

**BOARD OF ADJUSTMENT**  
**October 22, 2014**

Item No. 1, being:

**CALL TO ORDER**

Chairman Andrew Seamans called the meeting to order at 4:30 p.m.

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Item No. 2, being:

**ROLL CALL**

MEMBERS PRESENT

Hank Ryan  
Todd Marple  
Andrew Seamans

MEMBERS ABSENT

Cindy Deckard

STAFF PRESENT

Wayne Stenis, Planner II  
Jolana McCart, Recording Secretary  
Susan Connors, Director, Planning &  
Community Development  
Lean Messner, Assistant City Attorney  
(attended after the start of the meeting)

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Item No. 3, being:

**APPROVAL OF THE MINUTES FROM THE SEPTEMBER 24, 2014 REGULAR MEETING.**

Hank Ryan moved to approve the minutes of the September 24, 2014 Regular Meeting as presented. Todd Marple seconded the motion.

The motion passed with a unanimous vote.

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Item No. 4, being:

**BOA – 1415-10 – WP OKLAHOMA NURSING, L.L.C REQUESTS A SPECIAL EXCEPTION TO THE REQUIRED NUMBER OF OFF-STREET PARKING SPACES FOR AN EXISTING FACILITY LCOATED AT 5-1 E. ROBINSON STREET.**

## PRESENTATION BY STAFF:

Wayne Stenis reviewed the staff report. There were no filed protests on this item.

Hank Ryan asked how the number of beds was calculated. W. Stenis stated that there are 200 beds and that 1 parking space is required for every 4 beds and 1 parking space required per 2 staff members. The application identified 60 staff members.

H Ryan asked what the property was currently zoned? W Stenis stated R-2 with Special Use but it has been going through the process to get the proper zoning. Susan Connors said that the application had gone through Planning Commission and was on its way to City Council to receive a RM-6 zoning. H Ryan asked how long that process would take. S Connors stated 30 days. H Ryan asked if the City Council approved it at their November 25<sup>th</sup> meeting, would it then be RM-6. S Connor said yes. She stated further that they could not get a building permit until the zoning was changed.

H Ryan cited Section 22:441 of the Zoning Ordinance, *Special Exceptions Defined and Enumerated. 7d.*

*“To grant exceptions to the off-street parking requirements as set forth in Article XII, Section 431.5-431.7, when it is determined that the size and shape of the lot to be built on is such that off-street parking provisions could not be complied with, that the proposed use of land is similar in nature to adjacent land uses, and that the proposed use will not create undue traffic congestion in the adjacent streets.”*

H Ryan asked if this was the standard they were to look at. W Stenis concurred. H Ryan said that all three standards had to be met. S Connors concurred. He asked if it was the staff's position that the applicant could not reconfigure the lot to accommodate 80 parking spaces. He asked if staff had looked at that. S Connors said that they would have to remove the storage buildings on the site to accommodate more parking. H Ryan stated that there was a lot of open space available. S Connors said that maybe the applicant could address this. H Ryan asked again if staff had evaluated to see if the lot could accommodate 80 spaces. S Connors said that that could only be determined if they moved the storage buildings. H Ryan said that there needed to be a determination made that the lot could not be reconfigured to meet our standards.

There were no further questions of staff.

Chair Seamans asked for the applicant's report.

H Ryan stated before Sean Rieger could begin his staff report that the Board was a tribunal under Rule 1.M of the Rules of Professional Conduct. He stated that any presentation that misleads or failure to disclose material elements might be seen as a violation of the Rules of Professional conduct. He asked S Rieger to proceed.

S Rieger said that he didn't understand why that was stated, but proceeded with his presentation. He said he was aware of it.

Mr. Rieger stated that he represented the applicant in this case, which is to reconfigure an existing vacant nursing home. The nursing home was under zoning compliance until it became vacant. The nursing home was under a Special Use Permit but once it became vacant, the Special Use Permit became void. The property had gone to foreclosure. The new owner hopes to reopen the nursing home, but they will need to upgrade and modernize the structure in order to comply with the nursing home accreditation.

The money invested in the project will go to the interior work. The exterior has very little work planned. During the application process, the project has gone through the Predevelopment, Greenbelt Commission, and Planning Commission process. Each time the neighbor to the west has been concerned about an existing drainage problem and requested that the project not add any more impervious surface that would contribute to this problem. Mr. Rieger stated that this was an important aspect to the project and is an important aspect to the request.

