

Hearing Minutes

City of Prescott Board of Adjustment Public Hearing Thursday, October 19, 2006 – 9:00 AM

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

I. CALL TO ORDER

Chairman Fuchs called the public hearing to order at 9:00 AM.

II. ATTENDANCE

MEMBERS PRESENT:

E. Calvin Fuchs, Chairman
Mike Klein, Vice-Chairman
Duane Famas
Johnnie Forquer
Tom Kayn
Ken Mabarak

MEMBER(S) ABSENT:

William Warren

OTHERS PRESENT:

George Worley, Assistant Community Development Director
Gary Kidd, City Attorney
Matt Podracky, Assistant City Attorney
Dick Mastin, Development Services Manager
Mike Bacon, Community Planner
Mark Baker, Community Planner
Bob Bell, Council Liaison
Steve Blair, Councilman
Jim Lamerson, Councilman
Bob Luzius, Councilman
Kathy Dudek, Recording Secretary

1. Approve the minutes of the 9/21/06 hearing.

Mr. Klein, **MOTION: to approve the minutes** of the September 21, 2006 hearing.
Ms. Forquer, 2nd. **Vote: 4-0-2** (abstention due to absence: Famas, Fuchs).

2. **V06-007, 516 Home Street.** APN: 113-08-041 and totaling ± 0.6 acre. Zoning is Multi-Family Medium (MF-M). Request a variance to encroach into the corner yard setback. LDC Section 3.9.3F. Owner is Margaret Rambikur. Applicant/Agent is Tim Riley. Community Planner is Mike Bacon (928) 777-1360.

Mr. Bacon reviewed the staff report and indicated:

- Home Street does not go through to Dameron Drive and is not paved;
- the request is for an encroachment of 13' into a 15' setback because of rock outcroppings;
- photographs have been submitted showing the stakes for the placement of the garage and the close proximity of the rock outcroppings; and,
- no comments have been received from the neighboring properties.

Chairman Fuchs indicated that this is a situation where a variance is appropriate.

Mr. Kayn indicated that, based on the zoning, this use is less intensive with the surrounding properties.

Ms. Margaret Rambikur, owner 516 Home Street, indicated an old shed deteriorated and was removed from the area of the request. She stated it is the only location to place a garage because of the terrain.

Mr. Famas, **MOTION: to approve V06-007** for reduced setbacks in accordance with Exhibit "A" dated October 19, 2006. Mr. Mabarak, 2nd. **Vote: 6-0.**

- 3. CUP06-007, 520 W. Delano Avenue.** APN: 116-12-020 and totaling ± 0.95 acre. Zoning is Single-Family 9 (SF-9). Request a conditional use permit for a place of worship. *LDC* Section 2.3. Owners are Barney M. & Cynthia Strauss. Applicant/Agent is G. I. Shaw. Assistant Community Development Director is George Worley (928) 777-1287.

Mr. Worley reviewed the staff report and indicated:

- The request is to operate a fellowship hall under the category in the *LDC* as a "Place of Worship, Church".
- The property has been in use by Safe Harbor for approximately 6 months.
- The request is to operate a business called Safe Harbor, a non-profit organization that provides space and meeting rooms for various groups that offer a 12-step program.
- The applicant contends that Safe Harbor is operating under a category equivalent to the City's category of "Places of Worship, Church".
- The subject property is located immediately across from an elementary school and in the middle of a fairly large area of single-family zoning.
- Information has been given to Board members regarding the City's interpretation of the request in the Staff Report.

Mr. Worley further stated that there are two questions that must be answered by the Board of Adjustment to grant the requested Conditional Use Permit:

- 1) Does the use as described fit the parameters of "Places of Worship, Church" in *LDC* Table 2.3. (*Refer to staff report for cited definition*). If the Board finds Safe Harbor qualifies under this statement, then
- 2) Does the use meet the criteria established in *LDC* Section 9.3.5, with or without conditions. If the Board finds that Safe Harbor does [meet criteria established], what conditions or mitigations are required?

Continuing, Mr. Worley noted:

- The location of operation is next to Taylor Hicks Elementary School in a SF-9 zoning district.
- Does the use fall under the category of "Places of Worship, Church".
- Other uses are permitted in SF-9 under a conditional use permit.
- Staff has concerns with increased traffic and safety in the neighborhood.
- Staff also has concerns with the increased hours of use.

Board members queried and discussed:

- The previous occupant, Amazing Grace Baptist Church's utilization of the property.
- The type of present use by Safe Harbor in relation to Amazing Grace Baptist Church's use including church services.
- The fact that when Amazing Grace Baptist Church moved to Prescott Valley, the conditional use permit expired.
- The number of groups using the building at the present time [Mr. Worley: we will defer to the applicant].
- The current operation's activity that appears to be much different than that of Amazing Grace Baptist Church [Mr. Worley: staff's perspective is that this use is different].

