

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 476
Tuesday, November 19, 2019, 1:30 p.m.
Ray Jordan Tulsa County Administration Building
500 South Denver, Room 119
Tulsa, Oklahoma

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair
Hutchinson, V.Chair
Crall, Secretary
Dillard
Johnston

Wilkerson
R. Jones
Sparger

Tosh, Co. Inspector

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 14th day of November, 2019 at 10:00 a.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

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

MINUTES

On **MOTION** of **DILLARD**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the Minutes of October 15, 2019 (No. 475).

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

UNFINISHED BUSINESS

2651—Joseph Farris

ACCEPTANCE AND POSSIBLE ACTION REGARDING THE DISTRICT COURT'S DECISION ON APPEAL

Special Exception to permit Mining and Mineral Processing (Use Unit 24) in an AG District (Section 310). **LOCATION:** 14219 East 66th Street North

Mr. Charney asked Mr. Nolan Fields to explain the action of the unfinished business on the agenda. Mr. Nolan Fields advised the Board that when the initial matter was heard by the Board Mr. Charney was not present, so to be consistent with this appeal that has come back down from District Court Mr. Fields asked Mr. Charney to recuse and step out of the room to be consistent with the initial hearing. Mr. Charney agreed.

Mr. Charney recused and left the meeting at 1:36 P.M.

Presentation:

Don Hutchinson, Vice Chair of the County Board of Adjustment read the following:

On October 3, 2019 the following decision was made:

“Mining on the subject property is a permitted use sanctioned by the Tulsa County Zoning Code as long as, 1) the use conforms to the bulk and area requirements of the use district and 2) the 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. Tulsa County Zoning and Property Restrictions State Statute 340(B), 1680.3 (May 10, 2018) (<http://www.countyoftulsa-boa.org/zoning.code.html>). No empirical evidence was presented to substantiate a departure from of these factors. The TCBA must base its decision on “facts presented to the board.”
Mustang Run Wind Project, LLC, 2016 OK 113.Pargraph 30.

The Court finds that based on the record presented to the TCBA, (Tulsa County Board of Adjustment), the denial of the Special Exception sought by Cummings was arbitrary, unreasonable or capricious, as the evidence establishes that the requested use is compatible with the basic use authorized within the particular zone, and does not endanger the public health, safety, or general welfare of the area affected and is in harmony with the spirit and intent of the Code. The decision of the TCBA has worked or, if enforced, will work an unnecessary hardship on or create substantial harm or loss to Cummings. Accordingly, the Court reverses the decision of the TCBA and orders that TCBA grant the Special Exception.

Board Action:

On **MOTION** of **JOHNSTON**, the Board voted 4-0-1 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; Charney “abstaining”; none “absent”) to **APPROVE** with the understanding that pursuant to the District Court’s decision on Appeal, ordered and filed October 3, 2019, it found that ‘the evidence establishes that the requested use is compatible with the basis use authorized with the particular zone, and does not endanger the public health, safety, or general welfare of the area affected and is in

harmony with the spirit and intent of the code. The decision of the TCBA has worked or, if enforced, will work an unnecessary hardship on or create substantial harm or loss to Cummings. Accordingly, the Court reverses the decision of the TCBA and orders that TCBA grant the Special Exception.”; for the following property:

A Tract of Land that is part of the Southeast Quarter (SE/4) of Section 33, Township 21 North, Range 14 East, of the Indian Base and Meridian in Tulsa County, State of Oklahoma, and more particularly described as follows: beginning at the NE corner of the SE/4; thence S 00°00’30” E and along the E line of Said SE/4 1172.47 ft.; thence N 89°29’52” W a distance of 1035.24 ft.; thence S 00°34’19” W a distance of 407.68 ft.; thence N 89°50’50” W a distance of 99.79 ft.; thence S 01°21’52” W a distance of 28.51 ft.; thence 89°59’13” W a distance of 596.09 ft.; thence N 00°23’28” E a distance of 937.68 ft. to a point on the N line of the South Half of the NW/4 of the SE/4; thence N 89°56’07” and along said N line a distance of 405.85 ft. to a point in the west line of the East Half of the SE/4; thence N 00°02’37” E and along said west line a distance of 659.67 ft. to a point on the north line of the SE/4; thence 89°55’04” E and along said north line a distance of 1322.90 ft. to the Point of Beginning., OF TULSA COUNTY, STATE OF OKLAHOMA

Mr. Charney re-entered the meeting at 1:40 P.M.

NEW APPLICATIONS

2776—Gass Up Medical Marijuana Farm

Action Requested:

Use Variance to permit Use Unit 3, Agriculture, in a CS District (Section 710, Table 1). **LOCATION:** 7425 North Peoria Avenue

Presentation:

Natalie Jackson, 2145 South 74th East Avenue, Tulsa, OK; stated she would like to have a marijuana grow house located in the strip mall.

Mr. Charney asked Ms. Jackson if she currently owned the property or have it under contract. Ms. Jackson stated she does not own the property but will lease the property.

Mr. Charney asked Ms. Jackson if there was a building currently on the property. Ms. Jackson answered affirmatively.

Mr. Hutchinson asked Ms. Jackson about the layout of the proposal within the strip mall. Ms. Jackson stated that Suite A would be a dispensary, Suite B would be for processing, and Suite C is the former donut shop.

Mr. Hutchinson asked Ms. Jackson if the grow house was going to be inside. Ms. Jackson answered affirmatively.

Mr. Hutchinson asked Ms. Jackson how many plants she plans to cultivate. Ms. Jackson stated that it will be a small grow house, about six to ten plants.

Mr. Hutchinson asked Ms. Jackson if she was familiar with the Tulsa County Code that she will need to abide by. Ms. Jackson answered affirmatively.

Mr. Crall asked Ms. Jackson if she would have a problem if the Board assigned a time limit on the approval if they chose to approve this request. Ms. Jackson stated that would not be a problem for her.

Mr. Hutchinson asked Ms. Jackson if she knew how many square feet the nursery would be using. Ms. Jackson stated that she does not know.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a Use Variance to permit Use Unit 3, Agriculture, in a CS District (Section 710, Table 1), subject to conceptual plan 3.8 in the agenda packet. The approval will have a time limit of three years, November 2022. The Board finds the hardship to be that this is in CS zoning creating a fluent working pattern. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LOT 6 BLK 3, GOLDEN HILL ADDN, OF TULSA COUNTY, STATE OF OKLAHOMA

2777—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to permit Use Unit 13, Convenience Goods and Services, in an IM District to allow a Medical Marijuana Dispensary; Special Exception to permit Use Unit 27, Heavy Manufacturing and Industry, in an IM District to allow a Medical Marijuana Processing Facility that uses butane-based extraction methods (Section 910, Table 1). **LOCATION:** 7122 West. Charles Page Boulevard

Mr. Dillard recused and left the meeting at 1:56 P.M.

