

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 1035  
Tuesday, October 26, 2010, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Henke, Chair Stead Tidwell, Secretary White, Vice Chair Van De Wiele		Alberty Cuthbertson Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, October 21, 2010, at 4:53 p.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.

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

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**MINUTES**

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the **Minutes** of October 12, 2010 (No. 1034).

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**UNFINISHED BUSINESS**

**Case No. 21147-Erica Dorwart**

**Action Requested:**

**Appeal** the determination of an Administrative official in issuing a permit (#233593) for a carport addition and interior remodel. **Location:** 2249 South Troost Avenue

**Mr. White recused himself and left the room at 1:05 P.M.**

**Presentation:**

**Erica Dorwart**, 2255 South Troost Avenue, Tulsa, OK; stated she did not receive the motion to dismiss until late last night. First of all, the Board has already exercised jurisdiction over this matter because there was a hearing that heard approximately two-thirds of the case on October 12, 2010 without objection before this Board. The homeowner was recognized and spoke without objecting to this Board's jurisdiction. Therefore, Ms. Dorwart thinks the hearing is past the phase of a very untimely filed motion to dismiss. Secondly, the original permit issued was subject to a stop work order and the homeowners submitted a second set of site plans, an addendum application, which Ms. Dorwart says she timely appealed. Every time the homeowners have provided any additional information she says she has timely appealed certain issues.

Ms. Dorwart stated the first notice she had of work being performed next door to her was on August 26, 2010 when she left her home to go to work. Ms. Dorwart stated she did not believe construction to be a hole in the ground which is approximately 95 feet from the street and not visible from the street. Therefore, she feels she did not receive any notice to the construction to be performed. Ms. Dorwart stated that she did timely appeal the addendum application which should be the only application that complies, as was discussed at the first Board meeting the first set of site plans were falsified.

**Interested Parties:**

**John Moody**, Attorney at Law, 6004 South Marion, Tulsa, OK; stated he represents William and Patricia Harwell, the owners of the subject property. He presented the Board with an affidavit from Steven Krutz who is the contractor for the Harwells. The affidavit states that Mr. Krutz posted a building permit that was issued on August 13, 2010 on the outside gate of the fence adjacent to Ms. Dorwart's property, as required by Tulsa revised ordinances. Pictures were presented to show the work on the project that started on August 17, 2010 by cutting holes in concrete and digging out earth for piers for the proposed carport. These pictures and the affidavit are clear visible evidence that would have given any person notice of work being done on a project. The photographs document the construction that could have been seen more than ten days prior to September 3, 2010 which is the date Ms. Dorwart filed for an appeal. Mr. Moody stated the basis of his motion to dismiss states that Tulsa ordinance, Section 44-109, says any person who has been aggrieved by a decision of an Administrative Official must file an appeal within ten days from the date of the decision; clearly the appeal was not filed within ten days of the date the permit was issued. The Oklahoma Supreme Court, Lee Harwell vs. City of Tulsa Board of Adjustment, Section 110, says the ordinance is mandatory and a person must file within ten days. Mr. Moody stated it is his position that the appeal has not been timely filed within the ten day limit period.

Mr. Henke asked Mr. Moody if he was stating that the Harwells gave ten days notice to the neighbor; and if in this case the notice was given on the 18<sup>th</sup> of August. Mr. Moody stated the ordinance does not require a person to give notice of the issuance of a building permit, it simply says "ten days from the date of issuance". Mr. Henke then stated if that were the case how would a person know a building permit had been

issued. Mr. Moody answered that is why an affidavit was presented stating the building permit had been posted on the gate of the construction site on August 17<sup>th</sup>.

**Steve Krutz**, 3021 East 26<sup>th</sup> Street, Tulsa, OK; stated he is the contractor on the job site, and when he received a stop work order from the City he took the permit off the fence and made a copy for the City. Mr. Krutz stated that Ms. Dorwart would have and could have seen the permit at any time because of a gate in Ms. Dorwart's fence is only about six feet from where the permit was posted, which Ms. Dorwart uses almost constantly. Mr. Krutz also stated that Ms. Dorwart has a video camera positioned on an arch door way on her property that is positioned toward the work zone so she could have seen the holes being cut and equipment brought in.

Mr. Moody presented pictures of the gate constructed in the concrete wall constructed by Ms. Dorwart. The gate is used frequently by Ms. Dorwart and the gate is approximately within three feet of the property line therefore the permit is posted clearly visible from her property.

Mr. Henke asked Mr. Swiney for clarification on the posting of the notice on the fence. Mr. Swiney stated the ordinance does not state that the appellant has to file an appeal within ten days of knowing or should have known, the ordinance simply states ten days from the determination complained of; case law states a person has to have notice before starting. Mr. Swiney stated Ms. Dorwart should have had knowledge of work being performed or starting because of the document being posted and work being performed on the property.

Mr. Moody stated that if a person does not have jurisdiction they do not have jurisdiction, jurisdiction is not dependent upon the time to file a motion. A motion for lack of jurisdiction is always timely no matter how far the case has gone. The Oklahoma Supreme Court has ruled on that many times. The Board could have made their decision and the appellant could still object to jurisdiction. Mr. Moody stated he had given Ms. Dorwart notice on the day he filed the motion to dismiss, via e-mail, using the e-mail address she had listed on the INCOG application, and it did not come back. Therefore, Mr. Moody feels he did comply with any duty to notify Ms. Dorwart of the notice to dismiss.

Mr. Van De Wiele asked Mr. Krutz what type of work had been performed on the site beginning with the 16<sup>th</sup>. Mr. Krutz stated on the 16<sup>th</sup> the concrete was cut with a concrete saw in one day, finished digging the 17<sup>th</sup>, poured concrete footings the next day, and then the material was delivered on the 23<sup>rd</sup>, and on the 26<sup>th</sup> is when the framers were on the job site to start building. In that time span there was demolition done on the back of the remodel.

Ms. Stead asked Mr. Krutz if all the work was performed during the day time hours when Ms. Dorwart was working. Mr. Krutz stated yes but they would see her quite often during the day because she is there at lunch or there to let her dogs outside or there

would be somebody there to let her dogs out. At the end of the day they would see her arrive home because they would work later, especially if it had rained that day.

