

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1239  
Tuesday, October 22, 2019, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
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 17, 2019, at 9:50 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.

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

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**MINUTES**

None to be approved.

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**UNFINISHED BUSINESS**

**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:**

**Robert Sartin**, Attorney, 110 West 7<sup>th</sup> Street, Suite 900, Tulsa, OK; stated he represents the developer. The developer has requested a continuance of this matter this morning until the next scheduled meeting. The developer intends to redesign the building to flip the access into the building to the north side, and that may affect the Variance request.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none 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 November 12, 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**

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**NEW APPLICATIONS**

**22763—Eller & Detrich – Lou Reynolds**

**Action Requested:**

Appeal of the Administrative Decision issued in Zoning Code Interpretation #2019-01 that a Major Amendment is required to PUD-230 in order to permit a school use (Section 70.140). **LOCATION:** 3810 & 3840 South 103<sup>rd</sup> East Avenue **(CD 7)**

**Presentation:**

**Lori Decter Wright**, Tulsa City Council, District 7, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated she is requesting a continuance to the November 12<sup>th</sup> Board of Adjustment meeting which would allow the City Council to consider the PUD major amendment on the Council agenda for tomorrow. There was a discussion and committee last week and she does not foresee there being any controversy tomorrow night.

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated on behalf of the applicant, Epic Charter Schools, he objects to the continuance request because this is not about something that can be cured in the City Council. This has been a denial of the

applicant's constitutionally protected property rights because this Planned Unit Development allows a school use on this property as a matter of right. It is not something that can be fixed. The school would have had students in class in September if they had been able to get a building permit that they are entitled to. This is further delay and this PUD allows a school, so he objects to this request. If this had been interpreted properly the case would have gone to the Planning Commission and he would not be before the Board today. He wants an opportunity to make his case.

Mr. Van De Wiele asked Mr. Reynolds when is the next opportunity for students to be in the space? Mr. Reynolds stated it would be the first of the year.

**Lori Wright** came forward and stated with all due respect the property is zoned office light, OL, and according to the Zoning Code there is a Special Exception that needs to come before the Council under that PUD major amendment. The concern here is that the Council needs to retain authority over these types of cases.

**Lou Reynolds** came forward and stated that some of the misunderstanding is the property is not zoned OL, the property is zoned PUD-230. PUD-230 permits a school use by right and that is why he is here today. The school is being denied their constitutional property rights, and the Board knows you cannot get your rights back once they have denied. Delay doesn't fix it and having the City Council grant a major amendment to the PUD doesn't fix the fact that the property rights were denied.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Mr. Van De Wiele asked staff if they could give some history as to where these dual tracks, PUD amendment and this appeal application started and what timeline they are on.

Mr. Wilkerson stated the history is in the staff report, which shows the last three items, one being a BOA application for a Special Exception for the school use. The last three items have worked their way through the office beginning in July 2019, and there were two that were withdrawn, and the PUD application came in August 1<sup>st</sup> and that will be heard this Wednesday.

Mr. Van De Wiele asked if what is before City Council for discussion and vote tomorrow would clarify the use issue. Mr. Wilkerson answered affirmatively; there are two public hearings and 30-day wait time after tomorrow's meeting.

**Lou Reynolds** came forward and stated there is a 30-working day wait time after the Ordinance is published. So, there is probably ten days after the City Council approves this, if they do approve this, ten days to get it published and 30 working days before the Ordinance becomes effective. This is all subject to political and procedural delay and it is unwarranted in this case. If the Board is inclined to grant this case, he would

respectfully request to put the applicant's case on today so it can be heard and in the record.

Mr. Van De Wiele asked Ms. Wright if the emergency clause shortens the 30-day waiting time. Mr. Wright came forward and stated that it is her understanding is that this is under the Boards and Authorities, it is not under the first reading for tomorrow. Ms. Wright stated that she is not sure what political delays Mr. Reynolds is referring to. At the Council level there has been no controversy around this, and she understands it is Epic Charter Schools and they may be under scrutiny from the public, but even constituents have not contacted her about this. To her knowledge none of that is factoring into this decision. From an administrative standpoint Council wants to make sure precedent is not being set unintentionally.

Ms. Blank stated that in general, when an Ordinance is passed with emergency it becomes effective upon publication.

Mr. Bond stated that he understands the Council's concern based on issues that it is the City Council's right to make a decision and concerns about precedent. He also is concerned about the claim which is for a use by right which is being denied. He thinks that is a compelling argument to hear this case today.

Mr. Van De Wiele stated he understands the two pathways and the amendment of the PUD portion is well on its way to being heard tomorrow. Mr. Reynolds is correct in that at any moment that could change and become less clear. His personal inclination would be to continue this case until the 12<sup>th</sup> of November, by that time there should have been the first and second reading. He thinks there are more issues than just this one property involved in the appeal, and he would be inclined to hear the appeal on the 12<sup>th</sup> of November. He does not think a one meeting delay is an overly burdensome continuance.

Ms. Radney stated she defers to the Chair's judgment in this case.

Ms. Ross stated she could hear this case today or continue it to the 12<sup>th</sup> of November. She is hearing that should be no issues with tomorrow's meeting so why wait.

Ms. Shelton stated that she does not know that even this was going to take a day longer that would change anything. She is against the continuance.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 2-3-0 (Radney, Van De Wiele "aye"; Bond, Ross, Shelton "nay"; no "abstentions"; none absent) to **CONTINUE** the request for an Appeal of the Administrative Decision issued in Zoning Code Interpretation #2019-01 that a Major Amendment is required to PUD-230 in order to permit a school use (Section 70.140) to the November 12, 2019 Board of Adjustment meeting; for the following property:

**LOT ONE (1), BLOCK ONE (1), BISHOP ACRES, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO RECORDED PLAT NO. 3947., City of Tulsa, Tulsa County, State of Oklahoma**

Mr. Van De Wiele stated the continuance was denied, this will be heard in the ordinary course of the agenda.

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**UNFINISHED BUSINESS**

**22714—Diana Capehart**

**Action Requested:**

Appeal of a decision by the Tulsa Preservation Commission to deny Historic Permit Application #HP-0116-2019 to permit the replacement of a tile roof with shingles (Section 70.070-L). **LOCATION:** 1110 East 18<sup>th</sup> Street South **(CD 9)**

**Mr. Van De Wiele stated the Board typically hears from the Preservation Commission first.**

**Presentation:**

**Jed Porter**, Historic Preservation Officer, City of Tulsa, 2 West 2<sup>nd</sup> Street, Suite 800, Tulsa, OK; stated on Friday, June 14<sup>th</sup>, the staff of the Tulsa Preservation Commission received a report of replacement of the tiles on the roof of the residence of Dr. and Mrs. Capehart. The project was completed without a historic preservation permit which would have been required according to Section 7070A of the Zoning Code. When informed about the requirement for a historic preservation permit Mrs. Capehart submitted an application and the proposal for the work already completed was review by the Tulsa Preservation Commission during its regular meeting on July 11<sup>th</sup>. The proposal for the replacement of the tiles with shingles was not approved and the denial of that proposal has been appealed. The proposal for the work already completed was denied due to its lack of compliance with unified design guidelines and its introduction of a significant alteration of the appearance of the residence. The unified design guidelines are explicit, Guideline A.1.1, advises the retention and preservation of existing historic architectural elements. Guideline A.1.2 advises that whenever replacement of historic architectural elements is necessary, the size, shape, pattern, texture and directional orientation is to be matched with the original historic elements. Guideline A.5.6 refers specifically to roofs and advises that whenever the materials of the roof would be changed that the replacement materials should maintain the character of the structure and the size, shape, pattern, texture and directional orientation of the historic roof. A roof covered with shingles does not match a roof covered with tiles.

Mr. Van De Wiele asked Mr. Porter about the timeline, when this came to the attention of the Commission was the roof totally completed at that point in time? Mr. Porter answered affirmatively.

Mr. Van De Wiele asked Mr. Porter about the guidelines he was just reading; the architectural elements in the historic preservation arena are the roof and shingle materials fall into those guidelines? Mr. Porter answered affirmatively.

