

**BOARD OF ADJUSTMENT  
MINUTES of Meeting No. 1315  
Regularly Scheduled Meeting  
Tulsa City Council Chambers  
175 East 2nd Street, 2nd Level, One Technology Center Tuesday,  
April 25, 2023, 1:00 P.M.**

**Meeting No. 1315**

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS</b>
Barrientos Bond, Chair Radney, Vice Chair Stauffer Wallace		A. Chapman S. Tauber D. Wilkerson J. Banes	A. Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on April 19, 2023, at 2:33 p.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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Mr. Bond called the meeting to order at 1:02 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**

On **MOTION** of **Barrientos**, the Board voted 5-0-0 (Barrientos, Bond, Radney, Stauffer, Wallace “ayes”, no “nays”; no “abstentions”) to **APPROVE** the **Minutes** of April 11, 2023 (Meeting No. 1314).

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## **UNFINISHED BUSINESS**

*Review and approval, approval with modifications, denial, or deferral of the following:*

### **23507 – Oscar Garcia**

#### **Action Requested:**

Special Exception to permit Personal Vehicle Sales in the CS District (Sec. 15.020, Table 15-2); Variance to permit the outdoor storage and display of merchandise in the CS district within 300-feet of an abutting R District (Sec. 15.040-A) **Location:** 12430 E. 11th St. S. **(CD 6)**

#### **Presentation:**

**Ahmed Davila**, 56 East Place, Tulsa, Oklahoma 74105, stated that they were on several things in this site plan. We have been informed multiple times that there is a flood zone in that area. We are going to be working with not just a site plan, but an actual engineer to make sure that this is a safe space not just for ourselves, but for the neighborhoods. We need more time for engineering, this is not something that we can just draw on the board, we need to make sure that everything is done accordingly. He has been informed that the site plan needs more detail and of course we are still working on that as well.

Mr. Bond asked if he was requesting a Continuance at this time. We will hear from interested parties and entertain that.

#### **Interested Parties:**

**Christian Bengal**, 175 East 2nd Street, Tulsa, Oklahoma, 74103, stated that he was here again, on this application. It is no small task to create a small business model that one determines as their path to success. They also must traverse the bureaucratic process for permitting and along with property acquisition. As you can tell, this was a simplistic application, there was not much planning or thought process behind the application. At the last hearing it was incorrectly identified this property location as being part of the Route 66 Overlay. As I indicated during the initial hearing, he was confident the Board will determine this intended development does nothing more than we did individual interests and deny its implementation. It does not elevate anything associated to the overlay, nor the vibrance of the community. Additionally, he was not aware of any community engagement that has been done on this application. As this Board is aware of the Route 66 Commission has invested significant resources and time to elevating Tulsa to being the capital of this historic Route. Through facade neon sign grants and

advocacy for the reconstruction of Avery Cyrus Ridge. This commission is tirelessly promoted through marketing, to entice business owners and developers to take part in preserving and memorializing the historic significance that Tulsa owns. It is our responsibility as elected officials, boards and commission members to respect the work being done by these preservationists, but also as Tulsans to validate the reference, my colleagues of the council who are here with me today, along with the Route 66 commission members, along with Mr. Ken Busby, Executive Director and CEO of the Route 66 Alliance stand united to make sure that developments along this corridor continually meet a higher standard of approval and cater to developments that foster mutual benefit to not only historic preservation, but to the more localized community. That is a beautiful, undeveloped green space intended to duplicate two other businesses, less than a quarter of a mile away. One failed, which he suggested the applicant pursue ownership of and the other still operates. Clearly there is no need to establish with this application, no intent to create a significant economic impact, nor intended to create employment. The exception this application intends to bring is towing service while the board has already established that this is not allowed. He submitted respectfully that at some point, this will be implemented and left for the community to abate. If the applicant's intent were to exclusively sell classic cars with neon signage, this would be an application worth serious consideration. He wants the applicant to understand that even if our mayor were here today with the same proposal, he would be standing here speaking against him. He wants the applicant to understand this is not personal in a way, he sees no hardships being presented. Unfortunately, East Tulsa has suffered from a free reign and closed eye approach, where issuance of partial license has led to liberties that have decimated aesthetic inviting thoughtful and regulated business practices. So again, he stands here today hoping you will deny this application, because again, it does nothing for the community.

Mr. Bond asked the Councilman if he would prefer that we hear this matter today or would you be agreeable to a continuance like the applicant's request.

Mr. Bengal stated that he would appreciate you just rejecting this application. The green space is beautiful. We have two developments that are already within a quarter mile of this intended development, and he did not think you would be doing a disservice by ruining this green space that is undeveloped right now. 11th Street does not mean another car lot.

Ms. Radney stated that she would make that Motion.

Mr. Bond stated that no matter what the revised plans say, especially for the sake of the applicant, it sounds like they are spending a lot of time and capital on this. He would prefer to hear this today. He would give the applicant the outcome that would give them the benefit of the doubt on whatever plans might come back.

**Christa Patrick**, 175 East 2nd Street, Tulsa, Oklahoma, 74103, stated that she is the Chair of the City Council. She is on the Route 66 Commission, and we have issued a letter previously in the planning to INCOG to plead that no more car related industry be allowed on the Route 66 Corridor unless it is specifically targeting the tourism or vintage aspect. We are overpopulated with especially used cars and car-related industry in that corridor. We are putting so much investment into creating tourism. It is a detriment to the area. On top of that, as the applicant pointed out, it is a floodplain and car lots require concrete, which would not be an option for a floodplain. If you concreted over that green space, it would cause detrimental flooding to the areas around it because there is no place for the flooding to go. There are lots of empty car lots along that corridor. So, if he really wants to put in a car lot, she will also suggest that he seek someplace that is already designed and set up for that so that we are not creating more dead concrete than we already have on that Route. She would respectfully ask that you take into consideration that Route 66 official letter on record asking to please not allow any additional car lots on the road.

**Grant Miller**, 175 East 2nd Street, Tulsa, Oklahoma, 74103, stated he is the City Council for District Five. Right now, you are trying to get whether people object to continuing this. So, with that in mind, he would object to continuing the matter.

Mr. Bond stated that they were trying to take the bull by the horns. We are going to go on and hear the matter today.

Mr. Grant stated that with that being said, just what my colleagues have mentioned, there are some things that people cannot agree on within neighborhoods, but something that most people can agree on as far as Route 66 goes, is that there are too many car dealerships already in place, and that adding additional car dealerships will not be a benefit to the communities that are along that Route.

**Jeannie Cue**, 175 East 2nd Street, Tulsa, Oklahoma, 74103 stated as someone that helped initiate the Route 66 Overlay who started the Route 66 Commission with Mayor Dewey Bartlett, she wanted to say we want to improve Route 66. We are the capital of Route 66, the home of where it started, and 11th Street is a key factor. She supports citizens. She does not want them to spend a lot of time and money and continue cutting back and it is something that will not pass anyway. There are so many open car sales lots on 11th Street that they could do things. That is why we put that overlay in because we do not want people coming into Tulsa, the thousands, and hundreds of thousands with the new Route 66, 100 Year Celebration to see car lots. We want great development. We want signage, we want beautification along there. She could not support this, and she hoped you did not.

**Rebuttal:**

**Ahmed Davila**, 56 East Place, Tulsa, Oklahoma 74105, stated that he thanked everyone for being there. He too loves Route 66, as well as anybody else in this place. The owners want to develop this area. Regardless of if this is going to be a car lot, or something in the future, the purpose of this empty lot is to redevelop, we need to grow as a city and expand the city. A lot of times, to grow, you need to invest money, and we are willing to invest money in this property. He did not understand why this lot had not been developed in the past. This is one of the reasons; there are many car lots on Route 66. There are plenty of them. In fact, which is one of the main reasons why 11th Street has been famous, and a lot of folks keep forgetting that. If you go to Route 66, and you go through Tulsa, the first thing you see is the car lots, perhaps some of them are classics, some of them are old, and some of them are new. We need more development in this area. They would love to redevelop this area, making sure that development is not just safe for the neighbors, but for the whole community. We need to make sure that this new facility is not just a car lot, it is a space for him to grow once that development has been implemented safely, we could be something else that would be a commercial shop, we can develop something else. The bottom line is it needs to be developed. That is what we are saying here before you, letting the Board know that we are new in this development process, and we are learning from the Board. Please tell us what we need to do to make sure that this development is not just safe for the next-door neighbors, but for the future as well.