Mr. Gil Shaw, 220 W. Goodwin Street, representing Safe Harbor, Inc. and Mickey Strauss, the owner of the property in question, presented:

- In our investigation there is no existing conditional use permit on the property since the 1960s.
- A conditional use permit has lapsed but was granted for a school.
- As of today no record has been found of any conditional use permit on this property.
- We are in court [?] with the City because we feel the use is grandfathered in and there is no need for a conditional use permit.
- There is no finding by the City staff that this facility poses any danger to the the community except for increased traffic.

Further, Mr. Shaw submitted:

- There is "fear-mongering" by individuals who have misrepresented the function and purpose of this facility.
- About 4 or 5 groups or entities meet under the Safe Harbor umbrella, practicing at different times of the day.
- The use is a bit more intense than an active/reactive church at the location.
- Traffic impact is not, while increased, prohibitive to the use of this site.
- [Safe Harbor] is willing to screen impacts to the neighborhood.
- An emphasis is being placed on carpooling.
- Some meeting times have been adjusted to deal with the [traffic] impact.
- We are a place of worship and previous correspondence details a number of court cases that have held 12-step programs as places of worship.
- In a New York Superior Court case, the findings indicate it was determined that the dominant theme is unequivocally religious with an essential component being spirituality.

Chairman Fuchs questioned with answers supplied by Mr. Shaw [in parenthesis] following {the questions and answers are not in verbatim format, but indicate the gist of the answer}:

- Earlier you said you represented Mickey Strauss and Safe Harbor Center, Inc. Who owns the property? [Mickey Strauss does through a family living trust].
- When was the property leased to Safe Harbor Center, Inc.? [April, 2006].
- How long is the lease? [5 year lease].
- In what state was Safe Harbor Center incorporated? [It's an Arizona Corporation].

- Safe Harbor Center, Inc. is not listed on the Arizona Corporation Commission website [I'm sorry, it is a Nevada corporation].
- When was it incorporated? [March, 2006].
- Is Safe Harbor Center, Inc., authorized to conduct business in Arizona? [As far as I know, it is].
- You might want to check that, it doesn't show up on the Arizona Commission Corporation website as being authorized to conduct business here. [Mr. Shaw: . . .being registered as a foreign corporation]. {Chairman Fuchs: At least I couldn't find it.}
- The application states that Safe Harbor Center, Inc., is a non-profit corporation operating under Section 501C3 of the Internal Revenue Code, is that correct? [That's correct].
- What is the basis of its tax-exempt status? [Religious activities. . . I guess to some extent it would also qualify as educational activities . . . a 12-step program].
- Is Safe Harbor Center, Inc.'s tax-exempt status due to a status as a church? [Not necessarily, no, religious education I guess would be its total tax exempt status. [I'm not a non-profit tax-exempt lawyer, but I believe that's how it is set up. I've not seen the application]. {Chairman Fuchs: neither have I.}
- It occurred to me that its tax exempt status may be due to its status as an alcohol and drug abuse rehabilitation center, is that true or not true? [It may be part of the component].
- What denomination is Safe Harbor Center, Inc. [It's non-denomination].
- What does that mean? [I believe if you refer to some of the literature given you, Mr. Chairman, the Board of Appeals of New York put it very well. They said that in working the 12 steps, participants become actively involved in seeking such a god through prayer. . . So I think that describes the nature of religious activity].
- Are all the activities on the site Alcoholics Anonymous? [As of today, yes].
- How about yesterday? [There, well, for the last week there have been several groups that have left the facility, Narcotics Anonymous and one other Drug Anonymous group no longer participate in this facility. I think I noted that on the legal submissions, this just took place last week. Tuesday, Thursday, and Friday evening sessions have been eliminated. We anticipate they will be replaced with AA meetings over an extended period of time. There's really no timetable in trying to replace those].

Chairman Fuchs: "Monsieur, I would tell you that we were handed your supplement to the application for conditional use permit for Safe Harbor/Mickey Strauss this morning. We did not receive it in time to have an opportunity to review it and so, if I ask you questions that may have been answered by this, I apologize but I just didn't have a chance to read it."

- How many different groups are using the facility at this time? [Let me just get a definitive answer from Mr. Strauss. . . I believe I stated 4 groups].
- Please identify those groups for me. [They're just simply 12-steps groups].
- Is it formally sponsored by AA? [AA doesn't formally sponsor any group].
- When you say there's 4 different groups, you're talking about a collection of people that meet at certain times [Correct] with respect to the program? [Basically it's a convenience of time as to when they meet. Some different

groups sometimes emphasize different things; but, in general, they all work a 12-step meeting under the same auspices].

