

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1235  
Tuesday, August 27, 2019, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

| <b>MEMBERS PRESENT</b>  | <b>MEMBERS ABSENT</b> | <b>STAFF PRESENT</b>                        | <b>OTHERS PRESENT</b> |
|---|-----------------------|---|-----------------------|
| Van De Wiele, Chair<br>Bond, Vice Chair<br>Ross, Secretary<br>Radney<br>Shelton |                       | Wilkerson<br>Chapman<br>Sparger<br>K. Davis | Blank, Legal          |

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on August 22, 2019, at 10:01 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

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**MINUTES**

On **MOTION** of **BOND**, the Board voted 4-0-1 (Bond, Radney, Ross, Shelton, "aye"; no "nays"; Van De Wiele "abstaining"; none absent) to **APPROVE** the **Minutes** of the August 13, 2019 Board of Adjustment meeting (No. 1234).

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**UNFINISHED BUSINESS**

None.

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## NEW APPLICATIONS

### 22716—Jordon Droz

#### Action Requested:

Special Exception to permit a small Assembly and Entertainment Use serving or selling alcoholic beverages to be located within 150 feet of a residential district (Section 15.020-G, Table Note [2]). LOCATION: 9140 South Braden Avenue East (CD 8)

#### Presentation:

**Weldon Bowman**, W Design, 815 East 3<sup>rd</sup> Street, Tulsa, OK; stated he requests a continuance for this case. He has received comments of concern from the neighborhood through INCOG, so he has a neighborhood meeting scheduled this evening with Braden Park residents to explain what he would like to do.

Mr. Van De Wiele asked Mr. Bowman where the meeting is being held. Mr. Bowman stated the meeting will be held at the Jenks Library in downtown Jenks. Mr. Bowman stated that he has spoke with the neighborhood President and has sent a letter of notice to all the residents that received the original notice from INCOG.

Mr. Van De Wiele asked Mr. Bowman what time the meeting would start. Mr. Bowman stated that the meeting is scheduled from 6:00 P.M. to 7:00 P.M.

Mr. Van De Wiele asked Mr. Bowman if the meeting was just to inform the neighborhood and interested parties as to what the plans and goals are. Mr. Bowman answered affirmatively. Mr. Bowman because the INCOG notice went out as "small assembly and entertainment use" there is a wide array of rumors and concerns as to what it is, and he understands.

#### Interested Parties:

**Justin Vakilzadeh**, 9240 South Braden Place, Tulsa, OK; stated he is on the Board of Directors for the Braden Park Homeowners Association, and he supports the applicant's request for continuance, but he wants to reserve the right to protest this request.

#### Comments and Questions:

None.

#### Board Action:

On **MOTION** of **ROSS**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Special Exception to permit a small Assembly and Entertainment Use serving or selling alcoholic beverages to be located within 150 feet of a residential district (Section 15.020-G, Table Note [2]) to the September 10, 2019 Board of Adjustment meeting; for the following property:

**N173.70 S327.70 LT 2 BLK 1, HUNTERS GLEN, City of Tulsa, Tulsa County, State of Oklahoma**

**22715—Cheryl Cohenour**

**Action Requested:**

Special Exception to permit a low-impact medical marijuana processing facility in a CH District (Section 15.020, Table 15-2). **LOCATION:** 916 West 23<sup>rd</sup> Street South (CD 2)

**Presentation:**

**Cheryl Cohenour**, 2809 East 28<sup>th</sup> Street, Tulsa, OK; stated she owns the building on the subject property, and she has owned it since 1997. Previously she had a consulting, engineering and environmental laboratory in the building. She likes the area and is involved in the community, and she would like to have a low impact medical marijuana processing facility in the building; this is basically an industrial kitchen. There will be no combustible processing equipment. There should be no odor. There will be no signage, but the neighborhood has approached her about having painted murals on her building to enhance the neighborhood plan, so she would not want to exclude murals. It will be an industrial kitchen where edibles are made, and the product will not be sold to the public. There will be no public access.

Mr. Van De Wiele asked Mr. Chapman to display page 2.10 on the overhead projector and he asked Ms. Cohenour if the building lays on top of the building line as shown. Ms. Cohenour stated she does not know what that is about, she would need to go back to look at her old survey.

Mr. Van De Wiele asked Ms. Cohenour if she would be using all or some of the darker tan roofed building and the lighter tan roofed building. Ms. Cohenour stated that it is a two-story building. When she purchased the building, it had just been remodeled so it has really thick concrete block structure on the lower floors. She will be using two or three of the lower floor offices as the industrial kitchen and packaging. There are offices above and there is a warehouse.

Mr. Van De Wiele asked Ms. Cohenour if she had seen the letter that was received from the Tulsa Housing Authority. Ms. Cohenour answered affirmatively.

Mr. Van De Wiele asked Ms. Cohenour to address the concerns stated in the letter. Ms. Cohenour stated that she understands the concerns, but she is not going to display a marijuana leaf on the building or anything like that. There will be no signage to indicate what is going on inside the building. The impact to the neighborhood will be low. There will be no sales to the public so no one will know what is going on inside the building. There will be no heavy foot traffic and no public access with people coming and going.

Mr. Van De Wiele asked Ms. Cohenour if the building is intended to be used like a bakery where there will be distillate or oils used that are processed elsewhere. Ms. Cohenour answered affirmatively. Mr. Van De Wiele asked Ms. Cohenour if there would be no processing on site. Ms. Cohenour stated that she will be doing some processing, but it is usually done in crockpots with olive oil and coconut oil. There is not an odor that protrudes from the building, so someone walking by will not smell anything.

Ms. Cohenour stated that she is active in the neighborhood and in the Route 66 Village so it is important to her that all the development or the redevelopment that is going on the area is a good thing, so she will not do anything that will compromise the integrity of the neighborhood.

**Interested Parties:**

**Jeff Hall**, Tulsa Housing Authority, 415 East Independence Avenue, Tulsa, OK; stated the Authority's concerns are primarily with the proximity to the elementary school as well as the development plan for Eugene Field. Many of the concerns at the time of the notice was the perceived use of the building, and he thinks some of the concerns remain even after hearing the intent of the processing. The fact that it will still be medical marijuana processing near kids that live in the neighborhood, and the kids walking past to go to the school. Even though there is no direct selling to the public the concerns remain about any waste products, or anyone that could enter the building or that people will understand what is happening in the building. Could crime be increased in the area knowing that medical marijuana is being produced through edibles in the building in an area that is really trying to combat crime.

**Rebuttal:**

**Cheryl Cohenour** came forward and stated that since she has owned the building starting in 1997 there has virtually been very little crime in the neighborhood. This is a very stable neighborhood and she is not concerned about crime. Also, there is not going to be waste products that anybody can get into. Ms. Cohenour stated that her building is fenced all the way around and gated; those gates will not be open during the day. There is also a camera security system for the building making it relatively secure. Ms. Cohenour stated she has a letter of support from her next-door neighbor to the east, Construction Enterprises, Inc. Ms. Cohenour stated that she thinks she meets all the requirements of the City Code.

**Comments and Questions:**

Ms. Ross stated that she has no issues with this request.