Mr. Bond stated that we in the City appreciate your willingness to work with them on that. Can you articulate a hardship?

Mr. Davila stated that the hardship that we are facing right now is the flooding. For the Variance of course, we want to do a car lot and now the car lot is facing a hardship and in that specific Variance. Well, thank you all for your patience. This hardship has multiple reasons, one is the location where it is at, and 11th street. It is three hundred feet from the neighborhood. We would like to put cars in the front of the street so we can present those cars in that way.

Ms. Radney asked the applicant had done some investigations that relate to the floodplain that crosses the lot.

Mr. Davila stated that they have been speaking with some engineers who have told us that there is something called a slow process that does it from what had been formed is that it slows down the flow of water and thus does not create overflow in that area. We need to make sure that the back area is secure for that specific location.

Ms. Radney asked what percentage of the lot you would say is usable.

Mr. Davila stated that the front part. The back area is going to be a flood area. An example would be that there is a Starbucks Mingo Creek. That area is next to a flood zone. What they did is redevelop that area, and make sure that the water of the flooding area is secure for that specific space. There is plenty of space in the front for it to be used for commercial zoning. We will need some digging. We need to make further investigations into that, there is plenty of space in the front to develop.

Ms. Radney stated that on the 11th street side of the property she saw that you are in the adjacent properties have driveways that come across, that come off 11<sup>th</sup> Street and go to the south. Is that an open trench there or how difficult would it be to create an entrance into this property that we are looking at opposite 11<sup>th</sup> Street?

Mr. Davila stated that it was not difficult at all, because the trench goes through the backside of the area. The water flow will go through the back area into the creek that is there. We just need to make sure that development in that back area will work properly forward for that sector. Slowing down the flow of water will also help that area. There is an entrance on we can use the 11th Street as a main entrance.

Ms. Radney asked if they would not need the 124th East Avenue entrance.

Mr. Davila stated not necessarily.

Ms. Radney stated that she apologized. She was multitasking, and not paying attention to when you were talking about the portion of the land that would remain with the vegetation on it. Could you remind me a little bit more about what that would look like or what you were talking about?

Mr. Davila stated that they had not presented the Board with more details, but what our vision is in that area is something more of a space for parking, for starters. There will be plenty of space for a building as well, a small building that could be rentable, in the future for commercial business. The front part area is very stable, and very usable for the commercial lots.

**Comments and Questions:**

Mr. Wallace thanked the applicant for coming that day and for asking for a continuance. with asking for a variance and a special exception. He did not see that this was being in harmony with the neighborhood. We have several councilors here representing their communities. From his perspective, he did not want to continue this and have the applicant spend more dollars. Hopefully, the councilors have some ideas that what can be utilized for this property that can generate some growth here. He was going to be voting nay today.

Mr. Barrientos stated that he thought he would vote the same way. Although he appreciated the willingness to develop the area. This is not the right location to have another car lot.

Ms. Stauffer stated that she felt the same way. She did not see the hardship. She did not see that it meets the standards for reasons.

Ms. Radney stated that she did not necessarily concur with those arguments. She thought that this commercial lot has not been developed because it is difficult to develop. There are times that incremental development can at least begin to move you in a direction towards being able to have something that is at a greater, higher, or better use of the future. She was just going to say that she is agnostic about whether we have too many or not too many car lots. 11th Street has that reputation because car culture is embedded in the Route 66 narrative, we might not necessarily like all the locations that the car lots are sitting on. All up and down the Route, they may or may not be the best and highest use in those locations, but she did not know that she was able to say that that there are too many, if the market will bear them, then the market bears them. We are only looking at this site. She was setting aside that part, and she was appreciative of the importance in the work of a commission, specifically one that wants to elevate its historical asset of the city. That having been said, she did agree that we have not actually had a good hardship that has been described for us, although she did actually think that the topography of this lot does make it very challenging, and to a certain degree, at a relatively low impact, commercial use, like a car lot, does not seem terribly inappropriate for this location. So in for that reason, she would have been inclined to support it, and she would vote accordingly.

Mr. Bond stated that at the risk of being redundant here, we do our best here not to interpret policy. That is the sole purview of the City Council, we simply have a left and right limit to make decisions based on the limited allowances that they give us. Two of the most important things here are first the hardship, and although there are some unique things to this property, he did not see a hardship which is tied to the proposed use. That would be different than the ability to not simply just have a car lot but would be something which will be tied to geographic uniqueness. He did not see that here. Secondly, the thing that prevailed is almost a third rail and that is getting into trying to interpret the Comprehensive Plan. That is the full purview of the City Council and the Mayor to pass. In the event that this goes on to any other venues that the Comprehensive Plan, which goes over completely, the idea that we as a city can pass overlays, and the idea that it is up to the City to legislate overlays and to protect them, he found that this application would be very much violative of that event. Since no clear hardship has been articulated for this matter, and because he did find this to be violative of the City's Comprehensive Plan, as well as harmful to the surrounding neighborhood, given its intended use, he would vote nay as well.

**Board Action:**

On **MOTION** of **Barrientos**, the Board voted 4-1-0 (Barrientos, Bond, Stauffer, Wallace all “ayes”, Radney “nay”, no “abstentions”) to **DENY Special Exception** to permit Personal Vehicle Sales in the CS District (Sec. 15.020, Table 15-2); **Variance** to permit the outdoor storage and display of merchandise in the CS district within 300-feet of an abutting R District (Sec. 15.040-A).

Mr. Bond thanked everyone for their time as well as the applicant for their interest. He knows that the City of Tulsa goes out of its way to try to work with people with applications.

For the following property:

**LT 2 BLK 1, EAST CENTRAL PLAZA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**



## **23510-WAGONER - August Wakat**

### **Action Requested:**

Appeal of the Administrative Decision by a Neighborhood Inspector in Case 69279-2023 that the subject property is in violation of sections 60.020-A, 70.080-A, 80.040-B.2, and 80.040-F of the City of Tulsa Zoning Code, in accordance with Section 70.140. **Location:** 23780 E. Admiral Pl. **(CD 6)**

### **Presentation:**

**Mike Rider**, 175 East 2nd Street, Tulsa, Oklahoma, 74103, stated that he was the Zoning and Sign Official with the City of Tulsa, Working in Neighborhoods (WIN) Department and he wanted to begin by pointing out, in discussion with City Legal, we are going to drop section 80.040 from the Notice, which would also include the sentence on the Notice that says any new non-conforming uses such as the recycling use must also be approved through the Special Exception process. That section conflicts with a little further down in the same section and should not have been on there.

Mr. Rider wanted to run the Board through a quick summary of the case. We initially received a complaint about this property, which is found to be a nonconforming salvage use around the end of November 2020. The aerial images that we researched of this property revealed that there had been a significant expansion of the property since they had been annexed into the City of Tulsa, in 2001. We found no permits as a part of any of those expansions. We explained this to the owner, Mr. Wakat, and subsequently to his legal counsel. This is a big issue. In one sense, Mr. Wakat has painted himself in a corner by expanding the nonconformity. Our objective was to try to work with him recognizing that this did not occur overnight, and it is not going to be solved overnight and trying to get him on a path towards compliance outside of an official notice. We tried to work with him on that and then subsequently his legal counsel. We were not able to get anywhere through those means.

