

CITY BOARD OF ADJUSTMENT
****Addendum** MINUTES of Meeting No. 1028**
Tuesday, July 13, 2010, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Tidwell, Secretary Van De Wiele White, Vice Chair	Stead	Alberty Cuthbertson Sparger	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Tuesday, July 6, 2010, at 8:57 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Henke called the meeting to order at 1:00 p.m.

Mr. Cuthbertson read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the **Minutes** of June 22, 2010 (No. 1027).

Mr. Henke asked if there were any Requests for Continuance. Mr. Cuthbertson responded that there were two Requests for Continuance.

Case No. 21108-Susan Poe Dixon

Action Requested:

Appeal the determination of an administrative official in issuing a residential building permit for a 'new residence'. **Location:** 2640 S. Columbia Pl.

Mr. Cuthbertson informed the Board that both primary interested parties, the appellant and the subject property owner were in agreement for a continuance.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** the appeal in case No. 21108 to the August 24, 2010 Board of Adjustment meeting; on the following described property:

PRT LT 4 BEG NEC TH W75.5 CRV LF 173.75 NW92.68 NWC S121.70 E336.12 NLY141.6 POB BLK 4, WOODY-CREST SUB

Case No. 21115-William LaFortune

Action Requested:

Variance of the 300 ft. spacing requirement for an Adult Entertainment Establishment (Use Unit 12a – night club) from another Adult Entertainment Establishment (Use Unit 12a – bar); and a Verification of the spacing requirement for an Adult Entertainment Establishment of 300 ft. from a church, school, or park and 50 ft. from an R district (Section 1212a.C.3); to permit an expansion of an existing Adult Entertainment Establishment. **Location:** 725 & 727 N. Sheridan Rd.

Mr. Cuthbertson informed the Board the applicant made a timely request for continuance of this application to the next hearing on July 27, 2010.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** the request in Case No. 21115 to the July 27, 2010 Board of Adjustment meeting; on the following described property:

LOTS 1 & 2, Blk 1, WALTER SQUARE ADDN RESUB L1-24 NORTHEAST CENTER ADDN

UNFINISHED BUSINESS

Case No. 21086-Kim Wathen

Action Requested:

Variance of the maximum permitted floor area for detached accessory buildings in the RS-2 district (Section 402.B.1.d); and Variance of the 30 ft. of frontage required on a public street to permit a lot to be used for residential purposes

(Section 206); to permit an existing dwelling and detached building(s). **Location:**
1502 South 133rd East Avenue

Presentation:

Kim Wathen, 1502 South 133rd East Avenue, Tulsa, Oklahoma; Mr. Wathen stated he did not understand why he needed to go through this hearing and did not understand why the variance request for the 30 ft. frontage was on the agenda, because he went to Harden & Associates and had a survey performed on the property. The survey shows the frontage is a right-of-way for a street and is platted as a street.

Mr. Wathen stated he did not know how to handle the remaining variance request because the house and pool cover was built with no permit by a builder. Now the builder, Gerald Snow, is in prison on several charges.

Comments and Questions:

Mr. Cuthbertson asked Mr. Wathen if he had submitted his new plans to the City of Tulsa Permit Office, and Mr. Wathen stated he had not. Mr. Cuthbertson told Mr. Wathen he needed to take the survey and plans to the Permit Office, especially if the City sent a written letter of deficiency on a Permit Application stating he needed 30 ft. of frontage on a public street. Mr. Wathen then needs to provide the City evidence showing he does have 30 ft. frontage on a publicly maintained road, then have the Permit Office remove the deficiency from the Permit Application before the requested variance is withdrawn from the Board of Adjustment.

Mr. White asked Mr. Cuthbertson if Councilor Jim Mautino has had his issue with this application resolved, and Mr. Cuthbertson stated he had not heard from Mr. Mautino since his request to have the case continued.

Mr. Mautino had told Mr. Cuthbertson that one of his concerns was the dog shelters and Mr. Wathen stated he would no longer have the dogs in 30 days.