Ms. Shelton stated she is a little torn by this request. She knows the Board has approved similar cases in other parts of the City, but she is squimish about this being in Eugene Field. The City is investing so much in this area and THA has come out to speak against this request. She is not sure this should be in this neighborhood, because the Board does not know the affects these facilities have on neighborhoods yet.

Mr. Bond wonders what the discussion would be like if this were a pharmaceutical manufacturing facility that made pain pills. He thinks the City should be proud with what they are doing with Eugene Field. This is a case of first impression, and he does not take it lightly where it is situated. He thinks a restriction on the type of advertising outside would be appropriate.

Ms. Radney stated that she is sensitive to what Ms. Shelton is saying. For instance, if this were located on 15<sup>th</sup> Street between Utica and Lewis the Board would probably be having a different conversation. She acknowledges that this will probably have a low impact on the area, but she is a little more sensitive about the filtration system and other environmental issues. She would be more persuaded if she knew that everything would be environmentally contained.

Mr. Van De Wiele asked staff if there were requirements in the Code or the Building Code that would address those issues. Ms. Blank stated that on page 2.4 of the agenda packet there is a list of requirements that does apply to processing. Mr. Chapman stated that the waste materials are probably regulated by OMMA.

Mr. Van De Wiele stated that there has been the discussion about this being medicine; that certainly is how it was approved by the voters of the State. If this were an aspirin factory, he thinks people would be before the Board touting job creation, tax revenue, etc. This is unique and it is different. If there were truly no external indication of what is going on inside the building, whether that be signage, sight, sound, smell or that sort of thing he thinks it gets close. Injurious to the neighborhood is the one that he is having some issue with. Mr. Van De Wiele stated that maybe the Board could consider a time limit on this request.

Ms. Cohenour stated that she has made a significant investment in the building over the years, and it does not require a lot of renovation for conversion from an environmental testing laboratory to an industrial kitchen. Ms. Cohenour stated that she is not sure what the Board means by time limit.

Mr. Van De Wiele stated that term "time limit" meaning the Special Exception is only good for a particular period of time.

Ms. Cohenour stated that her commitment to this neighborhood has been with the rest of the City, to see this neighborhood to come up and grow. According to the newspaper it looks like what will be directly across the street from her building will be a grocery store which is a wonderful addition to the neighborhood. Also, this building does not lend itself to retail on the bottom and housing on the top. This is an industrial piece and that is why she bought it in 1997, because it fit her business at the time. It is an unusual property that is probably is not going to have other types of uses other than an industrial type.

**Board Action:**

On **MOTION of BOND**, the Board voted 4-1-0 (Bond, Radney, Ross, Van De Wiele "aye"; Shelton "nay"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to permit a low-impact medical marijuana processing facility in a CH District (Section 15.020, Table 15-2), subject to the actual plan on 2.11 of the agenda packet. There is a three-year time limit on the Special Exception, August 2022. There is to be no signage for a marijuana or medical marijuana products facility but there can be a neighborhood mural; this is limited to the existing building as shown on page 2.11 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:

**S137.75 LT 1 WESTDALE ADD & S110 LTS 1 & 2 BLK 41, WEST DALE ADDN, WEST TULSA ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22717—Jim Butler**

**Action Requested:**

Variance to increase the maximum building height from 35 feet in an RS-1 District (Section 5.030, Table 5-3). **LOCATION:** 2723 South Zunis Avenue East **(CD 9)**

**Presentation:**

**Jim Butler**, 11327 East 60<sup>th</sup> Place, Tulsa, OK; stated he is building a house on the subject property; he razed an existing older house. There was a basement under the older house, and he would like to rehab that basement into a tornado shelter. By doing so the elevation of the top of the basement pushed the roof above the 35-foot height restriction; the area that did that is only 2% of the total roof. Mr. Butler stated that he has made it through permitting and nothing was said about the height, but when started construction he realized the height exceeded 35 feet. Mr. Butler stated that he has signatures of all the neighbors in the entire area showing support of his project. He also had the President of the Homeowner's Association sign a letter showing support of the project.

Ms. Shelton asked Mr. Butler if there was something structurally or architecturally that requires that steep of a pitch on the roof? Mr. Butler stated that it is a design that the Architect put together and with that style of house that style of roof goes with it. Both the houses on either side of his property have roofs that are higher than his proposed roof.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **ROSS**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; "nay"; no "abstentions"; none absent) to **APPROVE** the request for a **Variance** to increase the maximum building height from 35 feet in an RS-1 District (Section 5.030, Table 5-3), subject to conceptual plans 4.7 and 4.8 of the agenda packet. The Board has found the hardship to be the builder was able to get past permitting and it would be an undue burden at this time to go back and redesign the house, and because there use to be a basement under the old house that will now be turned into a tornado shelter and that pushes the roof pitch higher. 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 3 BLK 7, FOREST HILLS, City of Tulsa, Tulsa County, State of Oklahoma**

**22718—Cherrie Muzaffar**

**Action Requested:**

Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D).

**LOCATION:** 6122 South Garnett Road East **(CD 3)**

**Presentation:**

**Cherrie Muzaffar**, 909 South Butternut Place, Broken Arrow, OK; stated she would like to open a medical marijuana dispensary at 61<sup>st</sup> and Garnett. The closest medical marijuana dispensary to her location is a little over 2,000 feet away.

Mr. Van De Wiele asked Ms. Muzaffar if there were any other licensed dispensaries within her 1,000-foot radius that she is aware of. Ms. Muzaffar answered not that she is aware of.

Mr. Van De Wiele stated that Board has received a copy of the applicant's OMMA license as shown on page 5.11 of the agenda packet.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) I move that based upon the facts in this matter as they exist presently, we **ACCEPT** the applicant's verification of spacing to permit a medical marijuana dispensary subject to the action of the Board being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary; for the following property:

**PRT LT 1 BEG EASTERNMOST NEC LT 1 TH S150 W285 N150 E285 POB BLK 1, NEAL PLAZA, City of Tulsa, Tulsa County, State of Oklahoma**

**22719—John Fulton**

**Action Requested:**

Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D).

**LOCATION: 1444 South College Avenue East (CD 4)**

**Mr. Chapman stated that in the staff report there is another medical marijuana dispensary within a 1,000 feet of the proposed medical marijuana dispensary. He notified the applicant of this conflict and he verbally stated that he is withdrawing his application, but he has not received anything in writing stating such.**

**Mr. Van De Wiele asked Mr. Chapman if he knew where the conflicting dispensary is located on page 6.13 of the agenda packet. Mr. Chapman pointed to a building on page 6.13 which had been displayed on the overhead projector.**

**Presentation:**

The applicant was not present and had verbally withdrawn his application.

**Interested Parties:**

**McKenzie Dildy**, Tall Grass Dispensary, 2811 East 15<sup>th</sup> Street, Tulsa, OK; stated his dispensary is open for business and he has had his license since January. He plans to dispense to his patients at that location and renovations are taking place.

Ms. Ross asked Mr. Dildy if he had received his spacing verification from the Board of Adjustment. Mr. Dildy answered affirmatively and stated that his dispensary is not within a 1,000 feet of any surrounding dispensaries.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) I move that based upon the facts in this matter as they exist presently, we **DENY** the applicant's verification of spacing to permit a medical marijuana dispensary because there is another medical marijuana dispensary within 1,000 feet of the subject site; for the following property:

**LTS 20 21 & 22 BLK 7, ROSEMONT HGTS, City of Tulsa, Tulsa County, State of Oklahoma**

**Mr. Bond left the meeting at 1:52 P.M.**

**22720—Charles Rogers**

**Action Requested:**

Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D).