Mr. Van De Wiele asked Mr. Krutz what time of day would the crew usually quit for the day. Mr. Krutz stated the framers quit around 8:00 P.M., and on the 26<sup>th</sup> they worked from about 8:00 A.M. until 7:30 P.M. or 8:00 P.M.

Mr. Tidwell asked Mr. Krutz if he had seen Ms. Dorwart on the 23<sup>rd</sup> when the materials were delivered. Mr. Krutz stated that he had seen her.

Mr. Henke asked Mr. Krutz if Ms. Dorwart had seen him on the site. Mr. Krutz stated it would be hard to miss him because he had a dump trailer in the driveway and his truck was in the driveway. Mr. Krutz stated he most always has his dump trailer on a work site to keep the area cleaned, and this site is a small area to work in.

Ms. Dorwart came forward and stated that if the concrete had been cut and the holes had been dug on the 16<sup>th</sup> and the cement had been poured on the 17<sup>th</sup>, the only thing that could happen between that time and the 23<sup>rd</sup>, when the materials were dropped off, was the cement had to cure. Ms. Dorwart stated she had never seen Mr. Krutz before August 26<sup>th</sup>, and the morning of the 26<sup>th</sup> Mr. Krutz was not on the site because she had spoken to the workmen regarding the zoning issue.

Ms. Dorwart stated a permit addendum after the stop work order had been issued, because the first set of site plans were not acceptable to the City. She says she timely filed the addendum application. Ms. Dorwart stated when she first noticed the work project she tried to speak with the homeowners regarding the issues.

Mr. Van De Wiele asked Mr. Swiney what the homeowner's responsibilities were for updating their permit or updating their construction file, does that start a new time? Mr. Swiney stated the action appealed is the original action; there are adjustments and amendments made in the normal course of business.

Mr. Henke asked Mr. Swiney if it would be a judgment call on behalf of the Board as to when Ms. Dorwart received notice based on the testimony presented. Mr. Swiney stated yes; the Board has heard conflicting testimony and it would be perfectly appropriate for the Board of Adjustment to vote on what they think is correct or deem as appropriate.

#### **Comments and Questions:**

Ms. Stead stated the Board has always tried to be fair to both parties so unless Legal, Mr. Swiney, tells the Board they cannot hear this case she thinks they should precede. Mr. Swiney stated he was not prepared to tell the Board they cannot hear this case. There is competing evidence the Board has heard, and the Board has very good arguments so the Board could go either way.

Ms. Stead stated that she would like for both parties to have their case heard, because both parties have gone to the trouble to prepare presentations for the Board. Mr. Tidwell concurred; both sides are prepared and the Board should give Ms. Dorwart the opportunity to present her case.

Mr. Henke asked Mr. Swiney if the Board dismissed the appeal for lack of jurisdiction could Ms. Dorwart file an appeal in District Court. Mr. Swiney stated yes. Mr. Henke then asked Mr. Swiney if this case went before a Judge, can the Judge send this case back to the Board of Adjustment. Mr. Swiney stated a court would have two choices, either rule on the case on its own motion or rule that the Board of Adjustment does have jurisdiction and send the case back to the Board.

Ms. Dorwart stated that it is possible to waive jurisdiction, and the home owner's waived jurisdiction when they spoke in front of the Board on October 12<sup>th</sup>.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 3-1-0 (Henke, Stead, Tidwell "aye"; Van De Wiele "nay"; no "abstentions") to **ACCEPT** jurisdiction and **DENY** dismissal of this case.

Mr. Henke stated there had been information received from the City of Tulsa and asked Ms. Dorwart if she would like to continue this case to a future date or to move the case to the end of today's hearing thus giving everyone time to review the latest information submitted in this case. Ms. Dorwart agreed to have her case heard at the end.

**Mr. White came back to the meeting at 1:55 P.M.**

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**NEW APPLICATIONS**

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**Case No. 21148-Curtis Connors**

**Action Requested:**

Special Exception to permit a paint ball park (Use Unit 20 – Commercial Recreation) in an AG district; and a Variance of the paving requirement for parking and driving surfaces (Section 1303.D). **Location:** 1328 South 193<sup>rd</sup> East Avenue

**Presentation:**

**Curtis Connors**, 3215 West 111<sup>th</sup> Street, Sapulpa, OK; stated the subject property is located near a City of Tulsa water treatment facility and no one is living within 500 yards of the property, therefore, no one would be disturbed and no property would be affected by the paintball field. Mr. Connors stated he plans on a 30 foot buffer zone of a wooded area, and he is proposing a gravel parking area because in the future if the property became valuable as a subdivision then he would sell the land for home development.

Ms. Stead asked Mr. Connors if he was aware he would be required to have 600 parking spaces for the proposed paintball park. Mr. Connors stated he was not aware of that requirement.

Ms. Stead asked Mr. Connors about a clean water supply. Mr. Connors stated water could be provided and port-o-johns could be used at the proposed paintball park, and he would work with the Sanitation Department to fulfill necessary requirements.

**Interested Parties:**

**Matthew Christensen**, Doerner, Saunders, Daniel and Anderson, LLP, 320 South Boston Avenue, Suite 500, Tulsa, OK; represents Frank and Mary Wyantt. Mr. Christensen stated the area around the proposed paintball park is agricultural and residential use, and his client's property is directly west of the proposed paintball park. The Wyantt's propose to build a home which would place it closer to the paintball park. Mr. Christensen stated the area is an area of growth by the Comprehensive Plan. Mr. Christensen stated the proposed paintball park would be a substantial detriment to the neighborhood because of increased traffic flow, increased dust and erosion caused by the 40 to 50 cars coming to the area, and disturbance of the water runoff from the creeks located in the area.