- Is there a pastor, or a priest, or reverend or rabbi that conducts services at the facility? [No, but they pray to God and close their meetings in prayer, they discuss a higher power. I'd like to point out that the true definition of a church is not some place where the pastor, rabbi or cleric leads the ceremony. It is a place where people gather to worship and have fellowship and a higher being. That's what's taking place here at this facility. . . .But, as you'll hear from many people in the room, it is a church where they go to almost every day.]

Chairman Fuchs listed the difficulties he has with the request:

- The cases provided have been read with regard as to how a court may not compel a DUI driver to attend Alcoholics Anonymous because it violates the Establishment Clause of the United States Constitution.
- The question of whether the activities here make this particular building a church or a place of worship as compared to a place where there is just a group of folks getting together on an *ad hoc* basis as described, going through the program.
- A funeral home, even though it has a chapel and conducts services, is not a church for zoning purposes because its primary purpose is to be a funeral home.
- The fact that there may be a religious component to AA does not necessarily transform the building in which those activities occur into a church for zoning purposes.

Mr. Shaw wanted to offer an analogy. A court cannot sentence a convicted drunk driver to attend Catholic mass, either. [Chairman Fuchs: That's correct.] And by the same analogy, they have also said that you cannot sentence a DUI offender to attend an AA meeting because of the heavily religious, spiritual and deified nature of their program. They have equated AA with, and the function of AA with, what we would all recognize as established religion. . . . We are talking about the First Amendment issue and the Establishment Clause. The courts have elevated AA to the point of any other church or religious activity without getting into the nature of exactly how you worship, who conducts the meetings, who conducts the prayer, meditation. . . . Without that component, AA does not work. Mr. Shaw submitted that it is a religious-based activity as a place of worship by any other name.

Chairman Fuchs continued:

- The Pledge of Allegiance was said here earlier, but City Council Chambers was not transformed into a place of worship by doing that.
- Does any ruling exist of a court on case where City Council Chambers would be transformed into a church [Mr. Shaw indicated that the answer was no].

Board members further queried and commented on with [Mr. Shaw's answers]:

- A *Brief Guide to Alcoholics Anonymous* and statement #3 that AA is not a religious organization. [Mr. Shaw indicated that he did not know where the source of that information came from, but referred to information he submitted on p. 2, where the Supreme Court of Appeals of New York refers to AA's 12-steps describing the spiritual evolution of atheists and agnostics].

- If the group claims it is not a religious organization, how is something turned into one? [. . .It hinges on the fact of organization. By way of example, if a group of people meet for prayer or Bible study that doesn't necessarily construe they have a church. But if they start meeting there every day or Sunday, whenever they may meet just simply for a Bible study or practicing fellowship, they still may not call themselves a religious organization, but they're certainly engaging in a religious activities. If you pull the religious component out of a 12-step program, it fails to work. It is fundamental to its nature. . .]
- Are the doors are open to anyone who wants to attend? [I would think so, . . . we'd have some open door policy or fellowship policy].
- What activities of the Safe Harbor operation show that is it open or welcome to people from the non-recovering community? [Now you're getting into a tantalogical [?] debate that I don't think we should get into, but I'll try to address it by asking you a question if I could to clarify your . . . by non-recovering definition. [Mr. Kayn: I would say that it's someone seeking church activities, but not based on the fact that they're recovering from an addicted lifestyle]. [Mr. Shaw . . . 12-step meetings are open to anybody. Anybody can walk into a 12-step meeting at any time regardless of whether or not they have an addiction problem. . .].
- Where else have the meetings been held in the recent past? [All over town. Smoki Lodge, Veterans Offices on Goodwin Street, at Firehouse Plaza, at Washington School, etc., . . . all over. One of the purposes of establishing this place was to insure that you wouldn't have to be worry about your meeting being kicked out].
- Were most of the places where these meetings have been held zoned single family, or did they have other types of zoning? [. . .downtown churches, businesses, I imagine the zoning varies according to the location].
- In the literature handed out this morning, it is noted that three meetings have been eliminated. [Yes]. How often does your schedule change? [Not very often, the schedule since April has been intact, there's been some minor adjustments].
- Are there other meeting places that AA uses in town? [AA's not a formal organization in the sense that they go out and find meetings. There's a saying that when two members of AA sit down and talk, that's an AA meeting. There are other AA meetings that occur. One that springs to mind is the Methodist Church off Gurley, they're scattered here and there].

