

MINUTES BOARD OF ADJUSTMENT July 24, 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
Vice Chair James Frazey	Karen Stovall, Senior Planner
Board Member Richard Watson	Brittainy Nelson, Administrative Assistant
Board Member Kevin Cullens	Ryan Levesque, Deputy Director
Board Member David Naugle	
Board Member John 'Jack' Confer	
Board Member Robert Miller (Alternate)	

- **HARVEST DISPENSARY OF TEMPE**

Chair Lyon stated that if there is not any new information or questions that need to be discussed that was not already covered in the last Study session for this case; then they will focus their time on the other cases being presented.

- **INTEGER CONSULTING LLC**

Chair Lyon asked if everyone has seen the videos that were presented to the Board previously. Some of the members were not able to view the video. View of the videos took place so they had a better understanding of demographic in which the business was taken place and what were the concerns in question.

Regular Meeting 6:03 PM

Present:

Staff:

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

1) Voting of the Meeting Minutes

Motion by Board Member Miller to approve the Meeting Minutes of June 26, 2019; second by Cullens. Motion passed on 5-0 vote.

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

Nays: None

Abstain: Richard Watson, Vice Chair James Frazey

Absent: Whitney Baker

- 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: Mr. Adam Baugh

Mr. Baugh informed the board members that the current suite is 1,290 sq. The proposed expansion into suite 103 will give them a total of 2,580 square foot and there will not be any changes to the exterior. In 2011 the site was approved for suite 102. The purpose and intent are to allow the expansion into the adjacent suite. When the City changed the code, its purpose was to allow the suite expansion where nobody realized the residential spacing distance would render the change meaningless. In Applying for a variance Mr. Baug is hoping to remedy that unintended hardship. Measuring from the nearest point of the property line of a parcel to the North and Southeast remains the same. Mr. Baugh went over the Special Circumstances that have caused the variance such as zoning code limited the site by the number of exterior doorways. City changed code to remove the door restriction. Now that the code has been amended, the property's proximity to a residential zoning district limits the business from expanding. The strict application of the code deprives the property owner of the availability of the changes it wants to make. It restricts it to an area significantly smaller than otherwise allowed by the zoning code and much smaller than other dispensaries approved in the City of Tempe. The requested variance will not grant special privileges inconsistent with the limitations upon other properties. Granting the variance does not increase the spacing distance anymore than its current condition. The existing suite is significantly less than the max 5,000 sf other dispensaries are permitted. Proposal does not change the physical characteristics of development on the site. It will not result in additional medical marijuana dispensaries not already permitted by the current code. Harvest Dispensary of Tempe has been in the City for 5 years with no issues. There is no evidence of detrimental impact. This is not a self-imposed hardship by the property owner. The medical marijuana regulations were amended by the City of Tempe after the business was approved and operating. The original owner was granted an amendment to the medical marijuana ordinance to allow future expansion of this site. The 2017 code amendment for medical marijuana inadvertently limited such expansion. The applicant did

not create the CHAA map. In summary Mr. Baugh feels that this meets the variance test which is an appropriate way to address an inadvertent penalty of an undersized suite. Existing site will have zero impact. No exterior changes, status quo remains the same. If the variance is approved, it does not change the separation distance at all.

Presentation by Staff, Karen Stovall, SeniorPlanner

Good evening chair and board members.

(Show zoning and aerial maps)

- This Variance request is for the property located at 710 W. Elliot Road, which is just west of the northwest corner of Kyrene and Elliot.
- The property is zoned PCC-1.
- Harvest Dispensary is an existing business operating within Suite 102 of the building.
- The dispensary was approved in 2012 and has been in operation since that time.
- In 2012, the Zoning Ordinance limited dispensaries to a maximum of one exterior doorway, which, in turn, limited the maximum tenant space for each the dispensary.
- The size of the existing suite is 1,290 s.f.
- The applicant wishes to expand the business into Suite 103, which is directly adjacent to the current business, and would double the floor area to 2,580 s.f.
- Since 2012, the Medical Marijuana ordinance has been amended to remove the limitation of one exterior doorway and allow a maximum floor area of 5,000 s.f., which is well above the applicant's requested floor area.
- However, the ordinance was also amended to increase the minimum separation requirement between a dispensary and residential zoning district from 500 feet to 1,320 feet.

