**CITY BOARD OF ADJUSTMENT**
MINUTES of Meeting No. 715
Tuesday, November 12, 1996, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

| MEMBERS PRESENT | MEMBERS ABSENT | STAFF PRESENT | OTHERS PRESENT |
|---|---|---|---|
| Abbott, Chair | | Beach | Ballentine, Code Enforcement |
| Bolzle | | Huntsinger | |
| Dunham | | | Romig, Legal Department |
| Turnbo | | | |
| White | | | |

The notice and agenda of said meeting were posted in the Office of the City Clerk on Thursday, November 8 1996, at 11:20 a.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Chair Abbott called the meeting to order at 1:05 p.m.

**MINUTES:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **CONTINUE** the minutes of October 22, 1996 (No. 714) to November 26, 1996 at 1:00 p.m.

## UNFINISHED BUSINESS

**Case No. 17533**

**Action Requested:**

Variance of required setback from the S. Rockford Ave. & E. 4th Pl. to 0´ to allow new construction. **SECTION 903. BULK AND AREA REQUIREMENTS IN INDUSTRIAL DISTRICTS;** a Variance to allow required parking on a lot other than where the use is located. **SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS**, a Variance of required landscape requirements to not provide landscaping. **SECTION 1001. LANDSCAPE REQUIREMENTS; APPLICABILITY AND EXEMPTIONS;** and a Variance of all weather surface to allow a gravel lot. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 25, located Southeast corner East 4th Street and South Rockford Avenue.

**Presentation:**

The applicant, **Danny Mitchell**, represented by Scott Chaney, 2651 East 21st Street, submitted a site plan (Exhibit A-1), photographs (Exhibit A-2) and a case map (Exhibit A-3.

**Comments and Questions:**

Ms. Abbott asked the applicant if the building adjacent to the new parking is owned by the same owner? Mr. Chaney stated that all of the marked areas on the case map (Exhibit A-3) have a common owner.

Mr. Beach asked the applicant if he was proposing that the area shaded in pink to the east of the subject tract is where he wants the parking? He answered affirmatively.

Mr. Beach asked the applicant what the other pink shaded areas represent? He stated the pink shaded areas are parking lots.

Mr. Dunham asked the applicant what type of surface did the parking lots have? He stated the parking lots are all gravel.

Mr. Dunham asked the applicant if he had any intentions of paving the parking lot surfaces at anytime? He stated that he did not have any plans to pave the surface of the parking lots at this time. Mr. Chaney explained that the area is old and it is common to have the gravel surface for the parking areas.

Ms. Abbott asked the Staff if there was any problems with the required setback as far as easements? Mr. Beach answered negatively.

Mr. Dunham asked the Staff if there was any problems with the requested variances? Mr. Beach stated that there will be a need for screening along the east side of the new parking lot adjacent to the residential area.

Mr. Dunham asked the applicant if there was any screening on the east side of the new parking lot? He stated the owners own the three lots that are in the residential area and they are vacant and there is nothing on the lots at this time.

Mr. Beach informed the applicant that the Code requires that anytime a use like this abuts a residential district, without regard to what is built there, it must be screened from the residential district. He further informed the applicant that he will have to erect a screening fence along the east side or ask this Board for relief from that requirement or rezone the three lots. He stated the applicant is not currently advertised for the screening relief and will have to make an application for that relief.

Mr. Bolzle asked the applicant why he is asking for a variance on the landscaping requirements? He stated he will be building to the property line on the building site. He further stated that there is already existing trees and greenery on the site of the parking area. He commented that none of the trees will be removed.

Mr. Bolzle asked the applicant to clarify if the parking area will be gravel or all-weather surface, because the plan indicates all-weather surface for the parking area. Mr. Chaney stated they do not plan to pave the parking area.

**Interested Parties**:

Jim Doherty, 616 South Boston, stated that the expansion of an existing industry, Southwest United Industries is the purpose of this application. He further stated the company has new contracts and the company needs the extra capacity to continue to function. He indicated the area is zoned IM and it is a large to medium industrial area, which is in transition. He explained the nearest resident to this site is two blocks away. He further explained the existing building patterns are lot line to lot line and they are the old industrial area. He commented the lots are small and much too small for the normal industrial zoning. He further commented that to develop and re-utilize the lots and avoid blight it is necessary to vary some of the requirements. Mr. Doherty stated that when you build out to the lot line you cannot landscape. He further stated that there are large trees surrounding the parking lot and that will take care of the intent of the landscape provisions of the zoning Code. He commented that varying the landscaping requirements will not be detrimental to the area. He informed the Board that there is an application pending on the vacant lots to the east and will probably take care of the screening requirement should the City Council rule favorably on the application. He commented that there is really no reason the City Council should not rule favorably given the development in this area. Mr. Doherty confirmed that the gravel parking is typical throughout the subject area. He informed the Board that MTTA uses gravel parking for their employees, which is directly to the west of the subject property. He requested the Board to grant the application as presented.

**Comments and Questions:**

Ms. Turnbo asked the applicant how far the residential houses were from the parking lot he indicated? He stated the homes are one block away.

Mr. White stated he had no problem with the application, however the site plan for the parking lot indicates all-weather surface and three areas of landscaping designated. Mr. White questioned if the motion should be made with disregard to the plan submitted?

Ms. Turnbo asked the applicant if he had seen the submitted plan and if the landscaping indicated are the existing trees?

Mr. Chaney stated that currently he would like to utilize the existing parking as it is now.

Mr. Dunham asked the applicant if he understood that if he doesn't go forward with his zoning and the Board does approve this application he will have to screen the east side abutting the residential area? He answered affirmatively.

Mr. Beach stated that the Board should disregard the site plan submitted with the application since it has many inconsistencies. He further stated the site plan does indicate that he can meet the required parking spaces.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Variance** of required setback from the S. Rockford Ave. & E. 4th Pl. to 0´ to allow new construction. **SECTION 903. BULK AND AREA REQUIREMENTS IN INDUSTRIAL DISTRICTS;** finding that typically the buildings in this area are built to the lot lines; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, a **Variance** to allow required parking on a lot other than where the use is located. **SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS**, finding that the building will occupy the entire lot and parking will be east of the subject property; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, a **Variance** of required landscape requirements to not provide landscaping. **SECTION 1001. LANDSCAPE REQUIREMENTS; APPLICABILITY AND EXEMPTIONS;** finding that landscaping already exists on the lots; finding that the approval of this application will not be injurious to the neighborhood, will be in harmony with the spirit and intent of the Code; and a **Variance** of all weather surface to allow a gravel lot. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 25; as requested; finding having gravel surface for parking is normal in the subject area, finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

SE/c E 4th St. & S. Rockford Rd. Legal Description: Lot 10, 11 & 12, Block 3, Hackathorn, Lots 9-10, Block 2, Hackathorn, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17542**

**Action Requested:**

Special Exception to permit a cellular telephone antenna tower in an OL district. **SECTION 601. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS**; and a Special Exception to reduce the required setback from a R district boundary line from 120′ to 92′. **SECTION 1204.C.2 USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES;** Use Conditions, located East of SE/c 21st & Memorial Drive.

