

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1238
Tuesday, October 8, 2019, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Van De Wiele, Chair Bond, Vice Chair Ross, Secretary Radney	Shelton	Wilkerson Chapman Sparger K. Davis	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on October 3, 2019, at 9:08 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Van De Wiele called the meeting to order at 1:00 p.m.

Mr. Chapman read the rules and procedures for the Board of Adjustment Public Hearing.

Mr. Van De Wiele announced that Agenda Item #10, BOA-22754, a bed and breakfast application located at 1120 South Xanthus Street has been withdrawn, and the Board will not be taking any action on the request.

MINUTES

On **MOTION** of **BOND**, the Board voted 4-0-0 (Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Shelton absent) to **APPROVE** the **Minutes** of the September 24, 2019 Board of Adjustment meeting (No. 1237).

Mr. Van De Wiele explained to the applicants and interested parties that there were only four board members present today; Ms. Shelton is out for business reasons. Most motions the Board makes it will require an affirmative vote of three of the remaining four members. When there is less than a full Board, the Board will entertain a request to continue agenda items to a later meeting date, at which all five members of the Board may be present. Mr. Van De Wiele asked if there were any applicants or an interested party would like to postpone his or her hearing until the next meeting he or she could do so. The audience nodded their understanding and no one came forward to request a continuance.

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Mr. Van De Wiele announced that a City Councilor has requested a continuance for agenda Item #13, and the Board will hear that continuation request.

22757—Michael Sager

Action Requested:

Variance to reduce the required 10-foot street setback in an IM District (Section 15.030, Table 15-3). **LOCATION:** 302 South Peoria Avenue East **(CD 4)**

Mr. Van De Wiele asked Mr. Chapman if he had received a telephone call from Councilor McKee this morning requesting this continuance. Mr. Chapman stated one of the Council Aides brought the request to the office in person because there is a neighborhood meeting scheduled for tonight, and they would like to hear the request after the meeting.

Presentation:

Michael Sager, 826 East Admiral Boulevard, Tulsa, OK; stated this project is an out of state buyer and developer for the property located at 3rd and Peoria, which is the site for the old Hanna Lumber Company. The developer has complied with each step of the application process in a timely manner. He reached out to GuRuStu who was at the last meeting to discuss the subject property, and he was basically the spokesperson and organizer for all the neighborhoods of the area. He voiced no big heartburn about this project except that they would like to see retail on that corner. The developers of the project are here today. The developers have the right to build the building on the subject property because of the existing zoning. The hardship is the City of Tulsa's design of the streets causing the property an excess of 400 feet of street frontage. If the developer is allowed to go to the lot line for the building, there is still 20 feet of space between there and the back side of the curb.

Mr. Van De Wiele stated that the Board just wants to deal with the continuation request, and he thinks what Mr. Sager is telling the Board that the potential buyer having

traveled from out of state there is an objection to the request for a continuation. Mr. Sager answered affirmatively. Mr. Van De Wiele asked Mr. Sager if there had been any conversation with the City Councilor or her staff. Mr. Sager stated that he has not and does not know who the City Councilor is at this time.

Interested Parties:

Steven Watts, 403 South Cheyenne, #205, Tulsa, OK; stated he is a developer in the City of Tulsa, and he has an association with the buyer. This investment has to be in place because there is a very strict timeline, so even a two-week continuance would make the project likely not to happen. Investment capital has to be in the project in the next couple of weeks.

Mr. Van De Wiele asked Mr. Watts what the timeline deadline is. Mr. Watts stated that it is the end of November; the property has to close at the end of November. The Variance is key to the next step to be able to do environmental studies, and all the third-party reports which take six to eight weeks.

Comments and Questions:

The Board members want to hear this case today. Mr. Van De Wiele stated the Board will proceed with the meeting starting with Agenda Item #2.

Board Action:

No Board action required at this time.

UNFINISHED BUSINESS

22740—Anthony Rodriguez

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: 432 South Sheridan Road East **(CD 5)**

Presentation:

Anthony Rodriguez, 1106 West Coyote Road, Sand Springs, OK; stated he currently has a dispensary in Sand Springs along with a cultivation operation. The subject site was the former Harden's Hamburgers.

Mr. Van De Wiele stated the Board has a copy of the applicant's license on page 2.9 and his exhibits on pages 2.3, 2.8 and 2.10.

