

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1236
Tuesday, September 10, 2019, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

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

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on September 5, 2019, at 10:11 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.

*****.

MINUTES

On **MOTION** of **ROSS**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the August 27, 2019 Board of Adjustment meeting (No. 1235).

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UNFINISHED BUSINESS

22716—Jordan 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 zoning district (Section 15.020-G, Table Note [2]). **LOCATION:** 9140 South Braden Avenue East (CD 8)

Presentation:

The applicant has withdrawn the request.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

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

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NEW APPLICATIONS

22727—Kathy Hayward

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: 1333 North Utica Avenue East (CD 1)

Presentation:

Kathy Hayward, 1333 North Utica Avenue, Tulsa, OK; no formal presentation was made but the applicant was available for any questions.

Mr. Van De Wiele stated the Board has a copy of the applicant's license on page 3.9 in the agenda packet, and a spacing exhibit on page 3.8.

Mr. Van De Wiele asked Ms. Hayward if she was aware of any established dispensary within the 1,000-foot radius. Ms. Hayward stated that she is not aware of any. Mr. Van De Wiele asked Ms. Hayward if she was aware of any other license within the 1,000-foot radius. Ms. Hayward stated that she is not aware of any.

Mr. Van De Wiele asked Ms. Hayward if the closest dispensary was Mary Jane's Treehouse located on Pine that is noted on the spacing exhibit. Ms. Hayward answered affirmatively.

Ms. Ross asked Ms. Hayward what the current use of the property is. Ms. Hayward stated that there is her dispensary and a security company located inside the building.

Mr. Van De Wiele asked Ms. Hayward if she was leasing only a portion of the building. Ms. Hayward answered affirmatively.

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) 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:

N/2 SW NW NE SEC 31 20 13, City of Tulsa, Tulsa County, State of Oklahoma

22728—Claude Neon Federal Signs – Ed Horkey

Action Requested:

Variance to permit a dynamic display in a CS District to be located within 200 feet of an RS-3 District (Section 60.100-F). LOCATION: 1228 West Apache Street North (CD 1)

Presentation:

Ed Horkey, Claude Neon Federal Signs, 1225 North Lansing, Tulsa, OK; stated this is a request for Metropolitan Baptist Church, which has a large property on the south side of West Apache Street. The church itself occupies quite a bit of acreage; the surrounding properties are mostly undeveloped except for the south side. To the west is the Tisdale Parkway, to the north is a PUD but it is zoned Commercial, and to the south there is a residential zoned area. The Code states that a dynamic display needs to be 200 feet away from the closest residential; the closest residential is in excess of 600 feet away. The display will be located on the West Apache frontage on the north side, and it is an area that is lower than the rest of the subject property. The Church would like to have a 48 square foot digital display.

Interested Parties:

Ray Owens, 2325 West 30th Street North, Tulsa, OK; stated he is the Pastor of the Metropolitan Baptist Church. Metropolitan Church has been in the community for over 100 years at multiple locations; the last eight years the church has been located on the subject property. The church has been a hub of the community and the message board will help the church share with the community what is happening in the church and what opportunities are available for them.

Comments and Questions:

None.

Board Action:

On **MOTION** of **ROSS**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; "nay"; no "abstentions"; none absent) to **APPROVE** the request for a **Variance** to permit a dynamic display in a CS District to be located within 200 feet of an RS-3 District (Section 60.100-F), subject to conceptual plans 4.9, 4.10, 4.11 and 4.12 of the agenda packet. The Board has found the hardship to be the large size of the lot and the distance from a true residential district. 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:

LOT 1 BLOCK 1, METROPOLITAN BAPTIST CHURCH, City of Tulsa, Osage County, State of Oklahoma

22729—Greenway Dispensary, LLC

Action Requested:

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

LOCATION: 9512 East Pine Street North (CD 3)

Presentation:

Alexander King, 20 East 5th Street, Suite 750, Tulsa, OK; stated he represents the Greenway Dispensary, LLC.

Mr. Van De Wiele stated the Board has a copy of the applicant's OMMA license on page 5.12 of the agenda packet, and the spacing exhibit is shown on pages 5.8 and 5.9.

Mr. Van De Wiele asked Mr. King if there were any other established dispensary or licenses within the 1,000-foot radius. Mr. King answered no.

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:

N140 W150 BLK 14 & S55 N195 W306.03 BLK 14, VAN ACRES ADDN AMD RESUB PRT B14, City of Tulsa, Tulsa County, State of Oklahoma

22730—Martin Yoho

Action Requested:

Special Exception to permit a manufactured home use in a residential district (Table 5-2.5); Special Exception to extend the one year time limit for a manufactured home to indefinitely (Section 40.210); Variance to allow the use of a non-all-weather parking surface to permit a gravel driveway (Section 55.090-F.1).

