

**TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 483**

Tuesday, June 16, 2020, 1:30 p.m.
Williams Tower I
1 West 3rd Street, St. Francis Room
Tulsa, OK

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Hutchinson, V.Chair Crall, Secretary Dillard Johnston	Charney, Chair	Wilkerson R. Jones Sparger Wertin	Tosh, County Inspector

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 16th day of July, 2020 at 8:57 a.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Vice Chair Hutchinson called the meeting to order at 1:30 p.m.

Ms. Jones read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **JOHNSTON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the Minutes of June 16, 2020 (No. 483).

Mr. Hutchinson explained to the applicants and interested parties that there were only four board members present at this meeting. If an applicant or an interested party would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from three board members to constitute a majority and if two board members voted no today the application fails. Mr. Hutchinson informed the applicants and the interested parties that one of the Board members present today has to leave at 5:00 P.M., so the Board may impose a time limit on presentations. Mr.

Hutchinson asked if anyone would like to continue their case and if they understood. Everybody nodded in understanding and no one requested a continuance.

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UNFINISHED BUSINESS

2822—Leah Harris

Action Requested:

Use Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a Residential District (Section 1203); Variance from the all-weather parking surface requirement (Section 1340.D). **LOCATION:** 11616 East 191st Street South

Presentation:

Chris Pearson, 4000 Sygma Road, Dallas, TX; stated when his client purchased the property, they had the intention of having agriculture operations on it, and after the purchase it was discovered that only 5 of the 40 acres is zoned for agricultural. The remaining 35 acres is zoned residential and that is why the Use Variance request is before the Board today.

Mr. Hutchinson asked Mr. Pearson if the applicant wanted to have all 40 acres zoned agricultural for the horticulture nursery. Mr. Pearson stated that ultimately his client would like to have all 40 acres zoned agricultural, but currently there are established greenhouses on 10 of the acres. This application is for the zoning of the 10 acres.

Christopher Harris, Jr., 631 Sundance Court, Crawford, TX; stated Mr. Pearson is his assistant, and he would like to have 10 acres zoned for horticulture nursery.

Mr. Hutchinson asked staff about the paperwork stating the 40 acres is all agricultural. Ms. Jones stated the map shows the distinction of the AG zoning and the RE zoning; the northwest corner is zoned AG.

Mr. Hutchinson asked Mr. Harris about the existing two buildings and asked if he is proposing another 50 x 50 building. Mr. Harris answered affirmatively.

Mr. Hutchinson asked Mr. Harris if he was willing to meet all the zoning requirements of the County Zoning Code. Mr. Harris answered affirmatively.

Interested Parties:

Crista Bauer, 11629 East 191st Street South, Bixby, OK; stated she lives directly across the street from the subject property. Ms. Bauer stated that she had the understanding that when the subject property was sold there was going to be house built on it. After meeting with some of the neighbors she found out differently. Ms. Bauer stated that OMMA requires that marijuana growers do so in a safe responsible practice, and she does not feel like a marijuana nursery in a residential district is safe or practical. Ms.

Bauer stated she has lived there for 24 years and moved to the country because of the security and a business such as the proposed will bring in crime and unwanted people into the area. There are a lot of family functions that happen in the area, and there is a school bus stop at the end of the subject property's driveway. There are children riding bicycles, people walking and people riding horses and she thinks it will affect everyone's quality of life. The Harris's do not even live in Oklahoma so this will not affect them at all. Ms. Bauer stated that this will affect property values and the roads in the area are in bad repair and additional trucks will damage them even more. The water usage at the nursery will affect the water pressure for the area because the system is not designed for agricultural use. She would also ask the Board to deny the Variance request from the all-weather parking, because the area is muddy when it rains. Ms. Bauer does not think this is a good fit for the neighborhood and she would ask the Board to keep the area residential as it is.

Christopher Bauer, 11629 East 191st Street South, Bixby, OK; stated that he just recently retired from the Tulsa Police Department after 38 years, and it is his experience this will bring people out to the area to snoop around and will give them an opportunity to attack surrounding properties. This will bring more traffic and more undesirables into the area. There has been no crime in the area since he moved into the area, and he is totally against this request.

Rebuttal:

Chris Pearson stated the Harris family has a long-standing residence in the area; Mr. Harris was born and raised in the area. Mr. Pearson stated the subject property did actually belong to Mr. Harris' grandfather, and Chris Harris, Jr. has a street named after him in Bixby. Mr. Harris is no stranger to the citizens of Bixby. Mr. Pearson stated that marijuana will not be grown on the subject property, they will be growing hemp. The growing of hemp will eliminate the number of undesirables because hemp is not something that is desired or has any value outside of commercial use. Hemp is used to make clothes, lotions, textured products, etc. Mr. Pearson stated he understands the neighbor's concerns but because the crops are not as valuable as marijuana, he does not think undesirables will be coming to the site. The growing site is in the southwest corner of the property and is not visible from the street because of a natural tree line that blocks the view. Mr. Pearson stated that hemp is not a plant that requires commercial trucking. Through a process of dehydration, the crop becomes much smaller than what it grows into, most of the packages will be air-tight sealed which minimizes the size and that affects the transportation mode keeping it at a van level. The harvest happens four times a year; at most there will be four days out of the year that will bring traffic into the area. Staff on site is a maximum of five people. When the site plan was laid out the neighbors were taken into consideration. There will be no sales transaction to the public will take place on the property.

Chris Harris stated that his family has lived in the area for 90 years, maybe longer, and he knows the area very well. This will be a family business and he plans to do more than just growing the hemp. He plans on establishing a community center, building up the community, and he has been heavily involved with the children in the area. Mr. Harris

stated that he does come back to Oklahoma a lot, but right now he is playing for the L.A. Chargers, so he has five people running the company. When he leaves the Chargers, he does plan to come back to Tulsa, and this is his way to help uplift the community.

Mr. Hutchinson asked Mr. Harris how many feet from the road is the facility. Mr. Pearson stated that 1,070 feet from the road. Mr. Hutchinson asked Mr. Pearson if permits were obtained for the two existing buildings. Mr. Pearson answered no. Mr. Pearson stated that he inherited this project in March and he discovered there were not a lot of practices followed that have been established by the County. When he discovered this the construction halted, and his number one concern is to follow the rules and guidelines established by the County and to keep the neighbors in mind.

Mr. Johnston asked Mr. Pearson if they planned to clear the land of all the trees to have growing operation work properly. Mr. Pearson answered no. He stated the plan is to plant more evergreens across the stretch of 191st Street to keep the low visibility maintained. Mr. Johnston asked Mr. Pearson how many acres of growing area was being considered. Mr. Pearson stated that the operation is planned for ten acres. The buildings are 100 x100 and it will only take about 1 ½ acres for growing space, the remainder is to utilize the movement between the buildings. This is the first aspect in the plan.

Mr. Crall asked if all the growing would be done indoors. Mr. Pearson answered affirmatively.

Mr. Johnston asked Mr. Pearson if the Board were to approve his Variance request on the parking requirement would he be willing to have an under layment under the gravel? Mr. Pearson answered affirmatively and stated there will be a General Contractor hired for the gravel parking lot and he will request guidelines for the maintenance of the gravel.