Mr. Henke asked Mr. Wathen if he was running a business on the property and Mr. Wathen stated he was not.

Mr. Henke asked when the accessory building was built and Mr. Wathen stated the building was built before the house. Mr. Henke asked when the house had been built and Mr. Wathen stated approximately 2008. Mr. Henke asked Mr. Wathen what the permit application from July 2009 was seeking. Mr. Wathen stated he did not know because he had not applied for any permits personally except for the permit for the pool and pool cover. Mr. Henke stated the permit in question was for the accessory building in July 2009.

The board asked if Mr. Wathen had acquired the property and Mr. Wathen stated he had not acquired the property, that the bank still owned the property.

Interested Parties

Jack Page, Director of Development Services, City of Tulsa, 175 East 2nd Street, Tulsa, OK; Mr. Page stated he has a little knowledge about this case. His office was closing out cases and the application for the accessory building and the application for the building permit for the pool cover had recently timed out, which caused concern for this case. According to the records the application for both of the structures were applied for by Mr. Kim Wathen. The Development Services office had provided notice to the applicant stating the permits had timed out and that Mr. Wathen needed to reapply. At approximately the same time as the application for a variance request came in for a hardship, stating the contractor, Gerald Snow, had built the structures without permits, the letter of deficiency(s) were sent to Mr. Kim Wathen. Thus, he was very much aware there were no permits. It is a concern of the Development Services Department that this is not a hardship based on a contractor building without a permit.

The Board asked Mr. Page which came first, the accessory building or the application for permits. Mr. Page stated the original application date appears to be July 16, 2009 for the accessory building and the house already existed.

Mr. Wathen stated the accessory building was in existence about 1 ½ years before the permit was applied for. He applied for the permit because "someone came to the house and told me the building was illegal and needed to have a permit applied for, so I applied".

Mr. White asked Mr. Boulden about the legal access from the street, because one lot is platted and one lot is unplatted. Mr. Boulden stated Mr. Wathen will need to go to the Planning Commission to combine the legal descriptions to give him legal street frontage.

Mr. Wathen explained the variance of the size of the accessory building may not be needed either as the interior of the home has been expanded. He thinks it might be big enough to provide 40% for the accessory building.

The Board suggested this application be continued to allow Mr. Wathen to bring the new information to the permit office for review and pursue the lot combination.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White aye"; no "nays"; no "abstentions") to **CONTINUE** the request for Variances for Case No. 21086 to the August 10, 2010 Board of Adjustment meeting; on the following property:

BEG NEC NW SW TH W322.5 S660 E322.5 N660 POB SEC 9 19 14

NEW APPLICATIONS

Case No. 21104-AMAX Sign Company

Action Requested:

Variance of the maximum display surface area permitted for wall signs in a PUD from 2 sq. ft. (Section 1103.B.2.a); and a Variance to permit roof signs on a building in a PUD (Section 1103.B.2.b.1) **Location:** 6716 South 104th East Avenue

Presentation:

Brian Ward, 9520 East 55th Place, Tulsa, Ok; Mr. Ward stated the signage for this project is different from the normal request because the ALOFT letters on the elevations appear to be floating. The structure the signs are attached to atop the building appears to be floating but is attached to a parapet wall. There is no clear definition in the city code stipulating whether these particular signs are a wall or roof sign, and since the letters in the sign are not attached to a wall, the sign is classified as a roof sign. The signs as viewed from the highway will appear to be wall signs.

Comments and Questions:

The board confirmed with Mr. Ward that he was only requesting a variance for 2 sq. ft.

Mr. Cuthbertson stated Mr. Ward does not need relief on the display surface area but does need to amend the PUD which does not require a variance from the Board of Adjustment. A variance for the roof sign is still needed because roof signs are expressly prohibited in the City of Tulsa, except for a small area in downtown. Mr. Boulden questioned whether the signs as presented at the top of the building were roof signs as they appear attached to a parapet wall. The Board discussed the nature of the structure to which the signs on top of the building would be attached.

