception to allow a duplex in an RS-5 District (Section 5.020, Table 5-2); Variance of the 25 foot setback for a Special Exception Use from R-zoned lots occupied by residential uses (Section 50303-B, Table Note 4); Variance of the required number of parking spaces (Section 55.020, Table 55-1), subject to conceptual plan 3.6; not intended to require the drive to the rear. The Board finds the hardship to be the small size and narrowness of the lot, and the undue burden of providing extra parking for such a small domicile. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In granting the Variance the Board finds that the following facts, favorable to the property owner, have been established:

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

**LT 4 BLK 16, BURGESS HILL ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22746—Shane Hood**

**FILE COPY**

**Actin Requested:**

Special Exception to allow a small (less than 250-person capacity) Indoor Commercial Assembly/Entertainment Use to sell and serve alcohol within 150 feet of a residential district; Special Exception to allow an Outdoor Commercial Assembly/Entertainment Use in a CH District (Section 15.020, Table 15-2).

**LOCATION:** 3924 West Charles Page Boulevard South **(CD 1)**

10/08/2019-1238 (5)

BDA-22746

FILE COPY

**Presentation:**

**Shane Hood**, 815 East 3<sup>rd</sup> Street, Tulsa, OK; stated the subject property consists of six lots that will be used for the event space. The building will hold about 89 people and there will be an outdoor area that is also used for entertainment. The event center requires 22 parking spaces, and there are 21 on the lot with an additional 22 parking spaces next door.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 4-0-0 (Bond, Radney, Ross, Van De Wiele "aye"; "nay"; no "abstentions"; Shelton absent) to **APPROVE** the request for a Special Exception to allow a small (less than 250-person capacity) Indoor Commercial Assembly/Entertainment Use to sell and serve alcohol within 150 feet of a residential district; Special Exception to allow an Outdoor Commercial Assembly/Entertainment Use in a CH District (Section 15.020, Table 15-2), subject to conceptual plans 4.5 and 4.24 of the agenda packet. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

**LOT 4 BLK 1; LOT 5 BLK 1; LOT 6 BLK 1; LOT 7 BLK 1; LT 8 BLK 1; E. 1/2 OF LOT 9 BLK 1, HOME GARDENS SECOND ADDN - TULSA, City of Tulsa, Osage County, State of Oklahoma**

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**NEW APPLICATIONS**

**22749—Magic Leaf, LLC**

**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: 4210 East 11<sup>th</sup> Street South (CD 4)**

**Presentation:**

**Jordan Towers**, 4210 East 11<sup>th</sup> Street, Tulsa, OK; no formal presentation was made but the applicant was available for any questions from the Board.

Mr. Van De Wiele stated the Board is in receipt of a copy of the applicant's license on page 5.5 and the spacing exhibit on pages 5.6 and 5.7.