Mr. Van De Wiele asked Mr. Rodriguez if he was aware of any other dispensary or dispensary licenses in the 1,000-foot radius. Mr. Rodriguez stated that he did not know of any other dispensary or licenses.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Shelton absent) I move that based upon the facts in this matter as they exist presently, 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:

LTS 1 & 2 BLK 5, SHERIDAN HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22745—Charles Higgins

Action Requested:

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). **LOCATION:** 1012 North Main Street **(CD 1)**

Presentation:

Charles Higgins, 1164 North Cheyenne Avenue, Tulsa, OK; stated he would like to have a duplex in an RS-5 zone; the zoning was changed to allow a duplex. The duplex will be a two-story with 600 square feet on each floor. The property is just outside of Brady Heights and there are other duplexes in the area. There is an alleyway behind the proposed duplex. There will be a driveway that will be 16 feet wide.

Mr. Van De Wiele asked Mr. Higgins how many parking spaces he is required to have and how many does he have. Mr. Higgins stated that he does not know the number of spaces required. Mr. Wilkerson stated the Code requires four parking spaces, and in this circumstance the spaces can be stacked.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

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

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)

Presentation:

Shane Hood, 815 East 3rd 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 11th Street South (CD 4)

Presentation:

Jordan Towers, 4210 East 11th 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.

Mr. Van De Wiele asked Mr. Towers if he was aware of any other establishments or license holders in the 1,000-foot radius. Mr. Towers stated that he was not aware of any.

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"; no "nays"; no "abstentions"; Shelton absent) I move that based upon the facts in this matter as they exist presently, 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:

LT 1 BLK 2, BEVERLY HILL ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22750—Raul Reyes

Action Requested:

Special Exception to permit a manufactured home in a RS-3/AG District (Section 5.020, Table 5-2 and Section 25.020, Table 25-1.5); Special Exception to extend the one year time limit for a manufactured home to indefinitely (Section 40.210); Variance to allow the use of a non dustless, all-weather parking surface to permit a gravel driveway (Section 55.090-F.1). **LOCATION:** West of the SW/c of East 46th Street North and North Lewis Avenue East **(CD 1)**

Presentation:

Raul Reyes, 19 South 70th East Avenue, Tulsa, OK; stated he would like to have a manufactured home for his home.

Mr. Van De Wiele asked Mr. Reyes how old the manufactured home is. Mr. Reyes stated that it will be a new manufactured home.

Mr. Van De Wiele asked Mr. Reyes what the orange box is that is shown on the map of the subject site. Mr. Reyes stated that it is the driveway. Mr. Reyes stated that he would like to have the drive as gravel in the beginning and eventually have a concrete driveway. Mr. Van De Wiele asked Mr. Reyes if there were other gravel driveways in the area. Mr. Reyes answered affirmatively.

Mr. Van De Wiele asked Mr. Reyes to state his hardship to allow the gravel driveway. The house will be placed about 100 feet from the street and it is too costly to lay a concrete driveway in the beginning. Mr. Van De Wiele stated the Board is not allowed to grant a Variance based on financial hardships, so there needs to be something other than an expense. Mr. Reyes stated there are things that he does not understand very well.

Kimberly Espino, 19 South 70th East Avenue, Tulsa, OK; stated she is the daughter of Mr. Reyes and she would like to explain. Her father wants to have the driveway extend from the street all the way to the house, and the property is very bumpy.

Ms. Radney asked Ms. Espino if the property was not level. Ms. Espino answered affirmatively. The property was formerly part of the neighbor's land, that is why their driveway is so close to the property line and part of that drive is on the subject property. So, her father would like to move the driveway over, so it is not so close to the neighbor.

Ms. Radney asked Ms. Espino if there was a reason, they chose the place on the lot they did for the manufactured home. Ms. Espino her father would like to have the house a little bit farther from the street for privacy, plus they want to preserve the trees.

Interested Parties:

Donnie Hall, 10392 East 21st Street, Tulsa, OK; stated he owns the property to the east of the subject site. His concern is that this will diminish property values. He is not aware of any trailers on that side of the street, and he thinks a manufactured home would be inappropriate for the area. He wants to keep the neighborhood moving forward and would not want to see it take a step backwards.

Ms. Radney asked Mr. Hall if he had a gravel driveway on his property. Mr. Hall answered affirmatively, but he has started concrete work.

Mr. Van De Wiele asked Mr. Hall where the nearest manufactured homes were located in relation to the subject site. Mr. Hall stated that he did not know.

