

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1230
Tuesday, June 11, 2019, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

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

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on June 6, 2019, at 11:15 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Secretary Ross called the meeting to order at 1:00 p.m.

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

Ms. Ross explained to the applicants and interested parties that there were only four board members present today; the Chair, Mr. Van De Wiele, is not able to be in attendance today. Most motions the Board makes it will require an affirmative vote of three of the remaining four members. When there is less than a full Board, the Board will entertain a request to continue agenda items to a later meeting date; the next meeting date is June 25th, at which all five members of the Board may be present. Ms. Ross asked if there were any applicants or an interested party would like to postpone his or her hearing until the next meeting he or she could do so. The audience nodded their understanding and no one came forward to request a continuance.

Ms. Ross stated that in Mr. Van De Wiele's absence the by-laws allow the Board to vote on who can chair the meeting. Ms. Ross called for a vote for the Chair of today's meeting.

On **MOTION** of **RADNEY**, the Board voted 3-0-1 (Ross, Radney, Shelton "aye"; no "nays"; Bond "abstaining"; Van De Wiele absent) to have Mr. Bond Chair the meeting of June 11, 2019.

Mr. Bond stated that he will be recusing on Item #12, leaving a three-person panel. If the applicant or an interested party would like a continuance, please state so. No one requested a continuance.

Staff has requested a Continuance for Item #15 on today's agenda.

NEW APPLICATIONS

22659—Nathan Young

Action Requested:

Variance of the minimum lot width (Table 5-3). **LOCATION:** 124 East 26th Street South (CD 4)

Presentation:

Staff requests a continuance to June 25, 2019 for additional relief needed.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **CONTINUE** the request for a Variance of the minimum lot width (Table 5-3) to the June 25, 2019 Board of Adjustment meeting; for the following property:

LT 2 BLOCK 14, RIVERSIDE DRIVE ADDN THIRD AMD, City of Tulsa, Tulsa County, State of Oklahoma

UNFINISHED BUSINESS

22626—Barbara Carson

Action Requested:

Variance to reduce the required street setback in an RS-3 District (Table 5-3).

LOCATION: 252 South Quebec Avenue East (CD 4)

Presentation:

The applicant requests a continuance to June 25, 2019.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **CONTINUE** the request for a Variance to reduce the required street setback in an RS-3 District (Table 5-3) to the June 25, 2019 Board of Adjustment meeting; for the following property:

LT 281 BK 1, RODGERS HGTS SUB, City of Tulsa, Tulsa County, State of Oklahoma

MINUTES

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond, Ross, Radney, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the **Minutes** of the May 14, 2019 Board of Adjustment Special meeting (No. 1228).

UNFINISHED BUSINESS

22617—Jarrett Metzler

Action Requested:

Variance to allow a detached accessory structure to exceed 500 square feet or 40% of the of the floor area of the principal structure (Section 45.030-A); Variance to permit an accessory building to exceed 30% coverage of the floor area in the rear setback (Section 90.090-C-2); Variance to allow an accessory structure to exceed 10 feet in height to the top of the top plate (Section 90.090.C-2); Special Exception to exceed the allowable driveway width within the right-of-way (Section 55.090-F.3). **LOCATION:** 7431 East 7th Street South (CD 3)

Presentation:

Jarrett Metzler, 7431 East 7th Street, Tulsa, OK; stated that after the last meeting he took the Board's advice regarding the hardship for this request. He is a homeowner that would like to build a garage for cars that he has owned for a long time; one of them he has had for over 30 years. Mr. Metzler stated that he has a disability and that is why he is requesting for the lift for the cars because he cannot lift like a normal person is able to do. Mr. Metzler stated he contacted a Federal Attorney in Washington affiliated with the American's with Disabilities Act. The attorney told him that since the request is for a residential area it falls under the Fair Housing Act. Mr. Metzler stated he then contacted HUD and they put in contact with a Federal Attorney in Michigan. That attorney stated this is a request for reasonable accommodation; it falls under the Fair Housing Act, Title 25, Article 4A, Section 1452, definition 16B. This states that it shall be an unlawful discriminatory housing practice for any person or any agent or employee of such person a refusal to make reasonable accommodation in rules, policies, practices, or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling. As a person with a disability, and he has had the disability his entire life, and he is the President of the Board of Directors for Ability Resources; a nonprofit agency in Tulsa that helps people with disabilities to live independently. Mr. Metzler stated that he meets the Federal guidelines, meets the State guidelines, and he believes he meets the City guidelines. Both attorneys stated with reasonable accommodation, the reason it is reasonable is because the burden of accommodating the disability falls on him; the cost, the building, the lifts, the higher walls is all on him. The only thing the City has to show is whether it is a hardship to the City. Mr. Metzler thanked the Board for their consideration in this request.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Radney stated that she believes it is a reasonable accommodation to allow Mr. Metzler to construct the structure he has requested. The biggest thing she thinks, from the standpoint of neighborhood aesthetics, is the extra curb cut. Ms. Radney stated that she has actually driven the neighborhood a number of times looking at the examples that were cited at the last meeting, and even in that regard it is not particularly exceptional for that neighborhood; there are a lot of people with RVs, boats, and other equipment that are being parked under various structures. She does not see this as being detrimental to the neighborhood.

Ms. Shelton agreed with Ms. Radney and stated that she too is concerned about the second curb cut.

Mr. Bond stated that at the previous meeting his sticking point was the hardship, and today the applicant has changed his view of the hardship.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a **Variance** to allow a detached accessory structure to exceed 500 square feet or 40% of the of the floor area of the principal residential structure to be increased from 521 square feet to 1,500 square feet (Section 45.030-A); **Variance** to permit an accessory building to exceed 30% coverage of the floor area in the rear setback to be increased from 390 square feet to 700 square feet (Section 90.090-C-2); **Variance** to allow an accessory structure to exceed 10 feet in height to the top of the top plate to be increased to 12 feet (Section 90.090.C-2); **Special Exception** to exceed the allowable driveway width within the right-of-way (Section 55.090-F.3), subject to conceptual plans 2.13, 2.14, 2.15, 2.16, 2.17, 2.18, 2.19, 2.20, 2.21 and 2.22. The Board finds the hardship to be that this would be the minimum accommodation that will be needed to satisfy the homeowner's needs per the ADA and his rights per the Federal Fair Housing laws. 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. 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:

LOT-14-BLK-10, PAMELA ACRES, City of Tulsa, Tulsa County, State of Oklahoma

22619—Christian Harvell

Action Requested:

Variance to reduce the minimum ground floor ceiling height requirement (Table 10-4); **Variance** to reduce the minimum ground floor window transparency requirement

(Table 10-4). **LOCATION: TENANT SPACE:** 1121 South Lewis Avenue East
(CD 4)

Presentation:

The applicant has withdrawn the application.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; on the following property:

LTS 15 - 21 BLK 4, BOSWELL'S ADDN, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

22649—Elizabeth Koelle

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: 1215 South Houston Avenue West (CD 4)

Presentation:

Elizabeth Koelle, 1215 South Harvard Avenue, Tulsa, OK; stated she has received her OMMA license and a license from OBDM to legally distribute medical marijuana. In order to open the doors, she needs permission from the Board.

Ms. Ross asked Ms. Koelle if the landlord was aware of the proposed use. Ms. Koelle answered affirmatively.

Interested Parties:

Ken Vonada, 1217 South Houston Avenue, Tulsa, OK; stated his landlord and the landowner has requested he appear on his behalf because he is out of town. Mr. Vonada stated that he owns the barbershop next door to the subject site. Mr. Vonada stated that he and the landlord's request is that there be adequate parking for the potential customers; he has three or four spaces for his barbershop. Mr. Vonada stated there were issues with the previous tenant because they were always parking in his spaces.