**Andrew Shank**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated he represents the landowner, Dr. and Mrs. Capehart. Mr. Shank stated the Board sits in an appellant capacity; you step into he shoes of the Preservation Commission. The Board has all of their power and the Board is tasked with hearing the application in the role of the Commission. It is a balancing test rooted in fairness that asks the Board to analyze the degree to which work that was done on this home, how it balances between the purpose and the intent of the Historic Preservation regulations, and the desires and needs of the landowner. That is the Board's task. Mr. Shank thinks that when the Board looks at the facts of this case and actually apply them to the pertinent criteria there is but one conclusion, the permit denial should be overturned. If the Board looks at the staff report on page 5.3, staff has laid out the standard under the Zoning Code that the Board's task to the greatest extent possible affecting a fair balance between the purpose and intent of the HP District regulations and desires of the landowner. The Capehart family has lived in the subject house since 1974, before any Historic Preservation Zoning Code existed and before the overlay was put in this area. Work has been done over time, none of which would have triggered or required a permit so, the record shows the Board clearly when asked by staff at the hearing and it was intimated that when informed of the requirement, the homeowners did not know they needed a permit from the Commission to change their failing roof. The desire of the landowner was to replace a failing roof. Mr. Shank stated that if the Board read the minutes of the meeting and listened to staff's comment, he never heard the historical character of the home. That is critical, because the purpose and intent of the HP District regulations does two things, preserve historic districts and historic resources located therein. Mr. Shank referred to Architect John Brooks Walton book "100 Historic Tulsa Homes". In the book, on page 74, the Capehart is discussed; it is known in the book as the McGraw mansion. Architect Walton tells the public the historical character of the subject house is a Dutch Colonial with a red brick and cut limestone façade built in 1960. That is the starting point and that is never discussed anywhere in the Commission's minutes. He does not know how there can be a fair balance without that in mind. Knowing that the house is Dutch Colonial, Mr. Shank referred to page 5.4 of the staff report, which reference the Zoning Code 7.070-F. There are five guidelines to be considered in analyzing the historic preservation permit to replace a failing roof. Number one, the degree to which the proposed work is consistent with the applicable design guidelines. The pertinent guidelines in this case are in Section A1 and A5. A1 talks about general guidelines for rehabilitation of existing structures. A historical architectural element is undefined in the design guidelines. There is a demonstrative picture, but the roof cover is not referenced in that picture. Mr. Shank referred to the general guidelines applicable to this permit; #1

retain and preserve the existing historic architectural elements of the house. Mr. Shank referred to a demonstrative picture, page 3 of the handout, showing the house after the roof was replaced with shingles and shows a plethora of historical architectural elements on the roof, none of which were disturbed by the project. All of which were preserved by the landowner. These are very similar to the demonstrative labeling in the design guidelines. Number 2, if a homeowner does replace historical architectural elements match the character, etc. The historical character of the subject house is Dutch Colonial. Mr. Shank stated that he consulted with several architects and asked what is roofing material consistent with Dutch Colonial historical resources? The answer was that tile is not typical roof covering of Dutch Colonial historic residences. In fact, some form of shingle is the more typical roof covering for this historical character. On page 2 of the handout there is a guideline for roofs. Retain and preserve the original historic roof form and pitch which has been satisfied. Number 2 do not remove character defining architectural features; all the architectural character features were preserved. When doing a balancing test rooted in fairness the Board has to take into account the extent of the historical architectural elements that were preserved by the landowner. Number 3, if a homeowner is going to replace deteriorated features maintain the character of the structure which is Dutch Colonial. Shingled roof coverings are consistent with that historical character. Elmwood; match the original historical roof material. This is the only place in the entire guidelines that tells a homeowner that he has to use the same roof covering. Mr. Shank stated that Elmwood is one mansion on Riverside Drive. Out of all the HP Districts there is only one home that has to absolutely match the roof covering. That speaks to a balancing test; that balances multiple design guidelines focused on preserving historical character with the needs and desires of the asset owner. All the historical elements were maintained and preserved by the landowner. The second review criteria, the Board has to analyze the facts and to which degree the proposed work would destroy or alter all or part of the historic resource, which may be the most important single fact. Page 4 of the application is an e-mail from Dr. Porter to the Capehart's referencing a conversation that was had with the national registered coordinator on the staff of the State Historic Preservation Office in Oklahoma City. The Commission sent before and after pictures, asking Ms. Warneke to give her opinion as to whether this had altered the resource. Ms. Warneke's answer was that the alteration of the appearance would not affect its status as a contributing resource. The house is still a contributing historical resource, because in the Dutch Colonial historical architectural character a roof like the Capehart's had installed is okay; a roof like this is typical. Oklahoma City says this house is still a contributing asset to the historical neighborhood. The analysis could start and end there. Number 3 tells us to what degree in which the proposed work would serve to isolate the historic resource from its surroundings. Sixty-seven homes are in the Maple Ridge neighborhood; 53 of those homes are shingled roofs. Every home in the subject property's block, except the Capehart's house, is shingled and there is one flat roof. So, there is nothing being introduced into the surroundings that is not already there. Nothing is being introduced that is altering the historical character of the house. In fact, the house is consistent with an overwhelming majority of beautiful homes in the historic district. The Capehart's are balancing and preserving historical assets of the district with the rights of the landowner to do things. His clients wish they had known and done this a different way

procedurally. That does not change the analysis. Mr. Shank thinks the facts can draw but one conclusion, denial of this permit was a mistake and he asks the Board to overturn it.

Ms. Radney asked Mr. Shank if, at the time his clients purchased the property, did the house have a tile roof at that time? Mr. Shank answered affirmatively. Ms. Radney asked if the house was originally built with a tile roof. Mr. Shank stated that he did not know, but there are pictures that historically show a tile roof.

Mr. Van De Wiele asked Mr. Shank if he had any letters or e-mails or anything confirming from the architects that discussed the Dutch Colonial issue. Mr. Shank stated that those discussion were only on the telephone, but he can tell the Board as an officer of the court that was their response to him.

Mr. Van De Wiele asked Mr. Shank about the Elmwood area, on page 5.6, there is a similar reference to Yorktown, is that a neighborhood? Mr. Shank stated he did not drill down to that depth.

Mr. Bond asked Mr. Shank about the unified zoning; replacing materials, is it the design of the subject house or is it the Dutch Colonial fashion? At what point do we go back to and freeze the clock? Or is it the determination that it doesn't violate the larger unified design of the neighborhood or the idea of being a Dutch Colonial house? Mr. Shank stated that it is unquestionably the latter, otherwise, why would someone need guidelines and a test? If it is frozen in time, don't ever change. There is no need for guidelines and a test. It is the intent and purpose of the HP Regulation to preserve the character of the district and the assets therein.

Ms. Radney asked Mr. Shank to explain what was in the mind of the property owner when they elected to actually change the roofing material from the tile to an asphalt shingle. Mr. Shank stated that the primary motivation was a failing roof; leaking destroying interior rooms. When they considered replacing the tile cost was an issue; it was not the only issue. The client went to great lengths to find a shingle that matched the color of the tile and the character of house. The shingle that were used are a robust shingles that further protect the house. By doing that it actually improved their position with the insurance company and it better protects the underlying house. It is his understanding that the cost of the tile work was almost \$100,000 which was not a practical option for the landowner.

Mr. Van De Wiele stated that the Board is supposed to give the presumption of correctness to the HPC, if they were aware of the State's stance and one Commissioner made a motion and nobody seconded that motion how is the Board to be convinced that was an error? Mr. Shank stated the facts primarily; the presumption of correctness has never moved him. As the applicant he has always had the burden. Our burden to the Board today is to prove, based on the fact and the law, the Commission erred.



### **Interested Parties:**

**David Schoell**, 1704 South Madison Avenue, Tulsa, OK; stated he is the current Chair of the Tulsa Preservation Commission, and he represents one of the historic property owners within the distribution of the rules of the Tulsa Preservation Commission. He has lived in North Maple Ridge for over ten years, which is the historic preservation overlay being discussed. As the Chair of the Tulsa Preservation Commission he would like to acknowledge Mrs. Capehart, and it is unfortunate that we were unable to work together to solve the problems before the work started. Mr. Schoell stated the Tulsa Preservation has a very streamlined process, that once an application is filed there is a sub-committee review of the application, the design element is discussed, and when the application is ready to come before the Commission a lot of the issues have already been vetted. In this instance, there was no application so the Commission could not even be involved to give the homeowner other options. Within the Commission there are historic property owners, builders, architects, landscape architects, historians and the Commission could have gone through all those roles and how they would have been able to work with the landowner.

Mr. Van De Wiele stated that this seems to be a binary decision of either there was going to be a clay tile roof or not. Would there have ever been a potential solution compromise between the Commission and the homeowner to the extent that the Commission would have been able to say there has been a solution reached, and if so, what would have that looked like? Mr. Schoell stated the roof is clay tiles, and the tiles have a very distinct shape. When the house was originally built there would have been rafters, battens, then clay tiles would have been attached to the roof. A person does not need to replace an entire roof to stop a leak, so the Commission would have brought that to the homeowner's attention. The process is that the clay tiles are removed, carefully stored, lay roof sheathing over the battens and nailed in place, then lay a roofing felt material as a waterproof membrane, and then the clay tiles are placed back on the house.