Chairman Fuchs asked if there were any other questions of Mr. Shaw at this time [No one spoke]. Chairman Fuchs continued by stating there are many folks here to speak. The issue to be concentrated on first is whether this particular facility can be classified as a church. In that regard, Chairman Fuchs asked Mr. Adams to take the podium as he made a submittal to the Board with respect to that [whether the facility can be classified as a church].

Mr. Jeff Adams, 164 Juniper Ridge Drive, partner with Musgrove, Drutz & Kack, indicated his research has been provided for free to a group of parents and property owners in the area who are concerned that this facility is being operated at its current location. Mr. Adams addressed specific legal issues {comments are paraphrased}:

- The property surrounding Taylor Hicks Elementary School is zoned one way, SF-9, meaning one family can live in a house.
- Commercial and industrial businesses are not allowed in SF-9.
- If a non-residential business in nature is desired, the business is required to comply with the zoning established in the City of Prescott and must obtain a conditional use permit.
- A conditional use permit is a privilege and not a right.
- The application submitted leads the property owners and group of people being represented to believe that any time there is any religious activity taking place, it converts the property on which it is being conducted into a church. It is an absurd proposition and would allow anybody in a property zoned SF-9 to apply to the City of Prescott for a conditional use permit to be operated as a church as long as they were conducting some sort of meeting that had some sort of religious or spiritual component to it. That is not happening at this property.
- The only activities being conducted at this property are services designed and intended to help people with their addiction.
- These types of groups are necessary; however, some care taking needs to be taken where these groups will be located.
- The primary mission of this facility located at 520 Delano Avenue is to provide people with services directed and intended to help them to recover from their addictions whether they be drug-based or alcohol-based addictions. Consequently, it does not fall within the definition of a “church.”
- The zoning requirement for the City of Prescott is to establish the property and the building as a church.
- There is no case law, no statute in Arizona, no ordinance in the City of Prescott, that defines a spiritual activity as being a church. It doesn't exist.
- Citing *Weslaw*, no case has been found that said that Alcoholics Anonymous and the facility where they were conducting their meetings was a church unless there is an actual church in existence that is sponsoring the meeting.
- It is not possible to bootstrap the activity onto the building and say because of the activity, we are a church. The legal authority doesn't exist.
- Citing Narcotics Anonymous World Services, “. . .provides a recovery process and support network inextricably linked together. One of the keys of any success is the therapeutic value of addicts working with other addicts.” That is rehabilitation.
- Referencing the application, the applicant indicates no detox or overnight stays occur at the facility. No one under the influence of alcohol is allowed on the premises. Safe Harbor's mission is to provide a safe and supportive environment for those who maintain sobriety.
- Their mission is not listed to worship God, and the mission does not say it is to conduct religious services.
- Safe Harbor does not have anybody monitoring the facility to test people [as to] whether they are under the influence.
- People attend the meetings voluntarily, they go for camaraderie, and there is safety in numbers.
- There may be a problem of recidivism with people who are addicted.

Chairman Fuchs reminded Mr. Adams that the question at hand is whether this facility is a church that would be entitled to a conditional use permit to operate in a residential area.

Mr. Adams continued by recalling:

- The use of the former church on the property.
- The lack of overflow parking by the previous church.
- The previous church parking not occurring during school hours, recess, and after school.
- The former church parking occurred typically on the weekends and also when a few activities during the week took place.
- The new facility now operates the facility 7 days a week.
- The facility is operated during the hours when the children attend school, teachers are teaching, staff is working.
- Consequently, this use is dramatically different.

Chairman Fuchs asked the audience if anyone else wished to comment with regard to the question of whether this facility is a church.

Mr. Peter Walter, 1970 Acacia Circle, listed three aspects to his background: 1) a former drug user; 2) a former pastor; and, 3) a resident of the area. In the matter of the facility being a church, Mr. Walter cited the fact that if a pastor is not there, it is not a church. In New York, the 12-step program didn't want the churches to have undue influences. This is more a "para-church" organization, an organization that works with the church but is outside the church. Mr. Walter questions why the pull-out occurred with some of the groups that used the facility. The tax exemption claimed by Safe Harbor is not for that of a church.

Ms. Pat Unkenholtz, 381 Northview Drive, indicated she walks around Safe Harbor several times a week from 6:30 a.m. until the evening. She affirms and applauds the persons in attendance as the parking lot is always full. She does not feel that there is a danger to the public.

Chairman Fuchs again stated that persons should speak to the topic of whether this building is a church.