**Presentation:**

The applicant, **Roy D. Johnsen**, 201 West 5th Street, Suite 440, representing AT&T Wireless, submitted photographs (Exhibit B-1) and stated that the subject property is fairly interesting in its zoning configuration, it is 167′ east/west plus or minus and 270′ north/south. He further stated that if you drew a north/south line down the middle of the tract, the property left to the line or west half is zoned OL and the east half is zoned CS. He explained that the subject property is comprised of two zoning districts and the proposed location of the tower is within the OL portion of the subject property. He further explained that the OL district is abutted on both sides by CS and would easily rezone, which would allow the tower, as far as the use, by right. Mr. Johnsen stated that because of the OL district a special exception is required to permit the tower and no hardship is required since it is a special exception request versus a variance request. He pointed out that the second request is due to the height of the tower. He explained that the Code requires that a tower is setback 1′ from an abutting residential boundary line for each 1′ of height. He further explained that the proposed tower is a 120′ monopole. Mr. Johnsen stated that he has computed from the south boundary, where the R district is located, the tower is 92′ away and the setback requirement is 120′. He reminded the Board that the Code provides that this Board may modify the setback requirement. He indicated that there is good separation from the subject property and any existing residential structures. Mr. Johnsen commented that if you went straight south from the subject property there is a fence and then south from the fence it is vacant, then there is an apartment building that has been constructed. He stated the apartments are closer to the southeast corner. He explained that to the west of the southwest corner is open and it is a good distance to the nearest dwelling at least 100′ or more, which provides good separation from existing structures. Mr. Johnsen stated that the monopoles were still standing after Hurricane Andrew went through Florida

**Comments and Questions:**

Mr. Bolzle stated the Board is seeing a great deal of applications for telecommunication towers and this tower happens to be in a commercial district, which is being located reasonably in relationship to the abutting residential. He further stated that the abutting RS-3 district will probably be something more intense in the future. It probably will not be developed for single family, but multi-family residential development. He commented he does not have any problems with this application because of those factors and because it abuts multi-family in the rear, which is less sensitive to single-family.

Case No. 17542 (continued)

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 4-0-1 (Abbott, Bolzle, Dunham, Turnbo, , "aye"; no "nays", White "abstention"; none "absent") to **APPROVE** a **Special Exception** to permit a cellular telephone antenna tower in an OL district. **SECTION 601. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS**; and a **Special Exception** to reduce the required setback from a R district boundary line from 120′ to 92′. **SECTION 1204.C.2 USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES;** Use Conditions; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 3, Block 1, Memorial Oaks Addition, City of Tulsa, Tulsa County, Oklahoma.

## NEW APPLICATIONS

**Case No. 17553**

**Action Requested:**

Special Exception to allow a home occupation (beauty shop) in a RS-3 zoned district. **SECTION 402. ACCESSORY USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located 4728 North Elgin Avenue.

**Comments and Questions:**

Ms. Abbott asked the Staff if there is anything that has changed from the Board meeting on 8-13-96 when this application was first heard and denied? Mr. Beach stated he is not aware of anything that has changed in this case, but the applicant may be able to address the question.

**Presentation:**

The applicant, **Alvin L. Woodrow**, represented by Leslie William Thornton, 115 West 3rd, Suite 585-A, submitted a petition (Exhibit C-1) and minutes (Exhibit C-2). Mr. Thornton stated that he is representing Mr. Woodrow.

**Comments and Questions:**

Ms. Abbott asked Mr. Thornton what has changed in this case since the hearing of 8-13-96? Mr. Thornton stated that it was not mentioned in the last case that there is a business already established in the area, which is a daycare center. He further stated he could not understand why a daycare center (or any other business) would be preferred over a beauty shop. Mr. Thornton explained that the beauty shop has had its driveway widened and has met all of the City's ordinances. He further explained that the beauty shop has been properly constructed. Mr. Thornton stated he did not think the beauty shop will create a traffic hazard or be more of a traffic hazard in the neighborhood then a daycare center.

Ms. Abbott asked the applicant if the daycare facility was in existence when the Board heard this application on 8-13-96? He answered affirmatively.

Mr. Bolzle stated the daycare center does not show up on the case report and it may not be an approved use.

Mr. Thornton commented he thought the daycare center has been approved and it is operating legally.

Mr. Beach asked Mr. Thornton if he knew how many children the daycare center had enrolled? He answered negatively.

Mr. Beach informed Mr. Thornton that a daycare center is allowed by right for up to seven children, including the children that live in the home. Mr. Beach stated he did not know the scope of the daycare facility and the Board may not find it relevant.

Mr. Thornton stated he thinks the daycare center is relevant because it is a business and not a non-profit organization.

Ms. Abbott asked the applicant if anything about the site plan has changed? He stated the driveway has been widened and the inside of the beauty shop has been completed. He further stated the beauty shop will not be a traffic hazard because you could probably park at least six cars in the driveway. He explained that only one or two cars outside of the family owned vehicles will be parked in the driveway. He further explained that the beauty shop is operated by appointment only and there will ample parking.

Mr. Dunham stated he noticed on the Staff report that the Board approved an application in 1966 to allow a home beauty shop in a U-2-C district at 4720 N. Elgin. He asked the applicant if the beauty shop was still in operation? Mr. Thornton stated he did not know if the beauty shop was still in operation.

Mr. Bolzle stated that in his opinion nothing has changed with this application, except that the applicant has continued to improve the use in spite of the Board's ruling against the use.

Ms. Turnbo agreed with Mr. Bolzle. She stated that there were a number of factors that were considered before denying the first application such as, the neighbor was a day sleeper and complained of the noise level.

Mr. Bolzle stated there were a number of factors as to why the Board denied this application. He further stated he did not see anything that has changed about the application and typically when the Board agrees to re-hear an application there is something substantial that has changed about the way the applicant has proposed the use. Mr. Bolzle listed some examples that would constitute a substantial change: less intensive use, screening in a different way, etc. He commented he does not see anything about this application that has changed to warrant the Board to re-hear this case.

Mr. Thornton stated he could not see how this beauty shop use will be intense in the first place, because the patrons are grown adults coming to get their hair taken care of. He further stated the patrons are not children with loud music.

Mr. Bolzle stated that Mr. Thornton is asking the Board to reconsider something that has already been decided.

Mr. Thornton stated the Board was not aware the first time the applicant came to the Board that there was a business already in the neighborhood. He further stated that if the daycare facility has more than seven children, then that is a business.

Mr. Bolzle stated that based on the facts before the Board the daycare facility has not been approved and Staff has gone back as far as 1966 to determine what has been approved in the area and the daycare facility does not show up as an action approved. He further stated either the daycare facility is operating illegally or it is operating legally without action from this Board (7 children or less). He reiterated that he does not see anything about this case that warrants another hearing.

Mr. Turnbo stated she does not want to hear this case again.

Mr. Thornton asked what is so difficult about a beauty shop as a home occupation? Mr. Bolzle stated the beauty shop is not before the Board today, what is before the Board today is should the Board reconsider this application. Mr. Bolzle stated that there is nothing that has changed about the application and there doesn't seem to be any facts that have changed that would cause the Board to reconsider this case at all.

Mr. Thornton asked even though there is possibly another business in this vicinity? Ms. Abbott explained that the facts would have to relate to the beauty shop. She further stated that if there was something substantially different, for example the case comments noted the hours of operation, if the hours were less intense or the customer base was less intense, or something significantly different than the last application, then it is a case the Board should reconsider.

Case No. 17553 (continued)

Mr. Thornton stated he did not know what the hours where before, but the hours are 10:00 a.m. to 6:00 p.m.