Mr. Van De Wiele asked Mr. Schoell to discuss how the Dutch Colonial aspect of the house plays into the Commission's decision. Mr. Schoell stated that he is not the authoritarian on Dutch Colonial, but he did live in Holland and all the Dutch Colonial houses in Holland had clay tiles roofs.

**Peter Grant**, 2845 South Florence Avenue, Tulsa, OK; stated he is the Building Developer for the Tulsa Preservation Commission, and he was appointed to that position by the Mayor. He owns Grant Homes Remodeling and Restoration and has been in business for 30 years; specializing in the restoration and renovation of older homes in Tulsa historic neighborhoods. Maintenance can be completely different on the historic homes than on a newer home. He was surprised and disappointed to see that the roof was taken off of this house. A terra cotta tile roof is different than an asphalt shingle roof in that it is considered a lifetime roof. The lifetime is of the person living in the house and for generations to come, that is why there are tile roofs that hundreds of years old. They do require maintenance, but they do last a long, long time. These roofs are a key architectural element to the property. Mr. Grant quoted from a preservation

brief from the U. S. Government National Park, “the unique visual qualities of a clay tile roof often make it a prominent feature in defining the overall character of a historic building”. Still quoting, “clay tiles have one of the longest life expectancies along historic roofing materials, generally about 100 years and often several hundred years”. Leaks and damage can be expected and can be repaired and maintained. Quoting, “Before initiating any repair work on historically tile roofs it is important to identify those qualities and important the contributing to the historic significance and character of the building.” Mr. Grant stated the Preservation Commission would have offered resources and work with the property owner to offer resources that are affordable. Through the Commission’s combined experience, it is able to offer great solutions to the property owners. Tile roofs are a key architectural feature of historic structures and they do not need to be removed or replaced; if broken tiles need to be replaced, they can be replaced.

**Chris Baumgardner**, 2672 East 37<sup>th</sup> Street, Tulsa, OK; stated he has been a commercial real estate developer for over 25 years, and most of the work he does is in infill redevelopment in historic districts. He also has a master’s degree in architecture and is the custodian of three 100-year-old buildings in downtown Tulsa. Everyone that is in and around a historic neighborhood knows they need to speak with the Commission. The bottom line is the approval rate of the Commission is over 95%; it is a group of people that work very hard to say yes. Unfortunately, they were not given that opportunity in this situation. A clay tile roof is a decorative roof and is a lifetime roof. The waterproofing is happening underneath the tiles. Mr. Baumgardner stated that he does not know what else the Commission could have done given the position they were put in. The bigger issue is that this is an existential threat to both historic preservation districts and to the Commission itself.

Mr. Van De Wiele asked Mr. Baumgardner to explain the voting process of the Commission meeting minutes on pages 1.5 and 1.6 of the agenda packet, it seems that there was a motion to approve with no second, then a motion to deny that was 3-1, 3 votes abstaining including Mr. Baumgardner, then more conversation, then a 6-0 vote with one abstention. Mr. Baumgardner stated the Commission was attempting to figure a way to send this back to a subcommittee, but it could not be done because the work is complete.

**Tom Neal**, 2507 East 11<sup>th</sup> Place, Tulsa, OK; stated he is a former architectural historian and he would like to briefly discuss Dutch Colonial. The Dutch architectural history would have been clay tile. The standard that the Preservation Commission is asked to uphold is keeping this house in its original condition. Mr. Neal stated that since he was able to start driving the subject house has had clay tile, so the concern is if the preservation process is going to remain serious the Commission has to be very careful. If the Capehart’s have been in the house since the 1970s they were in the house when the Preservation process was adopted.

**Rebuttal:**

**Jed Porter** stated there has been no shortage of effort to assist the owners, and as the members of the Tulsa Preservation Commission have indicated over 90% of the applications that have been submitted have been approved. This indicates a readiness by the Tulsa Preservation Commission to balance the necessities of owners and within the boundaries of the guidelines. Had the Commission been provided the opportunity the Commission surely could have found a solution more appropriate to protect the character of the residence. Because the Tulsa Preservation Commission is required to balance those interests within the boundaries of the guidelines does not require the Tulsa Preservation Commission to approve every application submitted. When there is a conflict as there explicitly is in this circumstance the Tulsa Preservation Commission needs to abide by its guidelines. Over 1,300 owners of property in the historic preservation overlay districts rely on the Tulsa Preservation Commission to protect the character of the residences and the character of the district. Tulsa Preservation Commission cannot betray that trust. It is quite true that this alteration, however unfortunate, would not affect the status of the residence as a contributing resource, but it certainly does alter its character. The responsibility for the protection of cultural resources lies with the City of Tulsa and the authority has been delegated to the Tulsa Preservation Commission. When the City of Tulsa became a certified local government in December 1990, it committed itself to the protection of its cultural resources including its historic architecture. The Tulsa Preservation Commission which charged with the protection of those resources, the development of guidelines which became unified to protect all districts, and to review applications to ensure protection of the character. While we value the interpretation of the National Register Coordinator the designation as a contributing resource, and indeed the designation of the district, as a district on the National Register of Historic Places is honorary. The issue before the Commission is regulatory. The Commission is dealing with issues involved in the City's Zoning Code, and as the section of the Zoning Code stipulates, the assumption is that the Tulsa Preservation Commission acted appropriately and in accordance with its guidelines. There was no error in the Commission's judgement; it followed its rules, balanced the interest, and decided based on the evidence presented that the character of this residence and the character of the district this proposal could not be approved. The Tulsa Preservation Commission respectfully that the Board of Adjustment affirms the decision of the Tulsa Preservation Commission and deny the appeal.

Mr. Van De Wiele asked Mr. Porter why Elmwood is called out specifically and individually about that one home. Mr. Porter because the owners of Elmwood, which is the Patrick J. Hurley mansion, specifically requested that prediction. That was their request when Elmwood was designated as the Historic Preservation Overlay District. Mr. Van De Wiele asked Mr. Porter if it would be his suggestion that the inclusion of this one home to say a person has to match the original historic material does not by negative inference mean that other homes do not have to. Mr. Porter stated the direction would be towards protection of the character, which with this particular residence, the protection of the character would entail the preservation of the tile roof. Had another material been deemed appropriate, another material would have been

applied. Tile was installed when the residence was constructed. It is appropriate for the character, and so its preservation should be insured.

Mr. Van De Wiele asked Mr. Porter if the Dutch Colonial aspect of the house contemplated, considered generally in the Commission's decision making and specifically in regard to this house. Mr. Porter stated character is always considered. Roofs are a prominent feature and define character. There are specific references to the protection of architecture elements, which include roofs.

**Andrew Shank** came forward and stated there is no evidence in the record that this is willful. There is no doubt that the Capehart's would have liked to go through the process; they worked with their contractor, worked through options, worked through the process and came to a decision that was practical for them and that is also consistent with the character of the district and the surrounding properties. It has been stated time and time again that the roof is a key architectural feature. The Board has the handout demonstrative and the plain language from the legislature. In those design guidelines, one house says don't change the roof covering. The balancing test of fairness between preserving historical character of the district and the desire and the need for the landowner is struck by overturning this denial. The State representative saying this is still a contributing asset is a fact. The historical character of this area and this home are still preserved.

Ms. Ross asked Mr. Shank if any part of the roof has been replaced or any maintenance done on the roof since the Capeharts purchased the house in 1974? Mr. Shank stated that there is a port-cochere that had a flat roof that had work performed on it because it was failing and falling in, which was done in early 2019. Mr. Shank stated that Mrs. Capehart has informed him that clay tile has been repaired from time to time, but that was site specific.

#### **Comments and Questions:**

Ms. Ross stated that she feels the Historic Preservation Commission has guidelines specifically discussing roofs and the materials, especially 85.3, 85.5 and 85.6 are very clear; if a homeowner is going to replace an existing roof covering with a different material the homeowner needs to appear before the Historic Preservation Commission. The applicant has owned the house since 1974 knew that the house was part of a Historic Preservation District and should have known that exterior changes of this nature would require at a minimum a phone call to the Historic Preservation Commission to inquire about violating any guidelines. She also believes, based on testimony, that the roof would not have needed to be completely replaced. She does think that clay tile roofs are very unique to this area, and it is what makes this part of the city so special. Ms. Ross stated that she will support the Historic Preservation Commission's decision.

Mr. Bond stated that he is conflicted, because this is an amazing house and it is a show piece house for North Maple Ridge. Mr. Bond stated that he agrees with the Historic Preservation Commission and they are due that deference. He thinks there is a conflict

between what the State Historic Preservation Association has said and what the local Historic Preservation Commission is saying. There are good points about other avenues being explored has the Capeharts participated in the process with HP. Based on the stature of the construction, 85.3 is problematic for Commission using only one example. Mr. Bond agrees with Mr. Shank that this requires a balance.