Mr. Johnston asked why the parking lot is planned to be 100 x 200 if there are going to be only five employees. Mr. Harris stated there will need to be room to move in between the buildings, and there is a temporary structure sitting across from the two existing buildings and that is where the dry hemp will be stored. Plus, the vehicles will need space to turn around after entering the property.

Mr. Johnston asked if the entrance to the property is from Garnett. Mr. Harris stated that it will be from 191st Street, entering from the East.

Christopher Bauer stated that if the applicant is allowed to complete this project, and Mr. Harris has indicated that he wants to build more, will he be allowed to build anything he wants because he does not want his quality of life disrupted. Mr. Pearson stated that Mr. Harris expressed his sentiments about how he would like to improve the value of life in Bixby. The plans are not set in stone or committed to at all, it is a desire to enrich the lives of his neighbors.

Mr. Hutchinson asked Mr. Pearson to state his hardship for the request. Mr. Pearson stated that the hardship is the original intent for purchasing the land. The Harris' were

unfortunately misinformed at the time of sale. They were told by the former property owner that all 40 acres were agricultural, and after the sale was concluded the Harris' were then informed that only five acres were agricultural which was a cemetery. If the Harris' had known the property was zoned residential, they would not have executed the sale.

Comments and Questions:

Mr. Crall thinks this is the least intrusive thing that could be put on the subject property, and he has no problem supporting the request.

Mr. Dillard stated he can support this request because this is the least dense thing that can be placed on the property. The proposal is not harming the property; hemp, marijuana and tomatoes are all agricultural.

Mr. Hutchinson concurred with Mr. Dillard and Mr. Crall; he can support this request.

Board Action:

On **MOTION** of **CRALL**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a Residential District (Section 1203), subject to conceptual plan 2.14 of the agenda packet. The approval is conditioned on the site meeting all County Zoning Code and growing facility requirements. The Board has found the hardship to be that the buildings exist, and the property is surround by agricultural property; for the following property:

NW NW SEC 8 16 14 40ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

On **MOTION** of **JOHNSTON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a Variance from the all-weather parking surface requirement (Section 1340.D). There is to be an under layment material installed under the gravel surface. The Board has found the hardship to be that the lot will not be used by a lot of traffic; for the following property:

NW NW SEC 8 16 14 40ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2821—Holliday Sand and Gravel Company, Inc.

Action Requested:

Special Exception to permit Use Unit 24, Mining and Mineral Processing (Section 1224), in an AG District (Section 310, Table 1). **LOCATION:** SW of East 141st Street South & South 193rd Avenue East

Mr. Hutchinson announced that since this case was heard at the last meeting, he would ask the people not to repeat the information provided last month. There will be time limits placed on this case because of today's time constraints.

Presentation:

Dan Jones, 7355 West 162nd Terrace, Oakland Park, KS; stated there has been an updated information packet provided to the Board for their review. The reason the site was chosen was for the rural area being low in population density and the location in relation to the Creek Turnpike. The very southern portion of the actual river property is within .3 miles of a residence; the dredging very rarely goes past the plant. The hot topic at the last meeting was the schedule of operation; originally the ability to operate two shifts was requested and that has been changed. The shift will now be 7:00 A.M. to 7:00 P.M., weekdays only. The normal equipment running time for the dredge is usually 10 hours on a 12 hour shift, because it takes about an hour to get the employees on the boat, out on the dredge and get everything ready to get the plant fired up, and at the end of the day it takes about an hour to get everything shut down, and get the employees off the river. So, the dredge operation would be 8:00 A.M. to 6:00 P.M., and the plant operation would be 8:00 A.M. to 6:00 P.M. which is normal shift work now. The life of the operation is still anticipated to be 15 to 20 years. Several comments were made at the last meeting about endangered species; there was an endangered species study performed over the last month, specifically for the Bald Eagle and the Interior Least Tern. There are no Bald Eagle nests on the site and there are several potential roosting trees but there are no active nests; there are multiple nests along the river and adjacent to existing sand plants that Fish and Wildlife have been monitoring for over 10 years, and there have been no issues with the operation and the existing Bald Eagle populations. Mr. Jones stated that Holliday Sand and Gravel work with the Fish and Game Department. If there is a siting of Interior Least Terns on the sand bar, where they commonly nest, the Fish and Game Department notifies Holliday and there is a zone established around that sand bar and it is avoided during the nesting period. Mr. Jones stated there are school bus stops on 193rd East Avenue but they are not posted stops; there is a resident who has erected a sign on his mailbox but most of the stops are in front of individual houses. The speed limit is posted at 55 miles per hour, and where the plant driveway is located, the line of sight is excellent in that location. Mr. Jones stated that Holliday Sand worked with the City of Broken Arrow to erect the radar signs and there are two additional radar signs proposed. Prior to permitting this plant, Holliday will work with the City of Broken Arrow on any additional signage. There is typical signage for jake brakes and Holliday will work with Broken Arrow to install those signs. Holliday regularly monitors all the trucks through the good neighbor trucking policy, and the company has dealt with truck drivers leaving the plant that have had issues reported to Holliday. Holliday has banned truckers from using their site, and currently there is a good group of contract truckers including the sister company APAC. The 161st Street plant currently averages over 100 trucks a day and with the 129th Street plant down it is probably close to 200+ trucks a day. To remedy this Holliday proposes to limit the truck loads to a maximum of 100 trucks a day, not just at the proposed plant but also at the 161st Street plant. The only way that would be changed is if the 161st Street plant went down or the proposed plant went down, and Holliday

would then increase that number at that particular location only by 50 trucks a day. This results in zero increase in truck traffic. Mr. Jones stated that since Holliday Sand was purchased by CRH there is a strict policy of zero tolerance for any employee that intentionally overloads a truck. All of the plants in Oklahoma, Kansas and Nebraska has a ticketing system that every truck has its legal weight limit entered and a ticket cannot be printed and a truck has to have a ticket to leave the plant; it is against the DOT law to allow a truck to leave overloaded. The truck scales are DOT certified; they have to be calibrated at a minimum of twice a year or when required. Holliday Sand retained an engineering firm to conduct an analysis of 193rd East Avenue pavement to determine whether that pavement was adequate for 150 to 200 sand trucks per day. Their core samples taken with permits and working with Broken Arrow and the study is on Appendix A. The pavement meets or exceeds what is required for the current truck load, however, no true maintenance has been done for a very long time on the road; it has had patching performed. There is a lot more vehicular traffic on the road and there have been several changes at some of the intersections. Holliday Sand proposes to pay \$.10 per ton royalty to a road maintenance fund; discussion has ensued both with the County and the City of Broken Arrow about the fund. This fund could generate at a minimum of \$70,000 per year; Broken Arrow's entire road maintenance budget is \$300,000 a year. Tulsa County does not have anything in the budget currently or in the future for any maintenance on County Line Road.