Rebuttal:

Kimberly Espino came forward and stated that she does not think by having a manufactured home on the subject property is going to change things, it is just a home.

Ms. Radney asked Ms. Espino what the intended use for the rest of the property would be, because it is a large lot. Ms. Espino stated that the family would like to have some farm animals and have a yard for family gatherings.

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 permit a manufactured home in a RS-3/AG District (Section 5.020, Table 5-2 and Section 25.020, Table 25-1.5); Special Exception to extend the one year time limit for a manufactured home (Section 40.210); Variance to allow the use of a non dustless, all-weather parking surface to permit a gravel driveway (Section 55.090-F.1), subject to conceptual plans 6.11 for the location, 6.12 and exhibits submitted by the applicant today for the style and architectural features. The manufactured home is to be new, skirted, and tied down. This approval has a time limit of ten years, October 2029. The Board finds the hardship to be the nature and layout of this lot and the existing adjoining non-all-weather parking surface. 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:

E/2 W/2 NE NW NE SEC 18 20 13, City of Tulsa, Tulsa County, State of Oklahoma

22751—Nathan Cross

Action Requested:

Special Exception to allow a High-Impact Medical Marijuana Processing Facility in an IM (Industrial-Moderate) District (Section 15.020, Table 15-2). **LOCATION:** 1315 North Utica Avenue East **(CD 1)**

Presentation:

Nathan Cross, 2 West 2nd Street, #700, Tulsa, OK; stated the building is a former steel manufacturing facility that has been vacant for a few years. The property was rezoned in 1977 and they maintained a 75-foot buffer of IL around the southern end of the property. It is presumed that the IL zone was to buffer the property from the IM zoning, but the IM zoning breaks across the building as illustrated on the zoning map. Today's request is just for the use in the IM zoning where the northern part of the building is contained.

Mr. Van De Wiele asked Mr. Cross if this was a common owner between the two lots. Mr. Cross stated that it is not two lots but is one lot with two different zonings.

Mr. Cross stated the property is surrounded on almost all sides by other industrial uses; it is IL heavy in the area. He does not think the use being proposed is inconsistent with the use of the area. This was a former steel manufacturing facility so prior to this request there were trucks going in and out of the property, heavy equipment being used, fumes, smoke, etc. The proposed use is to repurpose the property into an extraction facility. The extraction will be in the northern part of the building and there are no plans to expand from the designated location. Everything else in the building will be associated uses; offices, packaging, sales and storage of the finished product. This facility is less intensive than the previous use.

Ms. Ross asked Mr. Cross if there would be sales to the general public. Mr. Cross stated there would be no sales to the general public, it is not a dispensary. This is a manufacturing facility and that is all it is and all it ever will be during the tenancy term.

Mr. Van De Wiele asked Mr. Cross what type of extraction would be used in the process. Mr. Cross stated that it will be solvent extraction; it will not be butane extraction. Mr. Cross stated that his client has six other facilities across the United States, all of which have far more restrictive state requirements than Oklahoma.

Mr. Van De Wiele asked Mr. Cross if his client was to occupy the entire building. Mr. Cross answered affirmatively.

Interested Parties:

Kathy Hayworth, 2202 North Denver Boulevard, Tulsa, OK; stated she owns a dispensary next door to the subject property; 1333 North Utica Avenue and she was concerned about the type of sales they were going to have.

Mr. Van De Wiele stated that as an extraction entity they would be selling to people that make products that are then sold to the dispensary to be sold to the general public.

Charles Wilken, 6960 Foxbrier Drive, Tulsa, OK; stated he is one of the partners in the entity. He does not have a dispensary license and he is happy to have Ms. Hayworth's business next door. The same landlord actually owns both properties. The facility will

be making product and there will be a sales and administration accounting team on site that will sell to dispensaries.

Mr. Van De Wiele asked Mr. Wilken to explain the type of extraction that will be done on the site. Mr. Wilken stated that it is ethanol-based extraction as opposed to CO₂ extraction which high pressure extraction or butane extraction. This is a filtration extraction that operates at very cold temperatures instead of heat.

Cody Nelson, 1076 Spotted Bull Court, Henderson, NV; stated the type of extraction is an ethanol-based extraction; it will be very cold temperatures that is very much below the boiling point for any risk of fumes. It is very safe and in over ten years there have been zero issues; it is one of the most calm and easiest extractions to be used. The facility is obligated to have general liability, products liability, accident, auto and other sorts of insurance, not just to protect the citizens but to protect the facility. The facility also brings another added element of security as well. The Oklahoma Bureau of Narcotics and Dangerous Drugs has specific requirements on this type of facility, so as opposed to a dispensary. There will be video and access monitoring also.