LOCATION: West of the NW/c of West Archer Street North and North 38th Avenue West (CD 1)

Presentation:

Martin Yoho, 5818 South 32nd West Avenue, Tulsa, OK; stated he recently purchased the subject property and is cleaning it up to get it ready to live on. He and his partner both have full time jobs with a lawn company on the side. He is a hard-working person without a lot of fluid money, so building a house is out of reach. The subject manufactured home will be a new one that is being financed. Mr. Yoho stated there are other manufactured homes in the surrounding area, and most of them look like they need to be hauled away.

Ms. Radney asked Mr. Yoho to explain his logic in needing a gravel driveway. Mr. Yoho stated that an asphalt or concrete driveway is out of his ability to pay for that currently.

Mr. Van De Wiele asked Mr. Yoho if there were other gravel driveways or gravel parking areas in the neighborhood. Mr. Yoho answered affirmatively.

Ms. Radney asked Mr. Yoho how large his lot is. Mr. Yoho stated that the lot is 80'-0" x 165'-0"; a little under a half acre. Ms. Radney asked Mr. Yoho if there had been a previous driveway. Mr. Yoho stated there is some sort of driveway, it is not paved or anything.

Mr. Yoho stated the property will never be used for anything because the City of Tulsa Water Department told him that a main would need to be run 266 feet, which is going to cost \$17,000 to get water to the property. The manufactured home company has a contractor that is going to dig a well for him to be able to live on the property and have water; the sewer tap is at the street and the water main is located on 38th.

Mr. Van De Wiele asked Mr. Wilkerson if that would be allowed. Mr. Wilkerson stated that typically that is a question that will be asked in the Permit Office.

Interested Parties:

Robert Mitchell, 3823 West Archer Street, Tulsa, OK; stated he is all for progress in the neighborhood and he has lived in the neighborhood for 20 years. He has seen trailer houses in the neighborhood, but the City moved out the almost all the trailer houses out leaving only five. Out of the five, two are boarded up and two are still being lived in, and the fifth trailer house he tore down himself. There are a lot of lots in the neighborhood that if this manufactured home were allowed to move in there would be more trailer houses going in; he has been approached about the process of putting in a trailer house in the neighborhood. Mr. Mitchell stated that his biggest concern is if this manufactured home is approved it could start all over again with trailers. He would rather see a house being built than see a trailer house moved onto a lot.

Mr. Van De Wiele asked Mr. Mitchell if there was a time period with a brand-new manufactured home that he would be agreeable to. Mr. Mitchell stated that he does not think it would matter. He is more concerned with not just this one but others coming in.

Rhonda Hensley, 5354 West 11th Place, Tulsa, OK; stated she is the President of the Charles Page Community Action Group. She has lived in the area for 55 years. There is a large group of people that gather once a month and these people are trying to revitalize the Charles Page area, she does not think a manufactured home would help revitalize the area. Ms. Hensley stated that she thinks a manufactured home would be a step backwards for the community.

Mr. Van De Wiele stated that the way this type of application works is the City only allows one year unless the Board grants an extension for that, and Mr. Yoho has asked to have his time extended indefinitely. The Board is usually reluctant to go indefinite. Mr. Van De Wiele asked Ms. Hensley if there was a time period with a brand-new manufactured home that she would be agreeable to. Ms. Hensley stated the area is in the flood zone and she does not think it would be good to have a manufactured home.

Joseph Owens, 21 North 38th West Avenue, Tulsa, OK; stated he has the same concerns as Mr. Mitchell. He has lived in the area since 1968 and there used to be more in the neighborhood than there is now. Mr. Owens stated that a person has moved in a travel trailer that he is living in that is located at 20 North 38th West Avenue. There are a lot of homeless people living in camps along the Katy Trail. Mr. Owens stated he is concerned about property values and would like to maintain a good quality of life.

Rebuttal:

Martin Yoho came forward and stated he has financed the lot and is tied to it at this point. Mr. Yoho stated he mows lawns for Habitat for Humanity and does a lot of things for the community. He is not looking to move into the area and let the place run down or do anything crazy. He will build a privacy fence around the property for his dogs, have a garden, have a nice place to live and he will take care of the place. He does not want to live in a mobile home park and if he could he would live in the country where he could have chickens. He does not have that option right now. Mr. Yoho stated that he understands the concerns, and he thinks maybe the Board could entertain a ten-year period.

Ms. Shelton stated that she just realized who Mr. Yoho is and she will abstain from this discussion.

