

**MINUTES OF
THE CITY OF ELOY
BOARD OF ADJUSTMENT
Regular Meeting
Thursday, May 20, 2021 6:00 P.M.**

I. CALL TO ORDER

Chairperson Marlo Schuh called the meeting to order at approximately 6:00 p.m.

II. ROLL CALL

Members Present:

- Chairperson Marlo Schuh
- Board Member Gavino Rojas
- Board Member Natasha Tidwell
- Board Member Felix Bermejo
- Ex-Officio Andrew Rodriguez

Absent:

- Vice Chairperson Ezequiel Cazarez

Staff/Others Present:

- Jon Vlaming, Community Development Director
- Belinda Lopez, Planner
- Jeff Fairman, Economic Development
- J.W. Tidwell, Eloy resident
- Andrew D. Yancey, Bergin, Frakes, Smalley & Oberholtzer, PLLC
- Eric Offenberger, CEO of Vext Science

III. INVOCATION

Chairperson Schuh led the Invocation with a prayer.

IV. PLEDGE OF ALLEGIANCE

Chairperson Schuh led the Pledge of Allegiance.

**V. MOTION TO APPROVE THE OCTOBER 18, 2018 REGULAR MEETING
MINUTES OF THE CITY OF ELOY BOARD OF ADJUSTMENT**

Chairperson Schuh asked for a motion to approve the minutes. Board member Rojas made a motion to approve the minutes as written. Board member Tidwell seconded the motion. The motion was approved 4-0.

VI. NEW BUSINESS: POSSIBLE DISCUSSION AND/OR ACTION ON THE FOLLOWING:

A. PUBLIC HEARING TO ALLOW COMMENT FROM THE PUBLIC AND INTERESTED PARTIES ON PROPOSED CASE NO.: VA2021-010. APPLICATION BY BERGIN, FRAKES, SMALLEY & OBERHOLTZER, PLLC TO DEVIATE FROM THE PROVISIONS OF SECTION 21-3-1.24 (D) MEDICAL MARIJUANA CULTIVATION OF THE CITY OF ELOY ZONING ORDINANCE, TO REDUCE THE REQUIRED DISTANCE OF MEDICAL MARIJUANA CULTIVATION BUSINESS FROM A RESIDENTIALLY ZONED PROPERTY FROM 1,320' TO 1,307'. THE SUBJECT PROPERTY IS LOCATED AT 924 N. TWEEDY ROAD ON ASSESSOR'S PARCEL NUMBERS: 408-02-021 AND 408-02-022 IN THE I-1 (LIGHT INDUSTRIAL) ZONING DISTRICT.

Chairperson Schuh opened the Public Hearing. Mr. Vlaming gave a brief introduction of the item before them this evening. He commented that it is an addition and a follow on of the Conditional Use permit approved by the Eloy City Council at their last meeting and it is for a Medical Marijuana Cultivation facility located at 924 N. Tweedy Road, in the building previously owned by Elrus. The building has been vacant for a short period of time. The applicant has completed their due diligence and needed, not only the Conditional Use permit, but also the Board of Adjustment's consideration and approval of relaxing the setback requirement that is part of the Eloy City Code supplemental regulations identified in *Section 21-3.1.24 item D.: to provide a separation distance of 1,320 feet between the building wall and the residential property located south of Interstate 10. The property is zoned R1-43 (Estate Residential)*

Therefore, to ensure that the entire existing building can be used for cultivation activities (so that the Project can meet current and future product demands of its associated dispensary in Phoenix) a variance is now requested. If approved, the variance would reduce the existing adopted setback requirement between a medical marijuana cultivation building and a residential zoning district a total of 13 feet-the difference of the required (1,320 feet) and measured (1,307 feet) distance.

Mr. Vlaming mentioned this was the issue before the Board and that the applicant is asking for a relaxation of 13 feet because they have a survey measurement that is included in the meeting packet that confirms those distances. The existing zoning on the property is Light Industrial (I-1) and the applicant does not anticipate doing any additional exterior improvements-just inside tenant improvements. The south face of the existing Elrus building is not anticipated to expand in the future to further reduce the setback distance. Staff is recommending approval of the relaxation of the identified setback requirement.

Board member Rojas inquired as to a clarification of the 13 feet distance.

Mr. Vlaming explained that the 1,307 feet setback was measured from the existing building to the boundary of the residentially zoned parcel. The ADOT right of way would eventually be expanded in the future development of the area. The right of way would effectively function as a buffer between the separation distances at the end of the day.

Chairperson Schuh asked what would the city do if there was another case before them and the applicant inquired about a variance.

Mr. Vlaming responded that it is a fair question and that every case has its own set of circumstances and that is why the Board of Adjustment is in place. He added that not every situation is going to be the same. However, it does set a precedent that a requirement was relaxed, but based on the extenuating circumstances, he indicated that there is good rationale with this case as to why the relaxation of thirteen feet is permissible. He added that Chairperson's Schuh's point is well taken, but there is an awful lot of variables that could come into play on a future request to relax this particular requirement. He noted that the applicant has a very good barrier as the distance includes Interstate 10 right of way. There is a distance of 975 feet from the southern building to the edge of the I-10 right of way that is 300 feet of right of way on its own. He thought that many would say the presence of I-10 provides a very good separation from the building and its uses from the residentially zoned property (R1-43, Estate Residential).