Mr. Van De Wiele stated that there certainly is a presumption of correctness that the Board owes to the Preservation Commission. He has seen enough of these appeals and they often don't go the way the Commission would have them. The Board does step into those shoes and frankly he thinks there have been errors made in some decisions that have come before the Board of Adjustment. This one is a larger issue. When he looks at the standards it is clear to him that the guidelines say that if a homeowner is replacing the homeowner is to use materials to maintain the character; size, shape, pattern are mentioned none of which were done here. Section 5.5 states that if the homeowner replaces with the same material there is no need for an HP permit review, which leads one to believe that if you are not going to use the same materials then you do need a HP permit review. All of those things lead him to believe that this clearly needed HP approval. Reading through the minutes showed the struggle the HP was having, which leads him to believe they were doing the balancing between the intent and the homeowner's desires. Mr. Van De Wiele stated that he cannot come to the conclusion that the Commission erred, so he will vote to deny the appeal.

Ms. Shelton stated that she agrees with Mr. Van De Wiele. Although, she does not think the homeowner is being given enough credit because she thinks there was consideration with the roof replacement. She does not think that it is totally malicious. Ms. Shelton stated that she does not think the Historic Preservation Commission erred.

**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) to **AFFIRM** the decision by the Tulsa Preservation Commission to **DENY** historic permit application HP-0116-2019 to permit the replacement of a tile roof with shingles, finding that the Tulsa Preservation Commission acted appropriately in its denial of HP-0116-2019; for the following property:

**W28 LT 3 & ALL LTS 4 5 6 7 & 8 & N10 VAC ALLEY ADJ TO SL THEREOF & N30.2 E34 LT 13 & N30.2 LT 14 & N30.2 W28 LT 15 & S10 VAC ALLEY ADJ TO NL THEREOF BLK 4, MAPLE RIDGE ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

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**NEW APPLICATIONS**

**22759—Beverly Dowell**

**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:** 2633 East 15<sup>th</sup> Street South, Suite A (CD 4)

**Presentation:**

**Beverly Dowell**, 2633 East 15<sup>th</sup> Street, Tulsa, OK; no formal presentation was made but the applicant was present for any questions.

Mr. Van De Wiele stated the Board has the applicant's spacing exhibit on page 3.7 and 3.8, and a copy of the license.

Mr. Van De Wiele asked Ms. Dowell if she was aware of any other operating dispensary within a 1,000 feet of her location. Ms. Dowell answered no.

**Interested Parties:**

**Forest Corlett**, 5318 East 4<sup>th</sup> Street, Tulsa, OK; stated he owns the two buildings west of the subject property; he has a dispensary license for 2627 East 15<sup>th</sup> Street which one building to the west of the subject property. Mr. Corlett stated he has a dispensary license and a grow license.

Mr. Bond asked Mr. Corlett if he had a Certificate of Occupancy. Mr. Corlett did not give an answer.

Mr. Van De Wiele asked Mr. Corlett if his dispensary was operating at the location is speaking of. Mr. Corlett stated that it is not.

Mr. Van De Wiele asked Mr. Corlett when he was issued his license. Mr. Corlett stated that his license was issued September 5, 2019.

Mr. Van De Wiele asked Mr. Corlett what steps he has taken to open the dispensary. Mr. Corlett stated that there is quite a bit of reconstruction that needs to be done because it is an older building; he is remodeling on the inside.

Mr. Van De Wiele asked Mr. Corlett if he had started the permitting process and started the Certificate of Occupancy process for the dispensary. Mr. Corlett stated that he has not yet, because he is doing construction to get the building up to code.

**McKenzie Dildy**, 2811 East 15<sup>th</sup> Street, Tulsa, OK; stated he represents Tall Grass Dispensary. Mr. Dildy stated that there is dispensary near the proposed dispensary location. The patients for Tall Grass check in on the west side of the building, reception is also on the west side of the building, and the patient is then escorted to either a private consultation room or taken to the product storage area. Education classes are

also held in this building. Mr. Dildy stated that he has no sales at the moment, but product is on order and his is installing POS systems.

Mr. Van De Wiele stated the Board has seen Tall Grass for their spacing verification, and he asked Mr. Chapman if he had the exhibits from that case. Mr. Chapman stated he does not have the original exhibit. The issue is when Tall Grass did their original exhibit the spacing was from the center of the lot not by the shape of the buildings. In this respect, Mr. Chapman thinks it does come down to the portion on the west being used as a dispensary.

Mr. Dildy stated that Mr. Chapman is correct. Mr. Dildy stated that is where the patients check in, the distribution of product, receive medical cards, private consultation and education training.

Mr. Van De Wiele asked Mr. Dildy if the building was all one suite or is it divided. Mr. Dildy stated that it is all one suite.

Mr. Van De Wiele asked Mr. Dildy if that address of that building corresponds to his dispensary license. Mr. Dildy answered affirmatively.

Ms. Ross asked Mr. Dildy about the line shown on the site plan that runs down the middle of the building. Mr. Dildy stated that is where patients can be escorted from the front reception back to a private consultation area.

Mr. Ross asked Mr. Dildy if there was any other entry into the facility other than the west door. Mr. Dildy stated there is a locked entry that is only for receiving mail on the south side but that is not the dispensary address. Ms. Ross asked Mr. Dildy if there was an entry on the southeast side. Mr. Dildy answered no.

Mr. Van De Wiele asked Mr. Dildy if he believed the applicant's proposed dispensary is within 1,000 feet of his dispensary. Mr. Dildy answered affirmatively.

**Rebuttal:**

**Beverly Dowell** came forward and stated that Mr. Dildy's address clearly states that his dispensary is located in Suite 104, which is at the end of that building. Ms. Dowell stated that she has been to the facility, it is a doctor's office. No one get past any hallway and cannot get past a locked door. Inside there is a glass door with a keypad that leads to a doctor's office, it is not a dispensary. Suite 101 and 102 are doctor's offices with an ambulance drop off.

Mr. Van De Wiele asked Ms. Blank if the entire building is considered a dispensary if there are physicians meeting patients and writing prescriptions in the left portion of the building while dispensing product in the right portion of the building? Mr. Chapman stated that he thinks that will depend on how it was permitted; just because a facility caters to medical marijuana patients does not mean that it is any different than any other medical office. Therefore, it depends when the permits were received to perform

construction or a Certificate of Occupancy for a dispensary for a suite within the building. The Zoning Code stipulates that it is from the nearest point of a dispensary or a tenant space of a building comprising of a dispensary. So, there is probably a question about how that was originally permitted and how the building is being used.

Ms. Dowell stated that she has been inside the building and asked about Tall Grass Dispensary and was told that it was at the end of the building, but there is no dispensary.

**McKenzie Dildy** came forward at the request of Mr. Van De Wiele.

Mr. Van De Wiele asked Mr. Dildy if a patient could go into the doctor's office and be treated for a cold? Mr. Dildy answered affirmatively because there is a Primary Care Physician. Mr. Van De Wiele asked Mr. Dildy if the Primary Care Physician was there before the dispensary went in. Mr. Dildy answered affirmatively stating that it is a pain management clinic with multiple offices.

Mr. Van De Wiele asked Mr. Dildy if the office in the western portion of the building is a separate business? Mr. Dildy answered affirmatively; there are pain management doctors there that see patients and they also see the medical marijuana patients. All patients for any part of the building enter from the west side, and the reason there is a secure door is because they do not want just anybody into the office. Patients are to enter from the west side of the building and check in at the reception desk for Tall Grass Dispensary.

Ms. Radney asked Mr. Dildy if the public was serviced at large or if they only serviced people who are patients of the clinic. Mr. Dildy answered that the public is serviced at large; anyone that has a medical marijuana card can purchase product.

Ms. Dowell stated that she has never been to a place where you can obtain a card and get marijuana at the same time because those are two separate functions, they do not go together.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 4-1-0 (Bond, Ross, Shelton, Van De Wiele "aye"; Radney "nay"; no "abstentions"; none 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:

**LTS 21 & 22 BLK 7, CITY VIEW HILL ADDN, City of Tulsa, Tulsa County, State of Oklahoma**



**22760—Said Islam**

**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:** 6530 East 21<sup>st</sup> Street South **(CD 5)**

**Presentation:**

**Casey Reamy**, 6540 East 21<sup>st</sup> Street, Tulsa, OK; stated the address of 6530 is incorrect because everything she has states the address as 6540.

Mr. Van De Wiele asked Mr. Chapman if there was a notice issue. Mr. Chapman stated the notice is to the parcel, and this is a tenant space inside of the parcel. Ms. Blank concurred.

Mr. Van De Wiele stated the Board has the applicant's spacing exhibits on 4.7 and 4.8 in the agenda packet, and there is a copy of the license on 4.9.