Mr. Steven Knight, 403 Shalimar Drive, stated that he spent 38½ years in the US Navy as a Captain, Chaplain and is an Episcopal Priest. He stated that Alcoholics Anonymous (AA), Narcotics Anonymous (NA) and numerous 12-step programs have been adamant about saying they are not religious for much the same reason our forefathers wanted to separate church and state. AA and NA do not allow their members in any form to own property; as a consequence, Mr. Strauss and Safe Harbor joined together to provide a property for the people to hold the meetings.

Mr. Mark Blocker, 2847 Ithaca Drive, [inaccurately referred to Councilman Lamerson as speaking previously—it should be noted that he was referring to Board Member Klein], mentioned the difference between a religious program and a spiritual program. Regardless, Safe Harbor should be classified as a place of worship and

the fellowship will continue regardless of the ruling of the Council [sic Board of Adjustment].

Chairman Fuchs again asked that only persons intending to comment on whether this facility is a place of worship or a church do so.

Mr. Clint McKnight, 1928 Oriental Avenue, indicated he renewed his faith in God at Safe Harbor. Prior to starting the program there, he was a confirmed agnostic.

Mr. James Lamerson, City of Prescott Councilman, stated for the record that he did not comment previously and wanted to clarify that Mr. Blocker was referring to Board of Adjustment member Mike Klein.

Ms. Joni Strauss, 325 Ridge Court, indicated when asked that she is not the owner of the building, but is the manager [of Safe Harbor]. She stated {comments are paraphrased}: “. . . when we bought the property as a church, we felt it was a church. I came to the membership almost 20 years ago as an agnostic. If it wasn't for the religious component in the program, I wouldn't have stayed around but the program gave me a higher power that is so powerful to so many people's lives. . . I wanted to also comment on the hours. . . we worry about the neighbors, we worry about the children. We are only open during the day at noon for a meeting that conflicts with the school. Other than that, there's about just a few cars out there. During the day if you drive by our property, you would see maybe two or three cars at the most. It's always monitored. That place is never open unless it's monitored. So, we want to keep a safe place, a church-like place for our neighbors. . .”

Ms. Jenna Anderson, 2450 Valentine Drive, cited *Webster's Dictionary* definitions of a “church” using definition 1. The people choosing AA want the basis to be more spiritual in nature. Prayers are said at the start and end of the AA meetings. One person helps another in that building. Also cited by Ms. Anderson was the definition of “worship”.

Ms. Catherine Osburn, 1928 Stage Circle [no signature appears on attendance sheet], has children attending Taylor Hicks School. Within a week of Safe Harbor opening, she talked with a gentlemen to find out about Safe Harbor. When driving by the sign, since no denomination or non-denomination was listed, she felt it was her responsibility to find out what the building was being used for. The gentleman explained that the organization had moved from a location downtown next to The Liquor Barn. At no time, did the gentleman define Safe Harbor as a church. Ms. Osburn feels it is an interesting location to choose in relation to people who would not have easy access to it in the residential neighborhood. Three weeks later, Ms. Osburn called to find out what was going on as the rumor mill was active. It took 15 minutes into the conversation before the woman she was speaking with defensively said, “we're a church”. Ms. Osburn was told they would start NA meetings, but now the NA meetings have been withdrawn. If a conditional variance [use permit] is granted, the church label will be used for convenience and not a true definition.

Mr. Tom Staley, 2050 Victoria Road, father of a 3rd grader at Taylor Hicks School, has written and verbal authority to speak for the entire PTA at the school which includes almost 180 parents. As a Board member [Prescott Unified School District],

he appreciates the fact that another 180 people could have been here, but felt it would be more important to have one person speak for “us all”. That is why another 180 parents are not here to speak against this {comments are paraphrased}.

Mr. Staley indicated the following regarding the church and Safe Harbor:

- The primary purpose of AA and the group meetings is for rehabilitation.
- No other known religious institution meets 7 days a week from 7 a.m. until 10 p.m.
- Cars are present and folks have been loitering in the parking lot after hours after lights are off.
- Is this operation authorized to operate in this state?
- Citing information from the AA’s own website: “an AA group ought never endorse, finance or lend the AA name to any facility. . .lest problems of money . . .” comes into play. By their own rules they can’t lend themselves to Safe Harbor. “AA’s concerned solely with the personal recovery and continued sobriety.” Not religion. “AA never endorses, supports, becomes affiliated with” any other association.
- When the Goodwin Street Pharmacy moved from their old location to their current location, they had to reapply for another state liquor license. Safe Harbor was located within 300’—if they were a church, the liquor license wouldn’t have been granted.
- They [Safe Harbor] is listed under Alano Club, Mile High on their website—it lists “recovery AA”, not a religious institution.
- Presenting the latest *Dex Phonebook*, Safe Harbor and the Alano Club is not listed under any of the churches, either denominational or non-denominational.
- Safe Harbor is listed under Alano Club, Mile High [in the *Dex Phonebook*] with the words “alcoholism information and treatment” and the phone number given is answered as “Safe Harbor”.