Mr. Hutchinson asked Mr. Jones if this was dependent on the County or the City of Broken Arrow using all the funds to the roads or intersections. Mr. Jones stated that would be Holliday Sand's stipulation; that the money does not go to some other fund, that it is for the maintenance of that road. Mr. Jones stated that Holliday could do the whole road northbound, including the intersections, all the way to Creek Turnpike in ten years for the public. That \$.10 is not just coming out of this proposed plant but out of both plants, the 161st Street plant and the proposed plant. The processing of the sand is a wet process; the sand dredge does not emit dust. As the sand on the road dries out, that can emit dust but that can be fully mitigated by appropriate watering or paving of the road. Unfortunately, there can be nothing done about the truck noise on the street, but the trucking hours can be changed so the trucks do not show up at 5:30 A.M. The 161st Street plant starts loading at 6:00 A.M. but the proposed plant would not start loading until 7:00 A.M.; there is enough entrance room that there would be no trucks backed up on the road. Holliday Sand hired a third-party consultant, which is Appendix C, and had a noise study performed on the surrounding neighborhood; the average decibel limit, while the dredge and sand plant was operating, is 44.13 decibels. That is common for a rural or small-town area, that is not excessive or over any kind of noise limits. Mr. Jones stated the sand and stockpiles provide a visual barrier of the plant, but Holliday proposes to plant a screen barrier of eight-foot red cedar trees along the road, 300 trees. The levies were built around 1927 and several years ago the Army Corp of Engineers released those to the property owners for their maintenance; it was decided that the Army Corp of Engineers did not have enough money to protect the small levies and to maintain them. Holliday can build the road upon the north portion and ramp it up over a long distance and go over the levy and fortify it so there are no protection issues. Holliday hired Hydro Power International Services to perform a riverbank erosion and bed scour study, and a review

of the Broken Arrow Wastewater Treatment Plant, which is six miles upstream, and that is in Appendix G. It is Hydro's opinion that the distance between the discharge of the City of Broken Arrow Wastewater Treatment Plant and the proposed dredging location will not affect the discharge from the waste water treatment plant; the distance between the two locations is significant enough that the likelihood of any impact is so remote that it is not an issue of concern. That same report also details how the Holliday's dredging operation will not affect the riverbank erosion. There is a recommendation that Holliday uses their stabilization procedures to help out with that and that is one of Holliday's standard procedures. Mr. Jones stated that Holliday has operated two of the five sand plants that have been located near South 129th East Avenue since 1995; three of the sand plants still operate on 129th East Avenue. Holliday attempted to obtain a Special Exception for another sand pit and was denied due to all the development that has occurred nearby on both sides of 129th East Avenue; no development has occurred south of the Haikey Creek because that land is in the flood way. There has been a lot of development in the area since 1995 and all of those properties, south of the proposed site, have consistently increased in value since 2012 even though there have been existing sand plants operating in the area. Various permits through several different required agencies are pending for this proposed site. Mr. Jones stated the production hours would be limited to 7:00 A.M. to 7:00 P.M. weekdays. The typical dredge operation is ten hours a day. Truck loading hours would be limited from 7:00 A.M. to 4:00 P.M. on weekdays. Holliday would maintain all on-site plant roads in a dust-free condition. Holliday would establish a pavement maintenance fund for South 193rd East Avenue at \$.10 per ton for both the proposed plant and the existing 161st Street plant, and it is to be paid to the City of Broken Arrow and/or Wagoner County. Holliday will limit the number of truckloads of the proposed plant as well as the existing plant on 161st Street to 100 truckloads each per day and 150 truckloads from either plant provided the other plant is shut down and not hauling. Holliday will continue to work with the City of Broken Arrow on proposed street signage and all other concerns such as dredging impacts to the wastewater discharge. Holliday will provide stabilization as needed along the Arkansas River shoreline at the plant site. Mr. Jones stated Holliday is submitting these as conditions for the Board to consider for approval of this permit.

Mr. Crall asked Mr. Jones if Holliday Sand sold sand to private individuals or are there appointments set for an approved driver to pick up sand? Mr. Jones stated sales are made to contractors and that delivery would be scheduled for an independent trucker. There are also farmers that show up with their pick-up truck or single axle trucks, they pay for the amount of sand needed and Holliday loads them. Holliday works with many contractors, such as ready-mix plants, and they know how many tons are required per week or month, so Holliday works with the contract trucking by scheduling the load so they are receiving the materials they require in the time frame they need.

Mr. Crall asked Mr. Jones if he knew how many trucks he would get in a day? Mr. Crall asked what happens when the plant hits 100 trucks? Mr. Jones stated the trucks would be shut off.

Mr. Johnston asked Mr. Jones if the trucks are staggered in leaving so there are not two or three trucks leaving simultaneously. Mr. Jones stated it does take time for the truck to load, then go to the scale house to weigh and ticket out. There are multiple truckers that will show up first thing in the morning to get their load and come back to get their second or third load, so trucks are not scheduled that way. Mr. Johnson asked Mr. Jones if the trucks queue up or once they are loaded, they go? Mr. Jones said after loading the trucks stop to tarp up, as required by law, so there is some delay but there is not a scheduled stacking.

Interested Parties:

James Weger, Jones Gotcher, 15 East 5th Street, Suite 3800, Tulsa, OK; stated he represents Steve Walker and other homeowners. Mr. Weger stated he has not had an opportunity to see the updated packet, so he will discuss the items he knows about. There was a lawsuit in the early 2000s where this same company tried to put a sand plant on this same road about a mile away from the subject site. The Board at that time approved the request and District Court struck it down and the Court of Appeals affirmed it. Nothing has changed except there are more people living on this road than there were 15 or 20 years ago. The fact that these same homeowners have to keep coming back and fighting this same issue is very burdensome on them, and expensive. This has been turned down once in Tulsa County, turned down once in Wagoner County, this applicant filed an application last September over on 129th Street and three of member of this Board voted that down. This is not something that anyone wants by their house. The City of Broken Arrow has written a letter stating that this is within their fence line and that they do not want the sand plant because it is not within their long-term plan. Mr. Weger stated that he has heard Board members state that the Board is not obligated to follow the Master Plans of these cities but generally the Board tries to. The City of Broken Arrow does not want this plant here, this is zoned for residential in the future by Broken Arrow. Mr. Weger would ask the Board to respect the City of Broken Arrow's request that this not be granted. No amount of remediation is going to make this any better. A truck that size puts off 85 decibels and that is a lot of noise 150 times a day, five days a week. Mr. Weger would ask the Board to consider that when voting. Before the Board can grant a Special Exception, it has to be in harmony with the spirit and intent of the Code, Broken Arrow says it is not, and it shall not be injurious to the neighborhood or otherwise detrimental to the public welfare. The residents do not want this, it is injurious to them, it is not in harmony with the Code and it will be injurious to the neighborhood. The previous lawsuit raised all of these same issues and they did not meet their burden, and the District Court found they did not meet their burden. They have not offered anything new this time, it is the same issue on the same road with the same problems. There are other places in rural areas where you can extract the sand. This is the wrong place and the wrong time; it was 20 years ago, and it is still today. Mr. Weger urged the Board to vote against this proposal.