Mr. Van De Wiele asked Ms. Reamy if she was aware of any other dispensary or license within the 1,000-foot radius. Ms. Reamy stated there is not one within the 1,000-foot bubble; the closest dispensary is over 9,000 feet away which is Red Eye 420.

**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 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:

**E239 E425 N/2 NW NW NW SEC 14 19 13 1.81ACS, City of Tulsa, Tulsa County, State of Oklahoma**

## **22761—Mary Beth Babcock**

### **Action Requested:**

Variance to permit two freestanding signs in a CH District to exceed the maximum permitted display area (Section 60.080-C). **LOCATION:** 1347 East 11<sup>th</sup> Street South (CD 4)

### **Presentation:**

**Mary Beth Babcock**, 1347 East 11<sup>th</sup> Street, Tulsa, OK; stated she installed a 20-foot tall roadside attraction, Buck Adams, on Route 66 and Buck Adams had to be permitted as a sign. Because of Buck Adams she has to appear before the Board because she would like to have a neon sign in addition to the roadside attraction.

Mr. Bond asked Ms. Babcock if Buck Adams was a sign. Ms. Babcock stated she had to obtain a permit for Buck Adams and that was the only way she could get him was through a permit as a sign.

Mr. Van De Wiele asked Ms. Babcock if what she wants is what is seen on page 5.7 and the sign designated on 5.9 in the agenda packet. Ms. Babcock answered affirmatively.

Mr. Van De Wiele asked Ms. Babcock to state her hardship. Ms. Babcock stated her property is on Route 66 by the historical Meadow Gold neon sign. The State and City is embracing Route 66 and tourism, and today she had a group from HBO, Disney, NBC, Universal and Steven Spielberg visiting her location because Buck Adams is getting a lot of attention. She thinks that in two years people will see a change in the subject location. She has applied for a grant through Route 66 Commission for the sign, and that is pending on her approval for Buck Adams today. Ms. Babcock thinks this is a very unique situation.

Mr. Van De Wiele asked Ms. Babcock to explain to the Board what this is and who this is. Ms. Babcock stated that Buck Adams is a 20-foot tall sculpture. These are called muffler men and they were originally built in the 1960s for gas stations, tire shops, Phillips 66, Texaco, and there are now 250 of these statues all over the world. There are ten on Route 66, and the most popular one is named Gemini Giant in Wilmington, Illinois. These statues bring travelers from all over the world. There is a site called Roadside America, and it lists attractions. Buck Adams can be compared to the Blue Whale, the Golden Driller, the Totem Pole, Pops, that is what Buck is to Tulsa.

Mr. Van De Wiele asked Ms. Babcock if there was a tie to Tulsa, should he have heard about this? Ms. Babcock stated Buck Adams is completely made up from her imagination; his mission is to revitalize Route 66. Buck Adams is on the cover of the Tulsa Visitors Guide, on the cover of Oklahoma Today magazine, on the cover of Tulsa Voice.

### **Interested Parties:**

**Rhys Martin**, 5006 East 38<sup>th</sup> Place, Tulsa, OK; stated he is the current Chair for the Tulsa Route 66 Commission and he is the President of the Oklahoma Route 66 Association, but he comes to the Board today as an individual not representing those associations. Route 66 is experiencing a remarkable revitalization throughout the country but especially here in Tulsa. One of the initiatives that the City is currently undergoing is the neon sign revitalization which is a program based on a grant. Although, Buck Adams has this amazing roadside attraction which is bringing a lot of attention a neon sign would add the element that would not only tie in her business to the rest of Route 66, but it would also give the business that aesthetic and the presence that other businesses enjoy along the route. Even though Buck had to be classified as a sign to be placed at the location, he has really become much more than that. He has become a symbol that is being recognized all around the country.

**Peter Janzen**, Encino Signs, 9810 East 58<sup>th</sup> Street, Tulsa, OK; stated the parking lot where Buck Adams is located is a tight parking, and he could not be safely located closer to the right-of-way in the street; he is hard to see on the initial drive-by. The people visiting Buck Adams are international and the people drive through to see Buck Adams, and that is Ms. Babcock's one shot at getting their business. Mr. Janzen is hopeful that a 20-foot tall sign which is much larger and higher than the canopy will get more visibility. A wall sign is an option on the canopy, but structurally he is uncertain about that because of the age of the structure, so for parking lot safety and visibility and for the Route 66 tourism is the hardship.

### **Comments and Questions:**

Ms. Radney stated that she will be abstaining from the discussion on the basis of the fact that her former neighbor, friend, and repeat client Rhys Martin is here representing Route 66.

Mr. Bond stated Buck Adams is more than just single commercial sign. He thinks the hardship is the existing Buck statue is actually the sign.

Mr. Van De Wiele stated that the unique character of Route 66 gets him there for a hardship.

### **Board Action:**

On **MOTION** of **BOND**, the Board voted 4-0-1 (Bond, Ross, Shelton, Van De Wiele "aye"; "nay"; Radney "abstaining"; none absent) to **APPROVE** the request for a **Variance** to permit two freestanding signs in a CH District to exceed the maximum permitted display area (Section 60.080-C), subject to conceptual plan on pages 5.7, 5.9 and 5.10 of the agenda packet. The Board has found the hardship to be the nature of the existing co-located sign as well as the guidance from the Route 66 Overlay, Section 20.070. 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 LESS S2.5 THEREOF BLK 9, EAST LYNN ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22762—A-Max Sign Company**

**Action Requested:**

Variance to permit a 252 square foot freestanding ground sign to be installed on a property with no street frontage (Section 60.080-C). **LOCATION:** 801 North Mingo Road East **(CD 3)**

**Presentation:**

**Brian Ward**, 9520 East 55<sup>th</sup> Place, Tulsa, OK; stated the client purchased the subject property from the City of Tulsa in 1981. Prior to the City of Tulsa owning the property it was a mobile home park. It appears to not have any street frontage according to the site plan. The property is about 20 acres and it sits about 200 feet East of Mingo Road. There is an existing sign and it is approximately the same size as what is being proposed, and the new sign would be in the exact same spot and approximately the same size. The client wanted to get in on the Route 66 corridor grant but falls outside of that corridor. The sign will have visibility from Mingo, but it is not oriented toward Mingo. The sign will be lit and will have neon.

Mr. Van De Wiele asked Mr. Ward if Independence Street was a public street. Mr. Ward stated that he has not received a clear answer to that question. The map calls it out as Independence Street, but the owner has said he maintains that stub and has paved it. Mr. Chapman stated that the seminary owns the parcel and there may be an easement arrangement on that portion.

**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"; "nay"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to permit a 252 square foot freestanding ground sign to be installed on a property with no street frontage (Section 60.080-C), subject to conceptual plan 6.9, 6.11 and 6.12 of the agenda packet. The Board has found the hardship to be the location, size and shape of the property. 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:

**BEG SWC BLK 1 N698.58 E90 N684.94 E222 N330 NWC E841.92 SW1683.6 SW250.55 SW336.84 POB LESS BEG NWC BLK 1 E621.55 SW334.55 NW183.34 N26.71 W343.72 N200 POB TO CITY, VAN ESTATES NO 1 AMD, City of Tulsa, Tulsa County, State of Oklahoma**

**22763—Eller & Detrich – Lou Reynolds**

**Action Requested:**

Appeal of the Administrative Decision issued in Zoning Code Interpretation #2019-01 that a Major Amendment is required to PUD-230 in order to permit a school use (Section 70.140). **LOCATION:** 3810 & 3840 South 103<sup>rd</sup> East Avenue **(CD 7)**

**Mr. Van De Wiele stated that the Board will hear from the Administrative Official and then from the appellant.**

**Presentation:**

**Susan Miller**, INCOG, 2 West 2<sup>nd</sup> Street, Suite #800, Tulsa, OK; stated the property is a PUD which is an overlay PUD-230, and it is zoned OL; this a two-layer zoning situation. Ms. Miller stated the City Charter allows that once a Zoning Ordinance is published there is 30 days until it takes effect. A PUD can authorize any use that is permitted by right or by Special Exception in the underlying zoning district. In 1980 when PUD-230 was adopted it stated that the permitted uses be those that are permitted as principle and accessory uses in the OL District, and in addition include barber and beauty shops. The applicant is proposing a school use that would only have been permitted by Special Exception in an OL District. The applicant is reading PUD-230 to authorize a school use and all other uses that are allowed by Special Exception as allowed uses even though there is no such authorization to allow those. The PUD is very specific to office park development, and it requests OL zoning and that is why the standards of OL apply. All the uses permitted in OL are listed as those allowed in PUD-230 with the addition of Special Exception uses of a barber and beauty shop. Those were specifically called out of the list of Special Exception uses; the only ones that were allowed other than those by right. In looking at the Zoning Code that was in place at the time and the uses that would be allowed, if the interpretation was made that all uses were permitted by right, by Special Exception in the PUD. To say that is the case, this would allow things like a landfill, a juvenile detention center, a pre-release facility; a lot of things that require a little extra look, not that they're inappropriate everywhere but they are probably not appropriate everywhere. There was no reason to add the uses, a Special Exception uses of barbers and beauty shops if all Special Exception uses were allowed in the PUD; it is very clear and specific on that. There is no reason to allow all Special Exception uses either, since it was very specific for an office park development.