Mr. Alvin L. Woodrow, 4728 North Elgin Avenue, stated he wanted to apologize to the Board for his action he took after the hearing on the first application on 8-13-96. He explained he was upset and things were blow out of proportion. He stated he has widened and expanded the driveway to prevent anyone parking in the street or block the neighbor's driveways. He explained he has a petition that was signed by everyone that lives on Elgin, Frankfort and Detroit stating that they have no complaints regarding the beauty shop. He commented there are a few protestants attending today's meeting. Mr. Woodrow stated that the complaints regarding beer cans, loud music and trash was something that was made up. He further stated that there was never any beer cans and there never will be any beer cans. He commented that he takes great pride in keeping up his property. He further commented that his property is not where you will see two or four cars parked in the yard that doesn't run, washing machines and dryers. Mr. Woodrow explained that the patrons will have appointments and there will only be one lady in the chair. He further explained that when one patron comes in the other will be going out. He stated that it costs him $331.00 to widen the driveway, which was done in the past week. He further stated he converted a garage that was already in existence into a beauty shop. He commented that the neighbors have nice homes and he respects their homes. He further commented that he puts a lot of time and upkeep on his home too. Mr. Woodrow stated he did not install a building and put a driveway in front of it, rather he converted his garage legally. He further stated there is nothing wrong with bringing their business home and work out of the home. He indicated that all of the complaints from the protestants is nothing but black on black jealously. Mr. Woodrow stated he is not bothering any of his neighbors with this beauty shop.

Ms. Abbott asked Mr. Woodrow if the petition is signed by his immediate neighbors? He stated the signatures are from people who live on Elgin Avenue. He further stated his neighbors adjacent to his property have no problems with the beauty shop. Mr. Woodrow explained that the names on the petition are from people who live on his street and the surrounding area. He commented that he spoke with the neighbor behind his property, who makes barbecue grills, and his neighbor stated he has the same problem with Jane Malone (protestant on 8-13-96) regarding him making his barbecue grills at his home. Mr. Woodrow questioned why Jane Malone is so upset with a beauty shop being in their home? He commented that there are several different businesses in the area of his neighborhood.

Mr. Bolzle asked Mr. Thornton when he was retained by the applicant? He stated he was retained a while back.

Mr. Bolzle asked Mr. Thornton why would his client continue to improve the property for the beauty shop when the Board turned him down? Mr. Thornton stated that Mr. Bolzle is attacking him now.

Mr. Bolzle stated that one of the comments the applicant has said is that he has improved the property. Mr. Bolzle asked why would the applicant improve the property and spend extra money when you know that the Board has already turned you down for this use? Mr. Bolzle asked why would the Board want to take into account something the applicant has done in violation of what the Board has already denied? Mr. Thornton stated he has not started his business and he is not operating the business out of the beauty shop. He further stated that if Mr. Woodrow wanted to widened his driveway, it can be used for several other purposes. Mr. Thornton commented he could not understand why the application was turned down in the first place. He stated that the applicant is African/Americans trying to earn a livelihood, not disturbing anyone, trying to make a living and they are being turned down. He further stated that the Board is just saying no that the applicant cannot have a home occupation.

Mr. Bolzle stated that what is before the Board is very simple, it is why should the Board re-hear the case? Mr. Bolzle further stated the Board needs to be real clear about what they are doing here today. Mr. Thornton stated that had he been present the first time the application was heard, then maybe the Board would not be hearing this now.

**Board Action**:

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **DENY** re-hearing Case No. 17553; finding that the facts of the case have not changed significantly in the case.

## Case No. 17554

**Action Requested:**

Special Exception to permit an over-height fence in the required front yard ranging in height from 7′-6″ to 8′-10″. **SECTION 210. YARDS**, a Variance to permit a detached accessory building in the front yard. **SECTION 402.B.1.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS**, and a Variance of the required front setback from 25′ to 5′-6″ to permit the accessory building. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 6, located 4405 East 26th Street.

Case No. 17554 (continued)

**Presentation:**

The applicant, **Robert Freeman**, 4405 East 26th Street, submitted a letter of support (Exhibit D-1), architect drawing (Exhibit D-2), photographs (Exhibit D-4) and a site plan (Exhibit D-6). Mr. Freeman stated the letters of support are from neighbors around his property. He further stated he included photographs showing the house as it stands right now and the black/white photograph shows the house prior to the remodeling and landscaping. Mr. Freeman stated the designated front yard, which is to the west of his house that faces Sandusky. He further stated the request for the accessory building is for a pavilion building that will go over a future hot tub within the fenced area or inside the yard. He explained the only walls on the accessory building will be the walls of the fence. He further explained the pavilion backs up to the corner of the fence and there will be a pole inside the yard, which would support the roof to keep the rain off of the hot tub. Mr. Freeman stated that his home is located on a long rectangular lot and the home is long and rectangular. He further stated the home was set only 8′ from his back property line, which leaves very little usable yard. He explained in order for him to utilize his yard he is requesting that he can erect a privacy fence. He further explained that all of his bedrooms are on the west and southwest corner of his home, which also face the intersection. Mr. Freeman stated that with the bedrooms facing the intersection leads to a problem of privacy and security. He explained that when he had some dirt hauled in there was evidence of footprints close to the house, which is a little unnerving. He further explained that with the privacy fence he can utilize his yard and achieve some sense of security. Mr. Freeman indicated that living on a corner lot your whole yard is open to the street.

**Comments and Questions:**

Mr. Dunham asked Mr. Freeman if basically the improvements being heard today, with the exception of one building, are already in place? He answered affirmatively.

**Protestants:**

Mr. Orval Solvel, 4606 East 26th Street, stated he too lives on a corner lot. He further stated he has a back fence within 8′ of his home and he has a corner, which all of the lawn on the west and the north is open. He voiced that he objects to this application. He stated that if this is allowed to happen in the neighborhood, what is coming next. He further stated that across the street from the subject property is an above ground swimming pool and a board fence came out to within 6′ of 26th Street. He commented now the neighbors have the subject property to contend with. He questioned what will happen to his neighborhood next. He stated that when the housing addition was built, it had a covenant clause that there was not to be any fences or anything constructed in the front and side yards. He expressed the opinion that this application is a detriment to the neighborhood.

Lynn Hosey, 4413 East 26th Street, stated she lives in the house west of Mr. Freeman. She submitted photographs (Exhibit D-3) and stated that Mr. Freeman's mailing address is 26th Street and not Sandusky and therefore, his front yard is 26th Street. She further stated that the front porch faces 26th Street. She questioned why the case report states that the front yard is in fact on the west side? Ms. Hosey stated she objects to the variance for the height of the fence which ranges from 7′-6″ to 8′-10″. She further stated the excessive height is not in keeping with the character of the neighborhood. She explained that the neighborhood is very open and most of the fences are chain link or cyclone type fences. She further explained that the chain link and cyclone type fences are in keeping with the time the houses were built. Ms. Hosey commented that Mr. Freeman's fence is out of place compared to the rest of the neighborhood. She addressed the request for a variance to allow the detached accessory building in the front yard. She indicated that the accessory building will be in the corner of the lot, which is the intersection of 26th and Sandusky, that is a very busy thorough fare through t he neighborhood and again that corner will be out of character of the neighborhood. She stated that she is single and lives alone and has depended on her neighbors to look out for her property. She further stated that her house is totally blocked from the west due to the fence. She commented that the neighbors that she formerly relied on to watch her property can no longer see her property due to the fence and she can no longer see her neighbors house. She further commented that the presence of this fence on the west side of her house creates a well hidden place for intruders. She stated the fence also blocks her view of on coming traffic from the west as she backs out of her driveway. She further stated she has already experience a close call while backing out of her driveway due to the obstruction of her view. Ms. Hosey commented that she hoped the Board looked beyond the time and money spent in building this fence. She quoted the staff comments regarding the intent of the 4′ height limit of a fence is preserve the open space, air movement, light and safety of the public streets in residential neighborhoods. She stated that this fence is injurious to the area and not in harmony with the spirit and intent of the Code. Ms. Hosey read a letter of objection from Mr. William T. Voight, 2614 South Sandusky, who was unable to attend due to medical reasons. Mr. Voight expressed the same concerns that Ms. Hosey has already addressed.