Mr. Christensen also stated the proposed paintball park is listed as a Use Unit 20 in this application for a Special Exception before the Board of Adjustment. Use Unit 20 is listed as commercial recreation intensive, and a paintball park is not a listed use. A paintball park is more kin to Use Unit 2 which is rifle and skeet range gun club, and it is supported by the City of Tulsa ordinances, Section 1517 which prohibits the firing or discharging of air rifles and slingshots within the city limits of the City of Tulsa. An air rifle is defined as any instrument in which the propelling force is spring or air. The only exception of firing air rifles within the city limits is if the shooting range is indoors; the only paintball facility in the City of Tulsa is indoors. Mr. Christensen stated since the code does not provide for paintball facilities but does provide for gun ranges he thinks the applicant has not filed for the correct relief.

Mr. Henke asked Mr. Cuthbertson if he could clarify why the application was filed as a Use Unit 20. Mr. Cuthbertson stated typically the applicant will go to the City of Tulsa and apply for a zoning clearance permit and receive a classification. If staff assisted in assigning a Use Unit it was based on the idea that the paintball use is an outdoor recreational activity, it is a sport or a gaming competition. Use Unit 20, outdoor

recreational category, provides for outdoor recreation not elsewhere classified, therefore, paintball seemed to be an appropriate fit for the use.

Information was presented to the Board regarding air rifles and slingshots. With new information being presented the Board thought it prudent to delay the hearing to be able to review the material. Mr. Cuthbertson suggested the Board continue this hearing until the November 9<sup>th</sup> or 23<sup>rd</sup> meeting, have the applicant confer with the permit office to make sure they are in the proper category, and bring back his request to the Board.

Ms. Stead asked Mr. Connors if the paintball gun was powered by air, gas powered or Co<sup>2</sup>. Mr. Connors stated the gun is Co<sup>2</sup> which is compressed air. Mr. Connors went on to say that they are actually called paintball markers, they are not in the same classification as a gun due to the fact a person can shoot another person with them; they are not deadly, nobody has ever died being shot by a paintball gun. There are over 2,000 paintball fields operating in the United States; they are located near highways, churches, they are outdoors, etc. Mr. Connors stated he plans to take appropriate measures to ensure there is a 30 to 50 foot buffer zone of woods around the paintball park.

Ms. Stead asked Mr. Connors how far a paintball could travel before it lost it's traveling velocity. Mr. Connors stated the optimum paintball distance shot at 300 feet per second, which the highest rate of speed, at a 45 degree angle will travel approximately 300 feet; this was proven by engineers and is posted on the internet.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** the Special Exception to permit a paint ball park (Use Unit 20 – Commercial Recereation) in an AG district; and a Variance of the paving requirement for parking and driving surfaces (Section 1303.D) to November 23, 2010; for the following property:

**S990 W/2 SW NE & A TRACT BEG SECR SE NE TH N593.27 SW148.53 SW88.57  
SW63.06 SW161.24 SW46.16 SW877.58 S405.06 E1322.31 POB LESS BEG SECR  
NE TH SW134.19 NE344.98 NE695.92 NE68.74 NE174.14 NE52.65 NE69.50  
NE136.45 S533.27 POB SEC 12 19 14**

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## **Case No. 21149-Tim Terral**

### **Action Requested:**

Variance of the maximum amount of required front yard permitted to be covered with an all-weather surface in the RE district from 17% to 28% (Section 1303.D).

**Location:** 3015 South Rockford Road

### **Presentation:**

**Tim Terral**, Tulsa Engineering and Planning Associates, 6737 South 85<sup>th</sup> East Avenue, Tulsa, OK; stated the reason for the Variance request is because of an irregularly shaped lot on the end of a cul-de-sac. The application states an increase to 28% but a 25% increase is all that is needed, an increase from 17% to 25%. There is a 16 foot wide driveway and a four foot high privacy wall on 2.85 acres. The front yard covers approximately 6,800 square feet. This was approved by TMAPC on September 9, 2010 for a minor amendment for relief of the 17% for the RE zoning district; the requested 25% will allow a little room should it be needed. TMAPC approved this based on the Board of Adjustment approving the Variance.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

None.

### **Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum amount of required front yard permitted to be covered with an all-weather surface in the RE district from 17% to 28% (Section 1303.D). The Board has found this uniquely shaped lot of 124,205 square feet is oddly oriented to the street as well as the curving nature of the street and uneven terrain limits continuity of the street scape. The residence will be set back and a large circular driveway is proposed to cover 20.1% of the required front yard to accommodate a three-car garage although this relief is authorized up to 25%. The proposed privacy wall is only permitted up to four feet in height and should negate any impact of the driveway on the abutting street, and this is subject to conceptual plan on page 4.6. In granting the Variance for the reasons slated above 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; for the following property:

**LTS 3 & 4, HELMERICH ESTATES**



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**Case No. 21150-Darwin and Linda James**

**Action Requested:**

Special Exception to modify the height of a fence in the required front yard from 4 ft. to permit an entry wall and gate (Section 210.B.3). **Location:** 3424 South Atlanta Place East

**Mr. Henke recused himself from this case and left the room at 2:22 P.M.**

**Presentation:**

**Claire Ashby**, Landscape Architect, 5550 South Lewis Avenue, Suite 103, Tulsa, OK; stated the subject property is a new residence and the homeowner wants to install a four foot iron fence and subsequent stone columns along the front entry. It is proposed the two small wall sections on each side of the driveway entry exceed the four foot wall height by approximately one foot four inches. The driveway slopes from left to right and the right wall section will appear to be taller than the left wall section. The proportions of the lot, the house, and the neighborhood justify the request.

Mr. White asked Ms. Ashby if the proposed iron fence was going to be an open type iron fence. Ms. Ashby stated it would be an open picket type iron fence.

Ms. Stead asked Ms. Ashby if all the stone pillars throughout the fence, not the gate, were to be one foot over the allowed height. Ms. Ashby confirmed by saying yes.

Mr. Van De Wiele asked Ms. Ashby how far back from the curb of the street the gate would sit, and Ms. Ashby deferred to Brad McManes of Hunter Homes, Inc.

**Brad McManes**, Hunter Homes, Inc., 10051 South Yale, Suite 200, Tulsa, OK; stated he is the contractor. Mr. McManes stated there is no curb but the gate is set back from the street 27 feet. The wall to the left is approximately 3 ½ feet from grade with about 18 inches of fall from the south property line, and if the wall height were limited the south wall would be approximately 1'-6" tall; to make the north wall in the four foot requirement the south wall would 1'-6" off grade.