Ms. Shelton abstained at 1:33 P.M.

Comments and Questions:

Mr. Bond stated that he spent a lot of time in the neighborhood during the floods helping with the voluntary evacuations. He saw the neighborhood as a place where people have lived for generations and it is an area where a lot of young people have come into and they are working hard to bring the neighborhood back. The neighborhood is on its way. Mr. Bond the neighbors have an objection to this case so he would be inclined not

to vote for this request. But he would also be inclined to continue this case if the applicant and the neighbors could reach a compromise on this request.

Ms. Radney stated the property is located in an unplatted area, it is in a flood zone and that could be an impediment to a stick-built house so a manufactured home, in some respects, isn't necessarily a bad way to go provided that it is well situated and landscaped. Some of the cases the Board has looked at recently were used manufactured homes that had a shorter lifetime and this one would be new. Aesthetically, if the manufactured home is properly placed and skirted it would not necessarily be obvious that it is different than the stick-built houses in the area. She agrees the neighbors are here and they care about their neighborhood, but she thinks it be important that the Board be respectful of that but this is a new neighbor that wants to become a new part of the neighborhood so maybe there is a way everyone could work out a site plan. Ms. Radney stated she is not a fan of the gravel driveway, maybe for a limited period of time but not indefinitely.

Mr. Van De Wiele stated that he would not be inclined to grant the Variance for the gravel driveway. He does not see anything peculiar about this piece of property that would justify a hardship for the driveway or parking surface if he were inclined to support the manufactured home. The Board has certainly seen, in areas that are up and coming and trying to rebuild, given the wrong use with a manufactured home can be an impediment to that effort. There was a similar request for a manufactured home many years ago near the subject property, and it does not appear to be one of those homes that the neighborhood would want to avoid. The fact that the manufactured home is brand new is a good thing, but he will not vote for an indefinite time period; he probably wouldn't be inclined to go over five years. He shares the notion of community discussion and something that people can get behind, as many as possible, because it would be a better result for everybody and better neighborhood relations.

Board Action:

On **MOTION** of ROSS, the Board voted 4-0-1 (Bond, Radney, Ross, Van De Wiele "aye"; "nay"; Shelton "abstaining"; none absent) to **CONTINUE** the request for a **Special Exception** to permit a manufactured home use in a residential district (Table 5-2.5); **Special Exception** to extend the one year time limit for a manufactured home to indefinitely (Section 40.210); **Variance** to allow the use of a non-all-weather parking surface to permit a gravel driveway (Section 55.090-F.1) to the September 24, 2019 Board of Adjustment meeting; for the following property:

**W175 SW SE SW NE LESS W80 & LESS S165 THEREOF & LESS N25 THEREOF
FOR RD SEC 4 19 12 0.31AC, City of Tulsa, Tulsa County, State of Oklahoma**

Ms. Shelton re-entered the meeting at 1:45 P.M.

22731—Phillip Summers

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: 10125 South Sheridan Road East, Suite A (CD 8)

Presentation:

Dan Patton, 1120 East 35th Place, Tulsa, OK; stated he represents the holding company for the group in this request.

Mr. Van De Wiele stated the Board has a copy of the applicant's OMMA license on page 7.14 and the spacing exhibit on page 7.16 in the agenda packet.

Mr. Van De Wiele asked Mr. Patton if he was aware of anything within the 1,000-foot radius that is an established dispensary or a license holder. Mr. Patton stated that he is not aware of any.

Interested Parties:

Tom Ganem, 6615 East 103rd Street, Tulsa, OK; stated his property is directly behind the proposed dispensary location. Mr. Ganem stated that next door to him is an in-home child day care and there a lot of children there throughout the day. Directly to the east is a Christian Jujitsu/Karate Academy. There are a lot of children in the area and the neighborhood is concerned about a medical marijuana dispensary coming in when there are a lot of children in the area. A study from the University of Denver shows that in areas that have medical marijuana dispensaries there is an increased crime rate. The neighborhood is concerned. The neighborhood wants to make sure that the businesses that are coming in are going to be good for the area because we are concerned about our children. About .95 miles away there will be a place called Lotus Grove medical marijuana dispensary, so it is not like the area needs to have multiple dispensaries within a one-mile area.

Mr. Van De Wiele stated that it is not that the Board does not care about those issues, these applications are different than some of the other things the Board does. This is truly just a mathematical review of the facts of whether there is another dispensary within a 1,000 feet of this one. As to whether or not there should be one here or shouldn't be one here is not within the purview of this Board, the spacing distance is the City Council's Board.