**Comments and Questions:**

Mr. Bolzle asked the Staff if the application is based upon Sandusky being the front yard? Mr. Beach answered affirmatively.

Mr. Bolzle asked if an applicant living on a corner lot can designate his front yard? Mr. Beach answered affirmatively.

Mr. Bolzle stated that if 26th Street was the front yard and the Board denied the application, the applicant could keep the fence on Sandusky so long as it didn't extend past the 26th Street face of the house.

Mr. Beach agreed with Mr. Bolzle's statement.

Mr. Bolzle asked if the applicant can have an accessory or storage building in the side yard by Code? Mr. Beach stated he thought the applicant could have the accessory building in the side yard.

Mr. Ballentine stated the accessory building will have to be 3' from the property line.

Mr. Bolzle explained to Ms. Hosey that the applicant has the right to change the designated front yard because he is on a corner lot.

Ms. Hosey asked if you can have a solid structure in front of your home? Mr. Bolzle explained that as long as the fence is behind the front facing of the house.

Ms. Abbott asked the Staff if the applicant determined that Sandusky was his front yard? Mr. Beach stated that when the applicant came in he looked at various options and it was apparent, due to the location of the house, with respect to the setback from the north property line and the east property line, that if Sandusky were the front yard then he meets all of the required setbacks. He further stated that if 26th Street was the front yard, then he doesn't meet the rear building setback line of 20'. Mr. Beach commented that if Sandusky was designated the front yard then the fence along the east side, which projects toward 26th Street would be permitted by right, right up to the property line at 8' in height.

Ms. Abbott asked if the rear yard was considered non-conforming? Mr. Beach stated it could be considered non-conforming.

**Interested Parties**:

Mr. Drury Fenton, 4628 East 26th Street, stated he lives 3 blocks east of the subject property. He further stated he also owns a corner lot and living on a corner lot without a privacy fence is a little bit like living in a fish bowl. Mr. Fenton indicated that a corner lot owner has traffic on both sides of the house and if you are in your back yard there is no privacy unless you have a privacy fence. He further indicated that a privacy fence also keeps people from cutting through your back yard when you live on a corner. Mr. Fenton stated the fence has been under construction since early summer and if there was going to be a question about the size and location of the fence, people that are objecting to the fence should have raised the objections before the completion. He commented the fence is well built and made from quality materials. He stated the fence does not distract from the neighborhood.

**Protestants:**

Paul Atkins, IV, stated he is the property manager for Dr. John Ruffing, 4215 East 25th Place. He asked the Staff which street is decided to be the front yard? Mr. Atkins asked what the postal service has as the address and what is the legal description of the City?

Ms. Abbott explained to Mr. Atkins that basically the owner of the property can designate the front yard.

Mr. Atkins asked Ms. Abbott when did the applicant decide his front yard? Mr. Beach stated the front yard was decided when the applicant filed the application.

Mr. Beach explained that the front yard is not which side the house faces.

Mr. Atkins asked which side did the applicant choose as his front yard? Ms. Abbott stated he filed the application as Sandusky as his front yard.

Mr. Atkins stated that if Sandusky is the front yard then the application needs to be denied because the applicant has 26th Street written on the application.

Ms. Turnbo explained to Mr. Atkins that the front yard does not have anything to do with the address.

Mr. Atkins stated that if Sandusky is the front yard then the applicant will need to meet the 25´ setback. Mr. Atkins asked if the applicant is asking for the variance due to lack of property space? Mr. Atkins stated that in the past the City has denied two variances in the past. He explained that one denial was his own home where he is 18″ from the backyard of his nearest neighbor. He further explained the Board denied a garage in his front yard because he was not 25´ from the property line that the Board suggested.

Ms. Turnbo asked Mr. Atkins for his address where he lives presently? Mr. Atkins stated he works at 1638 East 17th Place, which is Swan Lake.

Ms. Turnbo asked Mr. Atkins what piece of property was denied the variances he mentioned? He stated the property the Board denied was 1638 East 17th Place.

Ms. Turnbo clarified that the property at 1638 East 17th Place is not in the neighborhood where Mr. Freeman lives. Ms. Turnbo asked Mr. Atkins if he realized each case is taken individually? He answered affirmatively.

Case No. 17554 (continued)

**Interested Parties:**

Chris Raz, 4311 East 26th Street, stated he lives three houses down from Mr. Freeman. He further stated the fence has enhanced the neighborhood. He commented the fence is painted and there is landscaping, which makes the fence look really nice. He stated Mr. Freeman needs the fence for privacy.

**Comments and Questions:**

Ms. Abbott asked if at anytime during this discussion, can the Board determine what the front yard is? The Board decided the applicant needs to decide which is his front yard.

**Applicant's Rebuttal:**

Mr. Freeman stated has lived in the house for four years and has been talking about putting the fence up for about three years. He further stated he has discussed the fence with neighbors and friends, which none had any problems with the fence up until the past few weeks. He commented that no official complaint was made about the fence until he had 60 to 80% of the fence completed. He further commented that he tried to include both neighbors adjacent to him, as well as his other neighbors, in the design process and planning. He stated the neighbor to the north that has more fence adjacent to their property than any other neighbor, do not have a problem with the fence and in fact like the fence. Mr. Freeman submitted letters of support (Exhibit D-1). Mr. Freeman stated he did not intend to create any hard feelings with his neighbors and the complaints have surprised him. He further stated many neighbors walk the neighborhood and has complemented the fence. He explained that he built the fence to simply improve his property and to make the neighborhood look nicer. He stated the fence does not directly block anyone that Lynn Hosey could see from her front door. He further stated that Ms. Hosey has to walk out and around her house to see directly west and there isn't anyone across the street. He commented Ms. Hosey can see the neighbors to the east. He explained that there is only one place in the corner where the fence is over 8′ and it is a 16′ section in the corner. He further explained he planned to install a hot tub in the corner and the only reason it is taller in the corner is to accommodate head room. He stated the only reason he asked for an accessory building is because he would like to put a roof over it to protect it from the rain. He requested the Board to approve his fence as it is because he really does not want to have to tear down his fence.

**Comments and Questions:**

Ms. Abbott asked the applicant if he was aware that if he designated 26th Street as his front yard all he would need is a special exception? He answered affirmatively.

Ms. Abbott explained to the applicant that a special exception does not require a hardship finding, but a variance does. She further explained that the variance request to permit an accessory building in the front yard could very well go into his back yard and there may or may not be a hardship finding needed there.

Mr. Freeman stated he understands Ms. Abbott's explanation and if the Board decided to make 26th Street his front yard then it is fine with him.

Mr. Beach stated that if the applicant wants to designate 26th Street as his front yard then he will have to re-advertise and ask for different relief.

Mr. Bolzle stated he wouldn't have to ask for additional relief because the two variance requests will become moot and he will still need the special exception for the over height fence in the required front yard.

Mr. Bolzle stated the applicant will receive the greatest relief by designating 26th Street as his front yard. He further stated that if Sandusky is designated as the applicant's front yard, then he could not approve the application as it is before the Board today.

After discussion with the Board and applicant, Mr. Bolzle suggested the case be continued in order to let the applicant reassess this issue. Mr. Bolzle stated that three Board members have already stated they would not approve this application if Sandusky is the designated front yard.