Mr. J.W. Tidwell introduced himself as an Eloy resident. He asked as to "why are we here, didn't the requester do his homework and found out that he would be 13-feet short"? Or did he discuss the issue with City Staff and were told it was okay, that they would give him a variance? Earlier in the month, Council approved an ordinance regarding recreational marijuana with setback distances established from churches, schools and residences. He said, "What would you do if someone comes to put a medical marijuana dispensary within the boundaries of a church, school or residences?" He continued, "What would you do if the next applicant comes with a different context". He asked the Board to deny this request.

Mr. Andrew D. Yancey with Bergin, Frakes, Smalley & Oberholtzer, PLLC introduced himself and commented that he represented the applicant (New Gen Eloy) who is in escrow to purchase the building located at 924 N. Tweedy Road. He reindicated that the applicant's intent is to develop their new medical marijuana cultivation facility and mentioned also that Eric Offenberger, CEO of Vext Science was present in the audience and was available to address any questions. He commented that they operate an herbal dispensary located in Phoenix, Arizona and that is the dispensary that will be serviced by this cultivation facility. He added they are actually one of the original Phoenix license holders for medical marijuana and began their operations in 2014. He continued that what is happening now, is that they are having trouble meeting their current demand at the dispensary, but they are also expanding it. He mentioned that the City of Phoenix is allowing the expansion of the dispensary, so there is a need for additional

product and that is why his client has been looking for a large facility where they can cultivate medical marijuana.

This property is in the Light Industrial designated area as depicted in the City's zoning map. City Council approved the Conditional Use permit and there are specific uses and they meet all of them except the 1,320 feet distance from a residentially zoned property- they are short 13 feet, which would total 1% of the setback area. He showed a power point presentation for those in the audience. He mentioned the subject property is a 15 acre property and the building is approximately 71,000 square feet, it was constructed in 2008 and utilized in the recent past for large equipment painting, so it was built prior to medical marijuana becoming legal in the State of Arizona. He continued that there is no way, when the building was constructed, that the builder could have known what the setbacks would need to be, so this is one of those special circumstances that we are discussing here for the variance request application that would differentiate it from another applicant who would come forward and request a variance in the future.

He stated that the plan is to improve the building interior for the cultivation use, there are not any changes to the exterior or site layout. The cultivation will be indoor with no outdoor component. He said that Vext is looking to employ 25-30 employees. Access to the site will be limited to the employees as well to the delivery drivers who transport the product to Phoenix. He pointed out through the power point presentation that there is no vehicular access on Tweedy Road across Interstate 10.

He explained that this request would meet the requirements of the city's zoning code. The general intent of the code is to make sure that there is some sort of use that is protected and he believes the applicant would meet the intent. The use is entirely inside the building, and the actual use of the land between the building and the R1-43 zoning district includes a perimeter wall, industrial land, and the Interstate 10 freeway. He continued, as Board member Rojas previously mentioned, there are specific aspects of this vacant R1-43 property that indicate that a sensitive use will not go in the 13-foot sliver that is impacted. There are roadway easements on the plat and in addition, in the R1-43 zoning district, the minimum setback requirement is twenty-five feet. So in that case, if a building gets constructed, it would be outside that radius. The other element is that the Arizona Department of Transportation (ADOT) has approved an area of establishment along this segment of Interstate 10, so while it does not have a specific geographic perimeter of how many feet it goes each way. It is a precursor, if ADOT requires the right of way as Mr. Vlaming noted. He added it is within the Sun Corridor and very likely (due to its adjacency to I-10) would be rezoned for commercial/industrial uses.

Hearing no other comments, Chairperson Schuh closed the public hearing.

B. CONSIDERATION, DISCUSSION AND RECOMMENDATION FOR APPROVAL, DISAPPROVAL OR OTHER ACTIONS ON CASE NO.: VA2021-010 (PROJECT NAME: NEW GEN ELOY)

Chairperson Schuh asked a recommendation. Board member Rojas made a motion to approve Case No. VA2021-010 as presented. Chairperson Schuh seconded the motion. The vote passed 3-1.

Ayes: Chairperson Schuh; Board member Rojas, Board member Bermejo.

Nays: Board member Tidwell.

VII. COMMUNICATIONS:

A. EX-OFFICIO MEMBER ANNOUNCEMENTS

Ex-Officio Rodriguez introduced himself as the new ex-officio member appointed by the Eloy City Council. He mentioned that he would be updating the City Council about the outcome of this meeting.

B. COMMUNITY DEVELOPMENT DIRECTOR ANNOUNCEMENTS

- Frontier Street Community Tree Program identified by a citizen and City Council and the project will be bid towards the end of the summer for tentative construction by October.
- The City will go out for bids for a new project on Shedd Road between Giles Road to Estrella Road in the Toltec area to landscape and hardscape and put irrigation in the center median.
- Century Complete is planning to build single-family homes on 90 single-family residential lots at the existing Picacho Heights Subdivision along Frontier Road.
- On December 14, 2020, the Eloy City Council adopted the 2018 International Building Codes and the 2017 National Electric Code with local amendments and an update to the City's Building Permit Fees. The new codes and fees will go into effect thirty (30) days after adoption on January 13, 2021. However, the City Council has provided a grace period until April 6, 2021.

VIII. MOTION TO ADJOURN

With no further business, Chairperson Schuh asked for a motion to adjourn. Board member Tidwell made a motion to adjourn. Board member Rojas seconded the motion. The motion was approved by a vote of 4-0. The meeting adjourned at 6:46 p.m.