Rebuttal:

Nathan Cross came forward and stated this is an IM location. This is a relatively heavy industrial area and there has been heavy industrial on the site for years, and it is consistent with the area. His clients will do whatever they need to do.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, 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 High-Impact Medical Marijuana Processing Facility in an IM (Industrial-Moderate) District (Section 15.020, Table 15-2), subject to conceptual plan 7.10 and the exhibit submitted today, subject to conceptual plan 7.10 and the exhibit submitted today. The marijuana extraction process is limited to butane, propane, ethanol, and all other extraction methods allowed by right in the IM and IL Districts. 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:

The Southwest Quarter of the Southwest Quarter of the Northwest Quarter of the Northeast Quarter (SW/4 SW/4 NW/4 NE/4) of Section Thirty-One (31), Township Twenty (20) North, Range Thirteen (13) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U. S. Government Survey thereof; LESS AND EXCEPT the South 75 feet thereof, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Van De Wiele left the meeting at 2:36 P.M.

22752—Lester Shaw

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: 1511 East Apache Street North **(CD 1)**

Presentation:

Lester Shaw, 1511 East Apache Street, Tulsa, OK; no formal presentation was made but the applicant was available for any questions from the Board.

Mr. Bond stated the Board has received the applicant's spacing verification on page 8.6.

Mr. Bond asked Mr. Shaw where the nearest marijuana dispensary to his location is located. Mr. Shaw stated the nearest dispensary is located at Peoria and Apache.

Interested Parties:

Steven Blades, 1621 North Greenwood Place, Tulsa, OK; stated he is the Pastor of St. Luke's Baptist Church. This proposed dispensary is actually being built at the back door of the church, and he is concerned about that and he doesn't know what the City Ordinance is regarding that situation.

Ms. Blank stated the City Ordinance only has the separation requirement from another dispensary; it is not something the City has in its ordinance.

Pastor Blades stated that he has a problem with where the dispensary is being placed. The area is a drug infused area and some of these dispensaries draw negativity. There are young people and elderly people at the church quite frequently, and he would like to see it moved to another location.

Mr. Van De Wiele re-entered the meeting at 2:40 P.M.

Curtis Webster, 5460 North Iroquois, Tulsa, OK; stated he is concerned about property values diminishing. The neighborhood cannot even get a decent grocery store to move in, and if this is all the neighborhood to look forward to it is sad. He is a coach and teacher and he has dealt with people all his life. This area is crime ridden and this will increase the crime. His concern is safety for the citizens of the area. He would like for the dispensary to relocate.

Otee Jones, Jr., 1148 North Boston Place, Tulsa, OK; stated he is the Associate Minister at St. Luke's Baptist Church. He questions the morality. He is an ex-marijuana

user and it brings crime, theft, and destruction of property. Most of this is being done on a recreational level. There is a dispensary on the corner of Apache and Peoria which is four blocks away, and would that make this dispensary within the 1,000-foot radius?

Rebuttal:

Lester Shaw came forward and stated he owns several pieces of property on Apache, about six acres. He is coming back into the community and wants to rebuild it. The church that is located behind the subject property has been there for years. There is a crack house located next to the church and nothing has been done about that. He just invested \$80,000 into the building and he is bringing positive vibes to the neighborhood.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Shelton absent) I move that based upon the facts in this matter as they exist presently, 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:

LT 12 BLK 4, MARTIN ROLL ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22753—Larry McCool

Action Requested:

Variance of the allowable square footage for detached accessory buildings in the RS-1 District (Section 45.030); Special Exception to exceed the allowable driveway width in the right-of-way and in the street yard (Section 55.090-F.3). **LOCATION:** 9402 East 16th Street South **(CD 5)**

Presentation:

Larry McCool, 9402 East 16th Street, Tulsa, OK; stated he trying to retire so the project is an attempt to provide a garage for a motorhome and a shop to woodworking in. The property is 2.7 acres in size, and the former owners, Dr. and Mrs. Gross, were the owners of Southern Ag and he was a veterinarian, so he built a barn on the rear of the property. The barn is about 900 square feet and he would like to add about 1,500 square foot building. The location of the proposed building needs to have access either off 16th Street or 94th Street to be able to access the building with a vehicle. There is a ten-foot overhead utility easement on the east side of the house, so the proposed structure needs to go on the west side of the easement or the east side of the easement.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Van De Wiele stated that Dr. and Mrs. Gross are personal acquaintances and he asked Ms. Blank if she thought that would create a conflict, because he does not think it does. Ms. Blank stated that as long as the relationship does not interfere with the decision making and can be impartial in this request. Mr. Van De Wiele stated that he is familiar with the subject property and it is a unique piece of property. He thinks from the size standpoint this would be an okay use.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-0-0 (Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Shelton absent) to **APPROVE** the request for a Variance of the allowable square footage for detached accessory buildings in the RS-1 District (Section 45.030); Special Exception to exceed the allowable driveway width in the right-of-way and in the street yard (Section 55.090-F.3), subject to conceptual plans 9.6 and 9.7 of the agenda packet. The Board finds the hardship to be the unique shape and surrounding characteristics and topography of the subject lot. 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 1 BLK 1, WINDSOR PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Van De Wiele left the meeting at 2:55 P.M.

22755—918 Elevate

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: 2828 East 91st Street South **(CD 2)**

Presentation:

Joshua Wyrick, 2828 East 91st Street, Tulsa, OK; no formal presentation was made by the applicant, but he was available for any questions from the Board.

Mr. Bond stated the Board is in receipt of the applicant's spacing verification exhibit on page 11.7. The Board also has a copy of the applicant's license on page 11.11.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Shelton absent) I move that based upon the facts in this matter as they exist presently, 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:

LT 1 BLK 1, CAR CARE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22756—Frank Stewart

Action Requested:

Variance of the setback to allow a canopy structure in the right-of-way along Peoria Avenue.(Section 90.090). **LOCATION:** 3739 South Peoria Avenue East **(CD 9)**

Presentation:

Michael Sager, 825 East Admiral Boulevard, Tulsa, OK; stated he is representing Frank Stewart. This is a commercial mixed-use building located in Brookside. The canopy awning has been in place since 2008 and it was removed due to deterioration, and the owners would like to have the canopy back in place.

Mr. Bond asked Mr. Sager to state the hardship for this request. Mr. Sager stated the hardship the fact is the canopy was designed and permitted in 2008, the canopy deteriorated and removed. The purpose of the canopy is for sheltering people in the outside area of the facility, and it is also the environmental control for the restaurant which was designed with floor to ceiling glass which faces west.

Mr. Bond asked Mr. Sager if he would agree that there has been outside dining in Brookside going back before the Comprehensive Zoning Plan. Mr. Sager answered affirmatively.

Interested Parties:

There was an interested party present, but he did not want to speak unless necessary.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 3-0-1 (Bond, Radney, Ross "aye"; no "nays"; Van De Wiele "abstaining"; Shelton absent) to **APPROVE** the request for a Variance of the setback to allow a canopy structure in the right-of-way along Peoria Avenue.(Section 90.090), subject to conceptual plans 12.7 and 12.8 of the agenda packet. Also included in the approval is the existing license agreement on pages 12.12, 12.13 and 12.14 of the agenda packet. The Board finds the hardship to be that the necessity of replacing the canopy provides shade to diners of the building. 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:

**W305 S165.57 GOV LT 3 LESS W50 & S25 E255 FOR STS SEC 19 19 13 .823AC,
City of Tulsa, Tulsa County, State of Oklahoma**

Mr. Van De Wiele re-entered the meeting at 3:05 P.M.

22757—Michael Sager

Action Requested:

Variance to reduce the required 10-foot street setback in an IM District (Section 15.030, Table 15-3). **LOCATION:** 302 South Peoria Avenue East **(CD 4)**

Presentation:

Michael Sager, 825 East Admiral Boulevard, Tulsa, OK; stated the property is the former Hanna Lumber Company. The corner is a unique piece of property in that to the east it bounds Peoria Avenue, to the north it bounds 3rd Street, and on the diagonal going to the west it bounds 4th Street which goes under the viaduct for the railroad. The property is zoned IM and this zoning is appropriate for the requested use. The ten-foot setback for 429 square feet impacts this lot by over 4,000 square feet of buildable area. There is no way for this lot to acquire the next-door neighbor's property because the next-door neighbor is the railroad, which has been there since the beginning of Tulsa. The use requested for the subject property is a quiet operation similar to an office building. In the early 1900s the founding fathers expected the intersection of 3rd and Peoria to be a major intersection so the widths for a short distance are particularly wide. In the 1960s Mr. Hanna dealt with the City and an agreement was entered into allowing Hanna Lumber Company to use a 20-foot strip down the face of 3rd Street and Peoria; the agreement is included in the agenda packet. When the 20-foot back of the curb line and add the 10 feet back of that, the visual impact of the neighborhood drives the building back 30 feet back into the lot. The relief being requested would allow the building to comply with the form base code which the Pearl District fought so diligently for and QuikTrip ignored when they developed in the opposite corner of the district, which would be 11th and Utica. This property is the juxtapose to QuikTrip; 11th and Utica and 3rd Street and the railroad going into downtown. The relief would still leave a fifteen-foot border on the street before getting to the sidewalk. Visually the building is not on the street, visually there is a great setback, visually this is a quiet non-toxic use.