Ms. Ross stated that is a landlord issue and the landlord has control over those type of issues not the Board of Adjustment. Mr. Vonada stated that his barbershop is right next door to where the dispensary will be located, and they are two separate buildings so the landlords are different.

Bill Andrew, 1701 South Quaker Avenue, Tulsa, OK; stated he attends Holy Trinity Greek Orthodox Church, which is around the corner from the subject site, serves on the parish counsel and is the Treasurer for the church. Mr. Andrew stated that he is against this request. Everything is so new with the dispensaries that the City probably still does not know the ramifications of how these businesses might affect the surrounding neighborhoods and/or other businesses. He believes that the dispensary has the so-called right to be there but in the uncertainty of its ramifications the close proximity to an established neighborhood rather than a strong mixture of businesses, given the newness and the concerns of that he would ask the Board to deny this application. Mr. Andrew wishes the City would have made the law more restrictive for these businesses to properly protect adjoining houses and other property owners. He thinks with activities of the children in the church and other activities he thinks that should be given consideration to have in the denial of this application.

Ms. Ross stated that all the Board is being asked to do today is to verify that there is not another marijuana dispensary within a 1,000 feet of this proposed location. The concerns the interested parties have, although valid, the Board has no control in the decision of those things. If there is not another marijuana dispensary within a 1,000 feet, the Board typically will approve the request of spacing verification.

Ms. Radney stated that she too is sensitive to the dispensaries that are located within the CH buildings that are adjacent to a community. She lives in such a neighborhood that has a dispensary at the end of her street. She would encourage the applicants is to remember that all of this is very new to everyone, to the extent that people can be the best neighbor that they can, whether that is to adjacent businesses who have concerns about parking or whether it is residences or churches around the area. The Board is hopeful that the dispensaries will be good citizens and good neighbors.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele 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:

**S 43 OF W 97.5 LT 4 BLK 15; S 10 OF W 97 .5 LT 3 & N 29 OF W 97.5 LT 4 BLK 15,
LINDSEY THIRD ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

22650—Julio Miranda

Action Requested:

Special Exception to permit a carport in the street setback and street yard, and to exceed the allowable height requirements and to exceed 20 feet in length (Section 90.090-C1). **LOCATION:** 4233 North Evanston Place East (CD 1)

Presentation:

Julio Miranda, 4233 North Evanston Place, Tulsa, OK; stated he has purchased a new car and he would like to have a cover to park it under to keep it out of the weather. The carport will be 16'-0" long x 14'-0" wide x 9'-0" tall. The carport will be constructed with metal poles concreted into the ground and the remaining part of the structure will be wood and will be open on all four sides.

Ms. Ross asked Mr. Miranda if he was aware of any other carports in the neighborhood. Mr. Miranda stated there are other carports north of his house.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a Special Exception to permit a carport in the street setback and street yard, and to exceed the allowable height requirements and to exceed 20 feet in length (Section 90.090-C1), subject to conceptual plans 6.13, 6.14, 6.15, 6.16 and 6.17 of the agenda packet. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

**LT 24 BLK 10, LAKE-VIEW HGTS AMD RESUB PRT B1-2 & B3-6, City of Tulsa,
Tulsa County, State of Oklahoma**

22651—Robin Stanley

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: 8010 East 106th Street South (CD 8)

Presentation:

The applicant was not present. Mr. Bond moved this item to the end of the agenda to allow the applicant time to arrive.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time.

22652—Robin Stanley

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: 6026 South Memorial Drive East – **OVERALL PARCEL** ---

TENANT SPACE: 6024 South Memorial Drive East (CD 7)

Presentation:

The applicant was not present. Mr. Bond moved this item to the end of the agenda to allow the applicant time to arrive.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time.