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated Quapaw Investments owns the subject property which is part of the Buford Family Investments. They have owned the subject property about six years, and this is the only building in the complex that they have had trouble doing anything with. To the east there is a portable storage building, a pole barn installer and the eastern wall of the building is solid concrete. There is a chain link fence that is six feet tall with barbed wire around the top of it, so it is already a secured property. To the west of the property is a pipe bending tenant and other heavy construction businesses. This site does not affect any residential areas and the property is located on Charles Page Boulevard which is a heavy commercial corridor. This will be butane extraction which has been used for hundreds of years. It is primarily used in the food business, the perfume business, the chemical business, the medical business and certain materials are extracted with the butane and it is a very effective way of extraction. Based on the location of the property and the surrounding uses the proposed use is not injurious to the neighborhood or the public welfare and will be in harmony with the spirit and intent of the Code. Mr. Reynolds respectfully requests the Board grant the Special Exception.

Mr. Charney asked Mr. Reynolds if the butane extraction process was a noisy or messy operation. Mr. Reynolds stated that it is none of those. Something that is comparable to it is an auto repair shop which has chemicals. When compared to similar things that people know and deal with regularly this is a much less intensive use, and no one will know what is going on.

Interested Parties:

Pamela Smithey, P. O. Box 757, Sand Springs, OK; stated she owns a business to the west of the subject property, and the scrap metal business is to the west of her. Ms. Smithey stated she has a commercial trucking company with 30 trucks with trailers coming in and going out of the facility daily. Plus, she has trucks with trailers coming into the facility that do not belong to her firm. Her concern is that in a 2 ½ mile area, from 6524 Charles Page to 200 East Morrow Road in Sand Springs there is two dispensaries. The City of Sand Springs has allowed a processing facility and another dispensary that will be going into the former K-Mart facility located at 1200 Charles

Page Boulevard. The K-Mart building is quite a large building and it will house a quite a large facility. Ms. Smithey stated she does not know why there is a need for four dispensaries and two processing facilities in 2 ½ miles of each other on the same road. She is concerned about the extra traffic that will be brought into the area. There is already enough traffic on Charles Page Boulevard, and accident-prone areas like Adams and Charles Page at 65th.

Mr. Charney asked Ms. Smithey to confirm that she owns the property to the west of the subject tract. Ms. Smithey stated she owns Smithey Environmental; Smithey Holdings owns the properties and environmental services.

Ms. Smithey stated she does not know how the butane processing works but Yaffee Metals has an automobile shredder that occasionally explodes. When it does explode it rattles the buildings so will that affect the butane system?

Rebuttal:

Lou Reynolds came forward and stated the Yaffee processing will not have any effect on this requested processing facility. There is not too much traffic on Charles Page Boulevard, but what this area of town needs is more traffic and more businesses. Mr. Reynolds does not think the area is over saturated with activity.

Mr. Hutchinson asked Mr. Reynolds to explain the butane process to the Board. Mr. Reynolds stated that dry marijuana is filled into a container, then fill that same container with butane and the butane separates the oil. The system is tightly closed and about 95% of the butane is recaptured allowing it to be reused again and again. What is not recaptured is then vented; similar to a car painting process.

Mr. Hutchinson asked Mr. Reynolds if the container that is being used for drying is equivalent in size of a paint booth. Mr. Reynolds answered affirmatively; it is about 12'-0" x 12'-0".

Mr. Charney asked Mr. Reynolds if any new curb cuts or points of ingress or egress points were being sought for this subject site. Mr. Reynolds stated they are not.

Mr. Hutchinson asked Mr. Reynolds if the dried medical marijuana is being shipped out or will be sold on the site. Mr. Reynolds stated that it would be both, but most of the product will be shipped.

Mr. Hutchinson asked if the product would be shipped by semi or a UPS type vehicle. Mr. Reynolds stated that it is a small vehicle, a suburban type vehicle.

Comments and Questions:

Mr. Hutchinson stated he can support this request because it is in an industrial area and there will be no new curb cuts.

Mr. Charney agreed. Mr. Charney stated the legal test is if the Board believes it would be injurious to the neighborhood, and he does not think it will be.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-1 (Charney, Crall, Hutchinson, Johnston “aye”; no “nays”; Dillard “abstaining”; none “absent”) to **APPROVE** the request for a Special Exception to permit Use Unit 13, Convenience Goods and Services, in an IM District to allow a Medical Marijuana Dispensary; Special Exception to permit Use Unit 27, Heavy Manufacturing and Industry, in an IM District to allow a Medical Marijuana Processing Facility that uses butane-based extraction methods (Section 910, Table 1), subject to conceptual plan 4.13 in the agenda packet. Finding the 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:

All that part of East Half of the Northwest Quarter of the Northeast Quarter (E/2 NW/4 NE/4) of Section Seven (7), Township Nineteen (19) North, Range Twelve (12) East, all lying South of the MK & T Railroad Right-of-Way and LESS the Charles Page Boulevard Right-of-Way, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof.

AND

That part of the Northeast Quarter of the Northeast Quarter (NE/4 NE/4) of Section Seven (7), Township Nineteen (19) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, being more particularly described as follows, to-wit:

BEGINNING at the Southwest corner of said NE/4 NE/4; thence North on the West line of said NE/4 NE/4 a distance of 556.90 feet to a point; thence Northeasterly at an angle of 110°15' to the left a distance of 70.57 feet to a point, said point being 581.70 feet North and 66.07 feet East of said Southwest corner; thence S 01°59'59" E a distance of 581.70 feet to a point on the South boundary line of said NE/4 NE/4; thence West on the South boundary line of said NE/4 NE/4 a distance of 86.36 feet to the POINT OF BEGINNING., OF TULSA COUNTY, STATE OF OKLAHOMA

Mr. Dillard re-entered the meeting at 2:10 P.M.