Mr. Van De Wiele asked Ms. Miller if the piece that is at issue is Paragraph B of both Development Area A and Development Area B. Ms. Miller answered affirmatively. Mr. Van De Wiele read the paragraph to confirm the issue. Ms. Miller answered affirmatively.

Ms. Miller stated that today language is occasionally streamlined before it gets to the final version, however, it still specifically called those only Special Exception uses that were allowed. Ms. Miller presented the Ordinance that was in place at the time. The title of the table is The Use Units Permitted in Office Districts. It lists many things, but it does not mean that they are all permitted by right, that means they are all permitted in one or the other and the Table specifies the way in which they are permitted.

Mr. Van De Wiele asked Ms. Miller that when the Board sees the word "permitted" in Development Standard A and B, is it the interpretation that is permitted by right and not

permitted by Special Exception? Ms. Miller answered affirmatively. There is no other discussion in the Minutes or documentation of the PUD-230 process that would point to the fact that would intentionally change for any reason.

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated he represents Epic Charter School in the interpretation of PUD-230. Specifically, he found a permit for a school use on the subject property, and it is his contention that a school is a permitted use in PUD-230. Permitted uses are those that are permitted as principle accessory uses; this is the limiting language of this PUD. Principle accessory uses in the OL District, in addition, include barber and beauty shops. The underlying zoning of the property is OL, but its uses are controlled by the PUD. The language of the PUD controls the only uses allowed to have because of the underlying zoning of OL are those that principle uses permitted in the OL District; that is the uses. This PUD allows uses by right and uses by Special Exception, and its permitted uses. The power of the PUD is in addition to uses permitted by right, like in underlying zoning; if the property were just zoned OL the applicant would be before the Board with a Special Exception. This is confusing by the landlord filed an application for a Special Exception mistakenly, not knowing that it was under a PUD and that case was withdrawn when it was discovered that the subject property is under a PUD. In the OL District principle uses are those uses permitted by right and by Special Exception. A school is a permitted use in the OL District by Special Exception. Because a school is a principle use in the OL District, therefore, a school is a permitted use in PUD-230. Mr. Reynolds stated the transition of what happened in this case is meaningful and it is set out in staff's letter. Mr. Reynolds read the staff letter.

Mr. Van De Wiele asked Mr. Reynolds if it was his contention that the language in the letter is what was ultimately adopted. Mr. Reynolds answered affirmatively. Mr. Reynolds stated it is the original language that was approved, and there would need to be a Special Exception.

Mr. Reynolds had page 7.25 placed on the overhead projector and read sections. If the language in the PUD intended to permit all uses, permitted by right or by Special Exception, it would not have specifically called out those uses. That is contrary to both the Zoning Code and the plain reading of the language. The interpretation that goes on to say that the words "as a matter of right" were omitted from the staff recommendation in PUD-230 does not imply that all uses allowed by Special Exception were included as permitted uses. That statement is sort of correct, in that the omission of "as a matter of right" does not imply that Special Exception uses are allowed, it rather expressly permits them. Mr. Reynolds stated that in Section 1.090-G in the Tulsa Zoning Code states, "unless otherwise expressly indicated lists of items, for example, such as or similar terms are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities". This is by definition in the Tulsa Zoning Code, so these are not limiting language. The qualifying language of uses permitted by right was taken out. The language was recommended approval by the Planning Commission and it was approved by the City Commission. The plain English definition by Stacy Hughes, PhD., states the inclusion of barber and beauty shops does not exclude expressly or by

implication other uses permitted in the OL District. Mr. Reynolds stated that in legal doctrine states “presumption of nonexclusive include the verb to include introduces examples not an exhausted list. This is the rule in both good English usage and in textural list decision making; includes is not exhaustive. Mr. Reynolds stated that it is well established in the Zoning laws there are derogation of the common law property rights, and to use the property to its highest utility it should not be extended by implication to place cases not clearly within their scope and purpose. Therefore, any ambiguity or uncertainty must be decided in favor of the property owner, in favor of the free use of the property, and summing it up by looking at the Tulsa Zoning Code tells the Board how to interpret the word “include”, look at how ordinary English language uses it, look at how legal documents take it, in the OL District, in this case the principle uses are going to be those permitted by right and by Special Exception. A school is a permitted principle use in the OL District by Special Exception; therefore, a school is a permitted use in this PUD. Mr. Reynolds respectfully requests the Board grant this appeal.

Mr. Van De Wiele asked Mr. Reynolds if he would agree that the go forward, the right to use it as a school is corrected either by what is being asked of the Board or by what the landlord is asking the City Council to do. Mr. Reynolds stated those are two particular results, but in this case the applicant has this right in the PUD, and there was an alternative type action filed and that is why the case is before the Board. It is very clear that a school is an allowed use.

**Interested Parties:**

**Lori Decter Wright**, District 7, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated the property owner is willing to go through the process before Council, and she has been in consultation with the applicant’s lawyer and they are not part of this appeal today. She is concern that using a Special Exception is intended to allow for a higher level of scrutiny. She understands that OL is the underlying zoning and that the PUD is the overlay. Special Exception uses the PUD must be brought to Council for a major amendment, and she stated earlier it is on the agenda for tomorrow. The discussion during committee last week had no indication that anyone on the Council would be reticent to move forward. She thinks everyone needs to be careful here. While this is a specific case with Mr. Reynolds’ client there could be precedent being set between things that come before the Board of Adjustment versus things that need to come before the Council. The Board members are experts that volunteer their time and the Council members are elected officials held accountable to the constituents. Having the public comment and public engagement pieces are very important when it comes to these kinds of issues. Again, this specific issue about this school, as a representative of District 7 she has no negative or positive input. She wants to assure the Board, that moving through the regular process she does see it being controversial. Ms. Wright stated that this is tenant asking for this request, and she keeps hearing that constitutional rights are being violated so she is very curious to know from a legal standpoint if tenants have constitutional property rights versus a property owner who is not here before the Board today.



Mr. Van De Wiele stated that to the extent that a landowner has rights, those rights can be conveyed for a short period of time to a tenant.

**Susan Miller** came forward and stated that the key to the determination was that barber and beauty shops speaks how to the Zoning Code was written. She does not believe that speaks to how PUDs were written, especially in 1980. PUDs are very specific about the uses that are allowed; to have this be an exhaustive list that goes beyond the two uses when it was specifically for an office park makes no sense. For instance, if that were the case then all Special Exception uses were allowed by right in a PUD. In an OL District, and OL Districts are those districts that are soft transitional areas that are between higher intensity commercial corridors and residential areas. In those transitional areas, why would these things be allowed by right when the intent was an office park. Common sense tells a person that this would not make any sense and that is how it was looked at.

**Rebuttal:**

**Lou Reynolds** came forward and stated the property is bounded by Highway 169, 41<sup>st</sup> Street, Mingo Creek and a stormwater detention area. It is not like this is intended to be transitional properties; this is a PUD, and this is a very plain reading of the rules. A PUD is a zoning district by its very definition in the Zoning Code. When interpreting a PUD, you are interpreting the Zoning Code. Each PUD is its own unique zoning district. That is why there is the blend of permitted uses and Special Exception uses, and that is why these rules apply.

**Comments and Questions:**

Mr. Van De Wiele stated he does think there is ambiguity in this, and it appears that there were negotiations in the drafting of this 40 years ago. He finds some of what Mr. Reynolds says persuasive. In legal writing the word “include” does not mean only including unless the word “only” is written. He thinks a common-sense approach or the way the interpreter would review this, the last phrase has to mean something. His instincts are that the meaning that was intended here was to allow this additional Special Exception use. He is confident that if the City Council and the TMAPC process were allowed to continue the use that is being sought is allowed. Even if the Board were to grant this appeal today that does not undercut what is going to happen at City Council. The language will still be amended. He is still inclined to wait to see that process unfold one more time, but he is not convinced that Ms. Miller made an error in her review. Mr. Van De Wiele would like to see a continuance in this case.

Ms. Ross stated that she would vote for a continuance.

Mr. Bond stated that he would vote for a continuance. He appreciates that City Council wants to clarify this; it is problematic the way it is worded right now.