Patricia Neel, 15 East 5th Street, Suite 3700, Tulsa, OK; stated she represents Suburban Realty and L. C. Neel Trust. She has submitted a written statement of what the arguments are, however, in response to some of the comments made by the applicant; the noise of cicadas is not the same thing as the noise from this plant or the trucks. The residents

relied on the Comprehensive Plan on where to buy their house; banks, lending institutions relied on the value of the house to make loans to the residents. A person's largest investment is their house, and they cannot enjoy the quiet and peace that the Comprehensive Plan allowed a person to rely on then something has been taken from that person that cannot be replaced. The idea of planting cedar trees along the street blocks the river view too. These properties and the property owners need to be protected. In 2001 when this was overturned before, the Creek Turnpike had not even been finished so a lot of the road and the residential properties came after the Creek Turnpike was completed. Another thing that has not been taken into account is Wagoner County. Wagoner County has a lot of development along 141st Street. This isn't just putting the trucks on 141st and County Line, it is putting all the new traffic from the developments on 141st Street. Ms. Neel would ask the Board to review what she has submitted.

Kathryn Starnes, 1413 East Little Rock Street, Broken Arrow, OK; stated she would encourage the Board to not approve this request. She just moved into the neighborhood in March, moving from 31st between Memorial and Sheridan in Tulsa. She moved into the neighborhood for peace and property values. It is not quiet. The trucks are constantly going, and the dredging wakes a friend up in the middle of the night. This morning she counted five gravel trucks while driving to 121st so there is no time limit. There is dust everywhere and there is no peace and quiet. Ms. Starnes thinks the \$.10 per ton deal is just lip service to get this approved. She would respectfully request this be denied.

Dewey Lowery, 600 East Ocala Street, Broken Arrow, OK; stated he works at American Airlines and drives Highway 169 every day. There are dozens of dump trucks and gravel trucks that have to be dealt with going and coming, both empty and full. They are all the time dropping debris of different kinds, sometimes it is from the load and sometimes it is out of the suspension. This is a hazard and the trucks are loud. Mr. Lowery stated that his neighborhood does not want to deal with those trucks every day.

Larry Curtis, City of Broken Arrow Community Development Director, 220 South First Street, Broken Arrow, OK; stated he has had conversations with his administration and finds it necessary to be here to state the City's concerns with this proposed development at this intersection. He was a County Planner for a number of years in Rogers County and has worked with other municipalities with the things that go on within fence lines but is in the jurisdiction of the County. Mr. Curtis stated that he has been working with INCOG over the last three months developing Broken Arrow's Comprehensive Plan to have it eventually adopted by TMAPC as the Comprehensive Plan for this area. The City of Broken Arrow Comprehensive Plan designates the entire area for low density residential use only as identified as Level I of the Broken Arrow Comprehensive Plan. The permitted land use nor the comparable land use is permissible within the Level I of the Comprehensive Plan, Broken Arrow typically requires this to be on a Level VII area of the City. He understands that a company has to go where the material is, obviously the material is not everywhere identified as Level VII. This area, through the City, was designated through a very extensive process in working with the citizens within the City of Broken Arrow and encouraging those in the surrounding areas within the fence line to be a part of this process and it was adopted by the City of Broken Arrow last year. The

application states the property is in a flood plain and according to the County and City maps some of the property is located in a 100-year flood plain, however, most of the tract surrounding the property is not within a 100-year flood plain and is developable; therefore it could be developed into low density residential development as within the Comprehensive Plan. There is only one access point to the property that is off 23rd Street. Existing traffic controls and signs would need to be studied, and in addition to that, a proposed sand binding and dredging operation approximately ½ mile south of the City, Lynn Lane Wastewater Treatment Plant impact would need to be assessed. Mr. Curtis stated that while the applicant has completed the study the City of Broken Arrow never received a copy of that study. He understands the applicant has reached out to the City Assistant of Operations, but it is his understanding that it was to discuss the \$.10 impact fee. He can assure the Board that the maintenance program is much more than \$300,000 a year for city roads. The City has millions of dollars that are associated with development of all roads within the City of Broken Arrow, though a small maintenance may be associated with that. If the Board is so inclined to approve this Special Exception for the use, the City of Broken Arrow would like the opportunity to discuss the analysis impact fee and where the City has industrial developments within the City of Broken Arrow. The City always requires that there be turn-in lanes associated with industrial development, especially on two-lane roads or highway areas to have the ability to have a deceleration lane that goes into the development; also, to have the ability for a J turn. Mr. Curtis can tell the Board adamantly that the City of Broken Arrow, because of the Comprehensive Plan, recognizes this as not a suitable use for this area and does not support the application.

Mr. Hutchinson asked Mr. Curtis if the City of Broken Arrow has any other businesses that pay a stipend for road maintenance. Mr. Curtis stated that it has not been done in the City of Broken Arrow, but he has personally worked with the sister company, APAC, in Rogers County on establishing an impact fee. APAC pays into a maintenance fund specifically for the maintenance of that road and it is permissible under state law, but City of Broken Arrow has not entered into such an agreement with any entities in Broken Arrow.

Kyle Loveland, 15353 South 193rd East Avenue, Tulsa, OK; stated that it has been said that the Board has repeatedly stated that they cannot find where something will be detrimental to the area, but the residents have shown the Board that this will be detrimental to the surrounding community, to the houses, to the wildlife, everything.

Rebuttal:

Dan Jones came forward and deferred to Mike O'Dell to address the previous lawsuit that was mentioned.

Mike O'Dell, Vice President of Holliday Sand and Gravel, 7355 West 162nd Terrace, Overland Park, KS; stated that he was part of the 2001 lawsuit, and they were ill-prepared for that lawsuit, but the request was approved by the Board. The problem with that site was having the drive come out near the neighbors, so that is why the site was moved a mile up where there are no driveways close by and there are no neighbors across the

street; there is no one within a ½ mile of the entrance off 193rd East Avenue. Mr. O'Dell stated he was advised that the suit in 2001 was not a de novo trial so there was no evidence submitted. Mr. O'Dell stated that the denial for 129th was a justifiable decision because the development has exploded. He feels the site for the proposed plant is a rural area and it is in the flood plain; it is in the 500 and 100-year flood plain, so obviously this will be the last land developed just as it was on 129th where the flood plain is not developed yet. The new proposal will improve the current situation. Holliday Sand has worked hard in the last month to figure how to improve the situation and that was done by not having a night shift and not increasing the number of trucks. Mr. O'Dell thinks the \$70,000+ will do a lot of good work in the area if the request is approved. The proposed site will impact a few people, but very few people. County Line Road, 193rd East Avenue, is a truck route and is built for that traffic and trucks are allowed. Mr. O'Dell thinks the Holliday trucks are just as necessary as turf trucks for development in Tulsa. Everyone wants development but without sand, development doesn't occur.

Dan Jones came forward and stated this is not hazardous or detrimental. There have been sand plants in these locations for 50+ years. If Holliday could go someplace and find an adequate sand deposit, had an arterial truck road, and access to the highway, the company would have done it. Holliday is actually making it better by reducing the trucking and reducing the nighttime operations. This does not affect property values.

Mr. Hutchinson asked Mr. Jones if any thought had been given to what Mr. Curtis with the City of Broken Arrow had said about the deceleration lanes and the J turns. Mr. Jones stated that Holliday would be willing to look at that.