**Interested Parties:**

**Marianna Vesely**, 3437 South Atlanta Place, Tulsa, OK; stated she lives across the street from the subject property. She thinks the proposed gate is too high because it is a visual deterrent to walkers and drivers, and should be brought back down to code

height. She also does not want this gate and wall to be allowed because it will set a precedent and allow the Board of Adjustment to approve similar future projects.

**Sheryl Chadd**, 3433 South Atlanta Place, Tulsa, OK; stated that she and her family chose to live in the neighborhood because of the large open park land appearance. Currently in the neighborhood there is only one home that has a substantial gate supported with stone pillars with an attractive wrought iron fence. The gate is unobstructed with 250 feet of lawn and trees visible in front of the single story home. The gate and posts are twice as far back from the road as the proposed structure under consideration. Ms. Chadd feels if this application is approved the neighborhood will go through a dramatic change.

**Walter Tempinski**, 3319 South Yorktown, Tulsa, OK; stated he supports Ms. Chadd's concerns. The neighborhood has the feel of a country estate with water features and bridges, mature trees, and open vistas. The roads in the neighborhood have no curbs to further give the feeling of being in the country. The fences within the neighborhood have columns that do not block the view unlike the proposed wall structure. Mr. Tempinski stated that he and several others in the neighborhood want to preserve the open country estate feeling of the neighborhood.

Brad McManes wanted the Board to clarify the zoning clearance permit, was it issued in respect to the front yard walls or fences. The Board confirmed it was issued for the front yard walls or fences. Mr. McManes asked about the abutting property to the south's entry wall, and the Board stated as long the structure was 35 feet back from the property line in a RE district it could be built above four feet tall.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 3-1-0 (Tidwell, Van De Wiele, White "aye"; Stead "nay"; no "abstentions") to **APPROVE** the Special Exception to modify the height of a fence in the required front yard from 4 ft. to permit an entry wall and gate (Section 210.B.3); limiting that to 5'-4" as shown per conceptual plan on page 5.7 with the understanding the gate is an open wrought iron like gate; 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; for the following property:

**PRT LT 3 BEG NEC TH ON CRV RT 198.66 W209 N175.75 NELY225 POB BLK 4,  
OAKVIEW ESTATES**

**Mr. Henke returned to the meeting at 2:53 P.M.**

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**Case No. 19779-A-Stephen Schuller**

**Action Requested:**

Amendment to a previously approved site plan for a church use in the R district.

**Location:** 1228 West Apache Street

**Presentation:**

**Stephen Schuller**, 1100 OneOk Plaza, 100 West 5<sup>th</sup> Street, Tulsa, OK; stated the only thing being requested is the approval of an amended site plan of the church due to a reconfiguration of the location of the church and the footprint of the church on the property. The amended plan orients the church to face north, reconfigures the shape and size of the building making it smaller, and different locations for parking. This amended site plan better serves the church's objectives and needs.

Mr. White stated there had been correspondence from the Home Owners Association and the church; he asked Mr. Schuller if the concerns of the Home Owners Association, i.e., the location of basketball courts, the buffer zone on the south side of the property, etc., had been resolved. Mr. Schuller stated the church is meeting with the leadership of the Home Owners Association and they have discussed the concerns and addressed them. The Home Owners Association opted not to request a continuance and not to make any presentation today to address the proposed site plan.

**Interested Parties:**

**Larry Duke**, 1919 West Seminole, Tulsa, OK; stated he is with the Gilcrease Home Owners Association and he wanted the Board to know that the Home Owners Association's concerns have been addressed and resolved.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Amendment to a previously approved site plan for a church use in the R district subject to conceptual plan 6.5. The Board finds this amendment is in keeping with the intent of the original Special Exception and it is subject to the same conditions, being any lighting shall be down and away from adjacent homes; all access is to be from Apache Street only, there shall be no access from the neighborhood. All building heights shall be limited to 35 feet as specified in the zoning code except for a possible spire or similar feature which shall be limited to 50 feet; all driveway and parking surfaces shall be concrete or asphalt. In granting this Special Exception the Board has found 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; for the following property:

**Lot 1, Block 1, Metropolitan Baptist Church**

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**Case No. 21152-Gregory Helms**

**Action Requested:**

Special Exception to permit a building addition to an existing athletic stadium/field and to permit modifications to the same stadium (Section 401). **Location:** 4929 North Peoria Avenue

**Presentation:**

**Greg Helms**, 329 South Elm Street, Jenks, OK; stated he is an architect for Tulsa Public Schools on this project at McLain High School which is part of the 2010 Bond Package that was approved by the City voters. The football field and track will be refurbished by replacing the visitor's metal bleachers, upgrading the handicapped area on the home side of the field, and constructing a new locker room facility for the football team and some of the girl's sports.

**Interested Parties:**

**Arlene Williams**, 4675 North Quaker Avenue, Tulsa, OK; stated she wanted to know how this proposed building addition was going to affect her property. The Board told her this should not affect her property because the size of the school is not being increased; locker rooms are being replaced and added for the athletic fields.

Mr. Helms also confirmed the school size is not being increased, and the only building to be built is the locker room facility. He stated as part of the stadium and bleacher modifications the number of seats would actually be reduced; everything else is to remain the same as it is.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White, "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit a building addition to an existing athletic stadium/field and to permit modifications to the same stadium (Section 401); 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; per conceptual plan on page 7.6; for the following described property:

**S825 OF W1320 OF N/2 SW SEC 7 20 13**

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## **Case No. 21153-Gregory Helms**

### **Action Requested:**

Special Exception to permit building additions to an existing athletic stadium/field and to permit modifications to the same stadium (Section 401). **Location:** 1919 West 40<sup>th</sup> Street

### **Presentation:**

**Greg Helms**, 329 South Elm Street, Jenks, OK; stated this Special Exception request is for Webster High School and it is a 2010 Bond Project. It is similar in nature to the McLain High School project previously discussed today. It is being requested to modify the bleachers for the visitors and home sides of the field to make them handicap accessible, build a new locker room, replace the existing press box, and replace the existing ticket booths. There will be a few parking spaces added to the interior of the property but those additions will not affect the traffic flow.