Mr. Van De Wiele stated that the way the interpretation is what is allowed there by right are OL uses that are uses by right. The only Special Exception uses are beauty shops and barber shops.

Ms. Radney stated she would not support the consideration of that being in error, but she will defer to the judgement of the rest of the Board.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 2-3-0 (Radney, Van De Wiele "aye"; Bond, Ross, Shelton "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Appeal of the Administrative Decision issued in Zoning Code Interpretation #2019-01 that a Major Amendment is required to PUD-230 in order to permit a school use (Section 70.140) to the November 12, 2019 Board of Adjustment meeting; for the following property:

**LOT ONE (1), BLOCK ONE (1), BISHOP ACRES, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO RECORDED PLAT NO. 3947., City of Tulsa, Tulsa County, State of Oklahoma**

***MOTION FAILED***

Mr. Van De Wiele stated that if he follows the guidelines, he is not convinced that Susan Miller made an error in her review. He would still push for a continuance.

Ms. Ross stated she would vote for a continuance.

Mr. Bond stated that he appreciates that City Council wants to clarify this, it's problematic where it is right now. There is a lot of ambiguity now. He would vote for a continuance to have this clarified, because it is the Board's role to interpret what is put into law and not to make the law.

Ms. Radney she believes that the question is that staff has interpreted the phrase to imply that the use as a school would require coming before the Board with a Special Exception and in addition that there were only two uses set aside that would have been Special Exceptions to be used by right, and those were specifically barber and beauty shops only. So, Ms. Miller does not regard the phrase and the addition to include barber and beauty shops in the context that Mr. Reynolds described.

Mr. Van De Wiele stated that what is allowed there by right are OL uses that are uses by right. The only Special Exception uses are beauty shops and barber shops.

Ms. Radney asked if the Board is being asked to consider that interpretation by the staff as being in error? Mr. Van De Wiele answered affirmatively. Ms. Radney stated she would not support that.

Ms. Shelton stated that she was not involved in the subject PUD, but she has written many PUDs. She thinks what she is interpreting this as is that it could include the school use, so she would be in favor of the appeal.

Mr. Van De Wiele stated the question before the Board is not whether the Board wants a school there. The question is whether, as its written, does it allow by the terms of the PUD all uses by right and all uses by Special Exception.

Ms. Radney stated that would be the reason she would not support the appeal; she would support the Special Exception but does support the interpretation that a Special Exception is not required.

Mr. Van De Wiele thinks at the surface level there are issues with this particular tenant, which he does not know anything about but that is not important to his decision making. He is sensitive to a tenant that has a lease hold interest that has customers coming in January. He would continue this case until the 12<sup>th</sup> of November, but he would not vote to continue it beyond the 12<sup>th</sup> for that reason and that reason only.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 4-1-0 (Bond, Radney, Ross, Van De Wiele "aye"; Shelton "nay"; no "abstentions"; none absent) to **CONTINUE** the request for an Appeal of the Administrative Decision issued in Zoning Code Interpretation #2019-01 that a Major Amendment is required to PUD-230 in order to permit a school use (Section 70.140) to the November 12, 2019 Board of Adjustment meeting; for the following property:

**LOT ONE (1), BLOCK ONE (1), BISHOP ACRES, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO RECORDED PLAT NO. 3947., City of Tulsa, Tulsa County, State of Oklahoma**

**22764—Jeff Robinson**

**Action Requested:**

Variance to allow a swimming pool to be constructed in the side street setback (Section 90.090-C, Table 90-1). **LOCATION:** 1325 East 18<sup>th</sup> Street South **(CD 4)**

**Presentation:**

**Tom Neal**, 2507 East 11<sup>th</sup> Place, Tulsa, OK; stated this is a 1926 house that Mr. Robinson and his family have been restoring and added on to. The addition consisted of a laundry room, mud room, and a garage with kid's rooms above leaving the back yard as the normal logical place for a pool. The house itself, like a lot of the 1920 houses, is oriented to the front to the street, to the porch and then to a side yard. The house sits on the corner of 18<sup>th</sup> and Quaker. This project has passed the Preservation Commission and has also been approved for an eight-foot-tall masonry fence which creates a private side yard that opens directly off the living/dining/kitchen area. His

client later in the process of the design wants to put in a small plunge pool and the City advised his client that a Variance is needed.

Mr. Van De Wiele asked Mr. Neal, looking at the design on page 8.7, it shows there is 15 feet between the side of the house and the fence/wall correct? Mr. Neal stated there is a 15-foot required side yard. The historic house from 1926 is grandfathered in and is actually within the required side yard, and it is a little bit too far in the front as well. The new additions are all respectful of the required setbacks. The actual distance between the existing vintage house and the property line is approximately 10 feet.

Mr. Van De Wiele asked Mr. Neal if the proposed wall is to be a solid wall all the way around the area the pool is in. Mr. Neal answered affirmatively. Mr. Neal stated that it is eight-foot tall and there will be about two inches separating it from the house, which allows it to be built in the required street yard.

Mr. Van De Wiele asked Mr. Neal to state the hardship for this case. Mr. Neal stated the hardship is that there is not a good way to integrate what is essentially going to be a private recreational space into the main body of the house. Literally, a person would have to go out across the driveway, through the garage to reach the private recreational space.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Ms. Ross stated she does not see a hardship in this case; to her it is self-imposed. The homeowner added onto the house taking up the side yard space. The house sits in the side yard, as it is, and she does not see how a plunge pool would fit in that space. Ms. Ross stated that she does support this request.

**Ms. Ross left the meeting at 4:16 P.M.**

Ms. Radney stated her issue is the height of the wall; it is an eight-foot block wall.

Mr. Neal stated that the Coleman's house which is directly south of the subject property has a very similar side enclosure that was approved by the Preservation Commission as well as City Permit officials.

Mr. Van De Wiele asked Mr. Wilkerson if he is correct, that even on a corner lot the rear yard is anything behind the rear line of the house? Mr. Wilkerson stated that there is a setback requirement on the rear lot line, and he confirmed that Mr. Van De Wiele's thought process is correct.

**Ms. Ross re-entered the meeting at 4:19 P.M.**

Mr. Van De Wiele asked Mr. Neal to come back to the podium and to explain how this request is not self-imposed. Mr. Neal stated the homeowners could certainly place the pool in the back. It is also a reasonable desire to have the adjacency between the two. Mr. Van De Wiele stated he understands the desire from how the pool would be used, and how they would not want to go through the garage to the back yard.

Ms. Radney asked Mr. Neal if there is a back door to the back yard from the garage. Mr. Neal answered affirmatively; the personnel door is on the north side that goes directly to the back yard.

Mr. Van De Wiele stated his concern is the self-imposed nature of the request.

**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) to **DENY** the request for a Variance to allow a swimming pool to be constructed in the side street setback (Section 90.090-C, Table 90-1) for the lack of a hardship that is not self-imposed; for the following property:

**LT 7 BLK 1, SANGER-DOUGLASS SUB B25 PARK PLACE, City of Tulsa, Tulsa County, State of Oklahoma**

**22765—DelRay Collective, 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: 18920 East Admiral Place South (CD 6)**

**Presentation:**

**Alan Soleyman**, 18920 East Admiral Place, Tulsa, OK; no formal presentation was made but the applicant was present for any questions from the Board.

Mr. Van De Wiele stated the Board has a copy of the applicant's license on page 9.12, a copy of the spacing exhibits on pages 9.5 and 9.6.

Mr. Van De Wiele asked Mr. Soleyman if he was aware of any other dispensary that is open or in the process of being opened within the 1,000-foot radius. Mr. Soleyman stated that he did not.

Mr. Van De Wiele asked Mr. Soleyman if he was aware of any other license holder in the 1,000-foot radius. Mr. Soleyman stated that he did not.

**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 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:

**W110 N140 LT 2 BLK 1, ROLLING HILLS CTR ADDN AMD, City of Tulsa, Tulsa County, State of Oklahoma**

**22766—Shawn Strong**

**Action Requested:**

Variance to allow for more than 25% coverage of the rear setback for a detached accessory structure (Section 90.090-C.2); Variance to allow a detached accessory structure to exceed 18 feet in height (Section 90.090. C); Variance of the required 5-foot side setback (Section 5.030-A). **LOCATION:** 2217 East 23<sup>rd</sup> Street South **(CD 4)**

**Presentation:**

**Roger McKee**, W Design, 815 East 3<sup>rd</sup> Street, Tulsa, OK; stated this request is for a detached accessory garage with a small workshop on the side. This garage would reduce the side yard setback to three feet to allow the garage to be shifted over and exceeding 18 feet in height going up to 21'-9". The precedent for this is case BOA-14397 on East 23<sup>rd</sup> Street; it was approved to allow for a one-foot side yard. Adjacent properties, five properties, are within three feet of the side yards and over on the allowance for square footage, or they exceed in height or have two stories.