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 **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 BLK 1, VILLAGE SOUTH, City of Tulsa, Tulsa County, State of Oklahoma

22732—Gorilla Brothers Renovations, LLC

Action Requested:

Variance to increase the accessory building coverage percentage in the rear setback from 30% to 65% (Table 90-2). LOCATION: 1407 East 21st Street South (CD 4)

Presentation:

Rob Taylor, 1407 East 21st Street, Tulsa, OK; stated he would like to build a patio and a pavilion in the backyard. The yard is not very large and no matter how he tries to build something he will be pushing up against one of his neighbor's property line. He has lived in the house for 14 years and is trying to improve the property. He will be removing a couple of dead and/or dying trees which take vegetation away from the power lines. The neighbors have about a 12-foot privacy fence behind the house so it will obscure their views and it would not be an eyesore to them.

Mr. Van De Wiele asked Mr. Taylor if this was just a covered patio addition that will be east of the garage. Mr. Taylor answered affirmatively.

Mr. Van De Wiele asked Mr. Taylor if he had visited with the neighbors that live behind him on 20th. Mr. Taylor stated that he has not.

Mr. Van De Wiele asked Mr. Taylor if he had anything positive or negative from any of the neighbors. Mr. Taylor stated that he has not. Mr. Taylor stated that he has spoke with the next-door neighbors that are on his street to let them know what he is attempting to do.

Ms. Ross left the meeting at 2:00 P.M.

Ms. Radney asked Mr. Taylor if he used his existing garage for parking or for living quarters. Mr. Taylor he basically uses it for storage.

Mr. Bond asked Mr. Taylor how visible will the new addition be to the neighbors. Mr. Taylor stated they will not be able to see it at all, even if the 12-foot fence were not there, then they would only be able to see the peak of the structure.

Mr. Van De Wiele asked Mr. Taylor if he was tying the addition into the roofline of the garage. Mr. Taylor answered affirmatively.

Mr. Bond asked Mr. Taylor when his house was built. Mr. Taylor stated the house was built in 1925.

Interested Parties:

Mike Buerker, 14824 East 92nd Street North, Owasso, OK; stated the garage is gabled and the addition will not be a vaulted line, so the neighbors will not be able to see this from the front or the back. There are two different ways the addition can go because he is not sure what the City will require. He can either attach to the existing garage or he can have it standing on four legs.

Ms. Ross re-entered the meeting at 2:03 P.M.

Mr. Buerker stated the addition is going to match the existing structure; it will look the same. He would like to tie it back into the garage so there are not two posts coming off the side door to the garage because it will keep it more open.

Mr. Bond asked Mr. Buerker if he has worked on houses that have been built since there was a Zoning Code in Tulsa. Mr. Buerker answered affirmatively. Mr. Bond asked Mr. Buerker if he encountered challenges with houses that were built before the Zoning Code. Mr. Buerker stated his only issue would be the fact that existing structures and the five-foot setback off the fence line.

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 increase the accessory building coverage percentage in the rear setback from 30% to 65% (Table 90-2) in a RS-3 District, subject to conceptual plans 8.15, 8.16 and 8.17 of the agenda packet. The Board has found the hardship to be the location predating the Comprehensive Zoning Code and the limited availability of space. The additional structure be in keeping with the architectural style of the existing structure. In granting the **Variance** the Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;

- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

**LT 6 BLK 2,HALSEY'S SUB L7&18&19B28 PARK PLACE ADDN, City of Tulsa,
Tulsa County, State of Oklahoma**

22733—Ron Reddy

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: 3202 South Memorial Drive East (CD 5)

Presentation:

The applicant was not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D) to the September 24, 2019 Board of Adjustment meeting; for the following property:

**PRT LT 3 BEG 408.75N SECR TH W222 N286.5 E196.75 SE35.38 S261.37 POB,
INTERCHANGE CTR, City of Tulsa, Tulsa County, State of Oklahoma**

OTHER BUSINESS

None.

NEW BUSINESS

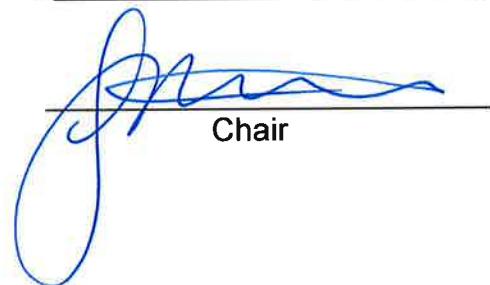
None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 2:07 p.m.

Date approved: 9/24/19

A handwritten signature in blue ink, appearing to read "Chair". It is written over a horizontal line that extends from the date approval line.