2778—Marc Najjar

Action Requested:

Use Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a Commercial General District (Section 710, Table 1). **LOCATION:** 19271 West Wekiwa Road

Presentation:

Timothy Janak, P. O. Box 52707, Tulsa, OK; stated he represents Mr. Najjar and the property owner, Super Moon, LLC. The property is located in far western Tulsa County and it has been vacant for some time. There is a warehouse on the property and that is where the growing facility will be located; the warehouse is approximately 4,975 square feet. Most of the land is zoned CG, Commercial General, however, a small portion is zoned AG thus the Variance request. About 1/3 of a mile to the east of the subject property is a trucking company, Mohawk Materials, that operates 18-wheelers and is a sand or cement facility. There is also a trailer park east of the subject property another 1/3 mile. Mr. Najjar is purchasing the subject property from Super Moon, and the intention is to have the growing facility in the warehouse. There will be an eight-foot fence erected around the warehouse and the manager of the facility will live in the house that is west of the facility. From that standpoint it is believed there will be adequate security for the grow house. There will be no retail.

Mr. Charney asked Mr. Janak to share the scope of the process. Mr. Janak stated that the plants within the warehouse will be substantial because it is planned to use the entire square footage of the warehouse for growing.

Mr. Hutchinson asked Mr. Janak if all 3-1/2 acres is zoned CG. Mr. Janak stated that parts of the property is zoned agriculture.

Interested Parties:

Michael Abboud, 19301 West Wekiwa Road, Sand Springs, OK; stated he owns 33 acres west of the subject property. As the request was presented by the applicant it sounds like the subject property is in the middle of an agricultural area but there are several residential properties near the site. Mr. Abboud stated that his back door is within 100 yards of the subject property and the neighbor across the street has property within 100 yards. Mr. Abboud stated he has several concerns and issues with the request. A concern is the decline of property values. The smell this type of facility will emit is best described as a skunk like smell. There are numerous chemicals involved in the cultivation of marijuana. Another concern is how the chemical runoff will be disposed of. He would like to know about the operating history of the applicant. The proposed ten-foot tall fence, not an eight-foot tall fence, will cause a blind spot on for traffic coming down 193rd pulling onto Wekiwa Road; Wekiwa is a heavily trafficked road. If this is such a good proposal, why is it necessary to erect a ten-foot tall fence around the facility? Mr. Abboud stated he has security concerns because the applicant had to file an application with OMMA and that it is on their website, so the site is published to the public and everyone will know it is there. Marijuana is not a normal agriculture crop due to the odor, the demand, and the need for high security. Mr. Abboud thinks this would also violate existing nuisance laws because of the odor alone. Mr. Janak stated the property is zoned CG and needs to be zoned heavy or medium industrial along the back. How will this be regulated and what is the recourse for the neighbors? This property is in the middle of a sleepy rural community with a lot of

homeowners in nice homes, not on the Sand Springs line in an industrial area. This request is not in the interest of the public good and is injurious to the neighborhood.

Mr. Charney stated the use being sought on the subject property is permitted as a matter of right in the AG District. This is not the manufacturing use like heard earlier; this is to allow the horticultural use not the manufacturing of the product.

Ms. Teresa Tosh stated that it is the Oklahoma Medical Marijuana Association (OMMA) that oversees the legislature. When the legislature was passed, they were behind and now they are trying to catch up. As they are putting into effect the rules that will govern the marijuana industry in all facets, the growing, the processing, and the dispensing, they now realize they need some way to improve their ability to make people comply. Now there is a letter of compliance which is filled out by a local jurisdiction which would be the County. The County will need to inspect facilities and so will OMMA make inspections once a year.

Mr. Nolan Fields stated that it is important to understand that the state's OMMA has the sole authority to regulate this industry. When it comes to compliance issues, that is the only facet the County has and that is similar to conforming compliance as for any commercial agricultural or other type of business that would have a new operation. The County really has nothing to do with the medical marijuana aspect of this industry, that is purely the State. If there are citizen concerns, it is important to follow up with the OMMA first and then Code compliance would fall under the County.

Roger Harrington, 19224 West Wekiwa Road, Sand Springs, OK; stated he lives directly across the street from the subject property and he has lived there 40 years. Mr. Harrington stated he has concerns with the ten-foot fence because his house would be about 65 feet from the fence. Another concern is the increase in traffic because there is a lot of traffic now. The site is about ¼ mile from the river and there is a creek on the subject property that dumps into the river, so he is concerned about water quality. There are children that use a school bus stop in the area and they also ride their bicycles up and down the road. Mr. Harrington stated the warehouse is a former truck repair shop, and the property has been run down for several years.

Rebuttal:

Timothy Janak came forward and stated that he is an attorney and Marc Najjar is his client, and he is the one with the license for the growing facility. Mr. Najjar is purchasing the subject property from Super Moon, LLC which is a real estate company. Mr. Janak stated he is before the Board today for the applicant but at the same time he represents Super Moon, LLC.

Mr. Charney stated that the site plan depicts a fence only on the front of the property, and he asked Mr. Janak if the Board is inclined to approve this request would the applicant object to having a fence around the entire facility. Mr. Janak stated that he and Mr. Najjar have discussed that and have decided to put a fence around the growing facility itself.

Mr. Crall asked Mr. Janak if the fence was just for aesthetic reasons or does it have a purpose? Mr. Janak stated the fence is for security.

Mr. Charney asked Janak if this was a growing only operation and if that was all he was before the Board today to ask for. Mr. Janak answered affirmatively.

Mr. Hutchinson asked Mr. Janak if there were security requirements necessary from OMMA. Mr. Janak answered affirmatively. Mr. Janak stated the fence is required and it is required to be covered, meaning that it can be a chain link fence with a covering through it so there is no visibility to the public.

Mr. Hutchinson asked Mr. Janak if there were security cameras required. Mr. Janak stated that there will be security cameras, but he cannot speak to the exact regulation.

Mr. Hutchinson asked Mr. Janak if there would be semi-trucks coming on to the property to haul out the harvested product. Mr. Janak answered no.

Mr. Johnston asked Mr. Janak about the odors that can be expected for just growing plants. Mr. Janak stated the plant growing will be inside the building; the temperature and lighting is regulated which enhances the growth of the plant. There is no issue of an odor going outside the building. Mr. Johnston asked if there would be any ventilation. Mr. Janak stated there has to be temperature control so to that extent there is ventilation for the plants.

Mr. Janak stated that there are numerous growing facilities on Charles Page Boulevard that are larger than what is being proposed, and a person cannot smell anything while on Charles Page Boulevard.

Mr. Hutchinson asked staff if there would be charcoal filters in the ventilation process. Ms. Tosh stated that there is a requirement for ventilation. Depending on what is used, like CO2 for growing, then the facility must be vented every day. There are filters in place that are part of the requirement for the very reason that there have been multiple complaints regarding odor.