Because of the way the buildings are built, parking is very confined. There is open space on the east side but they do not want to take up any more open space unless absolutely necessary. There is a parking lot in the front and parking and driveways in a very confined manner around the perimeter. There is not a lot of opportunity to add more parking unless taking up the open space. In hopes of accommodating the public's request of not adding more impervious surface, and giving the property a chance of being reconfigured into a more usable condition...right now it is vacant and has serious problems of dilapidation. If it can be brought back into good shape, it can be viable again. He thanked the Board for their time and consideration and that he was open for questions.

**H Ryan** said that the application says it is a variance application and the presentation stated variance but it is actually a Special Exception.

**S Rieger** said that was true. ...

**H Ryan:** And we speak to that requirement. Can this property be reconfigured to have parking to 80 spaces?

**S Rieger:** At significant expense and adding to impervious.....

**H Ryan:** Can it be reconfigured?

**S Rieger:** At significant expense and adding to impervious ground, yes, it could. But that would be in controversy to the public good.

**H Rieger:** There is one other item. You could reduce the number of beds. There are two ways of going about it. This is not an operating nursing home. All your client purchased was the ground and a building.

**S Rieger:** OK

**H Ryan:** In your application you refer to this property as a blight. Do you believe it is a blight?

**S Rieger:** I do believe this property is a blight.

**H Ryan:** How long has your client owned the property?

**S Rieger:** I think about a year or two.

**H Ryan:** The application states 14 months. So wasn't it the property owner's responsibility to cure a blight?

**S Rieger:** And that is what they are intending to do.

**H Ryan:** They have owned it for 14 months. If it is blighted, it is blighted.

**S Rieger:** They are not able to get a building permit until they go through this process.

**H Ryan:** But they are able to maintain the property so that it doesn't reach blight standards.

**S Rieger:** I guess you would have to define what a blight is. In my opinion, it is a property that is severely underused as compared to its highest and best use. I think what you are referring to is code violations. I am not aware of any code violations on this property. So I think that is different....

**H Ryan:** But you represented to this Board that it is a blight.

**S Rieger:** I think that it is blighted in the sense that it needs to be renovated and upgraded.

**H Ryan:** I think that it is important for the Board to speak to the fact that this has been closed for over 4 years. It's not ongoing. Your client basically purchased an opportunity for a clean slate. In your letter you also refer that staff has urged the applicant to apply for this variance and they would support it. Who are the staff members and what are their positions?

**S Rieger:** I am going to stop this right now Mr. Ryan. I am going to ask that this proceeding be stopped. And that we have a substitute Board member in this proceeding. It is clear for the record that I am enduring prejudice from this Board member and I don't know why. It is obvious and clear that I am enduring it, Mr. Chairman, and I object.

**H Ryan:** Mr. Rieger you sent this...

**S Rieger:** I object.

**H Ryan:** You sent this letter to this Board.

**S Rieger:** I did. I want to know what your agenda is Mr. Ryan. I'm completely taken back here today at to what I am facing, Mr. Chairman.

**S Connors:** Excuse me a minute. (She left the room)

**Chair Seamans:** You are asking some questions that may have some tone. Could you calm down your tone. Could you ask your questions and see if we can get through this.

**H Ryan:** Mr. Chairman.....

**S Rieger:** I object, Mr. Chairman, to be read the Act of Misrepresentation from the Oklahoma Attorney's Act. I object. That has never happened. It never will happen. I object to the prejudice I am facing in this hearing. I demand that this Board member be replaced with another that can act without prejudice.

**Chair Seamans:** I take your request. I'm not sure how to proceed at this moment. But we will figure it out. I believe Susan stepped out to get the attorney. And we will hold off the meeting until she returns.

**J McCart:** I will pause the recording.

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S Connors and Leah Messner, Assistant City Attorney, joined the room.

**Chair Seamans:** I will reconvene the meeting after a slight pause of 5 or 6 minutes minutes. The City Attorney has joined us. What we have is Mr. Rieger wanting to replace a current Board member from the Board because of prejudice.

**Leah Messner:** Sean, are you wanting to postpone until next month? I'm sorry I'm walking in a little behind here. I need more information.