Comments and Questions:

Mr. Dillard stated the presentation presented by the sand company was excellent, but he cannot understand how this is not injurious to the neighborhood. This is injurious to the residents because they are all upset about it and it is not in the spirit and harmony with the community. He cannot support this request.

Mr. Crall stated the Board has to acknowledge that Holliday Sand has been in business in the area for 50 years. He is concerned that it is the 50 years of performance that has brought everyone to this place because if everyone were happy with it, there would be no complaints today. The company did have a great presentation but because of all the other things he will not support the request.

Mr. Johnston stated he came to the meeting with a list of all the things that Holliday was going to do, however, the one outstanding question is what the Board is charged to do which has to do with the requirements for a Special Exception. Mr. Johnston stated that if he were a neighbor to the sand plant, he would be concerned with the whole operation.

Mr. Hutchinson stated he could easily support this request. He thinks they have done a tremendous amount of work. No other sand plant has come before the Board and done the things that Holliday Sand has had to do. Holliday gets the brunt of what everybody else's infractions. The Board is commissioned with the land use and he thinks this is a

good land use so he can support the request, based on the conditions offered on page 10 of the agenda packet.

Mr. Johnston stated that he saw the roads as a separate issue. The Board is looking at specific land, neighbors that live next to the subject site, he is looking at the Comprehensive Plan that the City of Broken Arrow has, and he could support this request if the roads were the only reason for objections but he is looking at the surrounding neighborhood.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 3-1-0 (Crall, Dillard, Johnston “aye”; Hutchinson “nay”; no “abstentions”; Charney “absent”) to **DENY** the request for a Special Exception to permit Use Unit 24, Mining and Mineral Processing (Section 1224), in an AG District (Section 310, Table 1) finding that it is not in harmony with the spirit and intent of the Code and is injurious to the neighborhood; for the following property:

Commencing at the Northeast Corner of the Southeast Quarter of Section 13, Township 17 North, Range 14 East, said point being the Point-of-Beginning; thence N 90°00'00" W (assumed), along the North line of the South one-half of said Section 13, a distance of 3490.00' to the East line of the Arkansas River; thence S 30°54'00" E, along the said East line of the Arkansas River, a distance of 1538.34' to a point 1320' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 1320' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 840.00'; thence N 08°56'58" W, a distance of 1285.65' to a point 50.00' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 50.00' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 2060.00' to the east line of Southeast Quarter of said Section 13; thence N 00°00'00" W, along said east line of Southeast Quarter of said Section 13, a distance of 50.00' to the Point-of-Beginning. Said tract contains an area of 36.644 acres, more or less, OF TULSA COUNTY, STATE OF OKLAHOMA

NEW APPLICATIONS

2823—Ken Binkley

Action Requested:

Special Exception to permit fireworks stand (Use Unit 2) in an AG District; Variance from the all-weather parking surface requirement (Section 1340.D). **LOCATION:** 9805 East 161st Street South, Bixby

Presentation:

Ken Binkley, 9805 East 161st Street South, Bixby, OK; stated he would like to be able to sell fireworks on his property.

Mr. Hutchinson asked Mr. Binkley if he currently sells fireworks from his property. Mr. Binkley answered affirmatively.

Mr. Hutchinson asked Mr. Binkley how long he had been selling the fireworks from his property. Mr. Binkley stated that it has been 16 years at his present location and a total of 28 years.

Mr. Binkley stated that he is requesting the Variance for the all-weather parking surface because the stand is placed in his yard for two months a year.

Mr. Hutchinson asked Mr. Binkley about his hours of operation. Mr. Binkley stated that he would open around 10:00 A.M. and close around 10:00 P.M. Mr. Dillard asked Mr. Binkley if he would want to stay open later on the 3rd and 4th. Mr. Binkley stated that each year is different but usually about 10:00 P.M. the crowds are gone.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Charney “absent”) to **APPROVE** the request for a Special Exception to permit fireworks stand (Use Unit 2) in an AG District; Variance from the all-weather parking surface requirement (Section 1340.D), subject to a five year time limit, July 2025. The hours of operation shall be June 15th through July 2nd, 10:00 A.M. to 10:00 P.M., July 3rd and July 4th, 10:00 A.M. to 12:00 midnight. The Board has found the hardship for the Variance to be that the applicant has operated this stand for numerous years with no complaints, and the stand is temporary in nature; for the following property:

E479.2 W849.7 LYING S OF MVRR LESS BEG 370.50E & 353.81N SWC SW TH N APR 128.67 SE APR 168.76 SW APR 119.19 POB & LESS S24.75 THEREOF FOR ST SEC 19 17 14 2.204ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2824—Richard Read

Action Requested:

Variance to permit a detached accessory building to exceed 750 square feet in an RS District (Section 240.2-E). **LOCATION:** 518 North 72nd West Avenue

Presentation:

Richard Read, 518 North 72nd West Avenue, Tulsa, OK; stated he would like to have a garage/workshop for personal use. Mr. Read stated that his hardship for the Variance request is that he has a very small house with no garage and has three cars; one is a 1978 Chevrolet Nova Highway Patrol Special. He would like to be able to have the cars in a garage. He has had a 10 x 15 storage unit for over 12 years that he stores his seasonal equipment in.

Mr. Hutchinson asked Mr. Read if he wanted to build a 960 square foot building. Mr. Read answered affirmatively and stated that would be his wish at a minimum because three cars would fill that up. Mr. Read stated that he has relatives on all sides of him and they have no problems with him erecting a building. Mr. Hutchinson asked Mr. Read if he wanted to build something larger or would he want to stay with the 960 square feet. Mr. Read stated that 960 square feet would work but a larger one would be nice, though his request is for a 24 x 40 building.

Mr. Hutchinson asked Mr. Read what the building materials would be. Mr. Read stated that it will be a metal building.

Mr. Johnston asked Mr. Read if the building would be attached to his house. Mr. Read answered no.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CRALL**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Charney “absent”) to **APPROVE** the request for a Variance to permit a detached accessory building to exceed 750 square feet in an RS District (Section 240.2-E), not to exceed 1,500 square feet. The Board has found that the hardship is that if the building were to be attached to the house the applicant would not need to come before the Board and the property has adequate land; for the following property:

N110 E256.75 BLK Q, FARM COLONY SUB, OF TULSA COUNTY, STATE OF OKLAHOMA

2825—Ashley West – Freedom Homes by Williams Long

Action Requested:

Special Exception to permit a manufactured home in an RS District (Section 410);
Variance from the all-weather parking surface requirement (Section 1340.D).

LOCATION: 909 West 6th Street South, Sand Springs

Presentation:

William Long, 7502 South 282nd East Avenue, Broken Arrow, OK; stated he represents Ms. West. Ms. West is in an area that requires a multi-section manufactured home. Mr. Long stated that Ms. West is facing a financial hardship because she can only afford a single section manufactured home.

Mr. Hutchinson asked Mr. Long if there were any other mobile homes in the area. Mr. Long stated that he was not aware of any; most of the houses in the area were built in the 1950s and the 1960s.

Mr. Hutchinson asked Mr. Long if his client would be willing to agree with the requirements of the skirting, tie downs, anchoring, etc. Mr. Long answered affirmatively.