22653—Mary Jo Masterson

Action Requested:

Special Exception to allow a second story addition to a non-conforming structure due to the less than 25-foot front setback (Section 80.030-D). **LOCATION:** 1314 West Easton Street North **(CD 4)**

Presentation:

Rachel Scott, 323 North Rosedale Avenue, Tulsa, OK; stated Mary Jo Masterson is her mother and she had to go out of town, so she is before the Board today representing her. The plans are to add a second story to the existing house and the issue is that there is not enough setback from the curb. The house was built in the 1920s and all the houses on that street are the same distance from the curb. There are also other houses in the neighborhood that are two story so it would fit into the character of the neighborhood.

Ms. Ross asked Ms. Scott if she knew if the neighbors on either side of the subject site had any objections to this request. Ms. Scott stated that she was not aware of any objections.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a Special Exception to allow a second story addition to a non-conforming structure due to the less than 25-foot front setback (Section 80.030-D), subject to conceptual plans 9.11, 9.12, 9.13 and 9.14 of the agenda packet. The Board finds that the requested Special Exceptions 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:

S495 W880 E/2 NW SEC 17 19 14, City of Tulsa, Tulsa County, State of Oklahoma

22654—Terance McDonald

Action Requested:

Variance to allow less than a 35-foot front setback (Section 5.030-A) in a RS-1 District. **LOCATION:** 6906 South Gary Avenue East **(CD 2)**

Presentation:

Eric Sack, 3530 East 31st Street, Tulsa, OK; stated he is a Civil Engineer and a Land Surveyor, and he is representing Mr. McDonald. Mr. Sack stated that the Letter of Deficiency from the City of Tulsa states that a Variance is required, or a site plan would need to be changed but this is an existing structure on a cul-de-sac. Mr. Sack stated that he has provided letters of support from the immediate neighbors around the bulb of the cul-de-sac where the subject property sits. The house is located in a RS-1 District so this deals with very large lots, larger houses and the bulb of the cul-de-sac which happens to be around a 90-degree corner, so the geometry is such that there are only four houses around the bulb of the cul-de-sac. The house was built in 2002, occupied by the McDonald family, and at the time the house was constructed there was an error made in the layout of the house prior to its construction. The garage is about three feet across the building setback line and the front porch is just over nine feet across the building setback line. The required setback in a RS-1 District is 35 feet. A surveyor was not performed prior to the homeowners occupying the property, they live in the house for 17 years and when they put the property up for sale and a mortgage inspection is performed. It is discovered that the house encroaches across the setback line. This is an existing condition that has existed for 17 years. At the time the house was built the contractor did not catch the error, survey was not prepared, building inspectors did not catch the error, the homeowners did not catch it, and the neighbors did not complain about it. So, it has existed in the neighborhood in the cul-de-sac for 17 years and it was only caught just recently. To ensure that this is the only discrepancy with the Zoning Code the owner of the property applied for a zoning clearance with the City of Tulsa. The site plan was reviewed, the mortgage inspection was submitted and as the Letter of Deficiency shows the only deficiency noted is the setback and that the structure encroaches over the setback requirement; the house meets all other requirements for a RS-1 District. There is no expansion planned and no future expansion planned. The nature of the geometry of a cul-de-sac is such that there is not the same visual as looking down a straight street; it does not look out of place with the properties around it and everything fits.

Ms. Ross asked Mr. Sack if Mr. McDonald had the house built or purchase it from someone? Mr. Sack stated a builder built the house and Mr. McDonald occupied it from the builder. Mr. Sack stated that he does not know if it was a custom-built house for the McDonald's or if the builder built and the McDonalds purchased it.

Mr. Sack stated that to him it is obvious how the error was made. Typically when a structure is staked for a builder, the outside corners of the main envelope of the structure are staked and he believes the south corner of the garage was staked, then the intersection of the front building, and then the far north corner of the front was staked because those points are all behind the building setback line. Someone did not think about the fact that the building line is curved; it follows the bulb of the cul-de-sac. So, the tangents between the points end up overlapping in the middle.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Radney stated this is a prime example of why people should always get title insurance.