Mr. Van De Wiele asked Mr. McKee how big the proposed building is. Mr. McKee stated the garage will be 935 square feet.

Mr. Van De Wiele asked Mr. McKee to state the hardship for the request. Mr. McKee stated the garage is being shifted over; the existing garages is set back and tucked in behind the house which is typical of mid-town detached garages. The garage is set close enough that if the homeowner has a SUV the turn would have to be negotiated to get into the two-car garage, so the proposed garage was shifted over. The garage will have two garage doors as opposed to a large single garage door. By shifting the

garage over it left the building about four feet from the property line. The house was designed and built by James Parker and the homeowners want to keep the intent of the original design so the garage was designed to match the roof slopes of the existing house thus having a higher plate to match the house; by doing so there is a 21'-9" plate. The garage has a hip roof and is not visibly encroaching on any of the neighboring properties to the north and to the east. There is a small gable on the back to take advantage of the area for storage.

**Ms. Radney left the meeting at 4:39 P.M.**

Mr. Van De Wiele asked Mr. McKee if the garage was not designed to any type of dwelling or rental unit? Mr. McKee stated there will not be living dwelling or rental in the proposed garage.

**Interested Parties:**

**Ridge Kayser**, 2136 East 22<sup>nd</sup> Place, Tulsa, OK; stated he is within 500 feet of the subject property. Mr. Kayser stated he has owned the Luxury Home Building for 35 years and has been before the Board three times. Mr. Kayser stated he is in favor of the proposed garage. He has looked over all the documents that was supplied by Mr. McKee and this will enhance the neighborhood. Mr. Kayser stated he supports anything that enhances the neighborhood and subsequently boosts property values. It is very positive what the homeowners are doing.

**Comments and Questions:**

Mr. Van De Wiele stated this type of situation has come before the Board in the past and this is typical of rebuilding of old garages in mid-town.

Ms. Ross stated she would support this request based on the past history of the Board regularly granting these type of Variances, due to the smaller size garages and the larger sized vehicles of today.

Ms. Shelton thinks the applicant articulated a good hardship. She worries about accepting some things that could be more venerable, particularly pertaining to the height but Mr. McKee made a good case.

Mr. Van De Wiele agreed with Ms. Shelton and thinks the Board would want to include the elevations that are being seen on page 10.15 and the language about the finishes being compatible with the principle structure and not being used as a separate dwelling.

**Ms. Radney re-entered the meeting at 4:47 P.M.**

**Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to allow for more than 25% coverage of the rear setback for a detached accessory structure (Section 90.090-C.2); Variance to allow a detached accessory structure to exceed 18 feet in height (Section 90.090. C); Variance of the required 5-foot side setback (Section 5.030-A), subject to conceptual plans 10.13 and 10.15 of the agenda packet. The Board has found the hardship to be the design predates the Comprehensive Code and the inevitably to access the garage with modern vehicles. The accessory building is not to be used for commercial gain and the height is to be 21'-9". The finishes of the garage to be constructed will be compatible with or similar to the principle structure. 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.10 OF LT 14 ALL OF LT 15 & W.40 OF LT 16 BLK 6, BRENTWOOD HGTS, City of Tulsa, Tulsa County, State of Oklahoma**

**22767—Stephen Gaulin**

**Action Requested:**

Special Exception to permit a fence in the street setback to exceed 4 feet in height (Section 45.080-A). **LOCATION:** 1366 East 27<sup>th</sup> Place South **(CD 4)**

**Presentation:**

**Howard Kelsey**, Kelsey Company, 8022 South Memorial, Tulsa, OK; stated he represents Mr. Gaulin who is a landscape architect, and he is the representative for the ownership of the subject property. The subject house is two doors west of Philbrook



and the trend along the street. The subject property adjoins the house that was built in 2000 which mimics Philbrook, which has a full compound solid wall eight feet tall. The trend on the street has been increasingly to have higher fences and gated. The street acts as a commercial street used to access Philbrook. Mr. Kelsey stated the homeowner is requesting a fence with columns and wrought iron fencing, not a compound type configuration.

Mr. Van De Wiele asked Mr. Kelsey, using page 11.15, is the actual wrought iron fence portion four feet in height? Mr. Kelsey answered affirmatively and stated that it sets on a two-foot tall knee wall.

Mr. Van De Wiele asked Mr. Kelsey, using 11.15, what is the highest point of the fence. Mr. Kelsey stated that looking at the top of a column it is about 6'-6" in height. Entry columns where the gates are will be a little more prominent and there is a pair of gates for a walk-through gate; those two columns would be about seven feet tall.

**Interested Parties:**

There were no interested parties present.

**Questions and Comments:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to permit a fence in the street setback to exceed 4 feet in height (Section 45.080-A), subject to conceptual plans 11.12, 11.13, 11.14, 11.15 and 11.16 of the agenda packet. The fence is to be limited to six feet and the adjoining columns be limited to eight feet. 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:

**BEG 1650N & 980.3E SWC OF SW TH W157.8 N330 E158.7 SLY POB SEC 18 19 13,  
City of Tulsa, Tulsa County, State of Oklahoma**

Mr. Kelsey came forward and stated that he has appeared before the Board prior to 1980, his company has been in business since 1960, and wants to applaud each of the Board members for their volunteer service to the City of Tulsa. It is a very important Board and what the Board does adds value to the community.

## **22768—Tom Neal**

### **Action Requested:**

Variance to allow more than 30% coverage in the rear setback for a detached accessory building (Section 90.090-C.2). **LOCATION:** 1716 South Quaker Avenue East (**CD 4**)

### **Presentation:**

**Tom Neal**, 2507 East 11<sup>th</sup> Place, Tulsa, OK; stated his clients have a vintage bungalow house; there is no existing garage. The homeowners have three vehicles and would like to have all three vehicles under cover with a little extra room for lawn equipment and home repair tool area. The house is in Swan Lake and one block off Peoria Avenue and is limited. Be receiving the Variance would allow the homeowner to complete the program and meet the needs of the clients.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

None.

### **Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to allow more than 30% coverage in the rear setback for a detached accessory building (Section 90.090-C.2), subject to conceptual plan 12.8 of the agenda packet. The Board finds the hardship to be the existing non self-imposed layout of the house, the house and plat predating the comprehensive Zoning Code. 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 24 & 10' VAC. ALLEY, ORCUTT ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22769—Nyesha Barre**

**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:** 1406 North Harvard Avenue East, Suite F **(CD 3)**

**Presentation:**

**Nyesha Barre**, 1406 North Hartford Avenue, Suite F, 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 has a copy of the applicant's OMMA license on page 13.2, and the spacing exhibits on pages 13.7, 13.8 and 13.9.

Mr. Van De Wiele asked Ms. Barre if she aware of another dispensary open or in the process of opening within the 1,000-foot radius. Ms. Barre stated that she is not aware of any.

Mr. Van De Wiele asked Ms. Barre if she knew the name of the dispensary that is closest to her operation. Ms. Barre stated that it is Mary Jane. Ms. Barre stated that she has noticed that someone is in the process of opening another dispensary, but it is not within 1,000 feet of her location.

**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 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:

**TR BEG 661.5S & 40W NEC NE NE TH S100 W145 N100 E145 POB SEC 32 20 13 .333AC, City of Tulsa, Tulsa County, State of Oklahoma**

**22770—Headquarters 66 – Charles Lewis**

**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:** 9306 East 11<sup>th</sup> Street South **(CD 5)**

**Presentation:**

The applicant was not present.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** 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) to the November 12, 2019 Board of Adjustment meeting; for the following property:

**BEG 50S & 25E NEC NW NE TH S280 E140 N280 W140 POB LESS N15 FOR ST SEC 12 19 13 .851AC, City of Tulsa, Tulsa County, State of Oklahoma**

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**OTHER BUSINESS**

**Review** and Approval of 2020 Meeting Schedule.

**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) to **APPROVE** the 2020 calendar schedule for the Board of Adjustment meeting removing the November 24<sup>th</sup> and December 22<sup>nd</sup> dates.

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**NEW BUSINESS**

None.

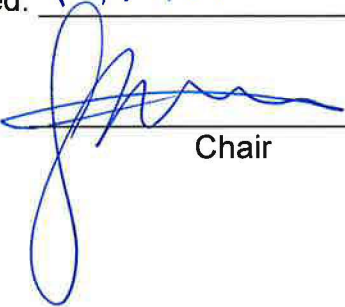
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**BOARD MEMBER COMMENTS**

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There being no further business, the meeting adjourned at 5:00 p.m.

Date approved: 12/10/19

  
Chair