Mr. Beach explained to the applicant that as the application is presented today, most likely it will be denied. He further explained that if the applicant changed the front yard to the 26th Street side, there is a chance the Board will approve your application, but require you to move the fence near the garage back in line up with the garage. Mr. Beach stated the call is the applicants and the Board is willing to give the applicant time to decide where his front yard will be designated.

Mr. Freeman stated that if he has to move the fence back to the front of the garage it will not leave enough room for future development, which eventually would have been a swimming pool.

Mr. Ballentine informed the applicant that he will not be allowed to install a pool in the area he has designated because of the overhanging powerlines. He informed the applicant that he would have to be at least 10′ back from the overhanging powerlines and then he also has sewer lines in the back yard. Mr. Ballentine submitted photographs of Mr. Freeman's fence (Exhibit D-5).

Case No. 17554 (continued)

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **CONTINUE** Case No. 17554 to November 26, 1996 at 1:00 p.m. in order to allow the applicant to review his decision on the designated yard.

**Case No. 17555**

**Action Requested:**

Variance of setback from Peoria to allow 2 existing buildings to encroach into the required setback and a Variance of setback from Peoria to allow an entry stairway to be added to an existing building. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS -** Use Unit 23, located 31 North Peoria.

**Presentation:**

The applicant, **Larry D. McCool**, representing owner, 1660-2A East 71st, submitted a site plan (Exhibit E-1) and stated this application is a result of a couple of citations that the owner received from OSHA and one from the Tulsa Fire Department requesting that the owner add an additional exit egress stairway from the second floor. He explained that the building was built in 1972 and the second floor was originally a mezzanine, which did not require two exists, it only required one at the time. He further explained that since then the second floor has been built into office space. Mr. McCool stated the best location for the second stairway, in order to comply with BOCCA Code, which requires specified separation distance between the two exit stairs, would be to locate the stairway on the west side of the building. He explained the west side of the building is the street side on Peoria. Mr. McCool stated the subject building was granted a variance in 1972 from a 50´ to a 30´ setback off of Peoria and today the request is to reduce the setback an additional 5´ to 25´ to allow the egress stair. He explained the stair is an un-enclosed stairway similar to a fire escape and it will not contribute any exterior wall or blocking visibility of Peoria. He further explained that the additional variances requested are to allow two existing buildings that were built in violation of the setbacks off of Peoria or were built when the setbacks were less.

**Protestants:** None.

**Comments and Questions:**

Mr. Bolzle stated the application is very typical of the older areas in Tulsa. He further stated the two existing encroachments were developed ages ago and the new stair is less of an encroachment then one of the existing buildings.

Case No. 17555 (continued)

**Board Action**:

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Variance** of setback from Peoria to allow 2 existing buildings to encroach into the required setback and a **Variance** of setback from Peoria to allow an entry open stairway to be added to an existing building. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS -** Use Unit 23; per plan submitted; finding that the two existing buildings that encroach the required setback were built before the new Code was implemented; finding that the stairway to be added to an existing building is less of an encroachment than one of the existing buildings; finding that the approval of this application will not be injurious to the neighborhood, and is in harmony with the spirit and intent of the Code, on the following described property:

A part of Lot 4, Sec. 6, T-19-N, R-13-E, I.B.M., Tulsa County, Oklahoma, more particularly described as follows: Beg. at a point 30.0´ E, SW/C, Lot 4; thence E for 320.0´ along the S line of Lot 4 to a point; thence N and parallel to the W line for 150.0´ to a point; thence W and parallel to the S line for 320.0´ to a point; thence S and parallel to the W line for 150.0´ to the POB and a part of Lot 5, Sec. 6, T-19-N, R-13-E, I.B.M., Tulsa County, Oklahoma, according to the US Government Survey thereof, more particularly described as follows, to wit: Beg. at NW/c said Lot 5; thence running E along the dividing line between the Creek and Cherokee Nations for 450.0´; thence S and parallel to the W line said Lot 5 for 300.0´; thence W and parallel to the dividing line between the Creek and Cherokee Nations for 450.0´; thence N along the W line said Lot 5 for 300.0´ to the POB, and all its right, title and interest in and to the vacated N portion of the alley adjoining said premises on the S and Lots 19 & 20, Block 4, Lynch & Forsyths Add. to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof, and all its right, title and interest in and to the N portion of the vacated street (Admiral Pl.), being approximately 30.0´ by 95.5´ adjoining said Lots 19 and 20 on the S and the N 45´ of Lots 1 & 2, Block 5, Lynch & Forsyths Add., Tulsa County, Oklahoma, and the S 40.0´ of the N 85´ of Lots 1 & 2, Block 5, Lynch & Forsyths Add., City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17556**

**Action Requested:**

Variance of the bulk and area requirements of the CS District to permit the division of the property into two lots with the branch bank lot having 370´ of frontage on South Lewis Avenue and a new lot having a frontage of 30´ on S. Lewis Ave. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 11, located 6140 South Lewis Avenue.

**Presentation:**

The applicant, **Charles E. Norman,** 2900 Mid-Continent Tower, submitted a site plan (Exhibit F-1) and photographs (Exhibit F-2). Mr. Norman stated he represents Liberty Bank & Trust Company in this application, which involves property at the 6100 block of South Lewis Avenue across from the Southern Hills Country Club. He indicated that the frontage of the subject property is occupied by a new branch banking facility and drive through bank, which was opened about two years ago. Mr. Norman explained that the tract is entirely zoned in the CS zoning district and consists of about 2.5 acres. He further explained the tract is bounded on the northerly side and west side by a concrete drainage ditch for Joe Creek Channel. He indicated the property to the south is in the CS zoning district and is occupied by a church. Mr. Norman stated the application is to permit the sale of Lot B, (see site plan Exhibit F-1), with a frontage of 30′ on South Lewis Avenue, which would permit the separate conveyance of the tract containing approximately 1 acre in the rear in the location of the pecan grove that is indicated in the photographs and the construction of a one story office building according to the site plan. He further stated that in this instance the rear part of the property is isolated from any other neighborhood by the its configuration, the drainage channel and by the absence of any streets providing access to the rear of the existing facility. Mr. Norman commented that on the above basis, he considered that there are unusual circumstances that support the application for the variance of the required frontage in the CS district.

**Comments and Questions:**

Mr. Bolzle indicated he had a concern with there being three driveways within less than 75′ all opening onto a very busy street. He asked the applicant if there was a way that the application could be structured so that the two users share a driveway access? Mr. Norman stated the driveway access to the bank is through the banking facility and unfortunately the access cannot be shared without directing traffic from the office through the banking lanes. He further stated the small parking area for the bank facility is served by an entrance to the north and an exit to the south, which also is used by those frequenting the drive through facility. He commented that the dental office will probably have low number of trips and usually the trips occur at the off peak periods. He further commented that the church traffic is to the south and is primarily during the weekends and evenings, which is not the peak periods of South Lewis Avenue. He stated the parcel of land acquired by the bank is extremely unusual in its shape. He further stated that creating two CS lots on the frontage of more than 400′ is far in excess of what could have been asked for originally, where 150′ of frontage is required for a lot. He indicated there are still on two lots on Lewis Avenue and 400′ of frontage, which could have supported more than that. Mr. Norman stated he did not think the use will be impacting the traffic flow at the same time and this use will not add to the traffic situation.

Case No. 17556 (continued)

Mr. Bolzle asked the applicant if the tract is zoned CS? He answered affirmatively.

Mr. Bolzle stated there is a potential that the CS zoned tract of land could be some higher use in the future. Mr. Norman stated it could be much higher use, but the bank chooses not to sell it, except for professional office use.