**LOCATION: 5459 South Mingo Road East (CD 7)**

**Presentation:**

**Charles Rogers**, 4733 South Harvard, Tulsa, OK; no formal presentation was made but the applicant was available for any questions from the Board.

Mr. Van De Wiele stated the Board has received a copy of the applicant's OMMA license as shown on page 7.2 of the agenda packet.

Mr. Van De Wiele asked Mr. Rogers if he was aware of any other dispensary within his 1,000-foot radius. Mr. Rogers answered no.

Mr. Van De Wiele asked Mr. Rogers if he was aware of any other dispensary license within the 1,000-foot radius. Mr. Rogers answered no.

Mr. Van De Wiele asked Mr. Rogers if he knew where the closest dispensary is located. Mr. Rogers stated he is not sure, but he knows there is one north of his location.

Ms. Ross stated that the map shows the closest dispensary is 1,008 feet away and she is concerned about the correct measurements.

Mr. Van De Wiele asked Mr. Rogers if he had hired Sizemore Weisz to map out his 1,000-foot radius. Mr. Rogers answered affirmatively.

**Interested Parties:**

**Dennis Hart**, 14030 East 24<sup>th</sup> Street, Tulsa, OK; stated that he is a barber and he owns the barber shop, and Mr. Rogers is going to lease on of his three suites. The plan is to open a barber school and the medical marijuana is going to pay for the school so youth can go to school free.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **ROSS**, the Board voted 4-0-1 (Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; Bond "abstentions"; none absent) I move that based upon the facts in this matter as they exist presently, we **ACCEPT** the applicant's verification of spacing to permit a medical marijuana dispensary subject to the action of the Board being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary; for the following property:

**LT 3 LESS BEG SWC TH N5 SE7.08 W5 POB BLK 5A, TULSA SOUTHEAST IND DIST B5A-8 RESUB PRT BLK A TUL SE EXT, City of Tulsa, Tulsa County, State of Oklahoma**

**Mr. Bond re-entered the meeting at 1:58 P.M.**

**22721—D'Andre Miles**

**Action Requested:**

Special Exception to allow a Market or Community Supported Farm Use in an RS-3 District and to permit on-site sale of products; Variance to reduce the minimum land area required for a Market or Community Supported Farm in a residential district from 2 acres to 0.44 acres (Section 5.020, Table 5.2 and Table 5.2 Note 1 and Section 40.090-A). **LOCATION:** 344 West 63<sup>rd</sup> Place North **(CD 1)**

**Presentation:**

**D'Andre Miles**, 2888 East 44<sup>th</sup> Place North, Tulsa, OK; stated he is the co-founder of Bell's Farm and Garden; the garden has been selling their product for three years. Mr.

Miles stated that he moved to Tulsa from St. Louis four years ago and one of the things that attracted him to the area was the vast opportunity to follow a dream of farming. He originally purchased the subject property from the County with the intent to build a house on it, but Tulsa's building regulations had not caught up with the modern concept of modular homes. That is when Bell's Farm and Garden was created in honor of his mother. This is a true organic urban garden. The animals and produce are raised and grown naturally without any synthetic fertilizers, pesticides, preservatives, antibiotics, feeds or hormones. He and his business partners are vegans, so it is a lifestyle they live as well. It took a lot of hard work to transform the subject property into what is seen today. To cultivate the soil naturally he introduced native plants and wildlife along with livestock after cleaning up a metric ton of trash and debris. Since he and his partner purchased the property the tax base has increased as they pay their taxes every year; the County has raised the appraisal value every year due to the improvements made. To date he has captured on video several different species on the subject property. Over the last three years he has sold his products at work, church, online and at the Greenwood Farmer's Market. He and his partner's efforts have produced contractual talks with local restaurants and confectionaries. He has scaled to the point of legitimacy and would like to take the next step in registration. There are at least four or more urban farms in some of the most prominent neighborhoods in Tulsa. There is a registered urban farm at 61<sup>st</sup> and Boulder, but no one does it quite like him. The Community Garden at the Health Department is in poor condition because it depends on volunteers; their policy is a person must work the plot before they can partake of its produce. The Black Wall Street Market in Osage County allow vendors like him to stock their store because they only produce a couple of the items they sell. The closest grocery store is two miles from the subject area, and it does not supply anything organic. Mr. Miles stated he has no intent of getting into the marijuana business now or anytime in the future. His impact in the community has already been recognized by a couple of local publications; the public-school teachers have also wanted him to create a curriculum on poultry farming to present to the classes. The biggest accolade comes from the children of the neighborhood that stop by the property to learn about the plants and animals. Mr. Miles asks the Board to allow to continue the great work he and his partner has started. Mr. Miles stated that he did reach out to his neighbors and has letters of support but he did not turn them in because the people of this area are poorly educated and there are some with citizenship issues because he did not want to embarrass them or get them in trouble.

Mr. Van De Wiele asked Mr. Miles if he had visited with the homeowners if they are rental tenants in the houses on West 63<sup>rd</sup> Street North or on 63<sup>rd</sup> Place North, those that are immediately touching the subject property. Mr. Miles answered affirmatively and stated that everyone within the 300-foot radius has called and he has been answering their questions.

Mr. Van De Wiele asked Mr. Miles what kind of animals does he raise on the property and the number of animals. Mr. Miles stated that it depends; the main livestock he has is chickens. Mr. Miles stated that he does have goats, pigs and geese. Right now, his pigs and goats are no longer on the property; the chickens are located on another

property currently; and the geese are on the subject property because he uses them as guard animals.

Mr. Van De Wiele asked Mr. Miles how many chickens, geese, pigs and goats are on the property at his busiest cycle. Mr. Miles stated that he has two geese on sight currently. Mr. Van De Wiele asked Mr. Miles if that is the most he has ever had or would have? Mr. Miles answered no.

Mr. Miles stated that he is also part of Pet Harbor. The ASPCA will call him and ask him to broker animals until they can be placed on another farm. Mr. Van De Wiele stated that he is trying to get a picture of what the farm would look like at its busiest. Mr. Miles stated that the highest number he has had was 80 birds; chicken and geese, a couple of goats and a couple of pigs.

Mr. Van De Wiele asked Mr. Miles what crops he grows. Mr. Miles stated that he grows a little bit of everything, but the main seller is cucumbers, tomatoes, swiss chard, parsley, oregano, watermelon and spinach.

Ms. Ross asked Mr. Miles who his customers are. Mr. Miles stated he sells currently to the Greenwood Farmers Market at Langston University, and the customers he is trying to target is the African American community in North Tulsa; those who do not have access to fresh produce and vegetables.

Mr. Van De Wiele asked Mr. Miles to explain how his on-site sales would work; would be like a farmer's market of one farmer? Mr. Miles stated he added that portion of the request just to have the option, but he has been doing online sales and the Farmer's Market has been great. He does have people that stop at the subject property and ask if he sells his produce or eggs so he would like to have the option to sell on site as well.

Ms. Radney asked Mr. Miles if he would have a small stand on the subject property. Mr. Miles stated that he would have it on-site for customers that drive by and stop.