### **Interested Parties:**

**Jill Morris**, 1737 West 37<sup>th</sup> Place, Tulsa, OK; stated she lives a block north of the existing stadium. There is inadequate parking for the high school events and she objects to any addition to the high school that will take up parking space. She stated her street is very narrow and many neighborhood residents park on the street, and when Webster High School has athletic events the neighborhood residents have problems with their driveways being blocked or people parking on their lawns.

Mr. Helms stated there would be eleven parking spaces added to the existing parking area, but the stadium seating capacity is being reduced to accommodate the wheel chair accessible seats.

Ms. Stead asked Mr. Helms if the proposed new locker room would be taking away from the existing parking area, and Mr. Helms stated no because it will be located on the practice field.

**Juanita Murray**, 2028 West 37<sup>th</sup> Place, Tulsa, OK; stated she lives next door to the new stadium that was built for Webster High School. She told the Board that she works nights and when Webster has an event she has had to wait for people to come back to their car and move their car because it was parked in front of her driveway. Ms. Murray stated she objects to anything being added to Webster High School until the parking overflow has been addressed.

### **Comments and Questions:**

None.

### **Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit building additions to an existing athletic stadium/field and to permit modifications to the

same stadium (Section 401), per conceptual plan on page 8.6; 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; for the following described property:

**LTS 4 THRU 23 BLK 1 & LTS 7 THRU 26 BLK 2 & ALL BLKS 3 & 4 & LTS 8 THRU 27 BLK 5 & VAC STREETS ADJ THEREOF & W10 VAC ALLEY ADJ LT 4 BLK 1 ON E & W10 VAC ALLEY ADJ LTS 8 & 27 BLK 5 ON E, CLINTON HOMESITES**

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**Mr. Tidwell left the room at 3:13 P.M.**

**Case No. 21154-Gregory Helms**

**Action Requested:**

Special Exception to permit a building addition to an existing athletic field (Section 401). **Location:** 6960 East 21<sup>st</sup> Street

**Presentation:**

**Greg Helms**, 329 South Elm Street, Jenks, OK; stated this Special Exception request is for Hale High School. The request is to build a locker room facility. This school does not have a stadium but does have a practice field. The new locker room will be between the existing softball field and the existing baseball field in what is currently a grassy area. No parking will be taken away to build the proposed locker room facility.

**Interested Parties:**

None.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Henke, Stead, Van De Wiele, White "aye"; no "nays"; Tidwell "abstains") to **APPROVE** the Special Exception to permit a building addition to an existing athletic field (Section 401), per conceptual plan on page 9.6; 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; for the following described property:

**NE NW SEC 14 19 13**

\*\*\*\*\*.

Mr. Tidwell reentered the room at 3:17 P.M.

**Case No. 21156-Lou Reynolds**

**Action Requested:**

Variance of the frontage requirement in the IL district from 150 ft. (Section 903).

**Location:** 5700 South Garnett Road

**Presentation:**

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated the property is a four acre tract that has been divided into one-third and two-thirds by the channelization of Cat Fish Creek. The western two-thirds does not have frontage on a public street and that is the subject of this requested Variance. This property is cut in half by the channel and the access road the City uses to access the channel.

**Interested Parties:**

None.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the frontage requirement in the IL district from 150 ft. (Section 903). This unusual tract of land is burdened by a creek going north and south which leaves one parcel without the street frontage required by the zoning code. The Board cites two items; one, the easement in favor of the public dated 1985 recorded in Book 4854, page 240, and by the roadway easement dated May 30, 2006, recorded as document number 2006103276; subject to the lot split exhibit on page 10.6. Finding that the above conditions are extraordinary or exceptional conditions or circumstances, which are peculiar to the land, 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; for the following described property:

**N/2 SE/4 NE/4 SE/4 SEC 31 19 14 LESS and Except the E 50 ft.**

\*\*\*\*\*.

**Case No. 18256-A-CAT Scale Company**

**Action Requested:**

Amendment to a previously approved site plan to relocate the truck scale and sign in an existing truck stop. **Location:** 121 North 129<sup>th</sup> Avenue

**Presentation:**

**Kent Jurgersen**, CAT Scale Company, 515 Sterling Drive, P. O. Box 630, Walcott, Iowa; stated it will be easier for the trucks exiting the property by relocating the existing truck scale and sign.

**Interested Parties:**

None.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Amendment to a previously approved site plan to relocate the truck scale and sign in an existing truck stop; this amendment will alleviate the existing traffic situation and the Board finds it will be consistent with the original approval. In granting this Special Exception 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; subject to the conceptual plan on page 11.5; for the following described property:

**PRT LT 2 BLK 1 BEG NWC TH E24.37 SE52.69 SE152.46 SE168.66 E74.20 N62.30 E417.75 SE442.39 E1247.95 N519.87 POB, LT 1 BLK 1, PRT LT 2 BLK 1 BEG SWC LT 2 BLK 1 TH N445.51 E622.41 S200 W100 S245.97 W522.41 POB, FLYING J TRAVEL PLAZA**

\*\*\*\*\*.

**Case No. 21157-Alejandra Ortiz**

**Action Requested:**

Special Exception to permit a manufactured home in an RM-2 district (Section 401); and a Special Exception to extend the one year time limitation (Section 404.E.1). **Location:** 1914 East Marshall Place North

**Presentation:**

**Alejandra Ortiz**, 2747 East Oklahoma Place, Tulsa, OK; Ms. Ortiz used a translator. Ms. Ortiz wants to own instead of renting so she has purchased a mobile home for the subject property. Ms. Ortiz has temporarily placed the mobile home in a temporary position on the property, because she wants to be able to have a foundation and



driveway poured, and then have the mobile home placed in a permanent position if the Special Exception is approved.