Mr. Van De Wiele asked Mr. Sager if he was looking for relief on the 3rd Street, 4th Street and the Peoria street sides. Mr. Sager answered affirmatively. Mr. Sager used prints on the overhead projector to explain the position of the building on the subject property.

Mr. Sager stated the proposed building will be a multi-story building, and the developers are here to answer any questions the Board may have. The building is a significant investment for that corner, and it is part of reality of what is trying to be accomplished. Time is of the essence.

Mr. Van De Wiele asked Mr. Sager what the building would be used for. Mr. Sager deferred to the developer.

Interested Parties:

Carl Thompson, 14207 East Coyote Road, Scottsdale, AZ; stated the intended use of the subject property is a self-storage facility. The building would be a four-story metal building with a brick façade. The facility will be a secure facility which would be manned during the day and secure during the nighttime and will have adequate necessity lighting.

Mr. Van De Wiele asked Mr. Thompson if he had the building renderings with him. Mr. Thompson answered affirmatively. Mr. Thompson described the renderings to the Board.

Mr. Van De Wiele asked Mr. Thompson if the façade would be around the other four sides of the proposed building. Mr. Thompson answered affirmatively.

Mr. Van De Wiele asked Mr. Thompson what types of materials would be used. Mr. Thompson stated there would be glass, brick with a metal façade, and the north and east sides would be similar.

Mr. Van De Wiele asked Mr. Thompson if he had a lease with the Union Pacific Railroad. Mr. Sager came forward and stated there is no lease with the railroad, however, with each prospect he has had for the property the railroad has entered into a LOI, and the developer has actually been cleared on the lease submittal.

Ashley Smith, Attorney, 2932 Pelham Drive, Oklahoma City, OK; stated she is the attorney for the developer. Ms. Smith stated there is a lease that is currently under review but has not been executed.

Mr. Van De Wiele asked staff if this proposal would have a parking element to it. Mr. Chapman stated there are parking requirements but that is not part of this request. Mr. Van De Wiele asked if there would need to be a Variance of the parking requirement. Mr. Chapman stated that under the 2016 Code a person can utilize the property with parking agreements, but it essentially has to be approved through Development Services at the Permit Center. Mr. Van De Wiele stated if there were an approval today and a failure of the parking requirement would it be an issue for the developer? Mr. Chapman answered affirmatively.

Kevin Anderson, 2510 East 26th Street, Tulsa, OK; stated he is the current President of the Pearl District Association. He has received several calls from constituents as well as Board Members about how quickly this has come up. The Pearl District is going to be one of the destination districts for the City of Tulsa, one of the premier ones therefore the Pearl District is sensitive about what happens. Mr. Sager did not reach out to the district and there may be a possibility for a compromise. The Pearl District is having

their general meeting this evening, and no one knows about this which is unfortunate. The Pearl District meets as a general membership once a month and it is tough to respond to this. The Pearl District welcomes investment, but the people are frustrated that the two schedules did not match up to allow the people to interact with the developer.

Mr. Van De Wiele asked Mr. Anderson what is his opinion about building out toward the three streets, as shown on the exhibit? Mr. Anderson stated that the hardship would need to be examined. When Iron Gate wanted to build on the subject property parking was a concern, and the railroad lease was a concern because if the lease goes away then it becomes an issue for the neighborhood.

Ms. Ross asked Mr. Anderson what the general consensus is from the Board members and the people in the area. Mr. Anderson stated that the Board members that he heard from are not in favor of this project.

Mr. Van De Wiele asked Mr. Anderson if that was because of the use or because of the proximity of the property line. Mr. Anderson stated the height of the proposed building was a major concern.