Mr. Charney stated that the pictures of the facility it is an overgrown unsightly facility. Sometimes the Board has granted Variances with the condition that the facility be cleaned up and maintained. Mr. Charney asked Janak what will occur in regard to cleaning up the facility and the maintenance of the facility. Mr. Janak stated the intention is to clean up both the outside and the inside. The building has been abandoned for quite some time and it is believed this will improve the area. The outside grounds will be taken care of so that it no longer looks like a deserted auto repair shop.

Mr. Wilkerson stated the Code stipulates in Section 240 that only allows a 4'-0" tall fence in the street yard, so he is not sure where the street yard is in this context. The

applicant will be limited to 4'-0" in the front yard and eight feet beyond that. The provisions of the Code will not allow a ten-foot fence under any circumstance.

Michael Abboud came forward and stated the neighborhood wants to have the property cleaned up, but who will want to move next door to a mass scale marijuana growing facility in the country? The neighborhood will be better off with the property staying in the condition it is today than to allow this growing facility. This is a bomb being dropped on the property owners around the facility. The house that has been discussed is not right next door to the facility and people could get around whatever security there is. This facility is in the middle of a neighborhood and he asks the Board to deny this request.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a Use Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a Commercial General District (Section 710, Table 1), subject to conceptual plan 5.8 of the agenda packet. There must be an eight-foot security fence surrounding the grow facility and any such fencing is to be done in conformity with the Tulsa County Code. The property is to be cleaned up, both the grounds and the building, and it is to be continued after the clean-up in a commercially reasonable manner. The Board has found the hardship being the unusually sized configuration of the tract being surrounded by AG with a portion of the subject tract being AG as it exists today allowing the use being sought as a matter of right. There is to be a three-year time limit on the approval, November 2022. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

The West 348.56 feet of the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section One (1), Township Nineteen (19) North, Range Ten (10) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U. S. Government Survey thereof; LESS AND EXCEPT a tract beginning at a point 24.75 feet East of the Southwest corner of Section One (1); thence East on the South line a distance of 323.81 feet; thence North at right angles to last described course a distance of 112 feet to a point that is the center of Wekiwa Road; thence Westerly on the center line of said road to a point 220 feet North and 25.25 feet East of the Southwest corner of Section One (1); thence South on a line parallel to the West line of said Section One (1), a distance of 220 feet to the point of beginning, LESS AND EXCEPT a tract for highway, described as beginning at the

Northwest corner of the said Southwest Quarter of the Southwest quarter (SW/4 SW/4) thereof; thence East along the North line of the said Southwest Quarter of the Southwest Quarter (SW/4-SW/4) a distance of 348.6 feet thence South a distance of 52.1 feet; thence South 85°52' West a distance of 349.5 feet to a point on the West line of the said Southwest Quarter of the Southwest Quarter (SW/4 SW/4) thence North along the West line a distance of 77.8 feet to the Point of Beginning; AND LESS AND EXCEPT the North 25 feet of Wekiwa Road; AND LESS AND EXCEPT the West 50 feet of the North 797.67 feet, AND LESS AND EXCEPT the West 30 feet of the South 200.00 feet for road and the South 5 feet including any previously dedicated right of way; AND LESS AND EXCEPT the North 601.53 feet to the East 323.81 feet of the West 348.56 feet of the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section One (1), Township Nineteen (19) North, Range Ten (10) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, LESS AND EXCEPT a tract of highway described as BEGINNING at the Northwest corner of the said Southwest Quarter of the Southwest Quarter (SW/4 SW/4) thereof; thence East along the North line of the said Southwest Quarter of the Southwest Quarter (SW/4 SW/4) a distance of 348.6 feet thence South a distance 52.1 feet; thence South 85°52' West a distance of 349.5 feet to a point on the West line of said Southwest Quarter of the Southwest Quarter (SW/4 SW/4); thence North along the West line a distance of 77.8 feet to the Point of beginning; AND LESS AND EXCEPT the West 50 feet for the road, commonly known as 19215 West Wekiwa Road, Sand Springs, OK 74063 (the "Property"), OF TULSA COUNTY, STATE OF OKLAHOMA

2779—Matt Blair

Action Requested:

Special Exception to permit Use Unit 5 (Community Service & Similar Uses) in the RS District (Section 410). **LOCATION:** 5323 South 65th Avenue West

Presentation:

Matt Blair, 3749 South 63rd West Avenue, Tulsa, OK; stated the subject Jane Adams school building is to be purchased and repurposed for a community hub location. The plans are to be put in a licensed family practice medical clinic, a counseling center, and an urban garden center. There are stipulations in the contract with Tulsa Public Schools that there will not be a public or private education facility. The plan is to also have a fitness center and potentially some life and trade skills for the community development. Hopefully, there will be a sports complex on the ten acres one day. This will offer the ability for people to have services for free, but it will not be a free clinic. This will be a community hub. The highest quality of care will be offered in a community location for anyone or everyone no matter what their socio demographics might be. Clean up on the inside of the building is currently being done and there are some issues with the building not being Code compliant, and this will probably be the most highly

regulated building in all of Tulsa County. The goal is to take a building that has been in disrepair in terms of the cosmetics of it and make it an attractive location.

Mr. Charney asked Mr. Blair if he thinks the fund-raising efforts that have been undertaken have sufficiently given both the operating capital and the reserve necessary. Mr. Blair stated that is absolutely in process and generally speaking he believes so.

Mr. Hutchinson asked Mr. Blair what he sees happening to the subject site should he not receive approval from the Board today. Mr. Blair stated that Tulsa Public Schools did have another interested party when the contract was entered into because they thought his offer was the best and most reasonable offer. It is his understanding that Plan B would be to raze the building because the land has some value in itself.

Interested Parties:

Marvin Bizzell, 2108 North Martin Luther King, Jr. Boulevard, Tulsa, OK; stated he represents the owner of the subject tract; he is not sure what the applicant is trying to do runs into the subject tract.

Mr. Charney asked Mr. Blair if he has asked for the ten-acre tract that the school is on in his application and the application only speaks to that school property, and it does not speak to land north or south of it. Mr. Blair stated that he did receive a telephone call about this. From his understanding, he is purchasing a property owned by Tulsa Public Schools and they have provided the documents that show that. This is only a contract with Tulsa Public Schools and no other property is involved in this transaction.

Mr. Charney asked Mr. Bizzell if the property he is speaking of is located north, south, east or west of the subject property? Mr. Bizzell stated the property he is talking about is east. It sounds like the information that Mr. Blair received is close to a residential area that is trying to be used. The piece of land that he represents was purchased also for the same reason as Mr. Blair's.