Mr. Hutchinson asked Mr. Long about the Variance request for the all-weather parking surface. Mr. Long stated that Ms. West has a gravel area that has grown over, and he plans to clean it out and add additional gravel because it is a hard base with large rock.

Mr. Hutchinson asked Mr. Long if he or Ms. West had spoken with any of the neighbors. Mr. Long stated that he has not spoke with any of the neighbors and he does not know if Ms. West has.

Mr. Long stated that he plans to build a new house pad to elevate the home for drainage with the appropriate anchors.

Mr. Hutchinson asked Mr. Long if he would be installing a concrete footing as well. Mr. Long answered affirmatively.

Mr. Hutchinson asked Mr. Long if his client would agree to pouring a concrete pad for parking if the Board were to vote in that manner. Mr. Long stated that the requirement for a parking pad for a car would be a burden for Ms. West, and in that area he believes the gravel base would be very sufficient and comparable to what is seen in the area.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Dillard stated he can support this request provided there is a parking pad poured on the subject property.

Board Action:

On **MOTION** of **JOHNSTON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a Special Exception to permit a manufactured home in an RS District (Section 410), subject to conceptual plan 6.17 of the agenda packet. The approval is subject to all County Code and DEQ requirements; for the following property:

Commencing at the Northeast Corner of the Southeast Quarter of Section 13, Township 17 North, Range 14 East, said point being the Point-of-Beginning; thence N 90°00'00" W (assumed), along the North line of the South one-half of said Section 13, a distance of 3490.00' to the East line of the Arkansas River; thence S 30°54'00" E, along the said East line of the Arkansas River, a distance of 1538.34' to a point 1320' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 1320' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 840.00'; thence N 08°56'58" W, a distance of 1285.65' to a point 50.00' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 50.00' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 2060.00' to the east line of Southeast Quarter of said Section 13; thence N 00°00'00" W, along said east line of Southeast Quarter of said Section 13, a distance of 50.00' to the Point-of-Beginning. Said tract contains an area of 36.644 acres, more or less, OF TULSA COUNTY, STATE OF OKLAHOMA

On **MOTION** of **DILLARD**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Charney "absent") to **DENY** the request for a Variance from the all-weather parking surface requirement (Section 1340.D); for the following property:

Commencing at the Northeast Corner of the Southeast Quarter of Section 13, Township 17 North, Range 14 East, said point being the Point-of-Beginning; thence N 90°00'00" W (assumed), along the North line of the South one-half of said Section 13, a distance of 3490.00' to the East line of the Arkansas River; thence S 30°54'00" E, along the said East line of the Arkansas River, a distance of 1538.34' to a point 1320' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 1320' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 840.00'; thence N 08°56'58" W, a distance of 1285.65' to a point 50.00' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 50.00' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 2060.00' to the east line of Southeast Quarter of said Section 13; thence N 00°00'00" W, along said east line of Southeast Quarter of said Section 13, a distance of 50.00' to the Point-of-Beginning. Said tract contains an area of 36.644 acres, more or less, OF TULSA COUNTY, STATE OF OKLAHOMA

2826—Roxanne Burch

Action Requested:

Use Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a CH District (Section 1203). **LOCATION:** 6155 North Peoria Avenue

Presentation:

Roxanne Burch, 14347 North 108th East Avenue, Collinsville, OK; stated she would like to have a garden center or grow house.

Mr. Hutchinson asked Ms. Burch if she was planning to have the grow house in the building that is south of her existing business. Ms. Burch answered affirmatively.

Mr. Hutchinson asked Ms. Burch how many plants she is proposing. Ms. Burch stated that she plans to have 400 plants. The building is about 50 x 100 and is established on the same property as the business.

Mr. Hutchinson asked Ms. Burch if she had heard from any of her neighbors. Ms. Burch answered no.

Mr. Hutchinson asked Ms. Burch if she had any plans to do anything else to the building. Ms. Burch stated that she is gutting the inside and will do what is necessary to get the building up to the Tulsa County Code requirements.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Charney “absent”) to **APPROVE** the request for a Use Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a CH District (Section 1203), subject to conceptual plan 7.9 of the agenda packet. The building is to meet all Tulsa County Code requirements. The Board has found the hardship to be that this is in an established area of commercial zoning. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LT 4 LESS W25 FOR RD, BUSSMAN SUB, OF TULSA COUNTY, STATE OF OKLAHOMA

2827—Malinda Beene

Action Requested:

Variance to reduce the lot and land area per dwelling unit in an AG district to allow two dwelling units on one lot of record (Section 330 Table 3); Variance from the all-weather parking surface requirement (Section 1340.D). **LOCATION:** 4219 South 225th West Avenue

Presentation:

Malinda Beene, 4219 South 225th West Avenue, Sand Springs, OK; stated she would like to have a second dwelling on the lot of record.

Mr. Hutchinson asked Ms. Beene if there was a house on the property currently. Ms. Beene answered affirmatively. Mr. Hutchinson asked if the house was of stick built construction. Ms. Beene stated that it is a mobile home.

Mr. Hutchinson asked Ms. Beene if the second mobile home would be for a family member or would it be a rental. Ms. Beene stated that the second mobile home would be for a family member. She stated that she has already moved the mobile home onto the property and that is when she found out she had to have a building permit.

Mr. Hutchinson asked Ms. Beene about the other structures, five or six, on the property as seen in the aerial view of the subject property. Ms. Beene stated there is nothing in the front yard but there are structures in the back yard; the second mobile home, a hen house and a storage shed.

Mr. Hutchinson asked Ms. Beene if there would be a second meter for the second mobile home. Ms. Beene answered affirmatively. Mr. Hutchinson asked if there would be a separate septic system and a separate water system for the second mobile home. Ms. Beene stated that the environmental agency came to the property and she was told by them that it would be okay to tie into the existing septic system. Ms. Tosh stated that the second mobile home will have to have its own septic system.

Mr. Hutchinson asked Ms. Beene about her Variance request on the all-weather parking surface. Ms. Beene stated she would like to be able to use a crusher run instead of concrete. Mr. Hutchinson asked Ms. Beene to state her hardship for this request. Ms. Beene stated she cannot move the mobile home to the back of the property because of the downhill slope and it would be a financial hardship. Mr. Hutchinson stated that financial reasons cannot be used as a hardship in a Variance request.

Mr. Hutchinson asked Ms. Beene if she would be able to meet the other requirements such as the septic system, tie downs, the skirting, etc. Ms. Beene stated the mobile home is tied down and she is waiting on a contractor to call her about the skirting.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Dillard stated he can support this request provided that it is subject to the County requirements, such as, the parking pad, having a separate system, the skirting and tie downs. This is near other mobile homes so he can support the request.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Charney “absent”) to **APPROVE** the request for a **Variance** to reduce the lot and land area per dwelling unit in an AG district to allow two dwelling units on one lot of record (Section 330, Table 3) and to **DENY** a **Variance** from the all-weather parking surface requirement (Section 1340.D). The approval is subject to conceptual plan 8.11 of the agenda packet. The second mobile home is to be on a separate septic system, have tie downs and skirting, and is to meet all County Code requirements. The Board has found the hardship for the first Variance request to be that there are other mobile homes in the area; for the following property:

PRT NW BEG 658.77S NWC TH E538.79 S205 W536.82 N205 POB SEC 27 19 10 2.53ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2828—Phoenix Industrial – Debra Agee

Action Requested:

Use Variance to allow Use Unit 25, Light Manufacturing Industry, in an AG District (Section 1225); Variance from the all-weather parking surface requirement (Section 1340.D). **LOCATION:** 18340 South 75 Highway West

Presentation:

Debra Agee, 10611 West Houston, Sapulpa, OK; stated she works at Phoenix Industrial and the company would like to build a pole barn for the agricultural part of the business. She is before the Board because she discovered that the company had not had the industrial side of the business adopted into Tulsa County; they went before the City of Glenpool but had not been approved by Tulsa County. She is trying to make sure the company is in compliance with Tulsa County for Phoenix Industrial, which is a small portion of the property. The pole barn is going to be built on the agricultural side of the property.