(Show radius map)

- This map shows a radius of 876 feet from the dispensary property, which touches a residentially zoned property to the southeast, across Elliot and on the east side of Kyrene.
- Therefore, the ordinance amendment made the subject site legally non-conforming.

(Show site plan)

- The applicant is requesting a Variance to reduce the separation requirement from a residential zoning district from 1,320 feet to 876 feet.
- No expansion or other changes to the exterior of the existing building are proposed.
- The applicant held a neighborhood meeting on May 21, 2019 and no members of the public attended.

Reviewing the Variance criteria:

- Zoning clearance for the dispensary was approved at a time that the code restricted the tenant space by the number of exterior doorways. Now that the code has been amended, the property's proximity to a residential zoning district prohibits the business from expanding. Dispensaries approved following the 2017 ordinance amendment are permitted a maximum floor area of 5,000 s.f.
- Strict application of the code prevents this business from increasing in size, restricting it to a floor area significantly less than that permitted for other dispensaries in the City.
- Approval of this variance would not grant special privileges inconsistent with the limitations prescribed to other properties. The modification of the separation requirement for this site will not result in additional medical marijuana dispensaries that are not already permitted by the current code.
- The special circumstance applicable to this property is not self-imposed by the property owner. The regulations were amended by the City of Tempe after the business was approved and operating.

(Conclusion)

Based on the information submitted by the applicant and review of the Variance criteria, staff recommends approval, subject to the stipulations listed in the staff report.
I'd be happy to answer any questions.

Chair Lyon called for a motion:

Motion by Board Member Naugle to approve the variance to reduce the required separation requirement for a Medical Marijuana Dispensary from a residential zoning district; second by Miller. Motion passed on 7-0 vote.

Ayes: David Lyon, Kevin Cullens, David Naugle, John Confer, Robert Miller Richard Watson, James Frazey

Nays: None

Abstain: None

Absent: Whitney Baker

- 3) Request for an appeal of the Zoning Administrator's Opinion to prohibit a testing laboratory use (Integer Solutions, LLC) within the R/O, Residential/Office District for **INTEGER CONSULTING LLC (PL190121)**, located at 2342 South McClintock Drive. The appellant is Gaona Law Firm, on behalf of Integer Consulting LLC.

Presentation from Appellant & Appellant's Representative: Mr. Jose Ojeda & Mr. David F. Gaona

Mr. Ojeda informed the board that he was not aware of any of the Code violations and as soon as he was informed, he shut down everything till he was able to make some changes to bring the area up to code. As he was working to bring the area up to code, he found out that he may not allowed to operate his business out of the current location because he is in a residential area. Which is why he is here to get the decision overturned. Mr. Ojeda informed the board that he talked to the one of the neighbors and informed them he wants to be a good business man and a good neighbor. Mr. Ojeda wanted the board to know that he has been working with building safety to bring the property up to compliance and that he wants to comply and will do what it takes to comply to continue running his business.

Public Comment:

Justin Dagan– Tempe Resident

Mr. Dagan Informed the bard that his home is adjacent to the Integer Consulting where his back door is 50 feet away. Mr. Dagan said that the company moved in overnight and the fumes that come out the company venting system is a strong stream of smoke. Due to his patio being so close to the business the fumes gather under the patio area or it gets sucked into the Evap and fills the home. He informed the board that it makes you nuisance and can cause really bad headaches. He feels that testing needs to be done because it is toxic. According to his research OSHA has that it can cause headaches, nausea, and rashes. He was informed by construction workers that this type of work is done when the construction crew is on site. So, the business is being run 24 hours. Mr. Dagan stated that he home school his kids and they have had to vacate the premises multiple times.

Liliana Melendez– Tempe Resident

She informed the board that as a Tempe resident that the city would have to approve the business that come into the area. She informed the board that the smell that comes from there work smells like the AC unit is burning up. She informed the board the business is closer to the residential back yards then to the Streets.

Chair Lyon acknowledged Vice Chair Frazey

Vice Chair Frazey asked if she has seen any of the same problems from other business.

She informed him that she has not because the other business is already closed and sometimes when the blinds are left open you can see the pipes and tubes from the testing area. She also informed the board that she did do a little bit of research and it was found that he is licensed as an Engineer not as a laboratory.

Shikley Landsburg– Tempe Resident

She feels that anything that is Industrial should not be in a residential area. And she does not agree that this should be changed and allowed in the residential area.