**S Rieger:** When is the next meeting?

**S Connors:** A month.

**S Rieger:** But what date?

**Todd Marple:** The next meeting is in December. We do not meet in November.

**S Connors:** That's right. December 10th.

**S Rieger:** Let's talk about the situation.

**Chair Seamans:** OK. You have a better grasp of it.

**S Rieger:** I walk in here and staff goes through their presentation. I would like to go off the record if that is OK.

**J McCart:** I do not believe we can.

**S Rieger:** Ok. I walk in here representing a client that is not me. Staff goes through their presentation. I'm asked to give the presentation but before I can begin Board Member Ryan reminds me that I am under the Oklahoma Ethics Act to not misrepresent. Makes that very clear to his fellow Board members. Thereby questioning my ethical conduct in front of the Board as if I can be honest to the Board. I don't know where this comes from. I have no idea why you did that. I have never had anybody in my career of 14 years do that to me sir. Ever. Not once. To question my integrity and honesty in front of a board is out of line. And you know better. It is wrong. My client is prejudiced and cannot get a fair hearing in front of this Board because of your actions. I proceed to answer questions and I am virtually not allowed to as I am interrupted. Your behavior is out of line and inappropriate. I object. I'll be asking for your replacement from City Council.

**Chair Seamans:** So that's about where we were when we stopped the meeting and brought you in.

**L Messner:** Thank you for calling me. Sean, I think procedurally the options are to postpone until the next hearing or go ahead and continue the meeting and see what the Board says and appeal if necessary.

**S Rieger:** And sue for any arbitrary and capricious behavior of anyone that has acted out of their character and out of their scope of liability within this meeting.

**L Messner:** That certainly would be your right to allege that.

**S Rieger:** You know Mr. Ryan, I represent clients. I bring the information that clients bring to me to bring in front of a board. I don't know what your problem with me is. I don't know why you did this today. I have never been confronted with this situation in my career. But if you have a problem with one of my clients, it has nothing to do with this client as far as I know. If you have a problem with me personally, it has nothing to do with me standing in the shoes of a client in front of a board. It's improper and inappropriate to take out your personality problems with an attorney when they are standing here not of their own, but on behalf of a client who is paying good money to get a fair hearing. You have corrupted the cause of that client to get that fair hearing by your actions today.

**L Messner:** I think we can go ahead and have the hearing and if you are unhappy with the result you can appeal or we can postpone and take it up in December. As far as removal of one of the members goes, or any board members, that is obviously up to Council to remove or reappoint. It is within your scope to submit something to Brenda.

**S Rieger:** I will postpone.

**L Messner:** To December?

**S Rieger:** Yes. You think it is November...

**S Connors:** December 10<sup>th</sup>.

**Chair Seamans:** It usually falls the Wednesday before Thanksgiving so we push the meeting to December.

**T Marple:** I specifically looked on line the other day and it is December 10<sup>th</sup>.

**S Rieger:** Unbelievable Mr. Ryan.

**Chair Seamans:** We will stop the discussion on that now and we will postpone it. We thank you for the time and we will....

**H Ryan:** Before we adjourn he decided to withdraw at this time...

**Chair Seamans:** He did not withdraw. He asked to postpone....

**H Ryan:** I think that it is my chance to say that I think it's clear that my questions were directed to the application presented to this Board and not to you personally. I was requesting additional information that you set out in this application to this Board.

**S Connors:** You should vote on the postponement.

**Todd Marple** made a **motion** to postpone to the next meeting; **Second Hank Ryan.** Roll Call vote was **unanimous.**

**Chair Seamans:** We will be back on December 10<sup>th</sup>.

**H Ryan:** Is there an application in the file for a special exception?

**W Stenis:** Yes.

**H Ryan:** May I see it?

**L Messner:** Are we still discussing the item that we just postponed?

**H Ryan:** May I see the file?

**W Stenis:** It's the same application form it just needs to be marked special exception.

**L Messner:** I think that with the approved motion to postpone the discussion on this item needs to stop and move on.....

**H Ryan:** I believe as a member of this Board I am entitled to review information.

**L Messner:** Yes sir, but I ask that we need to move on to the next item on the agenda. We can take that up at another time.

**Chair Seamans:** So we have no other items on the agenda. Do we need to adjourn the meeting?

**W Stenis:** You have miscellaneous comments and adjournment.

**Chair Seamans:** Are there any comments outside the previous conversation? Seeing none, the meeting is adjourned. **5:00 p.m.**

*Jolana McCart*  
*Recording Secretary*

A handwritten signature in cursive script that reads "Todd Maple".