Subha Sridharan, Architect, 2651 South Boston Place, Tulsa, OK; stated that Tulsa's downtown has seen tremendous growth over the last few years spurred by an increasing demand to live, work and play in close proximity and walkable neighborhoods. One of the natural trajectory for expansion is the Pearl District with it being located on the east side of downtown and the Comprehensive Plan identifies this as a downtown neighborhood as well and the entire 3rd Street as a mixed-use corridor. Median density development in this area is characterized by walkability, smaller footprint, well designed units, lesser off-street parking will provide the provide the missing middle while aligning with the neighborhood scale. A four-story storage building close to the street on three sides does not seem to be in alignment with the approved Pearl District overlay. It may even be detrimental to the urban quality of the neighborhood. From a pragmatic standpoint, regarding the current zoning designation and existing zoning codes that are in effect, have the site triangles been reviewed and have they been provided. From the plan she saw the only access appears to be off-site in the railroad right-of-way so that would be a concern. She also knows that the railroad will only provide a yearly lease and if that lease is not renewed that would be a concern. The site is fairly large, and it is buildable but what is the hardship for today's request?

Steven Watts, 403 South Cheyenne Avenue, Tulsa, OK; stated he has worked with the developer on several projects downtown and he is definitely a good steward of the community. The developer is very interested in preserving the neighborhood. What is unique about this site is that it is bounded by two City of Tulsa parcels on the north and the east, so the setback would require 25 feet from the street. The 4,293 square feet on the ground floor would prevent about 17,000 square feet of developable building. This is going to be really strong economic development for the City of Tulsa and for the County. It is very important that this site be developed; it is a blighted corner of the City

and people are invested in this corner to make it contribute to the economic base of the City and the County.

Ms. Ross stated that this corner seems like an odd place for a self-storage facility. Mr. Watts stated that south on Peoria there is a self-storage facility and there is a U-Haul facility in the Brady District. With all the residential downtown there is a strong demand for self-storage. This will be an amenity for the area.

Mr. Van De Wiele asked Mr. Sager if the lease being negotiated with the railroad is a year-to-year lease. Ms. Ashley Smith came forward and answered affirmatively. Mr. Van De Wiele asked if the building is built what is the plan to access the property if the railroad declines to extend the lease. Ms. Smith stated that she has every reason to believe that they will extend the lease from year to year. Mr. Van De Wiele asked what would be done if the railroad does not extend. No answer was given.

Mr. Van De Wiele asked Mr. Wilkerson to give the Board a status report on the Pearl District overlay. Mr. Wilkerson stated there was an amendment to the 6th Street Infill Plan, that was adopted by City Council July 3, 2019; it is a very recent amendment to the plan. It is not an overlay in the sense that there are design regulations and it is not a regulatory document. The visionary portion of that is just that, it is a planning tool.

Mr. Van De Wiele asked Mr. Wilkerson if there was a height limitation in the IM zone. Mr. Wilkerson stated there is not. Building design is not integral to the concepts in the Small Area Plan but the active uses are.

Rebuttal:

Michael Sager came forward and stated there are four-story buildings being built all over downtown. Mr. Sager stated that he was the inventor of the Blue Dome District and he has participated financially, physically, strategically and intellectually in over a million square feet of projects in downtown Tulsa. He has his heart and soul in this City, and he believes that his reputation is that he has always advanced things and moved them forward. The Pearl District bounds from the IDL to 11th Street to Utica; it is huge. Developers and planners trust the documents they review for accuracy of the future, and he does not know anything about the 6th Street plan that was adopted. He did reach to GuRuStu to see if he should reach out to people and was told no, this is a good project. He encourages the Board to help the developers to look forward.

Questions and Comments:

Mr. Bond believes this is a flash point in the City for a lot of opinions, and GuRuStu has as much standing with him as Paul Tay does; he is not an elected representative. There are a lot of people that have concerns, pride and hopes in the Pearl District. Mr. Bond thinks the City Councilor for this district has requested a continuance for a reason. He will support a continuance for this request to the next meeting. It is economic issues that want to build on every square foot possible which is the definition of self-imposed. The Board should give deference to the duly elected representative for the District and continue this case.