Mr. Van De Wiele stated that the typical minimum land area for this type of use would be two acres, and this request is to shrink that to .44 acres which is the subject property size. Mr. Miles answered affirmatively.

**Interested Parties:**

**Rosella Pickens**, 3857 North Delaware Avenue, Tulsa, OK; stated she has lived in the neighborhood for more than 20 years, and she too has been trying to teach the children how to eat healthy; the children do not know the difference between a cucumber and a zucchini. This will help educate the children and teach them to grow a garden and become healthy. Ms. Pickens asked the Board to approve this request for the children. Mr. Miles stated that Mr. Miles property is clean and has no smell, and it is a nice site.

Mr. Van De Wiele asked Ms. Pickens where she lived in relation to the subject property. Ms. Pickens stated that she lives about a mile away but Mr. Miles lives in her neighborhood.

**Terese Anderson Aduni**, 3407 North Lansing Avenue, Tulsa, OK; stated she is the Editor and Producer of the North Tulsa Black Business Directory of which Bell's Farm is listed. The directory has over 21,000 visitors to the website, so they are trying to support economic development within North Tulsa, and to support the businesses. She thinks there are a lot of people that will support Mr. Miles continuing his business; he has delivered his produce and eggs to her so she does not think there will be a lot of traffic because Mr. Miles will deliver if he is called.

**Linda Chapman**, 6398 North Cheyenne Avenue, Tulsa, OK; stated she represents Northgate and is a resident there. Ms. Chapman stated a letter was submitted from Northgate Addition and also a submitted a letter from the Northgate Action Group. The Northgate Action Group does not support any more animals in the community and the group is not in support of the business because of the animals and the pigs, but the garden is alright.

Mr. Van De Wiele asked Ms. Chapman if the non-support was specifically the pigs or is it any animals? Ms. Chapman stated that it would be any animals that the City does not allow within the city limits.

Mr. Bond asked Ms. Chapman if there was a specific complaint about Mr. Miles operation; is it a specific smell or is it the idea of any animals within the city limits? Ms. Chapman stated that it is the idea of animals being in a residential area in the city limits. Ms. Chapman stated the Tulsa Health Department has a community garden located at 56<sup>th</sup> Street North and Martin Luther King, Jr. Boulevard; they donate the produce to the community food bank. There is another black owned business located on Osage Drive that has a garden and they sell there too.

**Alfred Higgins**, 336 West 61<sup>st</sup> Place North, Tulsa, OK; stated he is the President of the Neighborhood Watch Team. It has been brought to his attention that there is a property located at 61<sup>st</sup> Place North and North Denver, but the Code Enforcement has issued five tickets to the landowner for not cutting his grass. This property is attracting snakes, and he has seen a black snake at the curb that was about ten feet long.

Mr. Van De Wiele asked Mr. Higgins if he was in favor of or in objection to Mr. Miles application for the community garden on farm on his property. Mr. Higgins did not know about the garden or farm until today and he has no objections about that.

**Vanessa Hall-Harper**, City Councilor, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated has received telephone calls from Mr. Miles and other people in the community and she went to the property to see the farm and she was surprised. She was surprised by the cleanliness of the farm and that there were no smells. Ms. Harper stated that she has not received any complaints. This is the first she had heard about concerns or

issues from citizens in the neighborhood. The neighbors across the street and next to the property well all welcoming and waving, there was nothing negative that she received or perceived in the interaction. Obviously, healthy neighborhoods are a concern for her as a City Councilor. A healthy neighborhood overlay was passed but she does not know if this subject property is outside those boundaries, but with the healthy neighborhood overlay one of the allowances was that community/neighborhood farms could sell their produce on site. If this subject property is inside that boundary is there even a need for this approval?

Mr. Chapman stated that in the Zoning Code there is a distinction between what the applicant is requesting and a community garden, it is the commercial nature of this request. If this were strictly for the community or for the neighbors to use or to grow, that is a different allowance than using the farm for a commercial enterprise. Regarding the issue of the animals on the property, per the staff report, anything involving farm animals is animal husbandry and that is not anything that can be varied through this process or through a Special Exception. Those allowances revert back to Title 2 of the City of Tulsa revised ordinances, which are the animal welfare ordinances. The focus of this is going to be whether the applicant can continue to have a commercial farm for the actual growing of crops and to be able to sell those crops. The issue with the animal husbandry is another issue.

Mr. Van De Wiele asked Mr. Chapman if the subject property were within the healthy neighborhood overlay. Mr. Chapman stated that he thinks it is outside of that overlay, a little north of that overlay. He believes that would have been a notation on the zoning map if it were inside the overlay, but he thinks the subject property is north of the overlay.

Mr. Van De Wiele asked Mr. Chapman if the animal husbandry prohibited all animals. Mr. Chapman stated that it does not.

**Rebuttal:**

Mr. Miles came forward stated that he has been working to address receiving special permitting for what he would like to do. He has removed the chickens from the property, but he left the geese in place because he has had problems with vandals; the geese act as guard animals and there is nothing in the City Code regarding geese. Mr. Miles stated there can be six hens and one rooster with 16 chicks. Mr. Miles presented pictures of the farm and Mr. Chapman placed them on the overhead projector.

Mr. Miles stated the animals get no hormones and do not receive any commercial feed; he does not give his animals any antibiotics and that is where the smells come from. All of his animals eat bugs and plants. Mr. Miles stated there is agriculture all around the subject property. The AG property across the street is a dairy operation and it is not organic, that is where the smells are coming from. Next to that there is a beef cattle operation and there are some horses there also. Mr. Miles stated he brought a Ziploc bag with some of his animal's feces in it if the Board would like to smell it, it smells like sweet grass because that is what true organic animal's by-product smells like. He then

reuses that feces as his only fertilizer to grow his produce. He is using nothing but the by-product of his animals. Mr. Miles presented pictures of the Community Garden showing that it is being neglected.

### **Comments and Questions:**

Mr. Bond stated that he thinks the hardship for this case is that it is located within a food desert. This is someone who is willing to step up and do something amazing for the community, and in his mind that is not self-imposed, and he will support this request.

Ms. Ross stated she too is in support of this request. She likes that the applicant is providing organic fresh produce and fresh eggs to the community.

Ms. Shelton stated she is in support of this request also.

Ms. Radney stated she is in support of the garden and she acknowledges that the animal husbandry is not before the Board.

Mr. Van De Wiele stated that he is also in favor of this request. The Board certainly does not have the authority to allow animals beyond what City Ordinances allow, even to the extent that the Board was in favor of one pig or a dozen pigs the Board does not have the authority to allow it.