**Interested Parties:**

None.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit a manufactured home in an RM-2 district (Section 401); and a Special Exception to extend the one year time limitation (Section 404.E.1), making this time limitation for a period of 20 years from today's date, October 26, 2010. The manufactured home shall be tied down and skirted. Within one year of today's date, October 26, 2010, there is to be asphalt or concrete on the drive surface. There is to be sufficient space to park two cars in the drive. The manufactured home shall be placed as shown on conceptual plan on page 12.8. In granting the Special Exception 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; for the following described property:

**LT-10-BLK-4, BERRY-HART ADDN**

\*\*\*\*\*

**Case No. 21159-Walter Adams**

**Action Requested:**

Special Exception to permit an indoor haunted house (Use Unit 19) in an IL district (Section 901). **Location:** 5681 South Mingo Road

**Presentation:**

Applicant was not present.

**Interested Parties:**

None.

**Comments and Questions:**

It was stated that the indoor haunted house was currently in operation.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 4-0-1 (Henke, Stead, Van De Wiele, White "aye"; no "nays"; Tidwell "abstained") to **APPROVE** the Special Exception to permit an indoor haunted house (Use Unit 19) in an IL district (Section 901) noting this approval is for the 2010 autumn season only, and will expire November 1, 2010. In granting this

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; for the following described property:

**LT 20 BLK 9, TULSA SOUTHEAST IND DIST B9-12 RESUB BLK C & PRT BLK A&B**

\*\*\*\*\*.

**Case No. 21161-Lamar Outdoor Advertising**

**Action Requested:**

Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10). **Location:** 6500 South Highway 169

**Presentation:**

**Lorinda Elizando**, Lamar Outdoor Advertising, 7777 East 38<sup>th</sup> Street, Tulsa, OK; stated she is before the Board today to receive verification of spacing to add digital to an existing billboard structure on South Highway 169.

**Interested Parties:**

**Craig Heidinger**, 4437 Oak Road, Catoosa, OK; stated he owns Lot 8, Block 6 which is the adjoining land to the billboard and the property legal on the survey is showing his land so he wanted clarification. Ms. Elizando stated she would have a meeting with Mr. Heidinger after the Board of Adjustment meeting to answer any questions he may have. Lamar Outdoor Advertising had purchased the easement in 2008, and the easement usually runs the entire length of the land.

Ms. Stead stated all the Board was doing was verifying the distance from one billboard to another.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **ACCEPT** the Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10) subject to the action of the Board being void should another digital outdoor advertising sign be constructed prior to this sign; for the following described property:

**LT-8 BLK-6, UNION GARDENS**

\*\*\*\*\*.

## **UNFINISHED BUSINESS**

\* \* \* \* \*

**CONTINUED** from the beginning of the Board of Adjustment meeting today.

### **Case No. 21147-Erica Dorwart**

#### **Action Requested:**

Appeal the determination of an Administrative official in issuing a permit (#233593) for a carport addition and interior remodel. **Location:** 2249 South Troost Avenue

**Mr. White recused himself and left the meeting at 3:47 P.M.**

#### **Presentation:**

**Erica Dorwart**, 2255 South Troost Avenue, Tulsa, OK; stated there is still not a complete survey of the property; there is a site plan but no survey. There are still conflicting findings from the City of Tulsa on September 15, 2010 where Mr. Dexter verified the site plans conform to the second set of site plans but the third set of site plans claim back more land.

Ms. Stead stated that in the previous hearing the Board was only to consider the original submittal, and Ms. Stead asked if that ruling still applied to this hearing. Mr. Henke stated the appeal is from the initial determination of the administrative official so it is from the first set of site plans.

Mr. Swiney stated a lot of the previous questions were in regards to footage and measurements, and those measurements have been determined so the new information can be considered.

Mr. Tidwell asked Ms. Dorwart if the measurements had been verified, and she stated they had been verified on September 15, 2010 as being in violation of the three foot lot line by Terry Dexter, employed by the City of Tulsa and by the Zoning Review.

Mr. Alberty stated the Board needs to hear from the Building Administrative Official, because at this point he does not know exactly what Ms. Dorwart is appealing. There have been a multitude of documents presented; there is so much information presented that it has become confusing as to what Ms. Dorwart truly is appealing. Mr. Alberty

suggested the Board let the Building Administrative Official make his statement and then let Ms. Dorwart present her information.

Ms. Dorwart objected to Mr. Alberty's suggestion because there were determinations made by the Building Official on September 15, 2010; those determinations made by the City officials based upon the site plans presented by the Harwells were not appealed by the Harwells. In the Zoning Review the City told the Harwells to change their site plans. In lieu of changing the site plans for the structure the owners have attempted to change the site plan for the survey that had been verified by the City of Tulsa. The Harwells failed to appeal that within ten days.

Mr. Tidwell stated that Mr. Page with the City of Tulsa should come forward to present his case because Ms. Dorwart is stating all the facts are wrong, and the City has not even presented their case.

Ms. Dorwart stated she believes this is a jurisdictional issue with respect with changing the fact finding of the City but she stated she would defer to the Board to hearing from the City first.

**Interested Parties:**

**Jack Page**, Director of Development Services, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated the City of Tulsa has never issued a violation notice regarding any wrong findings on this tract. When Ms. Dorwart came forward with questions to the measurements, the height of the building and the use of the building, the City wanted to make sure the permit had not been inappropriately issued based on an error in review of the project. The City also wanted to verify the building height because Ms. Dorwart was adamant that the building was taller than 18 feet because she could no longer see the neighbor's pool from her upstairs bedroom window. The building permit was first reviewed as a cabana because there is a pool next to the structure and there was a kitchen and bathroom. Mr. Page stated he had made an error in judgment by not confirming the structure's intended use. A stop work order was issued at this point so more information could be gathered. It was also pointed out that the boundary line shown on the site plan submitted by the applicant was not based upon survey information, because those markings were being contested the City requested a survey be completed by the applicant which they have done. Two weeks ago Mr. Page provided the Board with the survey that had been performed by a registered surveyor.

Mr. Page stated Mr. Ho, also with the City, will go through each of his calculations on those points and show how the City issued their decision. During the course of the resubmitted information there were still some deficiencies in which the City thought they needed more information to correctly issue the permit, not that the City thought there was anything done in error but there were some inconsistencies that needed to be addressed. Staff is of the opinion, as it is now, this application is compliant with the

zoning code both in terms of the setback requirements, the height of 18 feet, and the use as an accessory structure to the principle use on the premises.