Mr. Bolzle asked the applicant if the bank would be willing to restrict the sale to professional office use? Mr. Norman stated the variance is being requested on the basis of the site plan that is being submitted to the Board for the professional office.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 4-1-0 (Abbott, Dunham, Turnbo, White, "aye"; Bolzle "nays", no "abstentions"; no "absent") to **APPROVE** a **Variance** of the bulk and area requirements of the CS District to permit the division of the property into two lots with the branch bank lot having 370´ of frontage on South Lewis Avenue and a new lot having a frontage of 30´ on S. Lewis Ave. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 11; subject per plan submitted; finding that the tract of land is an unusual shape and the two lots will have a combined 400´ of frontage on South Lewis Avenue; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lots 5 & 6 of the resubdivision of Lot 1 of Pecan Acres, a subdivision, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17557**

**Action Requested:**

Approval of amendment to previously imposed conditions of BOA Case #15896 which approved a day care facility. The request conditions would be to operate 24 hours per day instead of 6:00 a.m. to 6:00 p.m.; 7 days per week instead of Monday thru Friday and 120 children instead of 80 children. **SECTION 1608.C. SPECIAL EXCEPTIONS**, located 9525 East 47th Place.

**Presentation:**

The applicant, **Alfred C. Stout**, 9525 East 47th Place, submitted a site plan (Exhibit G-1) and stated he is before the Board to request the two exceptions as stated.

**Comments and Questions:**

Ms. Abbott asked the applicant why he would need to be open 24 hours and 7 days a week? He stated there are people in Tulsa who need the 24 hour daycare facilities. He explained people who work three different shifts for the hospitals, American Airlines, etc. He further explained that there is already a waiting list, if it is approved, for the 24 hour daycare facility.

Ms. Abbott asked if the daycare will accept drop-ins? He stated they will accept drop-ins as well as monthly enrollment.

Ms. Abbott asked if the increased number of children has been approved by the Department of Human Services ("DHS")? He stated the increased number was approved by DHS. He explained that the previous tenant did not lease the whole building, however he is leasing the whole building and that enables the increase in the number of children.

Ms. Abbott asked the applicant if he was now licensed by the DHS for 120 children? He answered affirmatively.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** an amendment to previously imposed conditions of BOA Case #15896 which approved a day care facility. The request conditions would be to operate 24 hours per day instead of 6:00 a.m. to 6:00 p.m.; 7 days per week instead of Monday thru Friday and 120 children instead of 80 children. **SECTION 1608.C. SPECIAL EXCEPTIONS;** per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 4, Block 1, Regency Industrial Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17558**

**Action Requested:**

Special Exception to modify the screening requirements to allow an extension of time to erect the required screening until the abutting property is developed. **SECTION 212.C.3. SCREENING WALL OR FENCE**, located NE/c East 41st Street & South Garnett Road.

Case No. 17558 (continued)

**Presentation:**

The application, **Troy Higgins**, 11335 East 41st Street, submitted a site plan (Exhibit H-1) and photographs (Exhibit H-2). Mr. Higgins stated he is the President of Oklahoma Credit Union who is making this request. He further stated that the request for the east property line is due to the adjoining property being an undeveloped grass field, which when it is developed, the Credit Union will erect the proper screening.

**Comments and Questions:**

Mr. Bolzle asked the Staff how this would be enforced? Mr. Beach stated there is none.

Ms. Abbott suggested the Board grant the special exception for a specific period of time? Mr. Beach stated that would be reasonable and the applicant can come back before the Board to extend the time.

**Board Action**:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Special Exception** to modify the screening requirements to allow an extension of time to erect the required screening until the abutting property is developed. **SECTION 212.C.3. SCREENING WALL OR FENCE;** per plan submitted; subject to either a period of two (2) years or until the east abutting property is developed which ever is less; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Part of Lots 1 & 2, Block 1, East Vue Center, an addition in the City of Tulsa, Tulsa County, Oklahoma, Beginning at the NW/c, Lot 2, Block 1; thence E 610.00′ to the NE/c of Lot 2; thence S00°16′00″E for 610.00′; thence due W for 460.00′; thence N00°16′00″W for 350.00′; thence W 150.00′ to a point on the W line of Lot 2; thence N00°16′00″W for 260.00′ to the point of beginning, less a part of Lot 2, Block 1, beginning at the NW/c, Lot 2, Block 1; thence due E along the N line thereof for 408.00′; thence S00°16′00″E for 212.00′; thence due W for 408.00′ to a point on the W line of said Lot 2, Block 1; thence N00°16′00″W along said W line for 212.00′ to the POB.

**Case No. 17559**

**Action Requested:**

Variance of the required 50′ setback from centerline of Hartford to 30′-6″ to permit a carport. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6, located 3215 North Hartford Avenue.

Case No. 17559 (continued)

**Presentation:**

The applicant, **John Roberson, Sr.**, represented by Howard Miller, submitted a plot plan (Exhibit J-1) and a site plan (Exhibit J-2). Mr. Miller stated that Mr. Roberson is a sub-contractor and he is attempting to make the existing structure handicap accessible. Mr. Roberson's client Mr. Sharp has suffered a stroke and is wheelchair bound. Mr. Miller explained that the existing structure has a porch, a ramp and garage that is not big enough for Mr. Sharp to use as far as managing the wheelchair out of the car and accessing the home. He requested a variance of 19.5′ setback from the centerline so that a carport can be added to the existing structure with an overhang that will extend out over the ramp so that in inclement weather Mr. Sharp will be protected. Mr. Miller indicated that there was no other manner or plans in which to make the house more handicap accessible for Mr. Sharp then the add the porch, ramp and carport. He further indicated that the 19.5′ would not be a substantial detriment to the neighborhood.

**Interested Parties:**

**Robert Maxey**, Mr. Sharp's cousin, stated he has been helping his cousin with this project. He emphasized the fact that the carport is needed to protect Mr. Sharp in inclement weather. He informed the Board that it takes approximately 15 to 18 minutes to load Mr. Sharp into a car and if it was raining he would be soaked.

**Protestants:** None.

**Comments and Questions:**

Mr. Bolzle asked the applicant if the sides of the carport will remain open? He answered affirmatively.

**Board Action:**

On **MOTION** of **TURNBO**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Variance** of the required 50′ setback from centerline of Hartford to 30′-6″ to permit a carport. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6; per plan submitted; subject to the carport remaining open; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 5, Block 4, Teel Terrace Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17560**

**Action Requested:**

Variance of the required 100´ setback from centerline of Harvard to 75´. **SECTION 703. BULK AND AREA REQUIREMENTS IN COMMERCIAL DISTRICTS** - Use Unit , located 1545 South Harvard.

**Presentation:**

The applicant, **Gene Shaw**, stated he is representing the owner of the property and requested an extension of 15´ west, closer to Harvard. He further stated the extension will not be out any further than any other building on Harvard.

**Comments and Questions:**

Mr. White asked the applicant if he was extending out 15´ or 25´? Mr. Shaw stated he will be extending the building 15´ west.

Mr. Bolzle informed the applicant that he is not properly advertised. Mr. Bolzle explained the applicant needs to be re-advertised for 100´ to 60´.

Mr. Beach stated the application was made as it was presented and the site plan made no mention of any addition to the building. Mr. Beach explained he assumed the application was to allow an existing condition.

Mr. Bolzle informed the applicant that the application will have to be re-advertised, which means the application will have to be continued to the December 10, 1996.

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White aye"; no "nays", no "abstentions"; no "absent") to **CONTINUE** Case No. 17560 to December 10, 1996 at 1:00 p.m. to enable the applicant to re-advertise.