Public Comments Closed

Chair Lyon advised the appellant that they could come up and respond to the public comment.

Mr. Gaona stated that he is grateful that the neighbors came out to speak. Mr. Gaona stated that what the neighbors talked is what Mr. Ojeda wants as well. Mr. Gaona stated that his client Mr. Ojeda did inform the Board that he was not aware of who had complained and when he did find out he went over to talk to the neighbor. Mr. Gaona informed the Board that the electrical hook up is a 220 which is the same thing that is needed in a residence that is used for an electrical dryer. Mr. Gaona stated that his client did not pull any permits because he was not aware that he needed any permits because he was not doing anything to the building that was structural work. Mr. Gaona stated that in the handouts it shows the office space and where the labs are located. Mr. Gaona informed the board that the lab use with the two ovens is only used 10 percent or less of the business. Mr. Gaona pointed out that the shaker was always inside the business and he did move it outside when Mr. Ojeda had to get the work done for the permit however it is back inside now that the work is complete. Mr. Gaona stated that regarding the ventilation issue in Mr. Ojeda did inform the board that the machines have filters in them and are self-contained. When Mr. Ojeda was informed about the smell complaint, he pulled the permit and put the exhaust system in to exterior of the building leading up to the roof, as well as a filter system to help limit the smells. Mr. Gaona stated that he would like to put in more work on the property however he stopped because he was informed of a land use issue. Mr. Gaona stated his client is in a similar use area. There another company that is operating a few doors down in the same R/O district with similar machines. Mr. Gaona stated that his client run typical business hours and his office is closed four days during Christmas time.

Commission Discussion

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens stated that it is unfortunate that the business is in place however looking at the map and the location where the homes are right there by it, he cannot think of a more appropriate reason why laborites are not generally allowed in non-industrial zoned areas.

Chair Lyon acknowledged Vice Chair Frazey.

Vice Chair Frazey stated that has the line of thinking as Board Member Cullens. Also, the fact that there is another company there in the same area that may or may not had any complaints against them. If they are omitting smoke and fumes it is the types of materials that are being burned. The business is more of a light industrial use opposed to a residential office.

Chair Lyon acknowledged Board Member Watson.

Board Member Watson stated that he is the last person that wanted to stop a small business. When viewing the video and looking at the stacks on the roof they had soot on them. Which shows that there is soot coming out of them. That leads Board Member Watson to believe that the fumes are there and that if the winds are coming from the West no big deal but if they come from the East there is a problem. Everyone wants to be able to enjoy the use of the properties and the families in the surrounding area are not able to have that same in the area currently.

Chair Lyon acknowledged Board Member Miller

Board Member Miller stated that he is conflicted by this because on one hand he is sympathy to the residents and on the other regardless of where the building is it is operating within a R/O zoning. There are the complaints that the Board has been made aware of and the owner that is informing the Board that that is not the case.

Chair Lyon stated that he used to volunteer at his father's laboratory, and they had compressed oxygen cans that say danger oxygen. And they had furnace where they burned things mostly was all safe. However, there is a reason that lab was in an industrial park. What the Ordinance says is that this zoning can accept residential and straight office use and very little else except at the discretion of the zoning administrator who looked and stated that this is not a good fit. It is easy to sympathize with that it is a very round hole and a square peg. Chair Lyon read what OSHA says and if OSHA feels that this might be dangerous and if three neighbors come and say they do not like what is happening does give pause that it may be it is a nuisance and it may not be where Mr. Ojeda wants to do business so that he does not have to tiptoe around for the rest of his business life and he may want to find a place that is happy to have his business there.

Chair Lyon called for a motion:

Motion by Board Member Naugle to deny appeal of the Zoning Administrator's Opinion to prohibit a testing laboratory use within the R/O, Residential/Office District; second by Confer. Motion passed on 7-0 vote.

Ayes: David Lyon, Kevin Cullens, David Naugle, John Confer, Robert Miller Richard Watson, James Frazey

Nays: None

Abstain: None

Absent: Whitney Baker

Staff Mr. Abrahamson did not have any announcements.

Hearing adjourned at 8:17pm

Prepared by: Brittainy Nelson, Administrative Assistant

Reviewed by:



Steve Abrahamson, Principal Planner

SA:bn