Mr. Alberty stated if the signs exceeded 2 sq. ft. it would require Board relief. The signs do not exceed 2 sq. ft. therefore Mr. Ward will need to go back to the Planning Commission and request an amendment to the PUD. In regards to the issue of whether the sign is a wall sign or a roof sign the board can determine that it is a wall sign because the sign is attached to a parapet wall.

Interested Parties:

No interested parties were present.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") on a motion finding that on the Variance of the maximum display surface area permitted for wall signs in a PUD from 2 sq. ft. (Section 1103.B.2.a) the Board finds the relief is not necessary insofar as the area is actually less than 2 sq. ft. and the applicant is to appear before the Planning Commission to receive PUD relief. For the second Variance to permit roof signs on a building in a PUD (Section 1103.B.2.b.1) the Board makes the determination the sign as shown per plans

4.6 and 4.8 is by definition is a parapet sign and not a roof sign; for the following property:

LT 4 BLK 1, HOME CENTER AMD RESUB L1B1 HOME CENTER

Case No. 21106-Keith Menefee

Action Requested:

Verification of the spacing requirement for a pawn shop of 300 ft. from blood banks, plasma centers, day labor hiring centers, bail bond offices, liquor stores, and other pawn shops (Section 1214.C.3). **Location:** 11142 East 31st Street

Presentation:

Keith Menefee, 4055 International Plaza, Ft. Worth, TX; Mr. Menefee was present for presentation or questions; no presentation made, no questions asked.

Comments and Questions:

None.

Interested Parties:

No interested parties were present.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **ACCEPT** the verification of the spacing requirement for a pawn shop of 300 ft. from blood banks, plasma centers, day labor hiring centers, bail bond offices, liquor stores, and other pawn shops (Section 1214.C.3) subject to the action of the board being void should another above-referenced conflicting use be established prior to this pawn shop; for the following property:

LT 3 BLK 1, 3100 GARNETT SQUARE

Case No. 21107-Travis Butler

Action Requested:

Variance of the setback (required yard) from the centerline of an abutting arterial street from 70 ft. to 55 ft. (Section 403) to permit an addition to an existing attached garage. **Location:** 2404 East 25th Place South

Presentation:

Travis Butler, 1236 South Peoria, Tulsa, OK; Mr. Butler stated his client wants to convert a single-car garage into a two-car garage.

Comments and Questions:

The Board asked if the driveway was going to be widened and Mr. Butler stated it was not.

The Board asked if the applicant was going to maintain the existing fence and the existing landscaping in the front of the property. Mr. Butler stated the fence and landscaping were going to be maintained in both areas.

The board asked if the house was built before 1970 and Mr. Butler stated it was.

The board questioned the location of the existing privacy fence and Mr. Butler stated according to the survey the fence is located over the property line and has been for a long time. He did not know when the fence was built.

Mr. Cuthbertson suggested Mr. Butler's client pursue a licensing agreement for the fence.

Interested Parties:

No interested parties were present.

Board Action:

On **MOTION** of **Van De Wiele**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the setback (required yard) from the centerline of an abutting arterial street from 70 ft. to 55 ft. (Section 403) to permit an addition to an existing attached garage, per plan 6.6. Finding the house in question was built prior to the adoption of the code and the location of the other houses and improvements in the vicinity also are significantly closer to Lewis Avenue, the board finds this is a hardship that warrants the relief requested; 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; on the following described property:

**W. 85' LT 9- BLK 1, KENLAWN SECOND ADDN AMD RESUB PRT L4 J P
HARTER'S SUB**

* * * * *

Case No. 21109-Steve Olsen

Action Requested:

Variance of the required side yard in the RS-2 district from 10 ft. to 6 ft (Section 403) to permit an addition to an existing dwelling. **Location:** 912 South Braden Avenue

Presentation:

Steve Olsen, 324 East 3rd Street, Tulsa, OK; Mr. Olsen represents the applicant and proposes an addition to their residence in alignment with the existing structure.