**Case No. 17561**

**Action Requested:**

Variance of the required parking from 7 spaces to 0 spaces to permit a retail use in a CH district. **SECTION 1214.D. USE UNIT 14. SHOPPING GOODS AND SERVICES**, located 1542 East 15th Street.

**Presentation:**

The applicant, **Lonny Davis**, 1503 East 21st Street, submitted a site plan (Exhibit K-1) and stated he is representing the property owners, Mr. Greg McGill and Mr. W.H. Walker, Jr. Mr. Davis explained that the property is currently a mixed use building with a restaurant on the lower floor and three two-bedroom apartments upstairs. He further explained that the subject property has been this use by history for approximately 25 years. He stated the current usage is permitted by the zoning and when remodeling

began to move the Bourbon Street Restaurant below, the Fire Department came out and inspected the property. The Fire Department indicated that they did not want a mixed use of residential and restaurant in the same building. Mr. Davis stated the Fire Department recognized that by right the owners can use it as such, but imposed a requirement that a one hour fire floor be installed to separate the two uses. He further stated the usage of the three two-bedroom apartments is permitted, but is currently non-conforming to parking, which current Code requires that the apartments have six parking spaces. He explained that he has submitted plans to build a retail location in the same space, which under current Code would require seven parking spaces. He requested that the Board allow him to substitute one permitted non-conforming use for another permitted non-conforming use with similar parking non-conformance.

**Comments and Questions:**

Ms. Abbott stated the Board received a letter of protest (Exhibit K-2) from Virginia Bailey, 1431 South St. Louis.

**Protestants:**

Paul Atkins, 1638 East 17th Place, representing property owner, Dr. John Ruffing, 1613 East 16th St., 1631 South Trenton, stated he is not against the retail shop going into the subject property. He further stated that he is against the zero tolerance on parking. He explained that the Swan Lake neighborhood has been inundated by parking. He further explained that patrons block driveways and in front of their homes. He stated that Bourbon Street Restaurant was grandfathered in from the previous restaurant use. He further stated he protested the parking when Bourbon Street proposed to go in. Mr. Atkins expressed concerns that the retail shop will go out of business and another company will move in with more employees. He stated he didn't know how a retail shop could have zero parking. He questioned if the workers will be walking to work? Mr. Atkins stated the customers and workers have to have a place to park and he does not understand how a retail shop can have zero parking.

**Applicant's Rebuttal:**

Mr. Davis stated the owner of the retail shop was interested in the subject property because of the traffic that is already present in the area. He further stated the owner wants to feed off of the people that were parking at the businesses and felt that her business would come from people already in the area for dinner. Mr. Davis indicated that the owner recognized that if somebody wanted to come to her shop, they would not be able to come during the lunch hour because the area is impacted by parking. He stated the building is served by a parking lot with 21 spaces in it and those spaces are not being fully utilized during the 9:00 a.m. to 11:30 p.m. or 1:00 p.m. to 5:00 p.m. He further stated he recognizes the area is impacted with parking and there is little that can be done about the parking. Mr. Davis asked the Board to allow him to substitute a permitted a use that is nonconforming to 6 spaces to a permitted use that is nonconforming to 7 spaces. He stated that the impact of the parking will be less

Case No. 17561 (continued)

with the retail operation, which is upstairs and is not a situation where there is a lot of traffic.

**Comments and Questions:**

Mr. Bolzle asked the applicant when the apartments were last occupied? He stated the last occupant was the owner of the 15th Street Grill to his knowledge.

Mr. Bolzle asked the applicant what the proposed days and hours of operation of the retail center? He stated 9:00 a.m. to 6:00 p.m., six days a week and requested one weekday evening.

Ms. Abbott asked the applicant if the six parking spaces for the apartments would be substituted for the proposed use? He stated the apartments are nonconforming to parking. He further stated that there are 21 parking spaces for the use of the apartments and the restaurant. He indicated the retail shop will be nonconforming in the same manner with a different use. He suggested that the parking impact will be less with the retail store being located upstairs, then it would be with three two-bedroom apartments.

Mr. Bolzle asked the applicant if he could disclose the use for the retail store? He stated the retail store will be a party supply and party consulting. Mr. Davis explained that if the proposed retail store went out of business, then another retail operation will be moved in.

Mr. Bolzle stated that there are a number of uses that could go into a CS district and a some could be intensive.

Mr. Davis stated his client is going to utilize 1450 SF of the upstairs apartments for retail.

Mr. White stated that there is a 20´ wide dedicated alley and half of the parking spaces extend into the alley. He further stated that there is not 21 spaces available.

Mr. Beach stated the site plan is not accurate as far as depicting legal parking spaces, but the restaurant is nonconforming as to parking. He further stated that regardless of what the site plan shows, it is allowed to exist and whatever use goes upstairs will not have parking available.

Ms. Abbott stated in 1995 there was an application before the Board for a flower shop on the bottom floor and apartments on the second floor, which the Board denied a special exception where there was a difference of five spaces and now we are looking at seven, plus it is a variance request. She further stated that the fact the Board denied a special exception that is very similar to this case and she is not inclined to treat this case any differently.

Mr. Davis stated that as long as the Board is making their decision based on the fact that the Board is denying him the opportunity to change the use, which is nonconforming, to another nonconforming use that is basically the same non-conformance. He further stated he will have to accept the Board's decision and put in apartments. He requested the Board to consider that apartments are not the best use of the property according to the Tulsa Fire Department.

Mr. Bolzle asked that if the Board was inclined to approve this application, would the Board want to limit the use to what the Board feels is appropriate? Mr. Davis stated that his understanding is that as long as the subject property is nonconforming, any change in the use will have to be approved by this Board.

Mr. Davis stated that by the nature of the location being second floor with only stair access, it will limit the practical uses of the retail shop.

Mr. Romig stated the Board can attach whatever conditions and safeguards it wants to by the ordinance and so it could be limited to just this particular business.

In response to Mr. Dunham, Mr. Davis stated he would asked that the Board approve this application without restricting it to a party supply store.

Mr. Bolzle asked Mr. Davis if he is familiar with the retail trade establishment uses that are under Use Unit 14? He stated he is not familiar with all of the uses.

Mr. Bolzle stated the uses are typically retail uses you would find in a strip retail center, but they are not the more intensive service establishments that have a lot of traffic or more intense like a liquor store or tobacco store.

Mr. Davis stated he does not mind the Board limiting the use to Use Unit 14. He further stated his clients do not want high traffic.

Ms. Abbott stated she can not justify why the Board would grant a variance in this application when the Board would not grant a special exception in BOA Case # 17188. She further stated the use is very similar to that application and she cannot see the hardship to allow this application. Ms. Abbott commented that there is 3000 SF on this second floor and the applicant wants to create a use for approximately 50% of the space. She further commented that the other 50% of the space could come back as another variance in the future.

Mr. White stated he agreed with Ms. Abbott's statement. He further stated this application parallels too close with the BOA Case #17188.

Case No. 17561 (continued)

**Board Action:**

On **MOTION** of **TURNBO**, the Board voted 3-2-0 (Abbott, Turnbo, White, "aye"; Bolzle, Dunham "nays" no "abstentions"; no "absent") to **DENY** the request for a **Variance** of the required parking from 7 spaces to 0 spaces to permit a retail use in a CH district. **SECTION 1214.D. USE UNIT 14. SHOPPING GOODS AND SERVICES;** finding that the applicant failed to present a hardship unique to the property that would warrant the granting of the variance request; on the following described property;

W 45′, Lot 1 & 2, Block 4 and E 40′, Lots 14, 15 & 16, Block 4, Less S 15′ Lot 14, Block 4, Orcutt Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17562**

**Action Requested:**

Variance of the required side yards from 10′ & 5′ to 6.5′ & 4.8′ to permit expansion of existing residence & to permit existing encroachments. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6, located 2534 South Birmingham Place.