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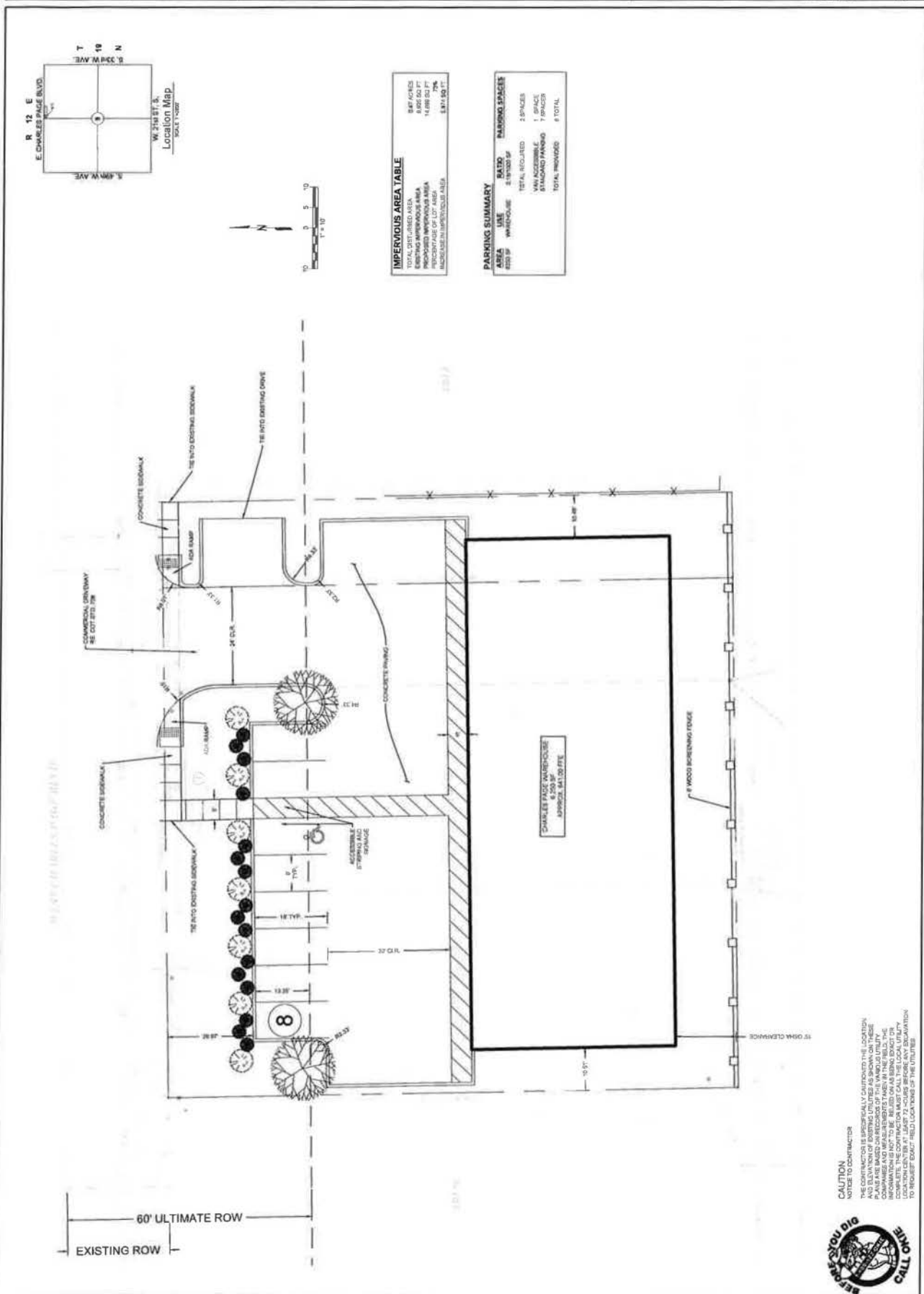
***Subject property***



***Facing West on Charles Page Boulevard***



***Facing East on Charles Page Boulevard***



**IMPERVIOUS AREA TABLE**

TOTAL DISTURBED AREA	887 ACRES
EXISTING IMPERVIOUS AREA	8 ACRES 547 SQ FT
NEW IMPERVIOUS AREA	14,688 SQ FT
PERCENTAGE OF LOT AREA	0.17%
INCREASED IMPERVIOUS AREA	14,688 SQ FT