### **Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to allow a Market or Community Supported Farm Use in an RS-3 District and to permit on-site sale and remote site sales of products; Variance to reduce the minimum land area required for a Market or Community Supported Farm in a residential district from 2 acres to 0.44 acres (Section 5.020, Table 5.2 and Table 5.2 Note 1 and Section 40.090-A). The Board has found the hardship to be the lack of any available food and vegetables within a reasonable area. 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 11 & 12 BLK 5, NORTHGATE THIRD ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22722—KKT Architects**

**Action Requested:**

Variance to permit the wall sign display surface area be increased from 32 square feet to 65.44 square feet, and to increase the aggregate wall sign area from 32 square feet to 130.88 square feet and to permit a 28.77 square foot ground sign to be installed along the west side of the lot with no street frontage (Section 60.050-B.2.a-b). **LOCATION:** 1620 East 12<sup>th</sup> Street East (CD 4)

**Presentation:**

**Nicole Watts**, KKT Architects, 2200 South Utica Place, Tulsa, OK; stated this request is for Parkside Hospital. Parkside is in the process of constructing a new facility which will be west of the existing facility, and keeping the existing facility open to the public. The existing facility is located on City of Tulsa property, which is a long-term lease. Legal has made comments about obtaining a letter from either the Mayor's office or another department within the City for agreement to this application, and Parkside is willing to do that. The new signs that are being proposed are replacing existing signs with the same sizes.

Mr. Van De Wiele asked Ms. Watts from what is being torn down and being replaced with new, there will not be an overall increase in square footage? Ms. Watts stated that the large signs on the very top of the building are existing; the entry signs will be increasing from the existing signs.

Mr. Van De Wiele asked Ms. Watts to explain her exhibits so the Board will be clear on what new signage is being requested, and where will the signage be placed. Ms. Watts stated that the red circles on the site plans are the new signs; there will be five new signs.

Mr. Van De Wiele asked Ms. Blank what the City requires from the applicant if the Board is inclined to grant this relief. Ms. Blank stated the City would like written permission from the Mayor's Office or from Asset Management, notation for the file that the City is in agreement with the application.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to permit the wall sign display surface area be increased from 32 square feet to 65.44 square feet, and to increase the aggregate wall sign area from 32 square feet to 130.88 square feet and to permit a 28.77 square foot ground sign to be installed along the west side of the lot with no street frontage (Section 60.050-B.2.a-b), subject to conceptual plans 9.20, 9.21, 9.22, 9.23, 9.24 and 9.25 of the agenda packet. The Board has found the hardship to be the nature of services utilized at this facility as well as the size of the buildings in relation to the existing signs. The applicant is to receive written permission from the Mayor's Office and/or the Asset Management Office in the City of Tulsa. 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:

**ALL BLK 3, MCNULTY ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

## **22723—KKT Architects**

### **Action Requested:**

Variance to permit a dynamic display sign in an OL District for a use that is not a Public, Civic or Institutional use (Section 60.060-E). **LOCATION:** 12020 East 31<sup>st</sup> Street South **(CD 6)**

### **Presentation:**

**Nicole Watts**, KKT Architects, 2200 South Utica Place, Tulsa, OK; stated this request is for Community Health Connection. This project has been in front of the Board for screening requirements. Community Health Connection is a non-profit that is located on Union Public Schools property; it is in partnership with Union and Community Health as a mission project to provide services for the surrounding population. Currently Community Health Connection is located at 3<sup>rd</sup> and Lewis and their facility does have a digital display sign. The population that they serve, English is not their first language and they have problems communicating. Community Health Connection uses the digital display for pictures to explain things to transmit their message without using English words all the time. The display sign would be 6'-9" x 2'-7" and they are in agreement with all the requirements within the Code for a digital display.

Mr. Van De Wiele asked Ms. Watts which entrance the sign would be placed on. Ms. Watts stated that it would be placed on the eastern side of the subject site near the regional detention pond.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

None.

### **Board Action:**

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to permit a dynamic display sign in an OL District for a use that is not a Public, Civic or Institutional use (Section 60.060-E), subject to the conceptual plans 10.13 and 10.14 of the agenda packet. The Board has found the hardship to be the nature of services provided by the institution, the location, and the adjacent neighbor to the north being a retention pond. 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:

**ALL OF UNION E-14, City of Tulsa, Tulsa County, State of Oklahoma**

**22724—Broclyn Burdex**

**Action Requested:**

Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D).

**LOCATION:** 1046 East Pine Street North **(CD 1)**

**Presentation:**

**Frances Burdex**, 539 East Newton Place, Tulsa, OK; stated she is not aware of any other dispensary within the 1,000-foot radius and there are no schools within that radius. The closest dispensary to the subject location would be at Utica and Pine.

Mr. Van De Wiele stated the Board has a copy of the applicant's OMMA license. Mr. Van De Wiele asked Ms. Burdex if she was aware of any other license holders within the 1,000-foot radius. Ms. Burdex answered no.

Mr. Van De Wiele asked Mr. Chapman if INCOG was aware of anything within the 1,000-foot radius that would cause concern. Mr. Chapman answered no.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **ROSS**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) I move that based upon the facts in this matter as they exist presently, we **ACCEPT** the applicant's verification of spacing to permit a medical marijuana dispensary subject to the action of the Board

being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary; for the following property:

**S30 LT 1 & ALL LT 2 & N20 LT 3 & E5 VAC ALLEY ADJ ON W BLK 1, LIBERTY ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22725—Mary Cooper**

**Action Requested:**

Variance of the 1,000 spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 6545 East 11<sup>th</sup> Street South **(CD 3)**

**Presentation:**

**Ronald Durbin**, Attorney at Law, 1602 South Main, Tulsa, OK; stated he currently represents hundreds of medical marijuana businesses across the State of Oklahoma; he has been involved in this process since it started. Mr. Durbin stated that he worked with the City of Tulsa on the Zoning Ordinances related to these issues; he worked with INCOG, Susan Miller, Janine VanValkenburg, City of Tulsa Attorney and one of the issues that was brought out at the start of this process was that what would be done when a business received their license first but did not apply for a Certificate of Occupancy, and a business gets their license secondary but applies for a Certificate of Occupancy first. That is exactly the situation in this case today. Mr. Durbin stated that his client was licensed by the State of Oklahoma in January 2019, they obtained their Bureau of Narcotics license on January 29, 2019 which gives them the right to possess medical marijuana. In that interim and after that period Bloomers dispensary obtained their license in April 2019. Mr. Durbin stated his applicant is asking for a Variance for the first licensed business, that truly when they applied for their OMMA license and their OBN license there was no other dispensary within a 1,000 feet of the subject location. This is a situation where neither party acted in bad faith, there was no issue in regard to Bloomers, neither party was trying to usurp the other because his client did not know that Bloomers was going to apply for anything. Pharmacies are allowed to be located across the street from one another. This will have a disparate impact on what his clients are attempting to do and what they have done. They have spent a lot of money on obtaining licenses and have done everything they have been required to do to be a license business under the laws of the State of Oklahoma. What the applicants are trying to avoid is the necessity of going to Court on this issue because it can have a detrimental impact to either party; he does not want to get to that point. He asked and hoped for the City of Tulsa to account for who came first in their Ordinances, but they did not do that, and there is nothing in the Ordinance that he is aware of that specifically says whoever applied for the COO first. In this particular instance, the only fair resolution to this matter is to allow both parties to continue. His client's family has owned the subject property for more than 40 years, so they have been there a long time and they want to continue to operate a business at that location, and this is the most conducive business for them to engage in.