Interested Parties:

No interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the required side yard in the RS-2 district from 10 ft. to 6 ft. (Section 403) to permit an addition to an existing dwelling; finding the hardship to be a RS-2 District and this house was built before the zoning code was adopted in 1970. Finding the applicant's proposal per conceptual plan 8.7 is to extend the existing structure to the rear and not expand any closer than the existing side yard already established. 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; on the following described property:

S 61 LOT 1 BLK 30, WHITE CITY ADDN

Case No. 21110-Metro Landscape

Action Requested:

Applicant was not present.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** the request for Variance for Case No. 21110 to the July 27, 2010 Board of Adjustment meeting. **Location:** 4243 East 72nd Street South

Case 21111-Roy D. Johnsen

Action Requested:

Variance of the required parking spaces for a public school (Section 1205) to 1712 spaces; and an Amendment to a previously approved site plan, both to permit an addition to an existing school. **Location:** 6636 South Mingo Road

Presentation:

Roy Johnsen, Williams Tower One, One West 3rd Street, Suite 1010, Tulsa, OK; Mr. Johnsen represents the applicant requesting the variance. The Union School District desires to move the sophomore students from the intermediate high school to this site to provide a better learning environment. This move would be approximately 1,000 students, thus requiring a new facility to be built which would eliminate existing parking on the northeast corner of the property. The southwest corner is proposed to be new parking to replace the eliminated parking.

Interested Parties:

No interested parties were present.

Comments and Questions:

The Board asked about overflow parking during school days, and Mr. Johnsen stated the overflow parking was not utilized by students during the school day. The overflow happens only during rare peak athletic events. Mr. Johnsen also stated that Asbury Methodist Church, located across S. Mingo Rd. would be notified by the school of any activities to take place.

Mr. Boulden questioned if there was going to be lighting installed for the new parking lot. Mr. Johnsen stated that there would be shielded lighting, or lighting that would be directed back into the parking lot so it would not interfere with the neighborhood.

The Board asked about the screening or landscaping for the area. Mr. Johnsen stated screening is not required by code as the parking lot is set back more than 50 ft. from the abutting R districts but there will be alternative landscaping in place when the project is complete.

Board Action:

On **MOTION** of **Van De Wiele**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the required parking spaces for a public school (Section 1205) to 1712 spaces; and an Amendment to a previously approved site plan, both to permit an addition to an existing school, per conceptual plan 10.10; 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. As to the Amendment the Board finds it 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. Also, note that an alternative compliance may be sought for the landscaping; on the following described property:

LT 1 BLK 1, UNION HIGH SCHOOL ADDN

Case No. 21112-Robert Shears

Action Requested:

Special Exception to permit an office use (Use Unit 11) in an RM-2 district (section 401); a Variance of the parking requirement from 7 to 2 (1211.D); and a Special Exception to modify the screening requirement for an office use from an abutting R district (Section 212.C); all to permit an office use in the existing home. **Location:** 1522 South Carson Avenue W.

Presentation:

Jim Beach, Wallace Engineering, 200 East Brady, Tulsa, OK; Mr. Beach represents the applicant who purchased the property in 1998 as his residence and started his landscaping consulting firm business in the home in 2004. In 2009 the applicant purchased a new residence and now would like to maintain his business at this property. The business would be very quiet because clients rarely visit the office because the business is conducted outside at his clients properties. There are several other properties located near the applicant that have prior approval for office space; therefore, it is a mixed use neighborhood. The request for modification of the screening requirement would apply along the north and west property lines; the west is screened by the garage structure and the north is screened with existing landscaping. The applicant feels the addition of screening would be a deterrent to a relationship between the properties and the neighbors have requested not to have a screening fence.

Interested Parties:

No interested parties were present.

Comments and Questions:

The board asked what the garage was used for and Mr. Beach stated half of the garage was used for storage.