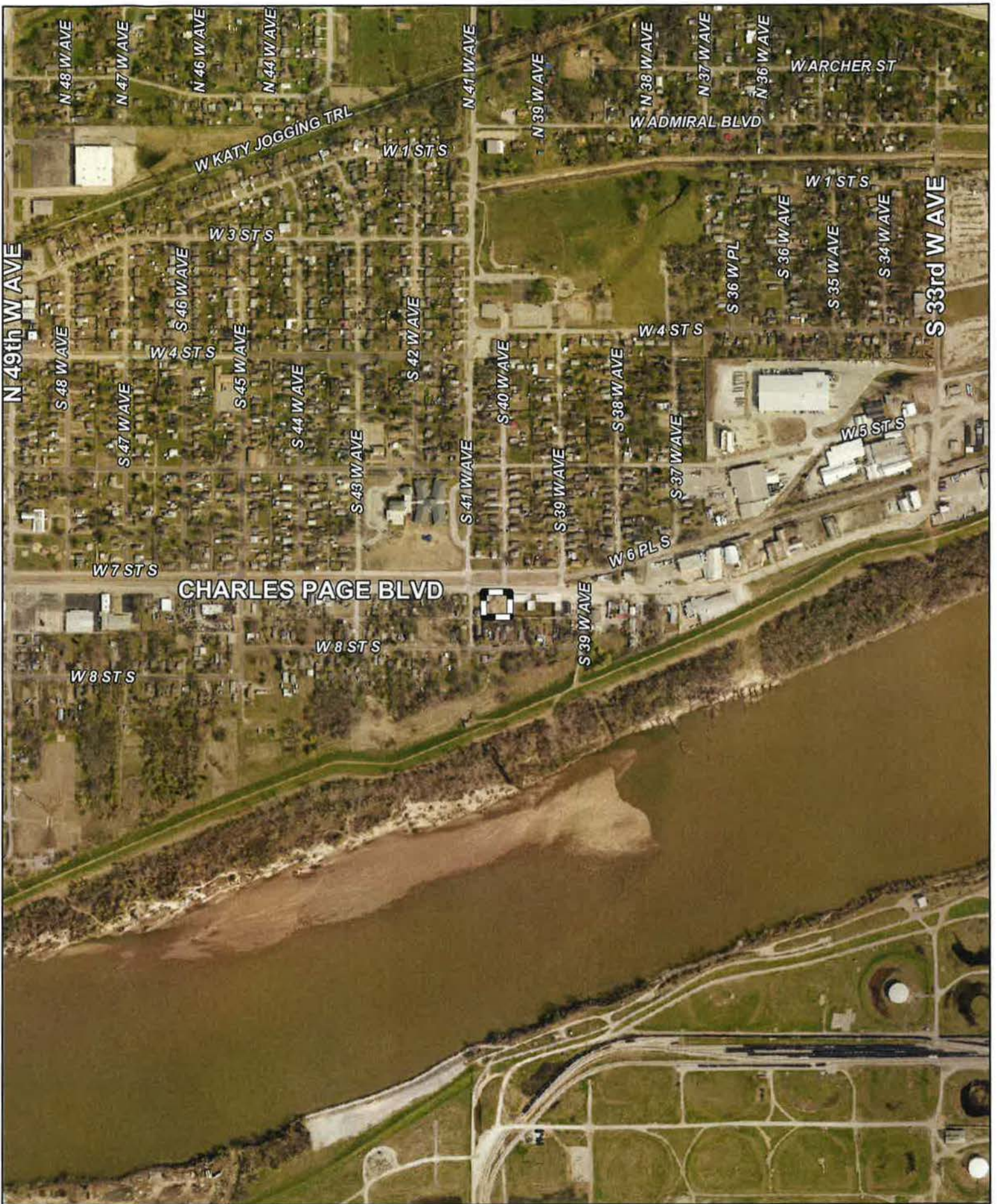
  

**PARKING SUMMARY**

AREA	LINE	RATIO	TOTAL REQUIRED	PROVIDED SPACES
WAREHOUSE	1	2.0	2 SPACES	2 SPACES
			1 SPACE	1 SPACE
			7 SPACES	7 SPACES
				8 TOTAL

**CAUTION**  
 NOTIFY CONTRACTOR  
 THE CONSTRUCTION IS SUBJECT TO VARIATIONS IN LOCATION AND ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS AND AS SHOWN ON RECORDS OF THE VARIOUS UTILITIES. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR LOCATION CENTER AT LEAST 72 HOURS BEFORE ANY EXCAVATION TO REQUEST "DRAFT" FIELD LOCATIONS OF THE UTILITIES.