Chairman Fuchs asked that Mr. Staley provide the Board with the materials that he referenced. Chairman Fuchs then indicated a 10-minute recess. After the recess the second issue will be addressed, and Chairman Fuchs noted that persons will be permitted to speak.

A recess was taken from 10:45 a.m. until 10:55 a.m.

Chairman Fuchs resumed the meeting and indicated that the second issue, safety and mitigation, would now be considered.

Mr. Shaw resumed and indicated {comments are paraphrased}:

- The only issue identified by [City] staff is that of traffic.
- The meetings are usually three times a day with minimal traffic in and out at other times.
- The previous church actually had three churches going on at one time: the Baptist Church, an Hispanic-Evangelical Church and a Church of Christ.
- The previous pastor, Pastor Parker, indicated that on Wednesday evenings they would have 60 people there on a good night, so the traffic pattern has changed some, but not dramatically.

- The “fear mongering” issue of persons attending the meetings; and, during the six months of operation, no police calls have been made to the site.
- The applicant will take active measures to screen the property per Staff recommendations.
- Carpooling will be encouraged to mitigate the traffic patterns.
- There is about a 10-minute overlap of traffic between Taylor Hicks and the facility in the morning.
- No traffic occurs during the recess period.
- A 4-foot fence exists on the property next to Taylor Hicks, and Taylor Hicks has a 10-foot fence on the eastern side of their property.
- Traffic is to the south where there is a bus loading zone, pick up and drop off.
- No one is to drop off or pick up children adjacent to the Safe Harbor property line.
- Everyone seems to be concerned with the type of people coming to the facility.

Further queries and comments by members of the Board included:

- Is Safe Harbor a drug and rehabilitation center? [Mr. Shaw: No its not, and the reason it’s not is because Safe Harbor, Inc., itself, conducts no activities on the site. It facilitates the meetings of other groups, in this case of AA meetings that come to the site. Alcohol drug rehabilitation is a pigeonhole. and that leads us to think they have detox facilities and dry-out tanks and overnight facilities. . . . It’s a place where people come and discuss their issues. . .]
- If this use is not a church and not an alcohol treatment center, could it fall into another zoning area? [Mr. Worley: yes].
- The 40-60 vehicles that congest Delano Avenue and Taylor Hicks Drive.
- The log of the daily meeting attendance provided by Mr. Shaw, the number of vehicles present, and the discrepancy of the totals.
- The on-site parking requirements if the use is not that of a church.
- The other uses permitted in a single-family zoning district.
- The potential adverse effects on the tranquility of the neighborhood.

Mr. Adams stated that there are rehabilitation facilities that could accommodate a non-profit organization. By definition, the services being received by the folks attending this [Safe Harbor] facility as well as many others is addiction recovery and treatment. That is how Safe Harbor advertises in the phonebook and on the internet. Consequently, by definition, this facility is a rehabilitation center.

Mr. Adams argued that the uses being made are dramatically, not a limited amount, more than was previously made. He stated that the parents he represents did a study over several weeks and the facility is being used 7 days per week. The prior church before used the church one or two days per week and about 10 hours during the week. The impact on the use of the streets and the parking is dramatic. The parental study was conducted from 7 a.m. until 9 p.m. over a period of several weeks. Cars have parked on the sidewalk, and that is a safety hazard and safety issue. . . that happens every day.

Mr. Adams indicated that he has contacted the Arizona Corporation Commission and the Secretary of State for the State of Arizona, at this point in time, Safe Harbor, Inc.,

as a Nevada corporation, does not have legal authority to transact business in the state of Arizona.

Chairman Fuchs asked Mr. Staley if he had additional comments. Mr. Staley deferred his remarks to a person who had to leave for work.

Ms. Patricia Goffena-Beyer, 385 Northview Drive, who has a son attending Taylor Hicks and lives ½-mile away, indicated traffic has increased significantly. She is empathetic to the people attending Safe Harbor as the organizations are necessary. The location of this one [Safe Harbor] is a very poor choice. Ms. Goffena-Beyer feels there are reasons to be fearful and cited that she has been tailgated, has watched erratic driving, has watched people racing; and, the cars have consistently turned into Safe Harbor. She has had to change her walking pattern because she doesn't feel it is a safe place to walk at 6:30 a.m. Ms. Goffena-Beyer, alluded to inappropriate comments made during the 10-minute recess. She believes in protecting the rights of the students and neighbors if it means the group has to move to another location.