Ms. Ross asked Mr. Durbin why his client chose to wait so long to apply for a Certificate of Occupancy. Mr. Durbin stated that his clients had a previous existing business at the subject location and they already had a Certificate of Occupancy related to that business, so they did not think there was going to be an issue. Mr. Durbin stated that the City Ordinance was put on and taken off the agenda many times, and his client missed the last time it was placed on the agenda and ultimately passed. There were quite a few people who were oblivious, and the word did not get out to some people. His clients were operating under an existing COO and they did not realize that there would be a requirement to receive a new COO. After his clients received their licenses, they started working to get everything ready, then applied for their COO and that is when the issue came up with Bloomers Dispensary. He thinks this is a reasonable request from his clients.

Mr. Van De Wiele stated that from the prior hearing the Board understood that the applicant had applied for the Certificate of Occupancy on May 21, 2019. Mr. Durbin stated that the date is May 20, 2019. Mr. Van De Wiele asked Mr. Durbin if that had been issued yet. Mr. Durbin stated that it has not. Mr. Van De Wiele asked Mr. Durbin if the spacing was the only issue hanging his clients up. Mr. Durbin answered affirmatively. Mr. Van De Wiele asked Mr. Durbin what his understanding is of to the Certificate of Occupancy date for Bloomers Dispensary. Mr. Durbin stated that Bloomers was licensed by the State of Oklahoma in April 2019 and they received their Oklahoma Bureau of Narcotics and Dangerous Drugs license on May 2, 2019. Unfortunately, OMMA website does not allow anyone to search for existing businesses which is another problem and why this is going to come up again. OMMA had the search website up and then they took it down, so there is no way of knowing about spacing. It is a flaw in the system, and it is something that needs to be resolved.

Mr. Bond asked Mr. Durbin to explain his hardship in this case. Mr. Durbin stated that his clients would not be allowed to engage in the commercial business for which they have obtained a license, and they were the first to obtain a license. They will be commercially impacted in not being able to engage in a lawful business for which they have been licensed by the State of Oklahoma.

Mr. Van De Wiele asked Mr. Durbin if that was a financial hardship. Mr. Durbin stated that it is a financial hardship, but it is a hardship in relationship to the building. That building is not conducive to a whole lot of other enterprises currently; it is an old building. To allow his clients to do this it will put the building back into viable economic use, so it is an important thing for the City of Tulsa. Mr. Van De Wiele stated the Board has to articulate a hardship that is neither financial nor self-imposed. Mr. Durbin stated that he does not think it is self-imposed. When his clients applied for their OMMA and OBNDD licenses Bloomers did not exist; they had not applied and obtained any licenses. This burden is not self-imposed. If the Ordinance would say to obtain the COO first and then obtain licenses the City would have given clear guidance to business owners; his clients did it in reverse and he does not think that is self-imposed.

Most people make sure they are clear through OMMA first and then ask for their Certificate of Occupancy.

Ms. Ross stated that she understands what Mr. Durbin is saying. The Board has had this discussion for hours, what the Board ultimately discussed was that the way for the Board to navigate this is the first to receive their license but to also apply for the COO which puts the person in the process of receiving their spacing verification and that would determine who established their business first. Otherwise, people could just sit on their license and prevent others from moving into the area and yet the first party never opens a business.

Mr. Van De Wiele stated that the Board is beyond who is established first. This is not a verification of spacing, this is a Variance request. In order for the Board to support this the Board needs a hardship. Certainly Mr. Durbin's client did not impose the Ordinances on themselves, but it is their order of behavior. The Board cannot say because this is going to cost somebody a lot of money the Board grants the Variance, the Board is legally prohibited.

Mr. Durbin stated that his client has owned the building and have owned it for over 40 years. They do not have the ability to locate elsewhere. They have the facility for which they can operate and conduct this business, it is not a self-imposed burden. It is not something they created because of waiting. The same situation could have arisen had they applied for the COO; there is nothing in the Ordinance for the City of Tulsa that says it is whoever applies for the COO first is the first legitimate established business.

Mr. Van De Wiele and Mr. Bond both agreed with that statement. Mr. Bond stated in his mind he has settled on the fact that it didn't matter as long as the business were legal and that includes the Certificate of Occupancy. Mr. Bond stated that he needs a hardship that is unique to this, such as the geography.

Mr. Durbin stated that he will allow his client to speak to the hardship because he believes they can speak to that on a more personal level than he can. Mr. Van De Wiele stated that he wanted to make sure that it is clear, that it is not how this is going to damage the applicant, it is what is unique about the property, this application that presents a hardship such that the Board should grant relief from the 1,000-foot radius.

**Mary Cooper**, 6545 East 11<sup>th</sup> Street, Tulsa, OK; stated she is the owner of Mother Road Extracts. Included with her application she answered the hardship questions required for a Variance. Ms. Cooper stated the property is located within a 1,000 feet of another dispensary; a unique hardship is created to said property because of the ambiguous undefined dynamic laws, regulations, and ordinances enacted by the State and local governments causing the physical surroundings being the nearest licensed medical marijuana dispensary to be a hardship and a practical difficulty. She believes that City Council enacted the 1,000-foot ordinance due to security concerns; the subject property is secured with solid iron bars, steel doors, and live recording surveillance as well as physical 24-hour security presence. Ms. Cooper stated that a

1,000-foot spacing verification is the reason for the Variance request, most generally, CH zoned businesses are not required to perform spacing verifications in order to obtain a Certificate of Occupancy. Ms. Cooper stated that no adjacent property will be impaired and a commercial business on the subject property will encourage new retail business in the corridor. She believes that the granting of this Variance will result and benefit the public good of this area and seeks to repair the purpose, spirit and intent of the Comprehensive Plan. She also obtained all of her adjacent neighbors, both commercial and residential, letters of support of the medical marijuana dispensary opening. She believes this presents a valid hardship for this request.

Ms. Radney asked Ms. Cooper if she was aware of Bloomers application for their verification of spacing. Ms. Cooper stated that she was aware of Bloomers spacing verification application when they personally came to visit her and told her, until then she was not aware. And as of that time she had already applied for her Certificate of Occupancy. Ms. Cooper stated that her timeline was a flurry of activity between November and January; she stopped because she thought she had received everything necessary in order to open a business. The only thing she thought she needed differently at the time was the Fire Marshal's inspection.

Ms. Cooper stated that she obtained the City of Tulsa's Guide To Doing Business in Tulsa, the Commercial Building Permit Process, the Certificate of Occupancy, the application process; all of these she started researching in March. Not once did she find that told her she needed to stop and file for a Certificate of Occupancy to receive her spacing verification. Even after speaking with the permitting office she really does believe that she has tried to follow every letter of the law.

Mr. Van De Wiele asked Ms. Cooper what caused her in May to get back on the process and file for the Certificate of Occupancy. Ms. Cooper stated it was because her opening date was June 1<sup>st</sup>, and she thought she needed an inspection from the Fire Marshal.

Mr. Bond asked Ms. Cooper how far she is from the other dispensary. Ms. Cooper stated she is 450 feet away from the nearest dispensary, and 1,050 feet away from the dispensary that is not within the 1,000-foot radius.