Mr. Hutchinson asked Ms. Agee if the property had been annexed into the City of Glenpool. Ms. Agee stated the Phoenix Industrial had not been annexed into the City of Glenpool nor is the pole barn.

Mr. Dillard asked if this was in the fence line of Glenpool. Ms. Jones stated that the property that is just south of Phoenix Industrial is still part of the business and is zoned IL, and that it is within the city limits of Glenpool.

Mr. Hutchinson asked Ms. Agee about the plans for the pole barn. Ms. Agee stated that it will be for the four-wheelers, feed, and stuff for the chickens. This is actually a house cleaning project because a small portion of the property is in Tulsa County and has never been before the Board but has been in business for years.

Interested Parties:

Robert Lynn, 18220 South Highway 75, Mounds, OK; stated he does not oppose the building or what Mr. Garcia has done there. He had no idea he was going to have a major manufacturing environment at the entrance to his house. This is the first time he has ever been notified to any changes near his property, so he wanted to show up. The building was in existence before Mr. Garcia purchased the property and Mr. Garcia has improved the property. Mr. Lynn wanted to know what this does to future transitions or changes or opportunities for Mr. Garcia's business, because he has been very kind not to build on the side of the property that is next to his house. Mr. Hutchinson stated the property is still zoned AG and if something different is to be done, Mr. Garcia would be required to come before the Board.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a Use Variance to allow Use Unit 25, Light Manufacturing Industry, in an AG District (Section 1225), subject to conceptual plan 9.7 of the agenda packet. The Board has found the hardship to be that the business has been in existence since 1997. The second Variance from the all-weather parking surface requirement (Section 1340.D) has been withdrawn by the applicant. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

BEG 1262.51N & 156.72W SECR NE TH N728.19 W512.47 S727.09 E512.49 TO POB SEC 3 16 12 8.561ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2829—Charles Stewart

Action Requested:

Use Variance to allow a machine shop (Use Unit 25 - Light Manufacturing Industry) in an RS District; Variance of the allowable square footage for accessory buildings in aggregate in an RS District (Section 240.2.E). **LOCATION:** 712 North Willow Road West

Presentation:

Charles Stewart, 703 North Willow Road, Sand Springs, OK; stated the machine shop already exists and he would like to bring everything up to Code. The shop has been in existence for at least 40 years and is under powered; the property has been in his family for 90+ years. Mr. Stewart stated he has worked out of the shop his entire life and he would like to upgrade what his uncle has in place; nothing will change. Mr. Stewart stated there are two properties there, 1806 Persimmon and 712 Willow, and when he made application for an electrical upgrade to 299 AMP three phase wiring, he found the power line has to be underground to go across the property.

Mr. Crall asked Mr. Stewart if he was currently using the shop. Mr. Stewart answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CRALL**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Charney “absent”) to **APPROVE** the request for a Use Variance to allow a machine shop (Use Unit 25 - Light Manufacturing Industry) in an RS District; Variance of the allowable square footage for accessory buildings in aggregate in an RS District (Section 240.2.E), subject to conceptual plan 10.12 of the agenda packet. The Board finds the hardship to be that the shop already exists and producing; for the following property:

LT 1 BLK 8; LT 2 BLK 8, CHARLES PAGE HOME ACRES SUB NO 1, OF TULSA COUNTY, STATE OF OKLAHOMA

2830—Jay Howard

Action Requested:

Variance of the minimum lot and land area per dwelling unit in an AG District to permit a lot split (Section 330, Table 3). **LOCATION:** 4327 West 26th Street

Presentation:

Jay Howard, 4327 West 26th Street, Tulsa, OK; stated he would like to split his property into a one-acre lot. He purchased the property in 2013 and built the house in 2015, and because of the way the land is split with the driveway and the creek, he cannot split the property into two acres.

Mr. Hutchinson asked Mr. Howard if there was a reason why he did not want to split the property down the middle, or was he attempting to make his property 3.9 acres and have one acre west of the existing driveway. Mr. Howard stated that was correct.

Mr. Howard stated he is actually wanting to move to the one-acre portion and sell the other property.

Mr. Hutchinson asked Mr. Stewart what is the typical lot size around his property? Mr. Stewart stated there are several one-acre lots throughout the neighborhood, and there are five-acre and ten-acre lots.

Mr. Hutchinson asked Mr. Stewart how much road frontage he would have. Mr. Stewart stated that it would be 165 feet.

Interested Parties:

John Fothergill, 3410 South 73rd West Avenue, Tulsa, OK; stated this application is well suited. The peculiar nature of the land with the creek running through the property precludes it from being an easy way to split the property and still have access to the other side of the property. It is typical of the area to have small acre lots and he believes more and more of that will be seen as the Gilcrease Expressway is developed; there should be a lot of growth in this area. Mr. Fothergill stated he is in support of this request.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Charney “absent”) to **APPROVE** the request for a Variance of the minimum lot and land area per dwelling unit in an AG District to permit a lot split (Section 330, Table 3), subject to conceptual plan 12.11 of the agenda packet. The Board has found the hardship to be that this is a large tract and there is a creek running through the property making it difficult to split the property. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

E/2 SW SE NW SEC 16 19 12 4.99ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2831—Kenneth Johnson

Action Requested:

Use Variance to allow Use Unit 25, Light Manufacturing Industry, in an AG District (Section 1225). **LOCATION:** 7703 West 7th Street South

Presentation:

Kenneth Johnson, 7703 West 7th Street, Tulsa, OK; stated he would like to be able to process his cannabis crop. He makes pre-row out of ice extraction bubble hatch and the crop is full organic. There is no C1D1, there are no hydrocarbons or anything like that. Mr. Johnson stated that his property is certified through the Department of Agriculture for USDA certification when he was growing produce. The land is kept organic. He has been growing cannabis since February 18, 2019. There is fencing around the property. He has his compliance from Tulsa County. The processing started in September 2019 and his renewal is August 25th. Mr. Johnson stated that he takes the product after it has been trimmed and put the trim in an ice water bath that runs like a washing machine, freeze it, the product is then strained off and place that in a freeze drier turning it into powder. The powder is added to infused pre-row. Pre-row is like a cigarette without a filter. The product is then sold.