Mr. Tom Staley continued with remarks as a speaker representing 180 persons:

- The traffic statements made by Mr. Shaw are untrue.
- People are parking along Delano Avenue and Taylor Hicks property.
- The east gate is closed.
- The parents are concerned with the safety of the children.
- Safe Harbor was told by City Staff that the use was inappropriate and a letter [Conditional Use Permit] was needed.
- No sign permit was issued prior to the sign being erected.
- The existing sign indicates that there is an espresso coffeehouse and also a bookstore, which are not allowed by either an old or new conditional use permit.
- The 12-step program listed on the wall inside the building has two or three steps with wording about being faith based which doesn't mean it is a church.
- Safe Harbor operates all day long.
- Safe Harbor did not open characterizing themselves as a church or place of worship, but a rehab center, a place where groups meet.
- On June 19 [2006] the City was concerned and Safe Harbor was issued a letter recommending that Safe Harbor cease and desist, which they did not.
- By your own [City] rules, if a piece of property stays vacant for a length of time, the conditional use permit isn't allowed, it doesn't transfer.
- It was not until huge political pressure was put on this group of folks that they decided to come before you [Board of Adjustment].
- Increased traffic and tailgating has occurred.
- On May 28 [2006] the City of Prescott through the City Attorney's office ordered Safe Harbor to cease and desist because they are not operating under a legal conditional use permit; and, Safe Harbor did not cease and desist.
- One bad incident regarding the safety of the children would be one too many.
- Parents and administrators from the school district are present to request that this operation cease and desist.

Chairman Fuchs indicated that the Board of Adjustment is not involved in the jurisdiction of the cease and desist issue as it is not within the Board's purview. Further, Chairman Fuchs indicated it is not particularly fair to paint everyone with the same brush; and, Chairman Fuchs wanted to temper the comments along the lines being made.

Ms. Lucy Hill, 359 Peregrine, takes her 19-month old there every day. She indicated that much of what has been said is heresy. She indicated that Safe Harbor is, in fact, a place of worship.

Chairman Fuchs indicated that time has run out with regard to having speakers at the podium regarding this issue; however, he stated he wanted to give the counsel for the applicant one last time to wrap up the discussion.

Mr. Shaw presented the Board with photos that are date and time stamped with regard to the parking issue. Mr. Shaw summed up anecdotally:

- As a quasi-judicial body, the Board should not have to pass on people's veracity.
- What people are afraid of—there have been no attacks, persons bringing guns, etc., and it is fear mongering.
- A fair representation has been made from the podium by people speaking on behalf of Safe Harbor and is reflective of people who go there.
- The place is perfectly safe.
- There is no condition that cannot be addressed with the screening, and through the parking spaces if the Board has serious concerns about the parking.
- There is no threat via the empirical evidence presented.

Mr. Klein: **MOTION to deny Conditional Use Permit, CUP06-007**, which would allow Safe Harbor, Inc., to operate a fellowship meeting hall at 520 Delano Avenue. Mr. Famas, 2nd.

Board members were given the opportunity to discuss the motion, and the following statements were made prior to the vote on the motion:

Mr. Kayn indicated we could, through the courts, the court definitions, through legal arguments eventually conclude that this is a religious activity, a religious organization, i.e., a church, even though the definition that we use in the [Land Development] Code refers only to a building. I think we would eventually, or could, eventually end up there; therefore, the applicant would have a right to apply for operation in a residential area based on our conditional use process. But, as in other cases, when we look at granting a conditional use permit, we also have to look at not does the person have the right to apply for it and be heard, but would the activities under the conditional use permit be compatible with the surrounding area, in this case the residential and school-nature area. I haven't been convinced of that. The argument has been made because of traffic problems and the hours of operation. With the increased intensity of traffic and parking problems, it would make me conclude that the activity, whether again a church or not, is incompatible with what has been there longer. Mr. Kayn concluded that he would support the motion.