Mr. Bond stated that this house is in a cul-de-sac, it does not have a line sight issue to deal with, and there have been houses in the area that the Board has granted setback relief for.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a **Variance** to allow less than a 35-foot front setback (Section 5.030-A) in a RS-1 District, subject to conceptual plans 10.11, 10.12 and 10.13 of the agenda packet. The Board has found the hardship to be that there was an error in the site plan at the time of construction. The Variance approval is to be only applied to the existing structures, as built. 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:

LOT-7-BLK-3, TIMBERLANE HILLS ADDN RESUB PRT B1 BRANIFF HILLS, City of Tulsa, Tulsa County, State of Oklahoma

22655—Joshua Schrock

Action Requested:

Verification of the 300-foot spacing requirement for a bar from schools, and religious assemblies and 50 feet from an R-zoned lot; Variance to allow a bar

within 300 feet of a public park (Section 40.050-A.1, 2). **LOCATION:** 507 South Main Street (CD 1)

Presentation:

Joshua Schrock, 8915 South Erie Avenue, Tulsa, OK; stated he would like to open a brewery that would be categorized as a brew pub. Chapman Green is about 280 feet from the front door of the subject site thus the request for the Variance. He plans on this being a small brewery with a family friendly environment.

Ms. Ross asked Mr. Schrock what other businesses are within the 300-foot radius. Mr. Schrock stated there is Boston Title and Abstract, Bison Company; which he thinks are technically restaurants but their bars a prominent.

Ms. Ross asked Mr. Schrock if he was planning on serving food. Mr. Schrock stated that he was not.

Mr. Schrock stated that he believes the qualification for a brew pub is less than 5,000 barrels a year and he plans to do less than 500 barrels.

Mr. Bond asked Mr. Schrock if he had heard of any community concerns. Mr. Schrock stated that he has not. Mr. Schrock stated that he has visited with several business owners in the area and they are excited to have a brewery in the area. There are a lot of people that live in the Central Business District (CBD) that are excited about having a brew pub within walking distance.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) I move that based upon the facts in this matter as they presently exist, we **ACCEPT** the applicant's verification of spacing for the proposed bar from schools, religious assemblies and 50 feet from the R-zoned lot, subject to the action of the Board being void should another conflicting use be established prior to this adult entertainment establishment. And to **APPROVE** the request for a **Variance** to allow a bar within 300 feet of a public park (Section 40.050-A.1, 2), subject to conceptual plans 11.9 and 11.10 of the agenda packet. The Board finds the hardship to be the proposed business is located in the Central Business District of downtown Tulsa and there is a park located in the urban district. The Variance approval is to be only applied to the existing structures, as built. 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:

N50 LT 7 BLK 148, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma

22656—Ed Sharrer

Action Requested:

Variance to reduce the street (rear) setback requirement in an RS-3 District (Table 5-3). **LOCATION:** 1719 West Easton Court North **(CD 4)**

Presentation:

An interested party stood and stated that a representative of the neighborhood association has yet to arrive.

Mr. Bond moved this item to the end of the agenda to allow the neighborhood representative time to arrive.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time.

22657—Claude Neon Federal Signs

Action Requested:

Variance to allow a sign to project above the parapet wall (Section 60.040-C).

LOCATION: 120 North Elgin Avenue East (CD 1)

Presentation:

James Adair, Claude Neon Federal Signs, 7508 East 77th Street, Tulsa, OK; stated he is speaking on behalf of VAST Bank, currently known as Valley National Bank. The bank would like to add signage to the new downtown bank building. If the building were one block south it would be in the Blue Dome District and the bank would not require a Variance. There are two sets of individual letters and two logos so there would be four signs total. The height, size, and square footage complies with the Code. The steel for this sign was built into the building structure.

Ms. Ross asked Mr. Adair to state his hardship for the request. Mr. Adair stated that the building is only one block from the Blue Dome District, and as downtown Tulsa develops there will be more projecting signs, more roof signs because it shows growth and the size of the city.