Mr. Charney stated that further study could be done later, and if the interested party received notice of today's proceeding, that notice generally goes to everyone that is within a 300-foot radius surrounding the actual property. The purpose of that notice is to inform nearby neighbors of any activity. The Board is only taking action today on the part that is actually owned by the school and is the subject of the legal description; that is a ten-acre tract. There would be no power to do anything different to the property represented by Mr. Bizzell, though he is given the right to come hear what will be happening to the nearby property.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request

for a Special Exception to permit Use Unit 5 (Community Service & Similar Uses) in the RS District (Section 410), subject to conceptual plan 6.19 of the agenda packet. Finding the 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:

NW SW NW SEC 32 19 12, NORTH TANEHA, OF TULSA COUNTY, STATE OF OKLAHOMA

2780—Miller Products, LLC

Action Requested:

Special Exception to permit Use Unit 24, Mining and Mineral Processing. (Section 1224) in an AG District (Section 310, Table 1). **LOCATION:** West of the NW/c of East 56th Street North & North Mingo Road

Mr. Charney recused at 3:08 P.M. and left the meeting.

Presentation:

Ron Miller, 10026-A #317, Tulsa, OK; stated he owns a company named Miller Products, LLC dba Gem Dirt. Gem Dirt has been in business since 1989 with a tagline of Tulsa's Best Topsoil. The company manufacture and distribute topsoil, planting mixes, garden mixes, etc. He sells to local builders, developers, wholesalers, etc. The City of Tulsa and Tulsa County Parks and Recreation Department are even a customers. In addition, he sells to the public. He does not bag his product, so he runs eight to ten dump trucks each day around Tulsa County delivering product. Today he has a 75-acre facility off Highway 75, west of Jenks, that he operates from and he is constantly looking for new land for his purposes and expansion. A customer of his turned him onto to a potential piece of land in North Tulsa County on the corner of 56th Street North and North Memorial. That property is owned by Bird Creek Farms, LLC and the owners have acquired about 1,500 acres of property in the area and he is under contract with Melissa Adams to purchase 324 acres with caveat that he is approved by the Tulsa County Board of Adjustment and the Oklahoma Department of Mines. The subject property is excellent property for what he does; he tested the soil and for a depth of eight to ten feet is sand loam soil. It is also ideal property because it is close to his marketplace, and there is not a lot of residential property in the area. There are two permitted dirt pits within five miles of the subject site. There is a concrete plant across the street and there is also a sod farm across the street. So, there are a lot of trucks using 56th Street North and Mohawk Boulevard today, so he feels like his company would fit into the neighborhood. Mr. Miller stated his site plan shows all of the 324 acres, but he will only mine on the southern portion of that and the top tract will remain as a pecan orchard that he will continue to harvest. The middle portion will be a soybean farm. The southern portion is 157 acres and will be mined to the depth of eight

to ten feet. Mr. Miller stated he will reclaim the property when the mining is completed, in about 20 years, to the specifications of the Oklahoma Department of Mines which he will be bonded for. Reclaiming the land means grading the slopes and planting natural grasses throughout and creating a natural wildlife habitat. The one change he wants to make to the site plan is a road to access 56th Street North. Robi Jones and he met with the Tulsa County Commissioner last week to work on that access. Mr. Miller stated he hopes to receive approval from the Board of Adjustment to operate a dirt pit on the subject property.

Mr. Hutchinson asked Mr. Miller if he would be using water on the road to keep the dust down. Mr. Miller answered affirmatively. He has a water truck that he will keep on the property utilizing the Bird Creek water from the pump station that is on the property currently. Mr. Miller stated he will have a track hoe, a bulldozer, a water truck, a trommel screener, a bobcat and a few other pieces of equipment.

Mr. Hutchinson asked Mr. Miller what his hours of operation would be. Mr. Miller stated the hours of business would be from 7:30 A.M. to 5:00 P.M., Monday through Friday.

Mr. Johnston asked Mr. Miller how this operation would affect the natural flow of Bird Creek. Mr. Miller stated it will not affect Bird Creek. He has to keep a lateral support of 100 feet between the creek and where he is allowed to excavate.

Mr. Miller stated the subject property is in a flood plain and not much else can be done with the property, but for his purposes that is very good. Every time the creek floods it brings sand and sediment over the banks depositing sandy loam soil.

Mr. Johnston asked Mr. Miller how he removes the water when the area floods. Mr. Miller stated there will be sediment pond on the property, and the DEQ allows him to pump overflow water back into the creek, and he will have a permit to do so.

Interested Parties:

Joe Gutierrez, 9804 South Louisville, Tulsa, OK; stated he is concerned about the road on 66th Street North. He does not want access to any dump trucks on 66th Street North because it is a bike trail. The road is basically one lane and cannot support dump trucks.

Mr. Hutchinson stated that the applicant has stated that he will not be using 66th Street North and will access 56th Street North only.

Mr. Gutierrez stated then he does not have a problem.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-1 (Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; Charney “abstaining”; none “absent”) to **APPROVE** the request for a **Special Exception** to permit Use Unit 24, Mining and Mineral Processing. (Section 1224) in an AG District (Section 310, Table 1), subject to conceptual plans 8.21 and 8.22 of the agenda packet. The applicant is to work with Tulsa County Engineering to have 56th Street North access. The applicant is to receive all the proper permits and zoning with the Department of Mines. Finding the 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:

Tract 6 is more particularly described as:

The North Half of the Southwest Quarter (N/ 2 SW / 4) LESS that portion lying East of the center line of Bird Creek; AND that part of the South Half of the Southwest Quarter (S/ 2 SW / 4) lying North of the South Meander Line of Bird Creek; AND the East Half of the Southwest Quarter of the Southeast Quarter (E / 2 SW / 4 SE / 4), lying West of the center line of Bird Creek; AND the Southwest Quarter of the Northwest Quarter of the Southeast Quarter (SW / 4 NW / 4 SE / 4), lying West of the center line of Bird Creek; AND the Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW / 4 SW / 4 SE / 4), all in Section One (1), Township Twenty (20) North, Range Thirteen (13) East of the Indian Base and Meridian.

The Southwest Quarter of the Southwest Quarter of the southeast Quarter (SW / 4 SW / 4 SE / 4) of Section One (1), Township Twenty (20) North, Range Thirteen (13) East of the Indian Base and Meridian.

Tracts 7 and 8 are more particularly described as: The NW / 4 of Section One (1), Township Twenty (20) North, Range Thirteen (13) East of the Indian Base and Meridian., OF TULSA COUNTY, STATE OF OKLAHOMA

Mr. Charney re-entered the meeting at 3:25 P.M.