Ms. Stead asked Mr. Page if this was based on a revised plan by the removal of the kitchen from the structure which would have indicated independent living. Mr. Page stated in part but not in total.

Mr. Page stated that during discussions with the applicants they were asked how the property was to be used. The applicants stated that it was a mother that would be residing or sleeping in the structure but getting her meals in the main house. Mr. Page stated he then told the applicant that if the mother was going to receive her meals in the house there would be no need for a kitchen. The applicant agreed and removed the kitchen. Mr. Page stated the preeminent part of the code that he made the determination on has to do with the independent living which has to do with the dwelling unit. Mr. Page quoted the code definition for a dwelling unit, "a room or group of rooms arranged intended or designated as a habitable unit containing kitchen, bath and sleeping facilities for not more than one family living independently of any other family." An item in this case that does not make the structure a dwelling unit is it does not have a kitchen. Mr. Page also stated the structure does not have a separate water meter, does not have a separate electric meter, and does not have a separate gas meter thus making the structure dependent on all its utilities on the house, no one is paying rent because it is a family member who will be dependent upon their existence to the main part of the house, therefore, this is not an independent living quarters thus not a separate dwelling unit. The City is ready to determine this project is compliant with the Zoning Code. Some of Ms. Dorwart's objections are not Zoning Code issues they are Building Code issues.

Mr. Alberty responded to Ms. Stead's original comment about what is being appealed and what needs to be appealed, that this action is to appeal Permit No. 233593. There is not any other additional permit that has been issued; there would be no need to appeal another. If modifications or new information is being submitted in compliance with that permit there is only one permit.

Mr. Van De Wiele asked Mr. Page what makes a kitchen, and Mr. Page stated what makes a kitchen is primarily the stove; the cooking itself. A microwave does not make a kitchen. If you go around to various offices you will see sinks, microwaves, refrigerators but no stove; it is the stove that makes it a kitchen, therefore, when there is a kitchen there are special conditions associated with a kitchen.

**Yuen Ho**, Building Plans Review Manager, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated the survey of September 28, 2010 dimensions for the property are shown. One set of measurements shows "per plan" which is 62'-0" x 130'-0", and the other set of measurements are field measurements which is 62.31' x 130'-0". There is no new information from the applicant. All the information within the package is gleaned from the applicant's submittal or excerpts from the zone code itself.

Ms. Stead asked Mr. Ho to confirm that the information provided is based on the original submittal only. Mr. Ho stated there are two sets of calculations; the calculations under Roman numeral one are the original set of calculations and they are the calculations addressed. The second set of calculations under Roman numeral two are the calculations for information for the addendum application. It is common in the building process for an applicant to resubmit information because there are three different reviews: Building Code compliance, Zoning Code compliance and Stormwater issues. These reviews render the application an open process; it is open for response from the applicant to achieve compliance in the application.

Mr. Henke asked Mr. Ho if, in his opinion, the Harwell's application was in compliance and Mr. Ho stated yes.

Ms. Dorwart stated she had two setback issues; they are the side setback to the south line and an invasion of the required side yard. The carport invades approximately eight inches to one foot the required side yard on the home; that is not just eaves it is the structure.

Mr. Henke asked Ms. Dorwart what her ideal disposition would be in this case. Ms. Dorwart stated the Harwells need to comply with the three foot building difference minimum and the carport needs to be moved back because it invades the side yard. Ms. Dorwart stated ideally she would request the carport to come down because there is a livability space issue.

Ms. Dorwart stated, as she has throughout the meeting, that there are two site plans for the subject property with conflicting information. The carport is not in compliance with the City codes and the conflicting professional plans only complicate the matter.

Mr. Steve Krutz stated he had the first survey rushed to him and he did not look at it. The 2.7 measurement is a gross mathematical error by the surveyor and the City pointed it out. Mr. Krutz stated as soon as the City pointed out the error he contacted the surveyor, the surveyor made the correction and e-mailed Mr. Krutz another copy. The mathematical error was a minor issue, they happen all the time. Terry Dexter, from the City of Tulsa field verified the measurements and there are no issues on the side yard.

Ms. Stead stated she thinks the Board does not have enough information to rule on, regardless of a mathematical error or not. This Board can rule in favor of the City or in favor of Ms. Dorwart but it is not going to matter tomorrow. Ms. Stead stated she has read every word of the material that has been submitted and she is not willing to vote on the material. There are issues in this case that the Board cannot settle.

Ms. Dorwart stated that until there is a true and accurate survey the livability space then can be addressed.

Mr. Henke asked Ms. Dorwart why she did not bring forth issue of wanting an accurate survey; why did she not ask for a continuance until a survey was provided.

Ms. Stead stated she had told Mr. Cuthbertson that she was not happy with the survey that was provided; there are two different versions. This has become a "he said, she said" case, and she is not willing to make a decision until the Board has a full legitimate survey. Ms. Stead stated that if she were working with the Zoning Department, not the Building Department, she would have to say the City is correct in issuing the permit. Ms. Stead stated the Board cannot settle all the disagreements between the two parties, and the Board should not be asked to do so.

Ms. Dorwart stated the field verifications that had been performed were actually verified on September 10, 2010. On September 25, 2010 a third set of site plans had been presented and there is no paperwork stating that set of site plans had been field verified.

Mr. Henke asked Mr. Ho to come forward and verify that everything as it exists had been field verified by the City. Mr. Ho stated he could not speak to field verifications of what was submitted by the applicant because he does not go out into the field. Mr. Terry Dexter is the field inspector and he can testify to the verifications. Mr. Ho stated there seems to be a misunderstanding of the application of the code under Section 210.B. Therefore, Mr. Ho respectfully submits to the Board that the surveys that have been submitted are sufficient to perform the Zoning plans review and to determine compliance. The survey or site plan that was given to the City on September 28, 2010 is the submittal for application No. 236038, it is not the original application.

Ms. Stead asked Mr. Ho if he believed Mr. Krutz's statement that the 2.7 measurement was truly an error. Mr. Ho stated in the application process it is very common for applicants to submit information that is erroneous and incomplete. The applicant always has a chance to resubmit new information, so in this case when the plan shows a 2.7 dimension, the City noted there was a deficiency, the applicant resubmitted new information which is the plan submitted on September 28, 2010.