Then Mr. Wakat contacted us, and then began to reassert that he did not believe that his property was within the City of Tulsa. At that point, we issued a Notice so that he could come here before you all and make that case. There is a time lapse video that kind of shows how the property progressed for you. While that is playing, Mr. Rider wanted to explain to you some of the background. He and his supervisor, Tim Cartner, first investigated this property and the original complaint. We were met by the property owner, Mr. Wakat, who showed us around the exterior of the property. We found nonconforming salvage use there and in an Agricultural Zoning District. We found the property and salvage to be tidy. It consists of several buildings and there was a metal processing area near the southeast of the property in the central south part of the property, and a dynamic display sign had been installed along the north property line. When asked, Mr. Wakat admitted to having expanded this salvage used to the new areas of the lot and constructing new buildings since he had purchased the property many years prior. He also stated here to establish this new recycling use involving the

processing of scrap metal, and that was the bar taking place near the south central and southeast portion of the lot. He mentioned he attempted to establish a medical marijuana use at the property that had been denied by the planning office. He was asked if he had any building permits, sign permit, or zoning clearance permits. Mr. Wakat stated that he did not and that is when he first mentioned that he did not feel like his property was within the City of Tulsa. He was asked to double-check that as best he could as part of my investigation. Mr. Rider invited Mr. Wakat to send him anything he had on that matter that in theory, then send it to City Legal, but he never received anything. Mr. Rider did try to research the issue, found the ordinance, and certainly was satisfied himself that Mr. Wakat was within the City of Tulsa as best he could tell. He explained to Mr. Wakat that these expansions of his property violated the City Ordinance because they had not been permitted, and they were they jeopardized his non-conforming status of the property. He answered Mr. Wakat's questions and asked him for a plan to voluntarily return his salvage to the scope it had in 2001 when the property had been annexed.

After many months, Mr. Rider finally received a phone call from an attorney, Martha Blackburn. This was September 2022. He updated her on our previous discussions, provided her with aerial images from the Planning Office from 2001 to 2022, and referred to Section 80.040 as what he had been looking at. He explained to her in the email, and he quoted "These photos show demolitions of old structures, additions of new structures, and expanded non-conforming use towards the east and southeast. He did not believe there had been any issued permits for any of these demolitions, additions, or the digital sign. He had also welcomed her thoughts on anything that might support the position of nonconformity, anything that we may have missed. She let me know she would follow up with me after she reviewed, but he did not hear back from her at all.

Then February of 2023, is when Mr. Wakat had reached back out to us and stated he was not being represented any longer, wanted us to close our case, and send out a letter that it was resolved. Mr. Rider told him that he could not do that, and that we were going to send him a Notice. If Mr. Wakat believed that his property is not in the City of Tulsa, he could appeal against it and see if the Board will hear that. So accordingly, a Notice was issued, and it included Section 60.020-A, a sign for which no permit has been issued as a prohibited sign, we did not have any sign permits. 70.080 A is the requirement that any property owner obtain a Zoning Clearance Permit before moving, structurally altering any building, or before establishing or changing the use of any building or the lot. Then 80.040-B-2 through F clearly prohibits the expansion on to the other parts of the lot.

Mr. Rider would save you from reading that verbatim, but it was clear that a pattern of expansion had occurred. In this next slide, he had placed the two photos side by side just so you can see this was what we are going off, and there were quite a few changes.

On the next slide is just a larger photo from 2001. He asked our communications department to enhance this and try to sharpen it just a little bit. It is slightly better and the same thing on the following slide from 2022. He also highlighted the changes that would require some kind of permit somewhere along the way. There are fourteen different sections on the property where changes occurred from 2001 to the present. That would have required, at the very least, a Zoning Clearance Permit. Often more, a Building Permit, a Right-of-Way Construction Permit, or a Curb Cut Permit those, but it all is rooted in the expansion without authorization and without any permits. There are fourteen expansions.

There are a few relevant ordinances that Mr. Rider has covered. The ones in the notice, and he had referred as well to Ordinance 20244, which annexed the subject property into the City of Tulsa and was signed by the Mayor on November 13, 2001. In addition to those ordinances, there is section 70.140G-3, which empowers you as the Board to affirm, reverse, or modify the decision to issue that Notice to Mr. Wakat by a vote of at least three members. There is subsection G-4 in the same section that places the burden of persuasion on the appellant to show that an error occurred. 140HH, same section requires that the Board affirm the official's decision, absent any finding of error. Also included is section 85.070, which discusses how notices are to be given when there is a zoning violation, because that was one of the few things that had been included in the Appeal.

Mr. Bond asked if he could backtrack a moment at your beginning. Was it at 80.040? Was it B or F?

Mr. Rider stated that it was B that needed to be stricken. It conflicts with F, which is the more restrictive and he wished he could explain to you how that happened. He had a presumption of correctness. But he did not mind telling you, he cannot make sense of that at this point. He had a copy of the Notice in here, as well as the Wagoner County Treasurer screenshot, showing the property owner.

Then to just respond to the arguments that are contained in the Appeal, and Mr. Rider would follow the same format of the Appeal. The argument responses are kind of difficult because the appeal is kind of vague. It does not clearly say here is what Inspector Rider did that violated the ordinance, it even questions in the document that we have tried to answer many times. On Section 1.1, the City would submit that on November 5, 2019, the subject property had been in the corporate limits of the City of Tulsa for 18 years. Obtaining a sign permit from Wagoner County does not satisfy the requirements of the Tulsa Zoning Code. The City of Tulsa should have issued any sign permit. The Wagoner County Permit does not help comply with Tulsa's ordinance. Under 1.2, the Oklahoma Jury Instruction 3-1 that was referenced, we submit as irrelevant. This is not a court hearing. This is on the appellant to show that the official erred in issuing the notice. In Item 2-1, there was no argument asserted. We have no

response for that. In 2.2 they are the document that has marked as Wakat Exhibit Three, it is a receipt from the City of Tulsa Permit Center. That was associated with attempting to establish a Marijuana Dispensary or medical marijuana use. It is not a permit. It is an application, and that application was denied by the Permit Center because that use was prohibited in the AG Zoning District and since that application has expired in our system. No permits have been issued at the property by the City of Tulsa since its incorporation into the City Limits. On 20244 three, returning the property to the scope it had when it was accidentally tucked into the City is not impossible, ridiculous, or sublime. It is very possible, and we work things like this out all the time, voluntarily.

Mr. Wallace asked when was the annexation or the incorporation?

Mr. Rider stated that they believe it to have been on November 13, 2001.

Mr. Wallace asked if there was any way to verify that.

Ms. Blank stated that their officer looked at the Annexation Ordinance and the Statute and we believe it was all in order.

Mr. Rider stated that argument number three of the Appellate Court of Appeal. We are aware that this property has been salvage use for a long time that it held a non-conforming status with Wagoner County prior to him being annexed into the City of Tulsa, but no violation would exist if it stayed exactly like it was at that time and not been expanded. Also was submitted February the 20, 2023, the date that the Notice was issued is not a City of Tulsa holiday. Our offices were open. So that was issued on a city workday. We have an issued Annexation Ordinance to Mr. Wakat as well as two different attorneys that have represented him over the life of this case.

Finally, we would submit we are not aware of any alleged fraud related to the abstract. We did not view the abstract or amended it in issuing this notice in any way. He included for you our permit search results; this is a screenshot that he took that shows the permits that we have on file in the system for the property. One was voided. The other two are expired. None of them had an issue date; that column is blank. The next slide is the permit from that permit receipts submitted by the Appellate with the highlighted areas showing the permit status has expired and showing that the next step in the workflow would have been for the applicant of the permit to resubmit their plans. On the next slide is a screenshot from the city website. It covers the period showing that Presidents Day is not observed holiday and we were there working. The following slide is an email to Mr. Wakat and emailed to his previous attorney and then a letter to his next and most recent attorney all where we had included the photographs, along with that Annexation Ordinance attempting to achieve a voluntary resolution. In conclusion, we would submit that no error occurred in the issuance of the Notice. We would submit

the Notice was issued lawfully pursuant to Section 85.070, on non-emergency matters, and only after all attempts to achieve voluntary compliance have been exhausted. We respectfully request that the appeal be denied and that the notice issued on February 20, be upheld as modified.