2781—Joshua Moore

Action Requested:

Variance of the minimum frontage requirement on a public street/dedicated right-of-way from 30 feet to 0 feet in the AG District to permit a lot split (Section 207).

LOCATION: South of the SW/c of North 166th Street North and North Mingo Road

Presentation:

Joshua Moore, 16302 North 97th East Avenue, Collinsville, OK; stated he would like to purchase 20 acres and build a house to raise his family. The downside to the property is that it does not have 30 feet of road frontage, but it does have a private driveway which is owned by the Popp. Mr. Moore stated that he has an agreement from the

Popps to access the driveway to access 166th Street North. Mr. Moore stated that he has approval from Washington County to add one more tap to the waterline. The tract is surveyed in two ten-acre tracts, and he will build on one ten-acre tract, and the other ten-acre tract is in a flood zone. The private drive is shared by the Poppes who own the private drive, and in the past they have given the Shults and the Fitzgeralds permission to use the private drive. Mr. Moore stated that he will pay his share in the upkeep of the private drive.

Mr. Hutchinson asked Mr. Moore if the south tract is the tract in the flood zone. Mr. Moore answered affirmatively.

Mr. Charney asked Mr. Moore if he had read the terms of the easement that allocates the various responsibilities for maintenance and care of the private drive. Mr. Moore answered affirmatively. Mr. Charney asked Mr. Moore if he was comfortable with the terms. Mr. Moore answered affirmatively.

Mr. Charney asked Mr. Moore if he had no intent to sell off or seek a building permit on any of the subject tracts other than his own personal home. Mr. Moore answered affirmatively.

Interested Parties:

James Shults, 8806 East 166th Street North, Collinsville, OK; stated he is before the Board today to object to the request for the Variance. Mr. Moore spoke a little bit about the shared driveway and that driveway is his driveway. Mr. Shults stated the driveway was built by him and his father-in-law in 1999 because they needed access to his 28 acres. The original 74-acre tract fronts 166th Street North, and he came to the Board of Adjustment to be approved for the driveway, and at that time it was stated that there would be no more houses using the access. The driveway is approximately ½ mile long. He used his equipment to dig the aggregate and packed the sub-base, paid for and installed numerous culverts to allow proper drainage. He has paid for dozens of loads of gravel and spent an enormous amount of time to build the driveway. The intent of the driveway was for access for the Shults and Fitzgerald families. The owner of the north portion of this 74-acre tract of land already have a driveway, however, over the years the original driveway was not maintained properly so those owner began using his driveway. All the while he and his father-in-law maintained the new driveway by using his equipment and their combined resources. Additionally, he ran utilities along the easement and it was originally not set up to handle three houses. Secondly, the seller of the property to the Moores should give access to the Moore's tract of land from 97th Street. The frontage should be on 97th Street and not from 166th Street North. The new owners should build their own driveway from their tract of land to 97th Street. Providing access to the property from 166th Street North will result in what is commonly called a wildcat subdivision; which was a concern early on. The primary reason access is being requested by the Moores is for economic reasons, which he believes the Board should not consider. The fact the driveway is currently in place and would be convenient to be used is not a valid reason. The one lane driveway was never built to have more than a few vehicles on it; adding more vehicles will undoubtedly result in

increased maintenance. To say there will only be two more cars added is a vast understatement; looking down the road the driveway will become a high trafficked lane because the Moores have children. Mr. Shults stated he is not against having a new neighbor, but he believes their access should be from 97th Street and not 166th Street North.

Mr. Charney stated that he is questioning whether the Poppo have the authority to grant an easement to the Moores. If he understands Mr. Shults correctly, he is saying the Poppo do not have the authority to grant an easement. Mr. Charney asked Mr. Shults if that is what he is saying. Mr. Shults stated that his thought is that when a person sells a piece of property, the property owner should have to allow access to a land locked piece of property and not someone else.

Mr. Charney asked Mr. Shults if there was a formal granting of the right to the Poppo to use his easement. Mr. Shults answered no; the Poppo purchased the property about a year ago, and there were two neighbors before them. It has never been an issue because they mow beside the driveway and he pays for the gravel and uses his tractor to keep it level and maintain it.

Mr. Crall asked Mr. Shults if, to his knowledge, if there is any official easement granted to the property or is it just a neighborly to allow them to use the drive. Mr. Shults stated the Poppo own the property, he has the permanent easement.

Mr. Dillard asked Mr. Shults if he said the Poppo own the property. Mr. Shults answered affirmatively.

Mr. Charney asked Mr. Shults if the Poppo had granted him an easement. Mr. Shults stated the Poppo did not, but the previous owner had granted him the easement.

Sarlene Johnson, 8814 East 166th Street North, Collinsville, OK; stated that when Mr. Ben Miller owned the property all there was only a fence on the property line, no road, nothing. When Mr. Miller sold the property to the Shults the Shults made the road. There is no easement. That road is right on the property line, and the easement is in her back yard. When the Shults moved in she watched them enhance the road, they built that road and they built it where Mr. Miller had laid the original road. Ms. Johnson stated that she hears every car that drives on the drive because her house is only 30 feet from that drive, and when the patio is calculated the drive is only 10 feet from her house. That drive cannot support any more vehicles.

Harold Johnson, 8814 East 166th Street North, Collinsville, OK; stated he wants the Board to know what is at stake. Earlier in the year, when there was all the rain, the drive has washed away and left a huge hole where the fiberglass culvert is. Mr. Johnson stated he wrote down the type of traffic that might drive down that driveway to build the proposed house; bulldozer, concrete trucks, brick trucks, block trucks, propane trucks, power company vehicles, dump trucks, septic tank trucks, gravel trucks, insulation trucks, builders trucks, roofers trucks. All of this will be ten feet from his patio and he

does not like that. He does not think that is right. Mr. Johnson stated the Popp have five children and he has three grandchildren, and they play next to that drive. Mr. Johnson stated the Moores wants to build a house in the middle of nowhere and he can put his own road in.

Mr. Charney asked Ms. Johnson who she thought owned the underlying land the existing road is on. Ms. Johnson stated she believes it is the Popp, but her property is right beside it.