**Leta Carmona**, Bloomers Dispensary, 6733 East 11<sup>th</sup> Street, Tulsa, OK; stated she is opposing the requested Variance due to the fact that the other dispensary is a little over 400 feet away. Ms. Carmona stated that she is aware that the other dispensary has a processing and a grower's license, so to state that it would be a hardship, even financially at best, they have the opportunity for two other businesses within the subject building to be a viable business. In researching, she believes the actual Certificate of Occupancy that the other dispensary filed in May is actually done on a residential property. The subject building is actually zoned residential. The area may be a commercial area but that particular address is zoned residential; Ms. Carmona stated she has the paperwork from the County Assessor's Office showing that zoning and she did call to verify that. Mr. Van De Wiele stated that the Board's zoning map shows

differently. Ms. Carmona stated that there was Homestead Exemption filed on both addresses; the subject property faces south and the home that is attached to it faces the east. Those were both, in 2018, had residential taxes paid on both.

Mr. Van De Wiele asked Ms. Carmona how that impacts things. Ms. Carmona stated she does not know the rules regarding a commercial Certificate of Occupancy being granted on a residential property.

Ms. Carmona stated the City Ordinance states that there needs to be a 1,000 feet between dispensaries. Obviously, she was able to find her way through the system and she obtained a lot of her licenses in April; started the process with the City in May. Ms. Carmona stated she has her health department, Oklahoma Bureau of Narcotics, two agricultural licenses, everything that is needed to go along with that so she was able to muddle through the process without any guidance, so does not know why it was hard for other party to do so.

Ms. Ross asked Mr. Wilkerson what the residential rules are in relation to what Ms. Carmona is speaking about. Mr. Wilkerson stated that he is not sure what database the County uses but he knows the staff does see things in the Assessor's office that are not consistent with the Zoning Code. Mr. Van De Wiele asked Mr. Wilkerson if that was possible because this was a former residence at some point. Mr. Wilkerson stated that it possible; the land use opportunities that are available are based on the Zoning Code not the Assessor's designation.

Mr. Van De Wiele asked Ms. Carmona if she had her shop open for business and selling to the public. Ms. Carmona answered affirmatively.

Mr. Van De Wiele asked Ms. Carmona when she received her Certificate of Occupancy and when did she open for business. Ms. Carmona stated that she was before the Board on the 23<sup>rd</sup>, she obtained all of her Code Enforcement on July 31<sup>st</sup>, and her first sale was on August 7<sup>th</sup> or August 10<sup>th</sup>, she is not sure.

**Rebuttal:**

**Ronald Durbin** came forward and stated that the opposition has just admitted that they applied for their OMMA and OBNDD licenses before they came to the City and applied for their Certificate of Occupancy. That would be rewarding one party for doing it that way and penalizing another party who did it first that way. He thinks this would create a situation where it is disparate treatment. When looking at the 1,000-foot radius from other dispensaries and schools there is a situation created where there is no other property in the City of Tulsa, it is used up. There is no other opportunity for his client to find any other property. Mr. Durbin stated that his client filed for her growers and processing license on a CH zoned property; that is not permissible in the City of Tulsa and that is why he is not asking for a Variance on the property related to those issues. Processing has to occur in industrial, heavy or medium, under certain circumstances. He is only asking for the Variance related to the spacing distance. Again, both parties acted in the same manner. They both received licenses first. The process has to be

that the party gets their OMMA license first because there are so many other things that OMMA is looking at, and what they are going to determine and classify as a school and what is not a school; before a person can obtain a fully executed lease that is really the first step a person has to go through in this process. If there is not a way for a person to determine what is a City resource, to say there is another dispensary and this will not get through, it does not exist. It does not exist for Bloomers and it does not exist for his clients.

Mr. Van De Wiele asked Mr. Durbin if he was aware that OMMA is going to reverse that process at the end of this week. Mr. Durbin answered affirmatively. Mr. Durbin stated they also completely redefined the definition of what constitutes the entrance to a school, the entrance to any piece of property in which a school sits so they have broadened the definitions even farther with regards to that under 2612. Under 1030 they changed completed the ability of cities and counties to zone; there are a lot changes. That makes it very difficult for any business to relocate themselves right now. It would penalize his clients for trying to do what was right when there was no clear guidance from the City of Tulsa that a person needed to get the COO before obtaining licenses.

Mr. Van De Wiele stated that the Board is not here today to establish, using the word establish in the motions, the Board is not here to argue about who established first it is really just a question of whether the applicant should have a Variance. Mr. Durbin stated that he understands that.

Ms. Radney asked Mr. Durbin if he would like to restate the hardship one more time. Mr. Durbin stated that he thinks Ms. Cooper went through the list of all the hardships that she would incur as a result of this. Again, the hardship is there would be no other suitable properties, that he is able to locate and he does this every single day, in the City of Tulsa for dispensary location that would now comply with the school distance issue and the zoning issue related to who received Certificates of Occupancy first. This puts the building in good use. He knows economic impact is not necessarily a factor, but his clients have already done the work to remodel the building so they would lose all that time, energy and effort to engage in this business. Again, it would be penalizing his clients for trying to do what was right and not applying for a COO first.

Mr. Van De Wiele stated that he has heard the comment from some of the billboard companies that there are virtually no spaces left, and they are 1,200 feet apart, in highway frontage within the City in which a billboard can be placed, so the Board sees very few billboard spacings. He does not know if a map were produced showing no more spaces for billboards, he does not know if that would be justification for letting a billboard being placed 800 feet away. Likewise, if there is a bar every 300 feet and a bar wanted to open in between two other bars 150 feet away that in of itself gets a person to a hardship. Mr. Durbin stated that in this instance those entities are not needing to obtain State licenses for having the billboards. We are dealing with a situation where a person is going to construct a billboard, can readily access the information to find out if there is dispensary located in the 1,000 feet. In this particular

case, even if Ms. Cooper had gone to the City of Tulsa and asked to verify that there are not other dispensaries within a 1,000 feet of her location she would have been told no, there are not because Bloomers did not exist when she was doing her applications.

Ms. Ross stated that Ms. Cooper had from January to May to apply for her spacing verification and she didn't do it, she only did half the process. Mr. Durbin stated that if the City had told Ms. Cooper to apply for the COO and get the spacing verification done. Ms. Ross stated that Ms. Cooper is not asking for a Spacing Verification today she is asking for a Variance, and the Variance requirement is that Ms. Cooper has to have a hardship that is not financial or self-imposed. Mr. Durbin stated that this is not a self-imposed hardship. Ms. Cooper already had a pre-existing Certification of Occupancy to occupy the premises, she had applied for her OMMA licenses and did the work to get the facility up to the standards of what it should be, and then she applied for her new Certification of Occupancy for the dispensary.

Mr. Bond stated that for zoning purposes the Board cannot make a ruling which would abrogate a City Zoning Code. The Board can simply give exceptions or variances in a specific instance, case by case instance which is specific to the applicant. The Board considers things like the geography of the location, the structure of the building, things like that. To say hardship in dealing with this Variance that is what is asking about. Is there something that is unique to this situation other than the ambiguity of law. Mr. Bond stated that he does not have the power to vote any other way than what the Codes provides the Board.

Mr. Durbin stated that as it relates to the building, the building is not conducive to very many other uses; it is a very old building that is not conducive to other type of commercial heavy operations that can relocate there without essentially scrape the building and rebuild something new. There is not much else this building can be utilized for given its location, given the property layout, etc. That is why the owner has not done anything with it in 20 years, because it is not conducive for engaging in any other kind of business.