**Appellant:**

**Ronald Durbin**, 1602 South Main Street, Tulsa, Oklahoma, 74119, stated that he was the privileged person to be the third attorney for Mr. Wakat on this matter. He did not know why that was relevant, but there were two prior attorneys. He was here the last time just to point out to the Board, interestingly, as in the last hearing, when the City asked for additional time to investigate the zoning issue, he provided his information to the City. Nobody contacted us from the City to discuss any of these, including the gentleman who just spoke. He found it disingenuous that they have tried to work this out with my client when they did not bother to reach out in the last couple of weeks regarding their decision and opinion on this case. Unfortunately, he did not know if you depend on City Legal for your legal advice, but if you do, you are getting bad legal advice. He was going to walk you through why that is the case. They want to keep talking about the ordinance that incorporated and brought this property by Mr. Wakat into the City of Tulsa. Ordinance number one, that is what they keep talking about, this is the Zoning Ordinance, and you have it in your packet.

Mr. Durbin stated he would ask you to direct your attention to it and look at it. He will show you how they are wrong. It is very, very simple. If you look at Ordinance One, the first page of it looks like this. He will show it to you. You see this, you got this so everybody can see. All right. So, if we go to Ordinance One and we go to Exhibit A. Let us look at Exhibit A, we will all agree that Ordinance One is the ordinance which the City of Tulsa alleges brought Mr. Wakat's property into the City of Tulsa. That is not an argument, and everybody is on the same page there, right? Ordinance One is what they are saying gives them authority over Mr. Wakat's property. If we look at Exhibit A, that document we are going to see Section Four, we see that it says Section Four, it says 1, 2, 3, and 4. In section four, it says quote, "All of Section Four, except the west one half of lot one. That is Mr. Wakat's property, it is excluded in this ordinance number one, which created the town of Fair Oaks from being owned by the town of Fair Oaks. Mr. Wakat's property is that excluded west half of lot one. Now, if we go and look at when the City of Tulsa annexed Fair Oaks, which is Ordinance number 2024.4, the City messed up. They put in Section Four of what they were adopting from the City of Fair Oaks, they put, quote, "All of Section Four." What is a very simple legal concept that somebody cannot grant something that they do not own. The Town of Fair Oaks did not have Mr. Wakat's property as a part of it and began to look at Ordinance Number One that created the town of Fair Oaks.

There is nothing presented to you that is shown apart from that they annexed Mr. Wakat's property. When the City of Tulsa adopted it, they incorrectly stated that they were getting all the Section Four. The town did not have that to grant to the city. If you look, my client has tried to explain this to the city more times than he cares to try to explain it. Mr. Wakat provided you with two separate legal opinions on this issue. If you look at the first one, it is from an attorney named Amy Collins. Ms. Collins conducts an independent examination of the title of this property. Ms. Collins, an attorney licensed in the State of Oklahoma and provided to you, concluded that this property was not part of the Town of Fair Oaks and therefore not parts of the adoption of the town or the incorporation of the Town of Fair Oaks into the City of Tulsa. Ms. Collins stated that very clearly. You have a copy of that, that Mr. Wakat did not rest on that, because he wanted you to have a bunch of attorney's opinions. So, he goes to Richard L. Gary and Associates and asks him for an independent title opinion related to his property. This has been provided to you. But if you look at page number four that it says at pages 205 - 212 of the abstract of title appears ordinance number one filed of record in the office of the Wagoner County Clerk on the 13th day of February 2023 and book 2886 pages 689 through 6396, reciting the annexation of property to the town of Fair Oaks, Oklahoma, however, does not appear that the abstracted property is included in the annexation. Again, it is a very simple legal concept, he could you a document that says he grants you all of New York City, even if I own a tiny little part of it. That does not mean you can use that document to claim that you own the entire city.

Mr. Bond asked if he meant you as an individual or you as a government actor.

Mr. Durbin stated me as an individual or government actor, either one. A government actor can grant you something, but they cannot grant you something that they do not have title to it. One of the fundamental concepts in the law is to grant somebody an interest in something, you have the first step title of it.

Mr. Bond asked again, for transfers of title you as an individual, or you as a government actor.

Mr. Durbin stated both. The town of Fair Oaks cannot grant the power of the City of Tulsa to take over its annexed territory when it did not annex that territory, and it does not have authority over it. Additionally, if you go and look and he did, this is the last hearing, and you go to the State Library Archives and pull the 1971 Statutes and we did this of what it takes to create a town. He could also tell you that the Town of Fair Oaks and if you look at Ordinance Number One does not comply in any way, shape, form, or fashion how you create a town. There is no proof of Notice, there is no Notice Clerk signature, there is no independent authorization on that. They don't meet any of the 1971 requirements of creating a town and he wanted to point out to you that there's no grants of property for many of the property owners contained in the Ordinance Number One that he referenced and this Mr. W.W. Repschlaeger, both sides is the only person

other than an alleged town clerk signed it.. There is no ordinance approving this. There is no ordinance or records of that in the Town of Fair Oaks establishing who this gentleman was. There is nothing in the State Archives that has been turned over to them. He has been told that the City still maintains records with a private individual, but that is not a government record being properly maintained in the Oklahoma Open Records Act.

Mr. Bond stated that there is there is no clear title for this property.

Mr. Durbin stated that there is clear title for this property, and it is held by Mr. Wakat, under Wagoner County.

Mr. Bond asked what the title of Mr. Wakat's property says, and which city does it say.

Mr. Durbin stated that the title does not list the city. Wagoner County is listed.

Mr. Bond asked if the title is completely ambiguous as to which town is located.

Mr. Durbin stated that he would have to go back and look at the title, but it would not matter what the title says with regards to the city. The city cannot have a piece of property even if the title said it was City of Tulsa. The City of Tulsa must go through a proper process to annex something. He thought as an attorney, you would understand that, but there is a process regarding that. They did not follow that if they did not have the authority to annex a piece of property. So, you, sir, as an attorney should certainly understand the way you grant property and be interested in a property.

Mr. Bond stated to Mr. Durbin that he did, and he looked forward to an appellate opinion on this, which is about to affirm his own opinion on this.

Mr. Durbin asked if Mr. Bond was indicating that he had already made up his mind before he came into this hearing. Did you have a discussion regarding that?

Mr. Bond stated that they had not discussed this case prior to this hearing. If you stick to your presentation, you have about three and a half minutes left.

Mr. Durbin stated he did not have anything else unless you have questions. This is a simple issue of the City of Tulsa did not properly annex this property. They need to go through that process. They should not have issued a Change Order, a Notice or anything regarding signs or anything on the property because they do not have jurisdiction over the property due to faulty annexation.

Mr. Bond asked if he was saying that they have no jurisdiction over this property, but you are here for them today.

Mr. Durbin stated that because they sent him a violation. So, we had to appeal to the process. So, we filed an appeal.

Mr. Bond stated that you filed that appeal here, not to the district court claiming that we had to go through knowing that we have no jurisdiction or venue for this matter. Instead, you came here voluntarily, correct?

Mr. Durbin stated that no, you made us. There is no voluntary thing, which was and there it was a violation issued. So, there is a proper process for coming here, sir. You should understand your rules.