Daniel Popp, 8822 East 166th Street North, Collinsville, OK; stated I have been place in the unenviable position of essentially deciding between two neighbors. To say no to one is to say yes to the other, so it is not an easy position to be in. It has taken deliberation on his part to come to the conclusion to allow Mr. Moore to use the drive. After great deliberation he and his wife decided to Mr. Moore the easement contingent upon the Variance being granted. Mr. Popp stated he worked with a lawyer to draft an easement, and he attempted to the best of his abilities to address the concerns of the other neighbors, i.e., maintenance of the driveway for the entire length. Maintenance of the driveway will be shared equally between myself (Mr. Popp) and Mr. Moore, but no maintenance of that stretch of drive that is on his property will not belong to the neighbors to the south. The maintenance responsibility is being taken completely off of those neighbors and putting it squarely on to himself and the potential land owner, Mr. Moore. The easement was drafted by the lawyer that it only applied to one house and one house only. Mr. Popp stated the easement has not been executed as of yet, it will be contingent on the outcome of this hearing. Mr. Popp stated the property does belong to him and there is an existing easement from Mr. Shults and Mr. Fitzgerald that his predecessor granted to them.

Mr. Charney asked Mr. Popp if he knew if the old easement spoke to the maintenance or who else could use the easement, or was it the old fashioned easement? Mr. Popp stated that ingress and egress was the only language mentioned in that easement.

Mr. Hutchinson asked Mr. Popp if the property Mr. Moore is purchasing was not originally part of the Mr. Ben Miller land. Mr. Popp answered affirmatively.

Rebuttal:

Joshua Moore came forward and stated that he has a copy of the deeds if the Board would like to see them, and the previous easement that was granted to the Fitzgeralds and the Shults.

Mr. Charney asked Mr. Moore if he would like to address some of the comments he has heard today. Mr. Moore stated that he only wants to build one single family home on the property. Yes there will be construction vehicles but that will last about six to nine months, and outside of that it will be single family traffic on the drive. Mr. Moore thinks that once everything is built and everyone is settled in everything will work out for everyone.

Mr. Charney asked Mr. Moore how many homes, total, will be using the subject driveway excluding the future home. Mr. Moore stated that it will be three.

Comments and Questions:

None.

Board Action:

On **MOTION** of **JOHNSTON**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a **Variance** of the minimum frontage requirement on a public street/dedicated right-of-way from 30 feet to 0 feet in the AG District to permit a lot split (Section 207), subject to conceptual plans 8.21 and 8.22 of the agenda packet. The Board has found the hardship to be the property is set back from the arterial street and since there are other houses in the area it does not make sense to have another access to the property. This is to be the final residence that is permitted to be serviced from this mutual access easement. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

The Northwest Quarter of the Southwest Quarter of the Northeast Quarter (NW/4 SW/4 NE/4) of Section Thirteen (13) of Township Twenty-two (22) North and Range Thirteen (13) East of the Indian Base and Meridian (I.B.&M.), according to the U.S. Government Survey, thereof, Tulsa County, State of Oklahoma; being more particularly described as follows:

Commencing at the SE corner of the NE/4 of Sec. 13, T-22-N, R-13-E, I.B.&M.; Thence S 88°42'49" W a distance of 2638.93 feet to the SW corner of said NE/4; Thence N 01°15'33" W a distance of 660.25 feet to the Point of Beginning being the SW corner of the NW/4 SW/4 of said NE/4; Thence N 01°15'33" W a distance of 660.25 feet to the NW corner of said NW/4 SW/4 NE/4; Thence N 88°41'12" E a distance of 660.63 feet to the NE corner of said NW/4 SW/4 NE/4; Thence S 01°13'12" E a distance of 660.40 feet to the SE corner of said NW/4 SW/4 NE/4; Thence S 88°42'00" W a distance of 660.18 feet to the Point of Beginning, and containing 10.011 acres, more or less., OF TULSA COUNTY, STATE OF OKLAHOMA

2782—Bobby Behrens

Action Requested:

Use Variance to allow Use Unit 14, Shopping Goods and Services, for a catering business in an AG District (Section 1214.2.C). LOCATION: 3454 South. Campbell Creek Road

Presentation:

Bobby Behrens, 313 East 49th Street, Sand Springs, OK; stated he has a meal prep business that is focused on helping people with their diet. He has a commercial kitchen on the subject property; a 12'-0" x 32'-0" shed that has been converted. This meal prep business is how he and his wife make their living. The structure is behind the house and is inspected by the Tulsa Health Department. There will be one cook coming to the subject property so there will be no true affect on the traffic in the area.

Mr. Charney asked Mr. Behrens if he does the cooking in the kitchen or in the shed. Mr. Behrens stated that the cooking is done in the kitchen.

Mr. Charney asked Mr. Behrens if he knew what took place in the shed before he purchased it. Mr. Behrens stated the shed was made for cooking. When he purchased the shed someone had converted it to be a cooking area.

Mr. Charney asked Mr. Behrens the age of the shed when he purchased it. Mr. Behrens stated the shed was new when he purchased it.

Mr. Charney asked Mr. Behrens how many days of the week would he be using the kitchen. Mr. Behrens stated that it varies, but it would typically be five days a week. He cooks Wednesday, Thursday and Friday, meals are delivered on Sunday and Monday.

Mr. Crall asked Mr. Behrens if the meal delivery was done by a food truck. Mr. Behrens stated that he has a Ford Transit with ice boxes in it to deliver the meals cold.

Mr. Charney asked Mr. Behrens if there were smells emitted from the shed while he is cooking. Mr. Behrens stated that it would be no different than if a person were barbecueing in the back yard.

Mr. Charney asked Mr. Behrens if there would be truck traffic onto the property for deliveries of food. Mr. Behrens stated that the traffic would consist of his and his wife's and if someone is working for them it would that person's vehicle.

Mr. Hutchinson asked Mr. Behrens how large his property is. Mr. Behrens stated that he has 5.2 acres.

Interested Parties:

Fred Hochhalter, 2505 Concord Circle, Sapulpa, OK; stated his property backs up to the subject property and he is concerned about adding a commercial business and the effect on his property taxes. Mr. Charney stated the use next to a property does not change the zoning on the neighboring land owner's property. This should not impact Mr. Hochhalter's property evaluation the next time it is reviewed, sales are much more relevant to a person than a zoning action.

Judy Gunckel, 2018 Baker Drive, Mannford, OK; stated her property is directly south of the subject property and she has lived there about ten years. The kitchen will sit 15 feet from her property line. The area is very wooded with no fire hydrants on Campbell Creek Road; the closest hydrant is 1 ½ miles and she is concerned about fires. Ms. Gunckel stated that when she purchased the property she was told that the water line could not support hydrants. Ms. Gunckel stated she went to the applicant's website and saw that they use big catering trucks. The roads in the area are winding and narrow. Ms. Gunckel stated she purchased her property for her retirement and she does not want to live next to a business.