He would argue that the first licensed dispensary was his clients. They were licensed from the State of Oklahoma, and that is the only way a person can become a license dispensary is to be licensed by the State of Oklahoma, they were there first. If anything he thinks it was a mistake being granted to Bloomers, authorization that they were 1,000 feet from another dispensary, because the only way you can be licensed dispensary in the State of Oklahoma is to have obtained a dispensary license from the State of Oklahoma which his clients did first.

Mr. Van De Wiele stated he is not going to let the Board get into discussion on that because the time for appeal for that has passed. Whether or not the Board should have or should not have, and he would defend the Board's action, the time to appeal the Verification of Spacing Bloomers ten days after the Board's ruling in that matter.

Mr. Durbin stated that his clients do not want to shut out Bloomers, that is not what they are trying to do. It is not Bloomers fault either.

Ms. Radney stated the applicant had a legal license for a specific address that had a Certificate of Occupancy that the applicant was unaware would not apply even though it was appropriate by right to operate that type of business out of the building, but what the applicant was not aware of is that she did not have the right type of Certificate of Occupancy because of involving legal landscape in which the Ordinances coming from the City that would determine whether she could establish that business and conduct a transaction there were evolving at the time. What is unique about this particular applicant is that she held up a license prior to the nearest licensed established business. Mr. Durbin agreed that is absolutely unique.

Mr. Durbin stated that was something he begged the City to address when it adopted the Ordinances because he felt he would here in this situation at some point. Ms. Radney stated that they are unique in that they hold a license to operate out of a building that is less than a 1,000 feet from another licensed building, and its unique that they held a Certificate of Occupancy at the time they applied, and its unique that the business district the building is in is evolving into a unique business atmosphere in terms of the relative concentration of marijuana related businesses. Mr. Durbin agreed.

Mr. Durbin stated that it is unique in that there is no other way for each of them to know. There is nothing that Bloomers could have done because OMMA had removed the listing long before either of these parties had applied. There is this quagmire of having no way to determine if there was going to be an issue.

Ms. Radney stated that in so much that the applicant had possession of the property, had a Certificate of Occupancy though not for this particular use, and if they had obtained their license 38 days earlier they would not have to be here at all because it would not have been subject to the 1,000-foot spacing.

Mr. Van De Wiele asked Mr. Chapman if the OMMA listing could still be obtained, though it has been modified. Mr. Chapman stated that he was able to get the list, with addresses, and when he was dealing with the applicant, he was able to look at specific addresses for licenses that were listed. It is not true that it was not available at the time the applicant made an application. Mr. Durbin stated that the listing was off, it came back on, it is off again and the only way a person can fully verify an existing business is to use OBNDD; it is the only site that is consistent. Mr. Chapman stated at the prior Board hearings he was able to access and use the information; to his knowledge it was just last week that OMMA began removing addresses.

**Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

Ms. Radney stated that it is very difficult for applicants to be able to, in real time, know that they have complete and accurate information, or at least has been. Ms. Radney believes the hardship would be to deny the applicant the legal right to use the license that was properly secured, but that have not been able to move forward with the business because of the uncertainty.

Ms. Ross stated that she is on the fence. She has heard some things that were convincing, and she does think that it was very confusing to a lot of people, so much so, that the Board had to have a special work session to discuss it for two hours. She is still struggling with the hardship; she does not believe the building cannot be used for any other purpose.

Mr. Van De Wiele stated there may be 50 other place holder licenses sitting out there, who knows there may be two next door to each other that was received in December 2018, and they have literally done nothing with them. They come in two or three months from now and space and they are rejected because they are ten feet away. On that basis, would they all be qualified for a Variance?

Mr. Van De Wiele asked Ms. Radney if she could state a hardship for this case. Ms. Radney thinks the evolving landscape of Ordinances is a real issue. Ms. Ross stated the Ordinances have been the same all year long. Ms. Radney thinks that within this new industry it is a new and burgeoning industry, so it is very difficult for them to know where to go to receive accurate information in real time. Even the way and the manner in which it rolled out of the City was confusing; that was not a linear process. It sounds like these people were engaged with the permitting office about their existing Certificate of Occupancy; someone at the City should have at least suggested to them that if an Ordinance were coming down that it would obviate the validity of the old Certificate of Occupancy. The applicant had to have the address to get the license, so she always comes back to that as a starting point. There was a clear intentionality to establish a business on the day they received the license. The rest of this is somewhat subject to interpretation.

Mr. Van De Wiele asked staff, he knows the City has taken the position that any new medical marijuana business has to have a new Certificate of Occupancy; that is a true statement, right? Mr. Chapman stated it is a true statement, but it is not limited to medical marijuana use; when the use on a building is changed a person is required to get a new Certificate of Occupancy.

Mr. Bond stated he has sympathy for the applicants, and he is trying to think of something that is uniquely situated in this case. The problem is what will the Board do when someone appears saying that they too were confused about the law.

Ms. Radney stated the Board granted the Variance for the dispensary in the CBD and there were less grounds than this. Mr. Van De Wiele stated there are some parallels between the two, and those dispensaries were closer than this. Mr. Van De Wiele

asked if Route 66 impacts one way or another? This is a unique area of town, but he cannot say it is so unique that there should be dispensary every 500 feet.

Ms. Shelton stated she is leaning toward a no. She does not think there is anything unique about this case. She does not think the confusing process should even be a part of this discussion. She does not think there is anything unique about this property, and a line has to be drawn somewhere and this application falls on one side of the line.

Ms. Radney stated that she appreciates the fact that right here at this particular juncture on Route 66, the Board has approved a lot of interesting marijuana businesses. There is extraction, there is edibles, there are dispensaries, there is a grower in the area, there has been a lot of intensity of interest in this corridor. This is a blue-collar corridor.

Mr. Van De Wiele stated this is certainly a concentrated business area, but there are houses in the area. Ms. Radney stated that it is a concentrated commercial district, but this is a hard-commercial corner. There is a vacant lot on the corner of 10<sup>th</sup> Street and 67<sup>th</sup>, and the other houses along 10<sup>th</sup> Street are not in good repair and most of the others going to the west along 10<sup>th</sup> Street are also vacant lots. It is definitely a neighborhood in transition, and she advocates strongly for neighborhoods that need energy to bring them back. There is a considerable setback where the residential district takes off. This segment of 11<sup>th</sup> Street is not terribly different than the Pearl District, and she can respect all the objections, but she is for the Variance.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 3-2-0 (Bond, Ross, Shelton "aye"; Radney, Van De Wiele "nays"; no "abstentions"; none absent) to **DENY** the request for a **Variance** of the 1,000 spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) due to the lack of a hardship; for the following property:

**LTS 21 & 22 BLK 36, SHERIDAN HILLS, City of Tulsa, Tulsa County, State of Oklahoma**

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**OTHER BUSINESS**

None.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

Mr. Van De Wiele stated there are changes in OMMA coming in the future, and the issue has become that what the Board has been asking applicants for on the spacing verifications, and it used to be that the OMMA website would show the addresses and that is no longer the case for now. If the Board wants the applicant to tell them what is in their 1,000-foot spacing what does the Board now want to see knowing the applicant cannot provide a license address. Ms. Blank stated this may be premature to decide, and she thinks the Board still wants to get as much information as possible.

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There being no further business, the meeting adjourned at 4:08 p.m.

Date approved: \_\_\_\_\_

\_\_\_\_\_  
Chair

DRAFT