The board asked about the existing fence. Mr. Beach stated the existing fence would be maintained but the neighbors have requested not to have it extended outward toward Carson Avenue, which is why the application request for screening modification has been submitted.

Board Action:

On **MOTION** of **Van De Wiele**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nay"; no "abstentions") to **APPROVE** the Special Exception to permit an office use (Use Unit 11) in an RM-2 district (section 401); a Variance of the parking requirement from 7 to 2 (1211.D); and a Special Exception to modify the screening requirement for an office use from an abutting R district (Section 212.C); all to permit an office use in the existing home; finding the neighborhood is a mixed use type and 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. As to the Special Exceptions the board has found 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, subject to plan 11.7 which will require the 8 ft. fence will be maintained as well as the sidewalks shown on plan 11.7; on the following described property:

LT 5 BK 3, STONEBRAKER HGTS ADDN

Case No. 21113-Tulsa Engineering and Planning

Action Requested:

Special Exception to permit nursing home use (Use Unit 2) in an RS-1 district (Section 401). **Location:** 9415 South Yale Avenue

Presentation:

Tim Terral, Tulsa Engineering and Planning Association, Inc., 6737 South 85th East Avenue, Tulsa, OK; requesting a special exception for nursing home use in a RS-1 district. This location is an appropriate property for a nursing home because it at an intersection that has limited access to an expressway, a primary arterial street, a good buffer to the properties to the north, and the topography is not conducive for a residential use. The proposed architecture is residential style and would be harmonious with the surrounding developed neighborhoods. The proposed nursing home would only generate a light traffic flow with the peak time being at shift change, which occurs at times such that there will be no impact with traditional rush hour traffic.

Interested Parties:

Steven Gray, 4530 South Sheridan Road, Tulsa, OK; represents Dr. Ben Pettigrow who lives immediately north to the subject property. This area was originally a corridor district but that has been removed because the area developed as a residential area. The Zoning Code in a RS-1 area requires a 25 ft. setback from the property line and the portico, as illustrated on the drawing presented, will not provide that. His client's bedroom is situated on the south side nearest to this property. The noise level created

by ambulances arriving or departing is an issue for the residential area, because ambulances can arrive at any time through a 24-hour day. The proposed use will negatively increase traffic in the area as there is only one way and one way out onto S. Yale Av. There is a possible traffic issue to the east and north if the facility was ever to connect to those neighborhood streets because a nursing home is a 24-hour facility. A nursing home is not a low intensity use like a school. The main concerns are the noise and intensity of the use. The zoning code states one of the purposes of the residential district is "to protect the character of residential areas by excluding inharmonious commercial and industrial activities"; a nursing home is a commercial use facility. He is also concerned this use will set precedent for strip zoning north on S. Yale Av. He feels there is not a shortage of nursing homes in the Tulsa area and this facility is not needed to meet demand.

Jim Barnes, 5110 East 93rd Street, Tulsa, OK; Mr. Barnes owns the property on the east side of the proposed nursing home. Mr. Barnes stated the City of Tulsa Commission and the Turnpike Authority both said there would be no commercial development on any of the four corners of the turnpike entrance. This is witnessed by the fact that there is nothing on the other three corners but residential. Mr. Barnes expressed concern with noise and traffic related to the proposed use.

Brad Beasley, 9325 South Winston Avenue, Tulsa, OK; an attorney representing himself as a homeowner near the proposed nursing home. Mr. Beasley stated he is concerned about the traffic count on S. Yale Av., because not only is it employees driving but it is deliveries, trash pick-up, visitors, etc. He is also concerned about the noise level created by ambulance or fire department sirens.