**Interested Parties:**

**Mark Swiney**, 175 East 2nd Street, Tulsa, Oklahoma, 74103, stated that he was Senior Assistant City Attorney in the City of Tulsa Legal Department. With the rest of the City of Tulsa Legal Department, he had been asked to review these documents and he would like to comment. First, he would like to say he objected, and he took affront at Mr. Durbin's comment that the City of Tulsa Legal Department does not know what we are talking about. He presented Ordinance Number One of Fair Oaks annexing a certain property. That is irrelevant to what we are talking about today. The City of Tulsa went and annexed the property that Mr. Wakat owned into the City Limits. He had the Annexation Ordinance. The City of Tulsa did not annex Fair Oaks Town. In fact, Fair Oaks is only mentioned once in this ordinance and it is the Fair Oaks Ranch, which was the owner of a majority acreage in that area, and we had the consent of that owner. Fair Oaks Town is irrelevant. Ordinance Number One that Mr. Durbin has shown us is irrelevant. It does not matter whether Mr. Wakat was within the Town of Fair Oaks or not. What you see here is Ordinance Number 20244 of the City of Tulsa, not Ordinance One of Fair Oaks, which has nothing to do with the City of Tulsa. What you see here is an ordinance by the City of Tulsa passed in 2001, annexing certain property. The fourth page has a legal description. The legal description of the areas that are being annexed and they are identified by sections, township, and range as is proper for legal description. If you look on this fifth page, it says all of Section Four the City of Tulsa is annexing into the City Limits. It does not say anything about Fair Oaks, and it does not have to say anything about Fair Oaks. Fair Oaks town is irrelevant. The City of Tulsa lawfully annexed what Mr. Wakat's land is included in that section. That is the basis. Mr. Durbin and Mr. Wakat are simply mistaken. They think that the Ordinance of Fair Oaks town annexing or not annexing certain property has anything to do with the annexation by the City of Tulsa. It does not. We in the legal department are satisfied that we do have jurisdiction over Mr. Wakat. Why? Because his land is clearly within the City Limits of the City of Tulsa. This board has the jurisdiction to rule on that appeal. Thank you.

**Christian Bengal**, 175 East 2nd Street, Tulsa, Oklahoma, 74103, as the councilor for District Six, he has met and spoken to Mr. Wakat since he has taken office and even



before, and he has tried to represent him as a Council Member. He thought about the issue here and again, it is a contentious issue for him specifically. He thought he advised him multiple times what he thought when he has a legal representative, and the City has its legal view. The challenge here is on the annexation that may have occurred in 1971. Whether that was legal or whether the one in 2001 was legal, it is a challenge for the District Court. This is not a fight that he can take up for Mr. Wakat specifically with the Council, but I am not sure who advised him that he could bring it before the Council and we can resend or reverse an ordinance, it has already been passed. He just wants this gentleman to finally get the resolution that he needs and understand where his path of resolution is.

**Joe Robson**, 23515 East 31<sup>st</sup>, Catoosa, Oklahoma, 74014, stated that he is the manager of Fair Oak Ranch LLC. He has been involved with this situation for several years, we own the property on three sides of Poe Boy's Salvage. He presented to the Board a list of documents. This property has been a non-conforming use, not just since 2001 but since 1981, when Wagoner County passed their ordinance. He gave you the three non-conforming use statutes, which is Wagoner County, the City of Tulsa from 2001, until the latest revision and he cannot remember whether that was 2016 and from 2016 to today. All three of them are the same thing. You cannot expand a non-conforming use, period. There's very little language change in all three ordinances that have been affected since 1981. He also included some pictures from 2001 to 2023. The first picture in your packet is from 1981. So there have been abuses on the non-conforming use side since 1980. When you compare 1981 to what it is today, it has expanded, it has grown. You know, there are benefits that people get when they have a non-conforming use. You do not have to have setbacks, you can use it the way you have done it, you just cannot expand it. It is simple. That is what has happened in this case. He would just encourage the Board to support Staffs recommendation.

**Rebuttal:**

**Mr. Rider** stated the Board heard from the best source on annexation legal department. He could not give you a legal opinion or conclusion. There really was not any alleged error in anything that he could explain to you. But if you have any questions for me, he would be happy to answer.

Ms. Radney asked what would be the remedy that you propose to the property owner.

Mr. Rider stated that they would ask Mr. Wakat to return the property to the state that it was in 2001 or apply for permits to change the zoning and try to make what he has done there lawful some other way. There will be some demolition permits that will be needed, just because of the nature of construction and having to take it down.

Ms. Radney asked Mr. Chapman if he could show us again what that condition was in 2001.

Mr. Rider stated that the highlighted slide was a better one to show. These are the fourteen separate things that have changed over that course. The one benefit of waiting to do it, you can do it all under one permit now rather than having to do fourteen permits. They can just submit this and answer any letters of deficiency that may come. There will be a little bit of overlapping ordinances, like curb cut permit, which may also be applicable that compliance is also required with those things. That is what we will be looking for is to either make all that lawful or to return the property and keep it as it was in 2001.

Ms. Radney asked Mr. Chapman where this was in our packet.

Mr. Chapman stated that this was sent out as an addendum.

Ms. Tauber stated that he should have it on your table.

Mr. Barrientos asked what kind of business activity is happening on those metal buildings.

Mr. Rider stated that as best he knew, it is an extension of the salvage operation. If it is not that, then it is an unpermitted new use that has been established that we do not know exactly and we are not aware of. He knew one of the structures, he did not know if it was new, but the marijuana use was set to go in that structure on the northwest corner of the lot. That is where that was. That is the only thing that we remotely had on file. But again, that was not finalized.

Mr. Bond stated that the applicant will give you three minutes and 45 seconds.

Mr. Rider stated no, sir, he would agree with you that they recorded it says section four. Absolutely. It says section four correctly.

**Respondent:**

Mr. Durbin stated that he said it the last time and he was going to say it again. You are getting terrible legal advice from the City of Tulsa Legal Department, and quite frankly, as an attorney, he gets very upset when attorneys argue positions that they know are incorrect. Because to me, there is this rule as an attorney of Candor to the Tribunal, and he thought that arguing something that you know is incorrect.

Mr. Bond stated that there is also an equal rule that you will conduct yourself as a professional and not insult individuals and fellow members of the bar.

Mr. Durbin stated that they are lying, sir, to you, and if you look at the request for action ordinances, the problem is that they are willing to lie to you even though they had the documents. If you look at this document, this is requests for ordinance, this is the request for ordinance that was that Tulsa's zoning ordinance that the city attorney just talked about lied to you about.

Mr. Bond asked what the date of that was.

Mr. Durbin stated that it is filed, stamped, and approved by the City Council on November 8, 2001. It is dated 11/10/2001 on the bottom of the page is request for action ordinance city of Tulsa. It is what precipitated 20244. He was going to read this a section to you. Going back to what I said about you can't annex something you don't have, or can grant something you don't have in the summary section it says, quote, in response to a request from Fair Oaks Ranch LLC, and upon research and evaluation, the Mayor has requested the legal department prepare the necessary documents to annex the town of Fair Oaks. It annexed the town of Fair Oaks as it existed in 2001 at the request of Fair Oaks Ranch, LLC. It cannot annex property the City of Fair Oaks did not own. It is that simple. It did not own it. Mr. Wakat was not a party to this. The gentleman who just got up and spoke Fair Oaks Ranch, LLC is the one who requested this. So again, he would urge you to make the correct decision that the City of Tulsa should not have issued any notices regarding this property because the city did not annex.

Mr. Bond stated that was on November 8 of 2001, and a month later, in December of 2001, in Book 1183, page 361 as Mr. Swiney pointed out the recording deed states, all those sections four. Do you dispute that it was recorded?

Mr. Durbin stated that no, sir, he would agree with you that they recorded in said section four. Absolutely. It says section four.

Mr. Bond stated that in totality, without exception did your client or anyone who had an interest in the land at that time dispute the recording of that document.

Mr. Durbin stated they had no notice, sir, which is the problem.

Mr. Bond asked if this was filed with the respective county clerks correct.

Mr. Durbin stated that but when you go through the adoption of a city and the way the city did this by ordinance, as opposed to a normal. Just a second, let me answer the question before you interrupt because these people might not know the answer, or might not have the predisposition to this issue that you do. When you annex a piece of property and when you bring it in through an ordinance, you can take it into an ordinance if the people agree with it, which is what the City of Tulsa was doing here.