Mr. Bond asked Mr. Adair if it was the intent in talking about a sign on a parapet wall to keep a builder from erecting a massive parapet wall to erect a sign on? Mr. Adair stated the parapet wall in the sign code does not allow signs to go above the parapet wall. The intent was to keep from having an irregular shape that takes away from the appearances. There is a maximum height of three-square feet unless the facia is less than three and the Code will allow a sign per the sign code. Even on a one-story building a sign cannot go above the parapet wall.

Mr. Bond asked Mr. Adair if the sign was to be erected on the architectural features. Mr. Adair answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION of ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a Variance to allow a sign to project above the parapet wall (Section 60.040-C), subject to conceptual plans 13.17, 13.18, 13.19, 13.20, 13.21, 13.22, 13.23, 13.24, 13.25 and 13.26 of the agenda packet. The Board finds the hardship to be the building size will not allow a sign of appropriate size in relation to the building and the lack of visual acuity of the sign from surrounding buildings. 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:

LTS 1 - 3 BLK 44, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma

22658—Claude Neon Federal Signs

Action Requested:

Variance of the maximum sign height for a projecting sign (Section 60.080-D).

LOCATION: 2 North Elgin Avenue East (CD 1)

Presentation:

James Adair, Claude Neon Federal Signs, 7508 East 77th Street, Tulsa, OK; stated the height relief is requested due to the fact that in the sign code free-standing signs, monument signs, and projecting signs are grouped in the same category as far as square footage, size, and height. The sign code states that the sign maximum at the property line is 25 feet, but because there is a building wall the sign cannot go backward. The sign code also has a minimum for projecting signs of the distance between grade level to the bottom of the sign which protects citizens from walking or equipment that would be underneath the sign. The distinguishable thing about projecting signs is that generally copy has to be stacked and cannot be made wide to display a message. VAST Bank is providing public parking for additional parking downtown for restaurants, the ballpark, and hotels. They expect to open sometime in August or shortly thereafter. Mr. Adair stated the hardship is if the sign was made 20 feet it would only be five feet off the ground, and that would be a safety hazard. The sign will not extend past the parapet wall in height.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a **Variance** of the maximum sign height of 25 feet for a projecting sign, to be installed 36.5 feet above grade with a 40 foot setback from North Elgin Avenue (Section 60.080-D), subject to conceptual plans 14.17, 14.18, 14.19 and 14.20 of the agenda packet. The Board finds the hardship to be the visibility for parking signage in a very pedestrian built area of downtown. The sign is a vertical sign it is intended to be seen by the people traveling to and from the area. 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:

PRT BLK 56 BEG 15NE SWC LT 4 TH NW131.90 NE134 NW168.10 NE11 SE132 NE140 SE168 SW285 POB BLK 56, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma

22660 – Kevin Pattah

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: 7111 South Mingo Road East – **OVERALL PARCEL** --- **TENANT SPACE:** 7117 South Mingo Road East (CD 7)

Presentation:

Evan Way, Attorney, 324 North Robinson Avenue, Oklahoma City, OK; stated he is representing the applicant, Mr. Kevin Pattah. Mr. Way stated the applicant has provided an affidavit from the landlord saying that he has an exclusivity for operating a dispensary.

Ms. Ross stated that the Board has received another affidavit from Joel Thompson stating that a current tenant in this shopping center, Buffalo Fine Jewelry, holds current license from the State of Oklahoma to sell legal medical marijuana products, however, it is a violation of Buffalo Fine Jewelry's lease with LaFortune Properties to use the space for the sale of legal medical marijuana products.