N 49th W AVE

N 48 W AVE

N 47 W AVE

N 46 W AVE

N 44 W AVE

N 41 W AVE

N 39 W AVE

N 38 W AVE

N 37 W AVE

N 36 W AVE

W ARCHER ST

W ADMIRAL BLVD

W KATY JOGGING TRL

W 1 ST S

W 1 ST S

W 3 ST S

W 1 ST S

S 46 W AVE

S 36 W AVE

W 4 ST S

S 36 W AVE

S 47 W AVE

S 45 W AVE

S 44 W AVE

S 42 W AVE

S 40 W AVE

W 4 ST S

S 36 W PL

S 35 W AVE

S 34 W AVE

S 33rd W AVE

S 43 W AVE

S 41 W AVE

S 39 W AVE

S 38 W AVE

S 37 W AVE

W 5 ST S

W 7 ST S

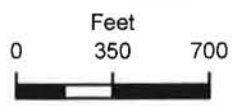
CHARLES PAGE BLVD

W 6 PL S

W 8 ST S

S 39 W AVE

W 8 ST S



Subject Tract

BOA-23183

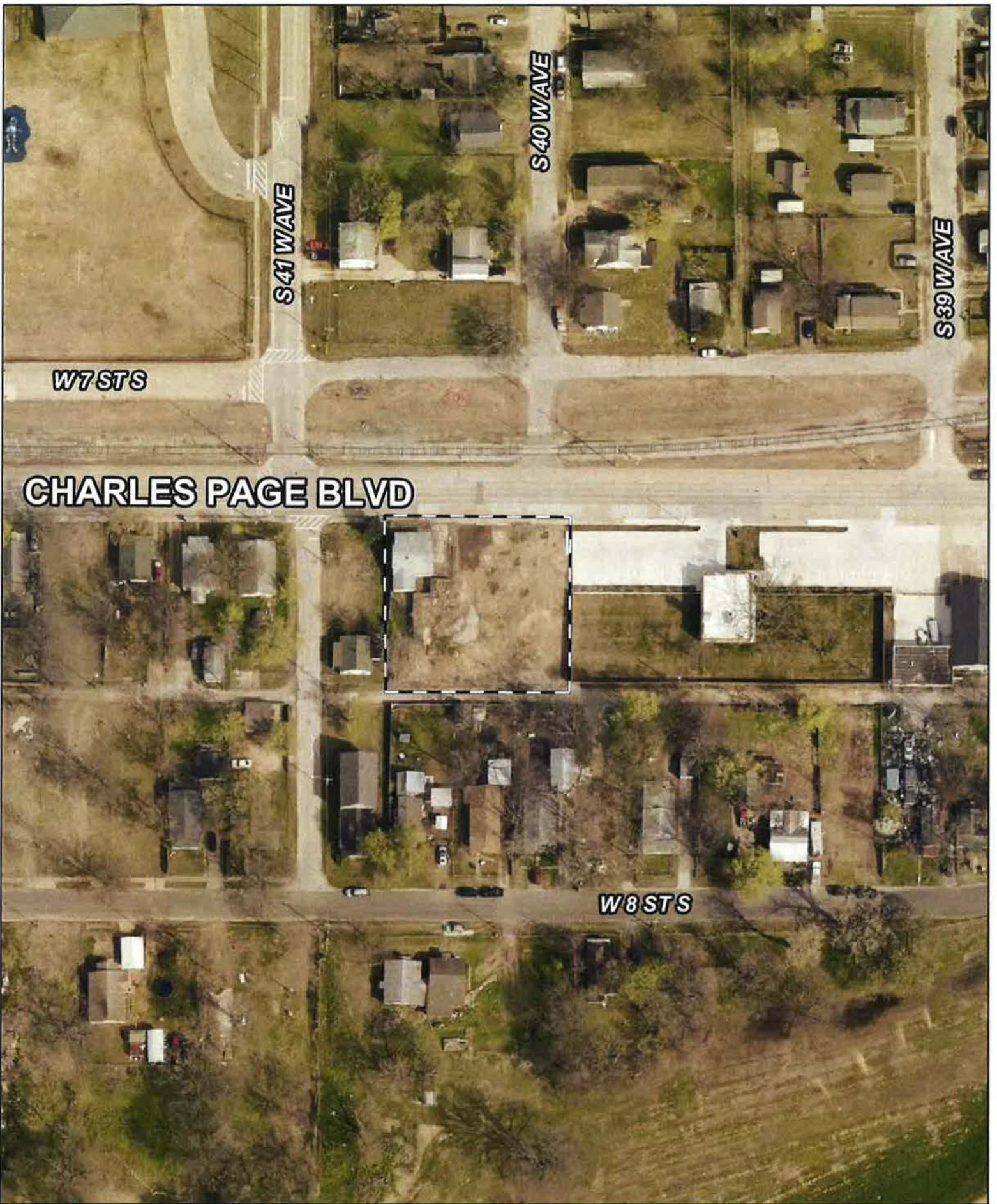
19-12 09

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

Aerial Photo Date: 2020/2021

5.13





W7 STS

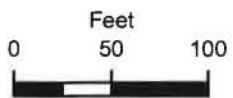
S41 WAVE

S40 WAVE

S39 WAVE

CHARLES PAGE BLVD

W8 STS



Subject  
Tract

**BOA-23183**

19-12 09

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

Aerial Photo Date: 2020/2021

5.14