Fair Oaks, LLC, wanted the city to adopt this property, Fair Oaks represented all the property that it owns in Fair Oaks. The problem is that when the city took that grant from the people that had the legal authority to do it, they also took all of Section Four. For the people who granted the City of Tulsa the entire power to do this did not have the authority and the city did not give anybody like the person who owned the property, proper notice to annex their property because they did not intend to annex anything other than what Fair Oaks Ranch LLC had the authority to grant them.

Mr. Bond asked if he was not disputing that it was filed with by Wagoner County, correct?

Mr. Durbin stated that for the 50th time we are not disputing that it was filed. You have a copy of the file.

Mr. Bond stated that on the one hand they have no notice, but you are also telling the other hand that it was filed.

Mr. Durbin stated that they have no proper notice under annexation statutes, or they would have noticed that they did a title opinion search. Those two attorneys concluded the same thing. You are the only person that does not conclude that, well, you and the City Attorney incorrectly conclude the same thing. You all do what you are going to do, but it is an incorrect annexation.

Mr. Durbin stated totality, without exception. Did your client or anyone who had an interest in the land at that time dispute the recording of that document?

**Comments and Questions:**

Mr. Bond stated that the idea that someone would come here and raise their voice to the Board and wave their arms and insulting members of the City of Tulsa, he found repugnant, but looking past that to their legal argument, which is because the City of Tulsa did not properly annex this. That there is no jurisdiction there and things like that. He agreed with the Councilman and that is properly a matter for the District Court. Before us, we give the city a presumption of correctness until that has been rebutted. We saw someone voluntarily appealing products in this matter, which is something which is a book and page recorded by the County of Wagoner, plainly stating that they annexed all of section four. He thought this argument is not mentioned by any standard to be valid, and it is not recorded, which moves us on to the actual issue and that is whether the City Inspector did this and acted appropriately and has shown us evidence. Let me back up a little bit that the evidence that the City Inspector has given us has not been shown to be incorrect by the applicant in this case. He thought it is clear for anyone to look at one or any standard of law that this has been a massive expansion, almost doubling from what it appears to me and the size that was originally made. There was a non-conforming use that that is what was expanded. He thought that is all that is

an issue today is whether the use expanded from the solid photos that we had or whether it did not expand it. So that is where he was putting his vote on. He thought except for Section 80, that the City Inspector pointed out that he wishes to withdraw, he thought they acted appropriately under the circumstances. The idea that we simply do not have jurisdiction over this because proper title was not conveyed, is bluntly nonsense. It is nonsensical. It is just nonsensical to me, and it is to anyone else that is going to look at this at a future date.

Mr. Wallace stated that to stay on topic for the items that are presented today, whether the City Inspector, everything was shown to for him to affirm the administrative decision by the neighborhood inspection to move forward with affirming that. The property is in violation.

Ms. Radney asked Mr. Wallace, in that you have been that the expansion of the use of a non-conforming use has been demonstrated by WIN through their presentation today to occurred.

Ms. Radney stated to Mr. Chair that his assertion is that the argument that the violation cannot occur where there is no jurisdiction is outside the scope of this Board.

Mr. Bond stated that he thought that it was recorded, even if it is not outside the scope of this board, it was recorded. In a recording state, which is notice. We can get into the legal complexities of it, but if you had a jurisdictional issue with this, that should have been filed in the District Court. It was not and they are here speaking with us. If we want to use that analogy, going back, ad infinitum, to the idea that a governmental actor must convey clear title to something else. If that is the case, then he needed to write in my taxation check to the to the Sovereign Creek Tribe. Whether it is a Scriveners error...

Mr. Durbin stated Point of Order, sir.

Mr. Bond said, "No Sir. We are in discussion."

Mr. Durbin stated Point of Order again. It is improper for a chairperson to give are making legal advice per Robert's Rules of Orders are pointed.

Mr. Bond stated that the Board was in discussion and not going to recognize Mr. Durbin.

Mr. Durbin stated "Point of Order" several times and said you are providing legal advice improperly. Point of Order. Deny my Point of Order.

Mr. Bond asked the City Staff to get a security guard for us, he would appreciate it. As he was saying, even if it is a Scriveners Error, which would have been a plausible argument, it was recorded. For him, that would not matter. That is not an issue. This is

obviously going to be appealed. The jurisdictional issue like this, he thought that the City Council is correct, it needs to be decided by a District Judge. We are a quasi-judicial body. We are simply here to help interpret the narrow left and right limits of the zoning code. That zoning code, simple, non-conforming use that was expanded, there has been no evidence that it was not expanded. He simply has a jurisdictional and venue argument here.

Ms. Radney stated that she was abstaining from a discussion about that aspect of it. What she was really getting at is that from a procedural standpoint because they received a notice from the city that they were not in compliance, which escalated to the point where we are now. There was a question about why the applicant had appealed to this Board. She thought that was just an administrative step that is required to the City's process as it relates to these violations. Right? She thought that coming before our Board really does not have any bearing at all on the process that they would take about whether the city has any jurisdiction.

Mr. Bond stated that would be something that would appeal to the District Court. He thought that is something which is a moot point for him. If you would like to entertain that he has an opinion on it. He thought that the relevant portion of this is whether this is an expansion nonconforming use or not.

Ms. Radney stated that to your point is that as far as we are concerned as a Board for this particular matter that is presented in front of us, do we believe that the city's agent through WIN made an error in judgment, and in terms of the his process, as an inspector, in terms of the activities, legal or otherwise, that were happening at this property. If we are just looking at his actions, they seem reasonable and appropriate, if they had jurisdiction to do to make them.

Mr. Bond stated that was correct.

Ms. Radney asked if it factored into our thinking at all, given the councilor's point, whether the City did or did not have jurisdiction in the first place? For the portion of this matter of this conflict that we have in front of us at this Board. She would be inclined to say that it makes a difference whether the WIN Department had standing to even have risen, gotten to this point. She did not think that was moot. She did not think that is not a question. She just does not think we can address it, because then he is in front of us administratively, because this is where you come when you appeal, the decision to WIN right?

Mr. Bond stated that we have five or six lawyers in the room and may get five or six different opinions. He did not think this was properly before us, because of the jurisdictional issue. It needs to be taken up with the District Court.

Ms. Radney stated that is what she just wanted to make sure she understood because this is not going to be the last time that a case like this comes before us. She just was thinking in her mind about how we think about questions of jurisdiction, because there are a lot of areas around the city that have been incorporated into the city recently. And there are lots of areas in the city that have been bypassed. She wanted to think about that, because what she is charged to do is to think about the administration of the city's ordinances. Having said that, her thoughts have been since we have been sitting in the room, she has heard all sides and she has an opinion, and she would be inclined to agree that WIN has acted appropriately and has not made an error.

Mr. Bond stated that the point was well taken.

