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12/07/2020

RE: December 8th Agenda item 23022 – Lubarje, LLC

Members of the City of Tulsa Board of Adjustment,

Lubarje, LLC is asking the BOA to overrule the Letter of Deficiency for Application ZCO-067561-2020. The LOD was issued because the examiner found “an active Zoning Clearance Permit for another dispensary within 1000 ft of your location.” That active permit should not have been granted because the applicant in that case was neither the property owner nor the owner’s authorized agent as is required by the zoning code.

The active permit that was referred to in my client’s LOD is ZCO-067758-2020. The applicant for that permit is Kevin Hale. It is our understanding that Mr. Hale is an architect employed by F5 Industries. Neither Mr. Hale nor F5 Industries are the property owners for the permitted location, 7309 S Memorial Dr. E.

The Tulsa Zoning Code states:

Section 70.080. - Zoning clearance and permits.

A. **Applicability.** Property owners or their authorized agent must obtain a zoning clearance permit from the development administrator before constructing, moving, or structurally altering any building or structure or establishing or changing the use of any building or lot.

Furthermore, under **Section 95.040** it states that an Agent is, “A person duly authorized to act on behalf of the owner of the subject property.” Generally speaking, a duly authorized person must be authorized in writing or by statute.

The owner of the permitted property is 5-D Property, LLC. While Mr. Hale’s client, F5, may now be negotiating with the property owner for a lease agreement, that does not make Mr. Hale the duly authorized agent of the owner. This would be even more true at the time Mr. Hale submitted his application in August of this year. It is our understanding that at that time F5

Industries may have been shown the property by 5-D's commercial real estate broker, Nick Lombardi, but that no meaningful communication between those parties had occurred beyond that.

There is an additional question of why Mr. Hale's permit was granted before my client's when our application predated Mr. Hale's. However, that issue only needs to be considered if you were to accept that a non-owner or their agent can suppress valid permits for a whole area without being duly authorized to do so. The only deficiency preventing the City of Tulsa from granting a permit for my client's property is this active permit that was granted in violation of the zoning code. We ask you to exercise your authority to correct this mistake and grant our permit. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Todd Maxwell". The signature is written in a cursive, slightly slanted style.

Todd Maxwell