Mr. Van De Wiele asked Mr. Ho if the setback line was measured from the property line to the eave or where. Mr. Ho stated the setback should be a clear line from the property line back into the property so it would be measured from the structure that is built not the eave. Therefore, it would be from outside of the post to the property line.

**Terry Dexter**, Building Inspector, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated he has been a Building Inspector for the City of Tulsa for 11 years, and when he goes to a site to perform a field verification all he can use is the data that has been provided. He uses the property pins and pulls a line all the way down the property and measures with a measuring tape from the string over to the structure which was a post inside of the garage. In this case Mr. Dexter stated he personally performed the measurement with the contractor on the site, and Mr. Dexter stated he used a post inside of the garage, and the measurement was three feet or more from the post to the string.

Mr. Tidwell asked Mr. Dexter if normally there would be measurements taken, and Mr. Dexter stated normally there would be no survey, so the City would field verify a site.

Ms. Dorwart stated she believes there is a livability issue; there is a survey issue; and a code interpretation dispute on the eave overhang.

Mr. Ho stated there is 5,879 square feet of livability space and if the carport were included in the livability space calculation there would be an additional deduction of 408 square feet. The 408 square feet is calculated using the carport dimensions of 20'-1" x 20'-4". Deduct the 408 square feet from the 5,879 square feet there is still approximately 5,400 square feet of livability space where as the required livability space per code Section 403 is 5,000 square feet.

Mr. Van De Wiele stated that according to the code, and the one measurement that is missing, is that paved access to parking areas within the rear yard are not a deduct. The inverse of that is that the concrete in the side yard or the front yard should be a deduction.

Ms. Dorwart stated she has interpreted the code to be that the paved access all the way to the back of the house is to be counted as a deduction against livability space. Livability space is to be areas open for landscaping except for the pavement that is in the rear yard.

Ms. Dorwart asked if she could address the dwelling issues and covenant issues. Mr. Henke told Ms. Dorwart that she would need to complete her statement so Ms. Harwell could be heard and the Board could make a decision. Ms. Dorwart stated her significant point is that she is dealing with a structure that is enclosed, looks awful, and looks like a mobile home has been moved into the driveway. Ms. Dorwart stated that one single family dwelling unit is allowed per the code in Section 207, not dwelling units. Ms. Dorwart stated that many times the Harwells have stated they are moving a family member into the garage thus making two dwelling units.

Ms. Stead stated the intended use is not to be considered because the Board is dealing with what is happening today and when the permit was issued. The Board does not deal with "he said, she said" issues. Therefore, if no one is living there the issue is closed because the residence is not an issue.

Mr. Henke asked Mr. Page to come forward again to clarify the issue of what constitutes a dwelling unit. Mr. Page reiterated if there is no stove there is not a dwelling. A family member can be in the garage because the structure is not a dwelling unit and it is not an independent living facility.

Ms. Dorwart stated in previous cases the Board has asked if the detached building on the subject property is going to be living quarters. Many times the Board will only allow electricity to a structure to ensure there is not living quarters in the garage. What is proposed is living quarters for a family member, the next use will be renters, and that



use will be established by moving in the family member. The City issued the permit when there was a stove in the living quarters; the City issued the permit knowing there was a full kitchen and a full bathroom in the quarters. Therefore, the permit was improperly issued and it is a change to the existing structure. Ms. Dorwart disagrees that someone can be moved into a garage. Ms. Dorwart stated she thinks it is a clear violation of the code.

Mr. Page stated with the permit that was originally issued by the City there was no bedroom shown on the site plan. The structure needs a bedroom, kitchen and bathroom to be combined as a dwelling unit. Again, the City thought the structure was to be used as a cabana.

**Patty Harwell**, 2249 South Troost Avenue, Tulsa, OK; stated the final survey by a certified surveyor should be the survey that would be used for the proposed structure. Ms. Harwell stated the reason there was a fence panel built and placed in front of Ms. Dorwart's gate is so Ms. Dorwart could not open her gate to look at their house, carport, and property in the back. Ms. Harwell stated she and her husband also had an eight foot fence built along her walkway because Ms. Dorwart positioned her security camera toward their property. Ms. Harwell stated that all construction and remodel is being performed in accordance with the last survey performed, there are no eyeball measurements. Ms. Harwell stated they are not building another driveway and they are not building an enclosed structure, they are building a carport and it is her understanding that the area under the carport roof does not count against livability space. Ms. Harwell admitted to using the entire length of the driveway but it is because of the construction of the carport, they cannot use the carport until the construction is complete. Ms. Harwell stated the changes that have been made have been made to comply, not to hide, not to change, not to sneak something, not to be caught, and not to falsify and there are no intentions to falsify.

**John Moody**, Attorney for the Harwells, stated the carport as proposed and built complies with every single provision of the Tulsa Zoning Code with respect to the construction of a carport that is not in a required front yard. The building setback line, the side yard setback line is three feet; by any measurement this carport exceeds the three feet. The permit that was issued by Mr. Page's office was only for the interior remodel and construction of the carport; the permit did not approve a separate dwelling unit, anything the Harwells have done has been correct. Therefore, Mr. Moody on behalf of the Harwells asks the Board to deny the appeal.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Tidwell, Van De Wiele, "aye"; no "nays"; no "abstentions") to **DENY** the **Appeal** and uphold the determination of an Administrative official in issuing a permit (#233593) for a carport addition and interior remodel; for the following property:

**LT 12 & N 12' LT 13 BK 7, TERWILLEGGER HGTS**

Ms. Dorwart wanted it on the record, that in the past the Board has entertained the conditions that there can be no renters to move in, no one outside of the family to move in.

Mr. Van De Wiele stated that if there are uses going on in the property in the future that are prohibitive there are recourses that can be taken.

\*\*\*\*\*

**OTHER BUSINESS:**

None.

**NEW BUSINESS:**

None.

**BOARD MEMBER COMMENTS:**

None.

There being no further business, the meeting adjourned at 5:28 p.m.

Date approved: \_\_\_\_\_

11/9/10



Chair