**Board Action:**

On **MOTION of Wallace**, the Board voted 5-0-0 (Barrientos, Bond, Radney, Stauffer, Wallace all “ayes”, no “nay”, no “abstentions”) to **AFFIRM THE DECISION** by a Neighborhood Inspector in Case 69279-2023 that the subject property is in violation of sections 60.020-A, 70.080-A, and 80.040-F of the City of Tulsa Zoning Code, in accordance with Section 70.140. Finding that the neighborhood inspector acted appropriately in the administrative decision by a neighborhood inspector and 69279-2023 case and subject property is in violation of Section 60.02-A, 70.08-A, and 80.040-F. For the following property:

**04-19-15 A TRACT OF LAND BEING A PORTION OF THE W 10.14 AC OF L-1 DES C COMM FROM THE NW CORNER OF SD TRACT ON A BEARING OF S 01 DEG 35'25" E A DIST OF 283.13' TO POB - N 88 DEG 45'34" E A DIST OF 660.91' TO A PT ON THE EAST LINE OF TH EW 10.14 AC OF SAID L-1 -S-01 DEG 32'28" EA DIST OF 385 64' TO PT ON THE S LINE OF SD L 1 - S 88 DEG 40'38" W A DIST OF 660.57' TO PT BEING THE SW COR OF L-1 - N 01 DEG 35'25" W DIS OF 386.59' TO POB CONT 5.86 AC (W2 OF L-1 CONT 10.14 AC), CITY OF TULSA, COUNTY OF TULSA, STATE OF OKLAHOMA.**

\* \* \* \* \*

## **NEW APPLICATIONS**

### **23518 - Christian Vaughn**

#### **Action Requested:**

Special Exception to allow an Accessory Dwelling Unit in an RS-3 District (45.031-D); Variance to allow a Detached Accessory Building/ Dwelling Unit to exceed one story or 18-feet in height and to exceed 10-feet in height to the top of the top plate in the rear setback (Section 90.090-C2); Variance to reduce the required 50% open space for a non-conforming lot (Sec. 80.020-B); Variance to permit more than 30% coverage of the rear setback by Detached Accessory Buildings/Dwelling Units (Sec.90.090-C, Table 90-2); **Location:** 1508 E. 20th St. (CD 4)

#### **Presentation:**

**Christian Vaughn**, 1508 East 20<sup>th</sup> St., Tulsa, Oklahoma, 74120, stated that this is my first time going through a process like this, but from what he understood, one point was to point out a hardship, and also to consider the intent of the zoning code, which is to promote the general welfare of the city. As far as the hardship. The first matter at hand is expanding the existing residence, which is a two bed, one bath, 1,211 square foot house built in 1921. When the house was built, it was before the current zoning code was enacted, in the late sixties, early seventies. That house is becoming obsolete. While it is very charming, and we have worked closely with the Historical Commission to preserve the historical nature of it, it is becoming impractical for a family living today to live in a house of the size of this age, without improving it. What we have done is we have taken the historical materials and created a plan to add a third bedroom, and second bathroom to the main residence by expanding out towards the south side of the property. It does not change any to the elevation of from the front side of the street. That was important to the Historical Commission, to just maintain the historical character of the neighborhood. With the accessory dwelling unit, there is an existing single car garage, and single bathroom and bedroom in that structure. To allow for a car that has manufactured in the last 20 to 30 years to fit in there, it is going to need to be expanded it was built her car in the 1920s. Cars have gotten a lot bigger. He is unable to fit my Chevrolet Silverado in there by any shot. Our idea was to preserve the existing bathroom that is there by extending it to the second story while allowing space for a modern car to be parked in the garage. He wrote hardship down just for you to articulate here. The hardship with the Accessory Dwelling Unit is that it already exists, it is an existing structure that has functional use for the property. Without it being moved to the second story, we are going to eliminate that if there is ever going to be a car parked in that garage. The hardship is twofold, and we are either getting rid of the Accessory Dwelling Units, or we are not allowing a car of modern standards to be parked in a



garage. With the extension of the house, the hardship is the home is becoming obsolete at over one hundred years old, with no renovations to the exterior. We wanted to invest in the house and make sure a family could live there for the next one hundred years.

Mr. Bond asked if he had a chance to speak with neighbors about this.

Mr. Vaughn stated that he had spoken with a neighbor directly south of him right before this meeting. She had some questions about what the construction process would look like, how long it would take, as well as the extent of the plans. We had a great conversation after he told her the expected construction would be around four months and exactly what we are doing she had no concerns. He also had conversations with the neighbors on 20th Street directly to each side of the property. His neighbor just to the west had gone through this process with the Board last year about their Accessory Dwelling Unit. He asked them questions about their process and if they had any qualms about this and did not hear any concerns for any neighbors.

**Interested Parties:**

No interested parties were present.

**Comments and Questions:**

Ms. Stauffer stated that she found it very compelling and would be in favor.

Mr. Wallace stated that he agreed. An Accessory Dwelling Unit, the house and the existing garage predates the comprehensive zoning code and he thought that was something that we see in this area.

Ms. Radney stated that she was not super excited about the height but I think that the applicant makes a valid point that if we consider at a modern residence the ability to park a modern vehicle goes with being a good neighbor robust and sustainable living on a city lot the size of this one that there really is no other direction to go in but it is we are talking about a pretty tall structure. She was surprised that they did not have any comments from neighbors, but she did want to stamp the fact that she agreed that taking the least intrusive step, but it is quiet a step. This is tall.

Mr. Bond stated that he agreed that it was tall. It gives me less heartburn because it is really in keeping with the design of the house.

Mr. Barrientos stated that he liked that it does not have any windows facing to the neighbors. He said he was inclined to support it.

Ms. Stauffer stated to correct me if she was wrong, but the house is on either side are both two stories.

**Board Action:**

On **MOTION** of **Wallace**, the Board voted 5-0-0 (Barrientos, Bond, Radney, Stauffer, Wallace all “ayes”, no “nay”, no “abstentions”) to **APPROVE** a Special Exception to allow an Accessory Dwelling Unit in an RS-3 District (45.031-D); Variance to allow a Detached Accessory Building/ Dwelling Unit to exceed one story or 18-feet in height and to exceed 10-feet in height to the top of the top plate in the rear setback (Section 90.090-C2);Variance to reduce the required 50% open space for a non-conforming lot (Sec. 80.020-B);Variance to permit more than 30% coverage of the rear setback by Detached Accessory Buildings/Dwelling Units (Sec.90.090-C, Table 90-2), per the Conceptual Plans shown on pages 4.13 through 4.23.

The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In granting the **Variance** the Board finds that the following facts, favorable to the property owner, have been established:

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

For the following property:

**LT-2, BURNS SUB L5-6 B28 PARK PLACE, CITY OF TULSA, TULSA COUNTY,  
STATE OF OKLAHOMA**

Mr. Wallace left the meeting at 2:39 p.m.

Mr. Bond stated before we began the next case, we are an all-volunteer board. We certainly do our best because one of our members had to leave for preexisting engagement you need three affirmative votes. For your requested relief to pass, we will grant liberally Continuances if you feel like you would like the full member, full member panel to be here. Otherwise, we are happy to hear your case. today.

**23519-WAGONER - Grady W. Whitaker, Jr.,**

**Action Requested:**

Variance to reduce the required 75-foot setback in the IM zoning district from abutting AG Zoning Districts (Sec.15.020, Table 15-2). **Location:** 19504 E. 6th St. (CD 6)

**Presentation:**

**Grady Whitaker**, with Whittaker Architects, 316 North Lincoln Avenue, Sand Springs, Oklahoma, 74063, stated that they are here representing our clients, DMV Processing. Our client purchased this property with all its improvements in 2018. It was originally for metal processing. One of his colleagues was a mentor. He purchased the property from them, and then used it for the same purpose. The property was at some point, and it is from Wagoner County into the City of Tulsa. It was zoned agricultural by Wagoner, and it was a non-conforming use what it was annexed in by the City of Tulsa it was again agricultural non-conforming use. We find ourselves at a point where our client needs to expand some of his operations in this area. All this property is adjacent to this less except the southern property, which is truly still used for agriculture. Everything else along 6th Street is a small to midsize Industrial Park for lack of a better term. All these properties that are adjacent to it are all zoned agricultural and they all are non-conforming uses. At any rate, because he wants to do expand, there are two buildings on the property. He is wanting to expand the property, the building on the east portion of the property is to handle some additional machining tools. He could not go through that process because he is a non-conforming use. We went to the planning commission, applied for a change in zoning to IM, was granted that and just recently was approved by the City of Tulsa and is now zoned as IM property. In the zoning ordinance, it says that if you are an IM property, you must be 75-foot setback from an AG zone property. They understand the intent, but in this case, all of these are non-conforming. The hardship would be that the line is 253 feet wide, which would mean that only 103 feet would be developed under this 75-foot setback restrictions. We do not necessarily have any issue with the setback on the southern border, but the eastern and western borders boundaries would be a significant issue. In effect, the building that is built that is currently built on the east side of the property is approximately six feet from the property line. So, again, they ended with a non-conforming use. The request is that there be a Variance to 75-foot setback rule from AG zone properties. Considering the existing conditions, the fact that all the other adjacent properties for the exception of the south are non-conforming uses as well.