Mr. Mabarak indicated this has been a difficult meeting to listen to. It is a confusing issue, it is a very compassionate issue; and, I know several of the people who have gotten up to speak. I think I have to look at this as what the purpose of this Board is. It is not a social group, its not here to judge or make decisions on social issues. But I don't think that prior use of a facility in a single-family neighborhood is a guarantee of continued use. When Mr. Shaw was talking, I was asking some questions of use of time, whatnot, it dawned on me that there's no guarantee that you could even give the neighborhood that these meetings [that have been] cancelled wouldn't come back at some other time, or the meetings might get more intense in the future. And, even if we could put a condition on that, we couldn't regulate it very easily. The program of AA is very important program to our city; and, when I've seen programs like this, we had an issue a month or two ago on another facility on LaRue, nobody wants this in their backyard, I think we have to find a place for this type of use. The number of people going through this type of program is only going to increase as time goes on, whether they're doing it voluntarily or a judge may make them do it. That's happening more and more. I think we need, as a City, to find some easier method for these folks to have a place where they can count on without being kicked out as often as I understand they have. As to the issue of a church, a place of worship, I don't know. It probably is, if a place of worship is whatever makes you feel closer to whatever you believe in. I do not think it is the proper use for the neighborhood, and I think that's the role we play here—what's good for the neighborhood, not what's good for the church, or what's good for AA, but what's good for that neighborhood. And, I don't think that the level of activity that we could potentially see in this operation is good for the neighborhood . . . The use is, and potentially could be, just too intense for that neighborhood.

Mr. Klein agrees with the statements of Board members Kayn and Mabarak.

Ms. Forquer also agrees with Board members of Kayn and Mabarak. She stated she has great empathy for the applicant but does not feel Safe Harbor belongs in this area.

Mr. Famas concurs. He looks at it with a use that has already been there; however, if the use was requested in advance, he couldn't see himself at that time granting it.

Chairman Fuchs summed up his view with the fact that the applicant has not demonstrated that this is either a place of worship or a church as defined in the law. In his opinion, it would not be necessary to get past the first question and consider other aspects of the application including traffic and safety. It is fairly clear to me [Chairman Fuchs] from my review and pertinent authorities that the fact that there may be some religious activity going on in a particular building does not transform it into a place of worship or a church. My vote, which will support the motion to deny the conditional use permit, is based on the fact that I do not believe that this facility constitutes a church as defined under the *Land Development Code*.

Having heard all the comments, Chairman Fuchs called for a vote on the motion.

Vote: 6-0. (Unanimous decision to deny CUP06-007).

4. **V04-010, 306 S. Marina Street.** APN: 109-04-001. Variance to reduce side and rear setbacks for a combination garage/apartment.
BOA original approval 12-16-04
BOA approved extension 08-17-06 for a 24-month period, to expire on August 16, 2008, with one condition: that substantial plans are submitted to the Building Department within 60 days (i.e., on or before October 16, 2006).

This item was moved to the first item on the agenda by Chairman Fuchs.

Mr. Worley reviewed the history and previous extension request by the applicant. At the August 17, 2006 Board of Adjustment hearing, the variance was extended with the condition that substantial plans needed to be submitted to the Building Department on or before October 16, 2006. Substantial plans were not submitted by that date.

Mr. Heiland, applicant/owner indicated that he did not have the mechanical, electrical and plumbing portions of the plans, and he also indicated that he was in contact with Otwell & Associates, Architects.

Chairman Fuchs asked City Attorney if, in fact, the variance had already expired. City Attorney Kidd concurred.

Mr. Kayn indicated that the Board did not have the purview to extend a variance that had already expired.

Mr. Kayn, **MOTION: to deny V04-010, variance extension** request at 306 S. Marina Street. Mr. Mabarak, 2nd. **Vote: 6-0.**

IV. REVIEW ITEMS

5. **V05-001 (revised), 327 S. Marina Street.** APN: 109-04-033. Request a variance to reduce side yard setbacks.
BOA Modified 04-21-05 with 3 conditions of approval: 1) eliminating the second floor of the proposed addition and permitting relocation of the building (i.e., a garage) to the rear of the lot as indicated on the site plan dated March 22, 2005; 2) the BOA is deleting the requirements that were previously approved for family use and not to be used as a rental; and eliminating the condition that the City of Prescott be allowed to inspect the structure on a yearly basis; and, 3) the modification of Variance V05-001 on 4-21-05 supersedes the original Variance V05-001 dated March 17, 2005.
Finalled: September 29, 2005.
6. **CUP04-010, 1035 Whipple Street (822 Sunset Drive).** APN: 115-09-018. Request a conditional use permit for a 30' x 30' modular classroom.
BOA Approved 10-21-04 with 2 conditions of approval: 1) the development of the property shall be in substantial conformance with the site plan dated 10-21-04; and, 2) prior to issuance of a building permit for the classroom, a parking agreement between the property owner, the Church and the City of Prescott needs to be

completed and signed. This agreement will stipulate, in part, that the Church will provide the required parking associated with the proposed classroom use, and any future use, of this building.

Finalized: August 9, 2006.

V. SUMMARY OF RECENT OR CURRENT EVENTS

None.

VI. ADJOURNMENT

Chairman Fuchs adjourned the hearing at 11:57 AM.

E. Calvin Fuchs, Chairman