Ms. Radney stated that she too would be inclined to see this case continued. If the vote were to be taken today, she would not vote in support of it. She thinks the objections raised by the interested parties in the audience today are still open questions to her. The new Pearl District plan is new, and it has not had an opportunity to be fully dissected and interpreted by investors and other persons in the neighborhood who are stake holders. A warehouse, and this is a warehouse, does not engage with the City street front and with all the investments that are being made in the south end of Peoria corridor her feeling is that 3rd Street and South Peoria intersection is more important than we yet know. She would not be inclined to support it without more information. She is also concerned about the ingress and egress, and she does agree that the handicap accessibility on site would be of concern. She also agrees this is a self-imposed hardship.

Mr. Van De Wiele stated there was discussion when Iron Gate was looking at this property, that this was the only industrial corner on a four-corner of which the other three corners are commercial. That is part of the reason that vote went the way it did. Parking was another issue, also. This being an IM zoned district to him means something. He has been on the developer's side of this sort of use before the City Council, and he thinks there is a need of this type of use near where people are. The application in itself does not bother him and he could get there on a hardship; this is a strange piece of property. What bothers him is that there is not a design review board at the City, and that lands here, but the Board is not seeing the plans. He means no disrespect to the developer, but he knows the cheapest way to build these is stand up metal panels and the most expensive way to build these is glass, rock and brick. The developer will not have his vote if it is stand up metal panels. If the street scape side of this is brick, rock and glass with a Main Street feel he will vote for it. Mr. Van De Wiele stated he wants to see all four sides of the proposed building with a description of what the materials are, and he would like to know more about the parking; this would need to fit in to this area of the City. He thinks there will be some issue with the parking.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Shelton absent) to **CONTINUE** the request for a **Variance** to reduce the required 10-foot street setback in an IM District (Section 15.030, Table 15-3) to the October 22, 2019 Board of Adjustment meeting; for the following property:

PRT LTS 1 THRU 10 & LT 16 & PRT VAC ALLEY BETWEEN SL OF LTS 1 THRU 5 & NL LT 16 BEG 20S & 20W NEC LT 1 TH W154.30 SW99.61 SE241.50 N172.36 POB BLK 18, BERRY ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22758—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to permit three households on a single lot; Special Exception to permit a multi-unit house/triplex in the RS-5 District (Section 5.020, Table 5-2 and Section 5.020-G, Table 5-2.5). **LOCATION:** 156 North Union Avenue West (CD 4)

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated the site was a grocery store in the 1920s into the early 1960s. Two families lived in the building, one downstairs in the back and one upstairs in the back, and the grocery store was in the front. The property was recently rezoned to RS-5 with the thought that was the least intrusive way to get zoned into the area. Sprinkled throughout the neighborhood there are family apartment buildings and three blocks over there is a development and an old elementary school was converted to an apartment facility. Mr. Reynolds stated he thinks the tri-plex is consistent with the uses in the area and in harmony with the spirit and intent of the Code. With the existing building it is not injurious to the neighborhood and it preserves the historical character of the neighborhood. The building will remain a red brick building and it will maintain the same footprint.

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"; no "nays"; no "abstentions"; Shelton absent) to **APPROVE** the request for a Special Exception to permit three households on a single lot; Special Exception to permit a multi-unit house/triplex in the RS-5 District (Section 5.020, Table 5-2 and Section 5.020-G, Table 5-2.5), subject to conceptual plans 14.6 and 14.18 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:

LT 4 BLK 24, IRVING PLACE, City of Tulsa, Tulsa County, State of Oklahoma

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OTHER BUSINESS

None.

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NEW BUSINESS

None.

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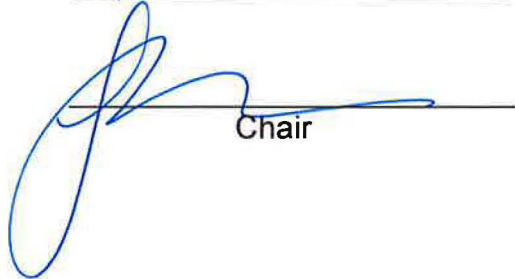
BOARD MEMBER COMMENTS

Mr. Van De Wiele asked Mr. Chapman to explain about the training later this week. Mr. Chapman stated the training is Thursday from 3:00 P.M. to 4:30 P.M. The session will be held in Williams Tower I in the St. Francis room. Mr. John Tankard, INCOG staff, will speaking to the Planning Commissioners about how to use the Comp Plan when making their discretionary decisions, and they also apply to the Board. Mr. Daniel McClure, Municipal League, will speak to the legal and statutory requirements surrounding Variances and Special Exceptions.

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There being no further business, the meeting adjourned at 4:05 p.m.

Date approved: 11/12/19


Chair