Mr. Way stated that the affidavit is stating that Buffalo Fine Jewelry does not have the authority to operate per their contractual lease agreement with the landlord. It is kind of a distinction with Oklahoma Medical Marijuana Authority, they do not look into whether a person is authorized to have a license at their location. If a person wants to apply for a license to grow marijuana, cultivate marijuana or process marijuana and that person used their home address the OMMA would approve it because they do not do a site inspection to make sure the site complies with the Zoning Code. That relies with the municipality that has the zoning authority. So, Buffalo Fine Jewelry was able to apply through OMMA but that does not mean they have the right to dispense medical marijuana. Also, they do not have their Oklahoma Bureau of Narcotics registration to lawfully dispense from their location.

Mr. Bond asked if what counts is actual occupancy? Is it a race to occupancy once the consent has been given from the City? Mr. Swiney stated this is the question that came up in a previous meeting; it was asked when does the right vest in a dealer to operate? It is occupancy when the establishment is up and running and begins to sell. Mr. Swiney thinks the affidavit is assuring the Board that there will not be any other operations within the 1,000 feet of Canvest, which is the applicant. He also thinks the landlord is saying, yes there is another company that has a license however they cannot operate because it would be in violation of the lease.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Radney stated that she does not ascribe to the billboard philosophy of how to determine what establishes a business that has invested ability therefore, she has an issue.

Ms. Ross stated that Buffalo Fine Jewelry does not have the ability to sell per their lease to sell these products. So, they are a jewelry store that used their address for a license

to sell product that they are not allowed to sell. Most commercial leases state what the use in a tenant space can be, and it sounds like that the landlord is saying that Buffalo is not approved to use the space to sell medical marijuana products.

Ms. Radney agreed with Ms. Ross, but from a jurisdictional standpoint she does not think that it has been adequately determined what the Board is to use; who has standing?

Mr. Bond stated that if Buffalo Fine Jewelry came forward today to object this application with a Certificate of Occupancy from the City, it would prove that they actually had permission to have a transaction. That is not present today, so barring that all the Board is saying is that a person is able to do this, if someone comes forth first with prior authorization from the State and City then the application would potentially be void.

Ms. Radney stated that would persuade her to agree with this application, but not on the basis of the argument that was put forward first. For her it would be that this is a viable business; they have a valid license, a valid lease, they have exclusive provision from their landlord, and they are the first to have the 1,000-foot verification.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) I move that based upon the facts in this matter as they presently exist, we **ACCEPT** the applicant's verification of spacing to permit a medical marijuana dispensary subject to the action of the Board being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary; for the following property:

LT 1 LESS BEG 330.01N SWC TH N282.67 TH ON CRV RT 47.24 SW28.34 S292.79 W10 POB BLK 1,EAST POINTE CENTER, City of Tulsa, Tulsa County, State of Oklahoma

22651—Robin Stanley

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: 8010 East 106th Street South (CD 8)

Presentation:

The applicant is not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **CONTINUE** the request for a Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) to the June 25, 2019 Board of Adjustment meeting; for the following property:

**LTS 21 & 22 BLK 1, AVALON PARK ON MEMORIAL PRT RSB TRINITY ADD AMD,
City of Tulsa, Tulsa County, State of Oklahoma**

22652—Robin Stanley

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: 6026 South Memorial Drive East – **OVERALL PARCEL** ---

TENANT SPACE: 6024 South Memorial Drive East (CD 7)

Presentation:

The applicant is not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 4-0-0 (Bond, Radney, Ross, Shelton "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **CONTINUE** the request for a Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) to the June 25, 2019 Board of Adjustment meeting; for the following property:

**PRT LT 1 BLK 1 DEBORAH ADD & PRT LT 13 BLK 1 THE FALLS ADD BEG NEC
LT 2 BLK 1 DEBORAH ADD TH N137.02 W233.63 S287 E75.29 N150 E160
POB,THE FALLS, DEBORAH ADDN, City of Tulsa, Tulsa County, State of
Oklahoma**

22656—Ed Sharrer

Action Requested:

Variance to reduce the street (rear) setback requirement in an RS-3 District (Table 5-3). LOCATION: 1719 West Easton Court North (CD 4)

Mr. Bond recused and left the meeting at 2:35 P.M.