Mr. Hutchinson asked Mr. Johnson if people come to his property when he sells his product. Mr. Johnson answered no and stated that he sells to dispensaries. There is no traffic that comes to the property. He has been doing this for a year and growing for a year and half. No one knew what he was doing until they received their notices about this request.

Mr. Johnson stated there is no environmental impact; he wakes up every morning to see 35 deer in the field.

Ryan Kuzmic, Viridian Legal Services, 1602 South Main Street, Tulsa, OK; he represents Mr. Johnson and he has handled most of the introduction to what is being asked for. Mr. Kuzmic stated this part of a reapplication process for Mr. Johnson; he is already using the property for this purpose and has been doing so legally for a year with no issues. The subject property is surrounded on three sides by family and he owns about 51 acres. Mr. Johnson has a processing license and when he obtained that license the certificate of compliance was not required. There are only three employees and they are all family living on the site. This will not increase the foot traffic to the site, and it will not increase the footprint or the affect on the neighborhood in any way. The subject property has a history of industrial use and had been previously been given a Special Exception for a land fill and it functioned as a construction land fill for about 30 years. When it was a land fill there were trucks going to the site until about four years ago. The land fill left scars on the land that he thinks does not make it appropriate for a commercial agriculture grow.

All the facilities that need to be there for this request are existing on the subject property. Mr. Johnson has 16 cameras on site with a 24-hour guard on site, and there have been no incidents. This will not affect the neighborhood in any appreciable manner.

Mr. Crall asked Mr. Johnson if this step is strictly a clean-up process for the paperwork of an existing business. Mr. Johnson stated that when he received his processing license OMMA did not have a requirement in their rules and regulations that the site had to be in compliance with the City or County. When he received his license, he paid his fees and he passed the background check and he proceeded. Since that time, there have been new laws implemented.

Ms. Tosh stated that it has always been a requirement that a person come to the local jurisdiction before going into growing, processing or distribution. Whether OMMA makes that clear may be a fault of theirs. People should call the local jurisdiction and ask questions. It has always been required so there have been no permits for the subject site.

Ryan Kuzmic stated that when this was passed a person was allowed to apply to OMMA as a state agency directly. There was a period of time when a person could apply directly to OMMA and receive a certificate of compliance or a processor license directly. Next year, since the laws have subsequently changed, to include the municipal zoning. He is also aware that Tulsa County, at some point, changed their position on the zoning that would allow processing as well. There would be no way online for a member of the public to be put on notice that a processor would not be allowed in that agricultural zoning in Tulsa County; it is not written in the Code anywhere. Mr. Johnson was completely compliant beforehand and now he is just trying to do everything correctly as part of the application process.

Mr. Hutchinson asked staff if a person owns more than 20 acres is it correct that there is no building permit required? Ms. Tosh stated that is an urban legend. There is a zoning clearance that is allowed to a person that owns 20 acres or more to build a house or pole barn, and that only allows the person a lower cost. All the paperwork still has to be turned in for permits, but the cost is less. It is a benefit to help farmers that have an Oklahoma agricultural exemption identification permit card. Tulsa County has changed nothing in the Code and there have been no new rules; this has always been in effect before OMMA.

Mr. Hutchinson asked if Mr. Johnson has the right to grow without coming before the Board of Adjustment. Ms. Tosh answered affirmatively.

Mr. Johnson stated that when he filed with OMMA agricultural grow license he called the building code department and asked about what he needed to do. At that time, the man that he spoke to said that his department was not involved in it and that he was to go by OMMA and Oklahoma Narcotics regulations. Now that he has come back for renewal after a year there has been a law passed that states he has to have a certificate of compliance with Tulsa County. When he went to Tulsa County this time to find out what to do, he was asked how much the fence he erected cost, so he could be issued a permit.

The fence is the only thing that he has built on the property because he already had the barns and had a hoop house. The only thing he has done differently is plant a different seed. Mr. Johnson stated he was passed by Tulsa County, and he still has those tags to show he passed the inspection, so he received his certificate of compliance. Two months later the Tax Commission came out because the eight-foot fence is considered industrial and now his property taxes have been raised. Now his property value has been reassessed because there was 30,000 square feet under an eight-foot chain link fence with barbed wire on top.

Interested Parties:

Amy McAllister, 3480 South 184th West Avenue, Tulsa, OK; stated she is speaking on behalf of her future father-in-law who resides at 416 South 73rd West Avenue whose property borders the subject property. Ms. McAllister stated she has also been given a letter of authorization from Georgia Keesline who has property at 108 South 72nd West Avenue. Ms. McAllister stated that she is a local builder and has built over 40 houses in the Tulsa County and Osage County area. She is currently building a \$750,000 property within a ½ mile radius of the subject property. Ms. McAllister stated that she would also like to speak as a community member for the women's shelter that is directly across the street from the subject property. There are two apartment facilities within the vicinity, one which is a low-income facility. It concerns her to see the community have an area go to light industrial after all the investments that have been done in a mostly residential area with children in the area. Ms. McAllister stated that everyone knows what is going on, if you live in the area you know. The fact that there is security on the subject property is an area of concern. Ms. McAllister stated she greatly opposes this request.

Amy Tebow, 7703 West 7th Street, Tulsa, OK; stated she lives on the property and has for four years. There are not a lot of children in the area and the area is basically a highway. There is a women's shelter across the street but there are no children out playing in the area. People in the area do know what is going on but no one has had a problem with it. The money the subject site is generating helps education, helps the Police force, helps the local high school, it is doing a lot of good. The armed security on site is there for their protection so they cannot be stolen from. The only time that security would be seen is if someone came onto the property, and then they would have to be 50 feet onto the property to be approached by armed security because of the fences. Ms. Tebow stated that the family does not live in a rough area, but she wouldn't consider it a residential area. The area was a highway and stuff built up around it.

Ryan Kuzmic stated that the affect on the neighborhood will basically be negligible. There are only going to be three employees so there will be no increase in traffic. This will not increase the impact on any of the surrounding properties.

Comments and Questions:

Mr. Dillard stated that if Mr. Johnson were growing tomatoes the Board would not be having this conversation. Unfortunately, the law has changed, and he may not agree with it personally, but it's the law. He can support this request.

Mr. Crall said obviously the women's shelter does not have a problem with this request because there is no one here saying this is detrimental to the neighborhood. Mr. Crall stated he has no reason not to support this.

Mr. Hutchinson stated he can support this request. Even if the Board were to vote no Mr. Johnson could still have the grow facility because the property is zoned AG. The property is a 51-acre tract. This request is because of the processing factor so he can support this request.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-0 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Charney "absent") to APPROVE the request for a Use Variance to allow Use Unit 25, Light Manufacturing Industry, in an AG District (Section 1225), subject to conceptual plan 12.11 of the agenda packet. The Board has found the hardship to be that the property is 51 acres and it is not detrimental to the surrounding area. Finding that by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**TR 2 W984.24 E1916 SW LESS S770 E368 & LESS W210 E1510 S520.65 SEC 6 19
12 50.63AC, OF TULSA COUNTY, STATE OF OKLAHOMA**

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OTHER BUSINESS

None.

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NEW BUSINESS

None.

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BOARD COMMENTS

None.

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There being no further business, the meeting adjourned at 5:20 p.m.

Date approved: _____

Chair