

MINUTES BOARD OF ADJUSTMENT June 26, 2019

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Study Session 5:30 PM

Present:

Staff:

Chair David Lyon	Steve Abrahamson, Principal Planner
Board Member Kevin Cullens	Karen Stovall, Senior Planner
Board Member David Naugle	Brittainy Nelson, Administrative Assistant
Board Member John 'Jack' Confer	Ryan Levesque, Deputy Director
Board Member Joshua Tracy (Alternate)	
Board Member Robert Miller (Alternate)	

- **Review of Minutes**

Chair David Lyon asked if anyone had anything in the minutes that need to be edited.

- **HARVEST DISPENSARY OF TEMPE**

Chair Lyon clarified his understanding of the case that they were approved 2012 then when things got amended they became a legal no conforming use that was grandfathered. Now they are trying to expand by 100 percent, but they can expand up to 25 percent. They are ok about the 1320 feet but not about the expansion. Karen Stovall stated that they are not meeting the quarter mile separation requirement which is why they are asking for a variance. Karen Stovall also clarified that they could apply for a Use permit, but the use permit restricts them to the 25 percent which is why they are asking for a variance to reduce the separation instead. Ryan Levesque stated that the new code allows for the greater use dispensary but because this is a legal non-conforming dispensary they are limited in size. Board members asked if they are losing their grandfather status. Ryan Levesque stated that if a legal non-conforming relocates or expanse then they lose the grandfather status. The Board members asked what the code says. Karen Stovall clarified that in section 3501 of the City Code it says that if you get a use permit you can expand up to 25% of the land. Since they cannot expand under a use permit they are seeking a variance. Ms. Stovall also informed the board that if the variance was granted the applicant would need to go through the Zoning application process which includes getting a new floor plan and updating the security plan.

Chair Lyon wanted clarification on the CHAA. Ryan Levesque clarified that it is areas that are established by the Department of Health services that disturbed Medical Marijuana Dispensary out of the state of Arizona and at the time in 2011 when they disturbed it they distinguished two areas of Tempe one dispensary for each CHAA one in North Tempe and South Tempe. There were originally over 50 applications and Tempe authorized 15 to go the State and State only granted two. And this one was one that was granted the right to operate and is not asking to be added to the CHAA. Chair Lyon asked to clarify the hardship that they have that everyone else doesn't have. Karen Stovall stated that in the staff report it says Zoning clearance for this dispensary was approved at a time that the code restricted the tenant space, not by size, but by the number of exterior doorways. Now that the code has been amended, the property's proximity to a residential zoning district limits the business from expanding. Dispensaries approved following the 2017 ordinance amendment are permitted a maximum floor area of 5,000 square feet. Board Member Miller asked how the new standards become what they are in the new City Code. Ryan Levesque stated that City Council decided to lift the limitation on how many dispensaries where in Tempe and put them in the separation process that is why there has been a valuation process. Board Member Cullens asked if they will be able to get a building permit because they are not going beyond the 25 percent. Chair Lyon clarified if the variance was approved then they would be allowed to get the permit for up to the code maximum of 5000.

Regular Meeting 6:01 PM

Present:

Staff:

Chair David Lyon	Steve Abrahamson, Principal Planner
Board Member Kevin Cullens	Karen Stovall, Senior Planner
Board Member David Naugle	Brittainy Nelson, Administrative Assistant
Board Member John 'Jack' Confer	Ryan Lesvesque, Deputy Director
Board Member Joshua Tracy (Alternate)	
Board Member Robert Miller (Alternate)	

1) Voting of the Meeting Minutes

Motion by Board Member Cullens to approve the Meeting Minutes of May 29, 2019; second by Board Member Naugle. Motion passed on **4-0** vote.

Ayes: David Lyon, Kevin Cullens, David Naugle, John Confer

Nays: None

Abstain: Joshua Tracy, Robert Miller

Absent: Whitney Baker, Richard Watson, Vice Chair James Frazey

- 2) Request a Variance to reduce the required separation requirement for a Medical Marijuana Dispensary from a residential zoning district for **HARVEST DISPENSARY OF TEMPE**, located at 710 West Elliot Road, Suites 102 and 103. The applicant is Withey Morris, PLC. (**PL190075**)

Presentation from Applicant representative: Adam Baugh

Mr. Adam Baugh stated that a matter like this is often sensitive and requires more deliberation without a full Board it makes it more challenging case to present if there was a three-three split it would put him at a no, and the nature of the case would be appropriate for the presence of the whole body available. He would like to entertain if the Board would be willing to consider a continuance to 30 Days.

Chair Lyon called for a motion:

Motion by Board Member Miller to approve the continuance for a variance to reduce the required separation requirement for a Medical Marijuana Dispensary from a residential zoning district for **HARVEST DISPENSARY OF TEMPE**, located at 710 West Elliot Road, Suites 102 & 103; second by Board Member Naugle. Motion passed on **6-0** vote.

Ayes: David Lyon, Kevin Cullens, David Naugle, Joshua Tracy, Robert Miller, John Confer

Nays: None

Abstain: None

Absent: Whitney Baker, Richard Watson, Vice Chair James Frazey

Staff Mr. Abrahamson announced that the next Board meeting will be July 24th and that there are currently two other cases in consideration one being an appeal of zoning administrator's opinion and the second would be a variance reduce required parking. The Next meeting will happen at the Don Casano Room at the Tempe Transportation Center.

Hearing adjourned at 6:11pm

Prepared by: Brittainy Nelson, Administrative Assistant
Reviewed by:



Steve Abrahamson, Principal Planner

SA:bn