Presentation:

Ed Sharrer, 1719 West Easton Court, Tulsa, OK; stated he lives in the house with his wife and two sons; a two bedroom and one bath. His wife purchased the house ten years ago before they met and were married. He would like to add another bedroom and bathroom; about a 360 square foot addition on the rear. Mr. Sharrer stated the hardship is that he has a non-conforming lot; the lot width is 50 feet but is only 104 feet deep which is below the minimum standard for the RS-3 zoning. Not only is the lot non-conforming but there is also street frontage on both the front yard and the back yard. The house currently sits 40 feet back from Edison Street which is a second arterial, and the Code requires the house to be set back 35 feet which means there would only be five feet for an addition. The house is 100 years old this year and he does not think it would be the best idea to add a second story to that old of a structure. The proposed addition would meet the required rear yard setback of 20 feet. Other houses on the street have detached garages or modified garages that have 15 to 25 feet setbacks. He proposed to meet the required rear setback of 20 feet which would be in character with what is happening on the rest of the block and it would not be injurious to Edison because there are no plans to widen it and there is a full sidewalk on both sides of the street.

Ms. Ross asked Mr. Sharrer if he had verified if there were any easements with active lines running through them. Mr. Sharrer stated there are no easements, there is a power line buried at a diagonal for his house, so he knows he will have to make those adjustments.

Ms. Shelton asked Mr. Sharrer if he had verified the green space and livability area requirement. Mr. Sharrer stated that has not been brought up and the Letter of Deficiency from the City only brought up the setback.

Mr. Wilkerson stated that in the Zoning Code, where a lot is a non-conforming lot there is an allowed 50% reduction in the open space requirement.

Mr. Swiney asked Mr. Sharrer about the lady that was in attendance representing the neighborhood association. Mr. Sharrer stated he spoke with her and she lives in the Skyline Ridge neighborhood on the north side of Edison. She was confused about what the application was concerning; she thought there was going to be a modification to

Edison Street. Mr. Sharrar stated that when she left her only request was to have a copy of his drawings so she could show them to the neighbors, and he agreed.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Radney stated this looks like a wonderful addition and she is happy that Mr. Sharrar is going to retain the original structure and to add on to it. This is a special case where the property abuts two streets, and she does not have a problem with the 20-foot setback.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 3-0-1 (Radney, Ross, Shelton "aye"; no "nays"; Bond "abstentions"; Van De Wiele absent) to **APPROVE** the request for a **Variance** to reduce the street (rear) setback requirement in an RS-3 District (Table 5-3), subject to conceptual plans 12.20, 12.21, 12.22, 12.23, 12.24 and the architectural drawings of the agenda packet. The Board finds the hardship to be the non-conforming smaller lot size and the additional burden of having street frontage on both the front and the rear of the lot. 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 5 BLK 1, IRVING PLACE, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Bond re-entered the meeting at 2:46 P.M.

OTHER BUSINESS

Election of Vice Chair due Ms. Carolyn Back's retirement from the Board.

On **MOTION** of **ROSS**, the Board voted 3-0-1 (Radney, Ross, Shelton "aye"; no "nays"; Bond "abstentions"; Van De Wiele absent) to elect Mr. Austin Bond as Vice Chair of the Board of Adjustment.

NEW BUSINESS

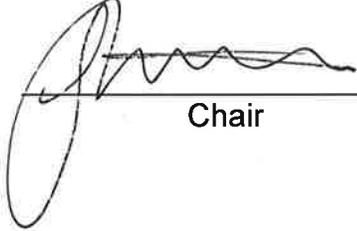
None.

BOARD MEMBER COMMENTS

The Board welcomed Ms. Jessica Shelton to the Board of Adjustment; today was her first meeting.

There being no further business, the meeting adjourned at 2:48 p.m.

Date approved: 7/9/19



Chair