Mr. Bond asked if they had issues with any of the surrounding neighbors.

Mr. Whitaker stated they had not. We only had discussions with the neighbor immediately to the east, and he has no issues with the application.

**Interested Parties:**

No interested parties were present.

**Comments and Questions:**

Mr. Bond stated that the Board has itself headaches over this before when an action in the city does not mean which creates a nonconformity. This one is easier not because it is not so does not necessarily create one. But he is asking now for relief from something which would have been the issue it is now. In his mind, which was a hardship. We go along with a spirit of zoning change on this to IM. He would be inclined to grant relief on this.

Mr. Barrientos stated he was inclined to agree with Mr. Bond.

Mr. Wilkerson stated that he had one thing he would just like to add that when we started working with the applicant on this at the Planning Commission, and through City Council, we went through that process with our eyes wide open, knowing that the zoning remedy really needed to happen probably for the entire subdivision there. But since we are only dealing with one lot, that we felt like the best solution, the only solution was a two-step process, and that was to go through the zoning, knowing that he would need to come here for some relief for the existing structures that are there. That is not a surprise to anyone who has been involved in this in the last six months.

Mr. Bond stated that he thought the hardship issues solve the questions, is this harmful to the neighborhood or the Comprehensive Plan and he did not it was.

**Board Action:**

On **MOTION** of **Barrientos**, the Board voted 4-0-0 (Barrientos, Bond, Radney, Stauffer, all “ayes”, no “nay”, no “abstentions”, Wallace “absent”) to **APPROVE** a Variance to reduce the required 75-foot setback in the IM Zoning District from abutting AG Zoning Districts (Sec.15.020, Table 15-2), per the Conceptual Plan shown on page 5.8 of the Agenda packet. Finding the hardship to be to either existing or non-conforming industrial use and a lot size.

In granted the variance the Board finds the following facts fall to the property owner has 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 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:

**The West 253.25 Feet of Lot thirteen (13) Port Area Industrial Park a subdivision of Part of Lot Ten (10) and part of the northeast quarter of the southwest quarter (NE/4 SW/4) of Section Six (6) Township Nineteen (19) North, Range Fifteen (15) East of the Indian Meridian, Wagoner County, State of Oklahoma, according to the recorded plat thereof.**

## **23521 - Tyler Choate**

### **Action Requested:**

Special Exception to permit duplexes in the RS-3 district (Table 5.020, Table 5-2, Table 5-2.5). Request is to allow up to six duplexes. **Location:** six lots located on E. 81st Pl. S., South and East of S. Evanston Ave. **(CD 2)**

### **Presentation:**

**Tyler Choate**, 99855 Highway 82, Vian, Oklahoma, 74962, stated that these lots are zoned for duplexes now. He would like to continue the development of these six available lots we would like to purchase and build new housing for new people.

Mr. Bond asked if he could explain more about how it is zoned for duplexes already.

Mr. Choate stated that it is zoned RS-3, which allows for duplexes and the current neighborhood is all duplexes. There is no housing in it.

Mr. Bond asked if he had any comments or issues from the neighbors.

Mr. Choate stated that he was not aware of any. They would come to him directly.

Ms. Radney asked if it was currently held as one parcel that you are going to build a six. Tell me a little bit about what we are looking at.

Mr. Choate stated that there are six separate lots.

Mr. Chapman stated that add just a point of context on this. The entire subdivision was approved for a Special Exception for duplexes, in 1979. These six lots were not built on. The request is there were six individual lots that are left in that subdivision that are currently undeveloped.

### **Interested Parties:**

**David Turnbull**, 2911 East 81<sup>st</sup> Place, Tulsa, Oklahoma, 74137, stated that he is a neighbor in the area. He saw the big yellow signs and was curious about it. He was interested in seeing the plan. He is all about development himself. We want something that will foster growth, enhance the neighborhood, and add value. He was curious to see what the houses would look like. He would like to see conformity with the neighborhood.

### **Comments and Questions:**

Mr. Bond stated that the normal heartburn for him is whether these duplexes are going to be in keeping with an existing neighborhood. He thought the interested party Mr. Turnbull had a good point. He wanted to make sure it is in keeping with the overall

character of the neighborhood. He thought that what is before us is whether putting into place itself there would be permissible or not. In his mind, this is one of the easier ones that they have seen in a while for a duplex. He would be inclined to support this.

Mr. Barrientos stated that this is a fine design. The whole street has duplexes, so he did not have any issues with it.

Ms. Radney stated that when she was looking at 6.4, she does not know why she is so thrown by the fact that it is showing just as though it was one parcel. But she guessed to the extent that it is all vacant land. It had been previously platted, but she saw the legal description. What are we voting on is to allow the construction of up to six lots within this boundary or up to six duplexes within this boundary?

Mr. Chapman stated that he would take some blame for that, because he did not have our mapping department draw the parcel lines for those lots. He just connected it as just gave them that legal and they boundary around the property, but it is for six duplexes, which would be a total twelve units across six lots.

Ms. Radney stated that when we are looking at these, the application can be made for a bundle of lots at one point in time.

Mr. Chapman stated that in the original subdivision, which is how it happened. It was the legal description was all of it was Southwood Terrace, and it was treated as one exception. Just as internal policy, we take applications like this. It is the same request and our adjacent properties, we can bundle it and if we make it clear in our Notice, what has been approved.

Ms. Radney stated that the last one that we did was one that had not yet been split, or something like that.

Mr. Chapman stated that there were some townhouses several weeks ago, that they still had a preliminary plat and they had to get them, the townhouses approved before they would go through the state split the lot.

Ms. Radney stated that she thought that when she looked at this, she thought it was one parcel that we would approve the use of, and then it would be moving forward with the subdivision plan. You were saying, although it is not drawn here, the underlying lots are platted. We are just going to go ahead and give him approval for all the six lots.

Ms. Radney stated that if you look at the zoning map, you can see where those lot lines are.



Ms. Stauffer stated that she thought that this Special Exception had already been approved but had expired. She would be inclined to approve of this.

**Board Action:**

On **MOTION** of **Barrientos**, the Board voted 5-0-0 (Barrientos, Bond, Radney, Stauffer, Wallace all “ayes”, no “nay”, no “abstentions”) to **APPROVE** a Special Exception to permit duplexes in the RS-3 district (Table 5.020, Table 5-2, Table 5-2.5). Request is to allow up to six duplexes, per the Conceptual Plan shown on pages 6.8 through 6.10 of the Agenda packet.

The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare, for the following property:

**LT 6-11 BLK 2, SOUTHWOOD TERRACE RESUB PRT ORU HGTS 3RD CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**OTHER BUSINESS**

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**NEW BUSINESS**

**Election of Secretary for City of Tulsa Board of Adjustment**

On **MOTION** of **Radney**, the Board voted 3-0-1 (Barrientos, Bond, Radney, Stauffer, all "ayes", no "nay", Barrientos "abstained", Wallace "absent") to **APPROVE** Tomas Barrientos as the Secretary for the City of Tulsa Board of Adjustments.

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**BOARD MEMBER COMMENTS**

Ms. Radney stated that she wanted to welcome our new Board member, Whitney Stauffer, and she looks forward to working with her in the coming term.

Mr. Bond stated that he wanted to thank City Staff and the Board for their professionalism. He did not think that anyone, whether it is volunteer or civil servant, should be subjected to rudeness. Being yelled at was not that for which any of us have signed up. He thanked everyone for their patience and professionalism.

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**ADJOURNMENT**

There being no further business, the meeting adjourned at 2:58 p.m.

Date approved: 7/11/2023

  
Chair