

## Justification & Compatibility Statement

### [ ] Variance Justification Questions:

- 1) **Explain what special circumstances or condltions apply to this property that may not apply to other properties in this area or zoning district (example: size, shape, topography, location or surroundings).**

**Response:** The special circumstances that exist between the subject 254 S. Mulberry property (Mulberry Lot 26) and the East Valley Institute of Technology "EVIT" \*relate to the physical barriers in place. First is the approximately 75' Union Pacific Rail Line that separates these 2 properties. Second, the pre-existing (8) topographic and other physical barriers that prevent entry/access exist between the 254 S Mulberry Building and EVIT properties. There are NO gates, openings, or access of any kind on the south EVIT property line (solid walls); and NO gates, openings, or access of any kind on the north Mulberry Lot 20 property line. Mulberry Lot 26 is another 310 feet to the south of Mulberry Lot 20, with the 254 S Mulberry building approximately 300' south of the Mulberry Lot 26 north property line.

These eight (8) physical barriers of entry to the 254 S Mulberry Medical Marijuana Wholesale Grow "MMWG" facility are as follows:

- 1) Secured interior EVIT wall preventing students from gaining access approximately 200' north of the EVIT south property line.
- 2) EVIT onsite water retention area of approximately 1 - 2 acres which contains approximately a 5-10' grade change with a steep 3/1 grade separation surrounding the perimeter of this onsite water retention area.
- 3) 8-12' high EVIT vertical chain link fence, with NO access points that runs along the south EVIT property line.
- 4) Rise in grade elevation of approximately 6' for the north side of the Union Pacific Rail right-of-way.
- 5) Drop in grade elevation down of approximately 6' for the south side of the Union Pacific Rail right-of-way.
- 6) From the north side of Mulberry Lot 20, there is a 14' HIGH BLOCK wall, with sharp razor/cupertino wire at the top of 14' block wall. This 14' high block wall has NO access gates to allow entry.
- 7) Another 6' high block wall between Mulberry Lot 20 and Lot 26 (254 S Mulberry is the south facing building of the 3 buildings located on Mulberry Lot 26) that has one direct access point during normal business hours.
- 8) The subject MMWG facility is proposed to be located within 3-5 suites of 7 total building suites. All 7 of these suites are 5,000 s/f/each at this 254 S Mulberry building. All the MMWG exterior doors will NOT be open/accessible to the public. Only employees who have passed the necessary screening process and carry security badges will be allowed into these MMWG suites. This facility will be LOCKED 24/7, 100% of the time. There will also be security cameras at every point of entry recording every ingress/egress of individuals to the facility.

\*Sidebar: An argument can be made whether EVIT Vocational school, with adult student enrollment, even meets K-12 "protected" class requirement of 1,200' separation.

**2) Explain how the special circumstances or conditions cited in Question #1 originated. Are these conditions pre-existing and not self-imposed? Why or why not?**

**Response:** The Union Pacific rail line and the EVIT physical barriers of entry detailed in question #1 have been in place for decades; and not self imposed by the Mulberry property. The Union Pacific Rail Line also necessitated that each respective property had to orientate their access from different north (EVIT: Main Street) and south (Mulberry: Broadway Road) major arterials, with NO direct access to one another's property. Both the EVIT and Mulberry property are located on "dead end" cul-de-sac streets.

The only vehicular OR pedestrian access between both properties requires taking a circuitous route via either Dobson Road (2.1 miles) or Alma School (1.5 miles) to get to the Mulberry cul-de-sac road from the EVIT campus. More importantly, a student would first have to be aware that there was MMWG operation *before* figuring out the connecting route via major streets between EVIT and the single cul-de-sac street to the site; then one would have to have the transportation or energy (on foot) to travel the distance on this circuitous route to locate (by chance) a cultivation site that will not have exterior signage to identify its location, and will not be advertising to the public its location.

Thus, the justification for the 1,200' *linear* separation between these 2 properties has no merit or factual foundation in this specific circumstance.

**3) Explain how strict compliance of the Zoning or Sign Ordinance would deprive the property of uses or development options available to other properties in the same zoning district.**

**Response:** The primary justification as to why Variances and Board of Adjustment committees have been created in every municipality is to provide a mechanism to interpret/break-down the general, "broad-brush" scope of general zoning ordinances and set-back requirements to allow leeway, IF warranted, for unusual and unique situations so that they can be heard/reviewed on their individual basis. In this specific situation, the strict compliance of the 1200' separation between this "not open to the public" MMWG facility and K-12 school (which in this "EVIT" case is also an adult vocational school), which has the 8 barriers of entry - supports the primary reason for establishing a Variance/Board of Adjustment process.

The reason for a separation requirement in the ordinance is to avoid, to the degree sensible, contact between youth and medical marijuana. Other Industrially-zoned property in the City may be on a major street close to a school that (were that property occupied by a dispensary) might introduce a "temptation" for a youth-drug interaction to occur. In this instance, the property is so far from accessibility by young persons, and is so "hidden" from public detection within the industrial project, that there is no likelihood of interaction between students and the operators of the facility. We note also that as a cultivation facility, the building is of little interest to persons who cannot make use of the site's product because it has not been processed for consumption (even for medicinal purposes) in operation of the facility. Finally, it is apparent that because of the physical barricades separating EVIT and the site, the chance of an interaction is negligible. Candidly, if this is not an instance in which variance relief can be granted, there is no location in the City of Mesa where it can be granted to a cultivation site – and if this fact is true, then the city should not process any zoning adjustment cases for the medical marijuana industry.

There is no "marketing window" along a street affording conventional opportunities to locate other potential users and uses of the project.

**4) Explain why the requested variance will not grant special privilege or unusual favor to this property or development over other sites with similar circumstances and zoning.**

**Response:** Having the Union Pacific Rail Line is the "constant" special circumstance that affects this largely industrial area. This Rail Line creates the same topographical obstacles, barriers of access entry to our site.....just as it does to every other comparable zoned site that is situated on the other side of this Rail Line. Given that this Rail Line has been in place well before practically every other type of commercial and/or residential development that has occurred in this area, this Rail Line also deterred residential development contiguous to this Rail Line. Much of this area within this zoning district has evolved into a commercial zoning district on the major arterial streets; and an industrial zoning district for the dead-end streets such as Mulberry. But there are very few industrially-zoned parcels within Mesa that (a) back up to the Rail Line AND (b) are accessible only from a local, dead-end street that sets the project back a significant distance from a major street.

Given that our contemplated MM facility is a wholesale, NO public access type facility, our Mulberry location, situated on a no-through access dead-end street, enables this wholesale "grow-only" user to maintain anonymity when compared to projects located along or closely adjoining arterial streets.