Donna Rice, 2219 West 40th Street, Tulsa, OK; stated she has owned ten acres since 1997 that abuts the subject property to the west. She wants to make sure the property stays zoned agricultural, and she too is concerned about fires.

Amber Behrens, 3454 South Campbell Creek Road, Sand Springs, OK; stated she is a nutritionist and is a cook for the business. The business use to operate out of a mobile food truck which is how she and her husband got their start. She has been fortunate enough to purchase a 384 square foot facility and move it to the subject property. The business must meet all Tulsa County health codes, there are fire extinguishers, there are blankets for smothering fires if necessary, and she has had no incidents. On occasion there is a person that is hired to help with the food prep. Ms. Behrens stated she does all the shopping at food distributors Monday through Wednesday.

Mr. Hutchinson asked Ms. Behrens what type of food is prepared. Ms. Behrens stated she cooks a variety of foods; lean chicken and ground turkey with an occasional barbecue. On a day to day she cooks a holistic menu that encourages low fat and low carbs. Ms. Behrens stated that cooking is done on Thursday and Friday with cold prep on Wednesday.

Mr. Johnston asked Ms. Behrens if she lived on the subject property. Ms. Behrens stated that she and her husband will be moving to the property.

Mr. Charney asked Ms. Behrens if that move was contingent on this effort. Ms. Behrens stated that it does not; there is already a home structure on the property.

Rebuttal:

Bobby Behrens came forward and stated the concerns that were stated by the interested parties has been addressed by the Board in regard to taxes, and there are less trees than there were. The Tulsa Health Department does require certain fire preventive measures. Mr. Behrens that he no longer has the food catering truck, he a Ford Transit which only a little larger than his Honda Civic.

Mr. Charney asked Mr. Behrens about the exhaust fans being 15 feet from the property line of another; how often do the fans run? Mr. Behrens stated the fans only run when meat is being cooked, about four hours a week.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; none “absent”) to **APPROVE** the request for a Use Variance to allow Use Unit 14, Shopping Goods and Services, for a catering business in an AG District (Section 1214.2.C), subject to conceptual plans 7.7 and 7.8 of the agenda packet. This approval is only for the five acres owned by the applicant and the 382 square foot building. The Board finds the hardship to be the large tract of land. In granting a Variance, the Board must find that by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

SW NE LESS N275 W715 & LESS 60 STRIP CL BEG 601W NEC SW NE TH SW358 CRVRT 332.5 TH SW660 TO SL SW NE FOR RD & LESS BEG NEC SW NE TH S150 W590 NELY154 E557 POB & LESS BEG 450S & 175W NEC SW NE TH W475.66 SWLY CRV RT311.64 E558.59 N300 POB & LESS PRT S, OF TULSA COUNTY, STATE OF OKLAHOMA

2783—CRB Companies aka Branch Communications

Action Requested:

Special Exception to permit a communication tower, Use Unit 4, in the RS District (Section 410); Special Exception of the required setback for communication towers from adjacent residential and AG zoned lots (Section 1204.C.7). **LOCATION:** 5902 North Martin Luther King Jr. Boulevard

Presentation:

Carl Dugan, Branch Communications, 7335 South Lewis Avenue, Suite 300, Tulsa, OK; stated the property has AG zoned property to the south and southwest, and residential zoned property on the other sides. The lease property is currently located on residential property that is owned by Rose of Sharon Baptist Church. This is an AT&T lease and the tower will be designed for three carriers.

Mr. Charney asked Mr. Dugan if there were other towers in the area that could be co-located on. Mr. Dugan stated there are two other towers in the area but they do not meet the centerlines and the propagation of the area that they require; one tower within ½ mile and two towers within one mile. Within that area the centerline does not meet the coverage area that is required for the propagation for that area. The other towers in

the area are about 125 feet and this tower will be 185 feet. The lease area with the church is a 50'-0" x 50'-0" area; the enclosure will be 40'-0" x 40'-0" with a 6'-0" chain link fence for security. The proposed tower will increase coverage for the area and the purpose is to support data usage, reliability and to increase speed. AT&T has partnered with First Met which is a dedicated band to first responders. The tower will set 50'-0" feet from the west lot line, 79'-0" from the north lot line, and 85'-0" from the south lot line. The nearest occupied structure is 200'-0" north of the tower and the church is located 265'-0" to the east. The tower is a monopole and is designed not to fall and does have break points built into it.

Mr. Charney asked Mr. Dugan how the decision is made to increase coverage in an area. Mr. Dugan stated that RF Engineering is able to see what coverage they have in certain areas and they are trying to get into more of the rural areas. There is a government mandate that underserved areas be served.

Interested Parties:

Joe Kralicek, Director of Tulsa Area Emergency Management Agency, 600 Civic Center, EOC, Tulsa, OK; stated in 2001 it was discovered that parts of the communication system failed, and that has occurred time and time again. In 2012 Congress passed First Net, so they contracted with AT&T and public/private partnership to create a dedicated cell phone service for first response networks; the Sheriff's Department, Police Department, Fire Department, Emergency Management and other first responders giving them priority access and dedicated access during a disaster. These type of towers are vital for assisting first responders during times of crisis.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a **Special Exception** to permit a communication tower, Use Unit 4, in the RS District (Section 410); **Special Exception** of the required 110% setback for communication towers from adjacent residential and AG zoned lots (Section 1204.C.7), subject to conceptual plan 10.10 of the agenda packet. The Board considered prior to making the motion each of the various factors that are set forth in the Code for this sort of application, and the Board finds the application complies with the requirements. The requirements considered by the Board was the height of the proposed tower, the proximity of the tower to residential structures and other boundaries, the nature of uses on adjacent nearby properties, the surrounding topography, tree coverage and foliage, the tower design, the number and size of the antennas that are in the area, architectural design, ingress and egress, the size of the tract, future development potential within the area, the landscaping and the need for the tower in the immediate geographic area. The Board also considered the co-location of facilities on alternative towers was available, and it was determined that co-location was not available elsewhere. The Board was informed by certain emergency service providers that the nature of this tower

was one that would assist with emergency communications in the event of a large-scale emergency. Finding the 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:

N/2 S/2 SE NE SE LESS E40 THEREOF & LESS N25 THEREOF SEC 2 20 12 1.99ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

Review and approval of the 2020 meeting schedule.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the 2020 calendar schedule for the County Board of Adjustment meetings.

NEW BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 3:24 p.m.

Date approved: 12/17/19
Daniel E. Charney
Chair