Bob Dupree, 4620 East 94th Street, Tulsa, OK; Mr. Dupree stated he has looked at the INCOG traffic counts for the area and they are 24,700 which is approximately the same as Memorial and Riverside Drive in the same general area because there is a limited number of access sites to the turnpike in south Tulsa. A few years ago the city widened the street to six lanes plus a center median. In order to do so the City of Tulsa obtained a substantial amount of residential property so when a car stops on a side street it is almost in the on-coming traffic flow to be able to see in either direction, the nursing home will face the same problem. The other concern is the safety issue of the dedicated lane for exiting the turnpike because that traffic does not slow down. The nursing home traffic will have to exit through that turnpike exit lane.

Lawson Vaughn, 9107 South Canton Avenue, Tulsa, OK; Mr. Vaughn is an attorney representing Braden Park Home Owners Association. The homeowners association's concern is the increased traffic count and possible decreased property values. Mr. Van De Wiele asked Mr. Lawson if his neighborhood has direct access to S. Yale Av. Mr. Lawson replied that the neighborhood connects to E. 91st St.

Steve Cox, 11801 South Sandusky, Tulsa, OK; Mr. Cox is the developer of the proposed project. He stated in the 1970's there was a Certificate of Need issued by the state created for building new nursing homes. There has not been a certificate issued

to build a new nursing home for many years, so basically, an existing nursing home had to move to establish in a new area; south Tulsa is grossly underserved. An established nursing home located at 21st east of Lewis is the facility proposing to move to the subject property site. Mr. Cox felt that the existing facility near 21st and Lewis deals with the same type of traffic intensity as posed on S. Yale Av. and there is no negative impact.

Comments and Questions:

The Board asked about the total number of employees, and Mr. Terral stated there would be approximately 42; the day shift possibly would be 25, the evening shift possibly would be 12, and the night shift possibly would be 6 for a 66 bed unit such as this proposed nursing home.

Mr. Terral added that the nursing home is a low intensity use. The nursing home would comply with the RS-1 district requirements and other City technical requirements. Mr. Terral provided that the property is not feasible to be developed as residential property particularly as the property abuts an expressway. There is an average of 2 to 3 ambulance runs to these types of facilities a week and deliveries are also limited to 2 to 3 a week. There will be no access to this property to the east. Mr. Terral questioned how this particular use would contribute to strip zoning as S. Yale Av. is already well developed out between this property and 91st St. This property will have a residential look and feel to blend into the surroundings.

Mr. Tidwell asked about the elevation and Mr. Terral stated it was between 5 ft. to 10 ft. below street level. Mr. Tidwell also stated he thought the deceleration lane for the Creek Turnpike could pose a traffic hazard due to the location of the proposed driveway to the nursing home. Mr. Van De Wiele observed that the nursing home driveway is located where the existing driveway for the property is located.

Mr. White asked Mr. Boulden about the binding nature of the promise given by the Turnpike Authority. Mr. Boulden stated he did not think it was binding unless the Turnpike Authority owns the property and there has been nothing presented in writing.

Mr. Tidwell expressed concern for the potential traffic for this facility given the proposed size. Mr. Van De Wiele provided that existing traffic on this portion of S. Yale Av. is already very heavy.

Mr. Alberty responded to a statement regarding seeking rezoning the property to permit a nursing home. A nursing home is categorized as a Use Unit 2 use. None of the Use Unit 2's go in any zoning district by right. The applicant could file a PUD and under a Planned Unit Development request the same thing by Special Exception. Therefore rezoning will not solve the problem.

Mr. Tidwell suggested he could not support this as presented today. Mr. White expressed that we have an aging population and we have an increasing need to locate

nursing homes around the city. Mr. White suggested that this plan is not perfect but it appears workable.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 3-1-0 (Henke, Tidwell, Van De Wiele, "aye"; White "nay"; no "abstentions") to **DENY** the Special Exception to permit nursing home use (Use Unit 2) in an RS-1 district (Section 401); in not granting the Special Exception the board must find it will not be in harmony with the spirit and intent of the Code, and will be injurious to the neighborhood or otherwise detrimental to the public welfare; on the following described property:

A tract of land located in the W/2 of the SW/4 of the NW/4 of Section 22, T-18-N, R-13-E of the Indian Meridian, Tulsa County State of Oklahoma, according to the Official U.S. Government Survey thereof, being more particularly described as follows: The Southerly 330.00 feet of the Northerly 528.00 feet of the W/2 of the SW/4 of the NW/4 of Section 22 LESS AND EXCEPT: Beginning at the Northwest corner of the Southerly 330.00 feet of the Northerly 528.00 feet of the W/2 of the SW/4 of the NW/4 of Section 22; Thence South along the West line of the NW/4 a distance of 330.00 feet; Thence East a distance of 131.17 feet; Thence N 03°34'07" W a distance of 7.90 feet; Thence N 22°50'21" W a distance of 215.41 feet to a point 50.00 feet East of said West line of said W/2 of the SW/4 of the NW/4; Thence North and parallel with and 50.00 feet as measured perpendicular to said West line a distance of 122.07 feet; Thence West a distance of 50.00 feet to the Point of Beginning. AND LESS AND EXCEPT: The West 10.00 feet of the North 146.83 feet thereof.

* * * * *

Case No. 21116-Malcolm Rosser

Action Requested:

Special Exception to permit an Assisted Living Facility (Use Unit 8) in an OM district (Section 601); and a Variance of the maximum Floor Area Ratio permitted in the OM district from .50 to .85 (Section 603); both to permit an existing Assisted Living Facility on the OM zoned property. **Location:** 7220 South Yale Avenue

Presentation:

Malcolm Rosser, 321 South Boston Avenue, Tulsa, OK; he said that he represents Covenant Group that has existing assisted living facilities around the country. The subject property is Aberdeen Heights Assisted Living facility established in 1998. Mr. Rosser's client purchased the property in September 2009. In May 1994 a variance was granted by the board to modify the floor area ratio from 50% to 85% for a nursing home use, which was allowed in an OM district by right. In July 1994, the City of Tulsa adopted an ordinance that required a special exception for nursing homes located in an OM district; at that time, assisted living facilities were not recognized by the Code. Building permits were issued in 1996 as a nursing home. The State of Oklahoma

Department of Health issued a license in September 1998 to the facility as an assisted living facility which is a different license from that of a nursing home. The facility has always been licensed and operated as an assisted living facility, which is now classified under the code as a Use Unit 8. The request for a variance and special exception was brought about by attempting to refinance the facility.

Interested Parties:

No interested parties were present.

Comments and Questions:

The board inquired about the capacity of the facility; Mr. Rosser stated the facility was licensed for 88 beds or 82 rooms.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit an Assisted Living Facility (Use Unit 8) in an OM district (Section 601); and a Variance of the maximum Floor Area Ratio permitted in the OM district from .50 to .85 (Section 603); both to permit an existing Assisted Living Facility on the OM zoned property; 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 and 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 as constructed. The hardship would be the modification of the zoning code from when the building was constructed to the present code; on the following described property:

LT 1 BLK 1, HEATHERIDGE SOUTH

Case No. 13834-A-Sequoyah Hills Baptist Church

Action Requested:

Amendment to a previously approved site plan for a church in the R district constructed within 25 ft. of an adjoining R district; to permit an entry canopy addition to the north side of the existing building. **Location:** 714 North Harvard Avenue

Presentation:

Fred Jackson, 4609 West Memphis, Broken Arrow, OK; is requesting the approval to have an 8 x 12 canopy installed over an entry on the north side of the building as presented.

Interested Parties:

No interested parties were present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Amendment to a previously approved site plan for a church in the R district constructed within 25 ft. of an adjoining R district; to permit an entry canopy addition to the north side of the existing building per plan 15.7; finding the Amendment 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; on the following described property:

LT 1, BLOCK 1, HARVARD SQUARE RESUB HARVARD CIRCLE

* * * * *

OTHER BUSINESS:

None.

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 3:15 p.m.

Date approved: 7/27/10

Frank X. Henke
Chair