**Presentation:**

The applicant, **Sherri M. Duvall**, represented by Kathleen Paige, 320 South Boston, Suite 1400, submitted a site plan (Exhibit L-1) and stated she is assisting an owner in adding on to a residence. She explained that the current residence does not meet existing side yard setbacks. She further explained that on one side the required setback is 5′ and the subject property is 4.8′. She indicated that on the other side the requirement is 10′ and the subject property is 6.8′. Ms. Paige stated she is proposing to stay within the existing setbacks of the house and to add only on to the side yard that has the variance with only 4″ off of the required setback.

**Protestants:** None.

**Board Action:**

On **MOTION** of **TURNBO**, the Board voted 4-0-0 (Abbott, Bolzle, Turnbo, White, "aye"; no "nays", no "abstentions"; Dunham "absent") to **APPROVE** a **Variance** of the required side yards from 10′ & 5′ to 6.5′ & 4.8′ to permit expansion of existing residence & to permit existing encroachments. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property;

S/2, Lot 5, N 63.5′, Lot 6, Block 2, Peragen Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17563**

**Action Requested:**

Variance of setback from an abutting R district boundary line requirement of 75. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS,** and a Special Exception to waive the screening requirement from an abutting R district. **SECTION 212. SCREENING WALL OR FENCE** - Use Unit 23, located 5707 South 107th East Avenue.

**Presentation:**

The applicant, **Rick L. Oberlender,** 5700 East 51st Street, Suite 107, submitted a site plan (Exhibit M-1) and a platt (Exhibit M-2). Mr. Oberlender stated that the plat indicates that Lot 9, Block 1 of Golden Valley is an 80′ x 180′ deep lot, which is zoned IL. He indicated the properties on either side and rear are still zoned RS-3 and it has become apparent that the entire two block section is in transition. He stated there are a number of industrial light buildings on the property. Mr. Oberlender explained that the industrial light abutment setback is 75′ on each side from a residential property and that presents a hardship for the subject property. He further explained the subject property is 80′ wide and so the variance is needed to reduce the side yard setback to 17′ and the rear to 50′. He indicated he will be able to meet the front setback as it stands. Mr. Oberlender submitted photographs (Exhibit M-3) and requested a special exception to waive the screening requirement. He pointed out in the photographs, other businesses in the area that do not have screening. He explained the reason for the waiver is because the Code reads that you must screen all the way to the front of the property, which is to the easement and that really is not very good for a business. He indicated he would prefer to screen only to the front of the building and at a later date when he is able to do the screening.

**Protestants:**

Darlene Haines, 5705 South 107th East Avenue, stated she has owned her property for 20 years. She further stated she did not feel that a big building should be built on this lot because the lot size is very small. Ms. Haines is concerned that the proposed building will injure her rental property. She indicated that she has invested $5,000 in renovating her rental property and stated she is against this application. Ms. Haines stated that the current light industrial buildings are located on large lots and are usually located to the back of the lot.

**Applicant's Rebuttal:**

Mr. Oberlender stated that the two block section that is in question is definitely in transition. He further stated that it will be virtually impossible to build residential on the vacant property in the two block section, because it is not suited for residential. He indicated that all of the light industrial buildings on the two block section in question are relatively new and are considerably larger than the proposed building. Mr. Oberlender stated the proposed building will be 3,000 SF, which more than meets the front yard setback. He further stated the building will be 77′ from the centerline and

he will meet the required parking for the proposed building. He commented that it is not his intent to build a large building on a small lot and this building has been designed to fit the lot. He further commented that at this time the lot has no use because of the zoning and because of the required setbacks. Mr. Oberlender stated that a very good percentage of the few homes located on the two blocks in question are rental properties.

**Comments and Questions:**

Mr. White informed the Board that this is the area where the Board approved the HOW Foundation facility recently which backs on to the expressway. He stated that Mr. Gardner made a comment during the hearing for the HOW Foundation that the area was in transition to industrial. He further stated that everything to the east of the subject property is being made into a large detention pond that is approximately 30 acres.

Mr. Dunham stated the screening requirement that is mentioned is for the RS-3 that is to the south, east and north. He further stated that because of the transition in zoning, he does not have a problem with this application.

Mr. Bolzle stated he felt that there is still a responsibility on the part of the parties coming in to preserve some privacy and some quality of life for the remaining residents. He suggested the screening not be eliminated on the north and east.

Ms. Turnbo stated that although the area is in transition, sometimes it can stabilize and the remaining residents should be screened off.

Mr. Oberlender stated he intends to screen, but he would prefer to only screen to the front of the building and not to the easement.

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Variance** of setback from an abutting R district boundary line requirement of 75. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS,** and a **Special Exception** to waive the screening requirement from an abutting R district. **SECTION 212. SCREENING WALL OR FENCE** - Use Unit 23; per plan submitted; subject to screening being required along the east property line and the north property line, except portion of property that is west of the front wall of the residence; (intent to screen which ever point is closest to the street, the front wall of the subject property or the front wall of the residence); finding the area is in transition to industrial and that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Golden Valley, Block 1, S 80′ of W 180′, Lot 9, City of Tulsa, Tulsa County, Oklahoma.

**Additional Comments:**

Mr. Oberlender requested that the Board continue the balance of his application to a later date for re-advertising regarding landscaping, irrigation and paving.

In response to Mr. Beach, Mr. Oberlender stated he didn't know of the requirements until his third visit to INCOG and it was too late to include with this application.

Mr. Beach stated the applicant needs to file for a building permit, which will identify everything that may need to be addressed in the application process.

Mr. Bolzle asked Staff if they had a problem with waiving the application fee? Mr. Beach stated there was no problem with the waiver of the application fee.

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **CONTINUE** the balance of Case No. 17563 until such time the applicant files for a building permit and determines what additional relief that is required (re-advertising will be necessary).

**Additional Comments:**

Mr. Beach informed the applicant that when he applies for his building permit and if there is additional relief necessary, the application fee will be waived, however there will be additional advertising fees.

Mr. Oberlender stated he was told by INCOG Staff that he would have additional advertising fees and he understands that there will be additional advertising fees.

**Case No. 17564**

**Action Requested:**

Variance to permit required parking to be on a lot other than the lot containing the principal use. **SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS - Use Unit 11;** and a Special Exception to waive the screening requirement along a Freeway zoned residential. **SECTION 1211.C. USE UNIT 11 OFFICES, STUDIOS AND SUPPORT SERVICES;** Use Conditions, located South side of I.D.L. between South Boston Avenue & South Cincinnati Avenue.

Case No. 17564 (continued)

**Presentation:**

The applicant, **David W. Short**, representing the Parent/Child Center, 406 South Boulder, Suite 250, submitted a site plan (Exhibit N-1) and stated that he is requesting a waiver for the contiguous parking to the existing site. He further stated that the Parent/Child Center has purchased the whole site and it was broken up into several smaller sites. He explained the residential portion was changed to CS zoning and the portion that the building sets on is CH zoning, which is adjacent to the south of the site for Lubby's Cafeteria. He further explained that the I-44 I.D.L. wraps around the site on the north and west side. Mr. Short stated the land is owned by the Highway Department and a portion is zoned RS-3, which requires screening. He requested a special exception to waive the screening because there is really no sites to be built residential.

**Protestants:** None.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 4-0-1 (Abbott, Dunham, Turnbo, White, "aye"; no "nays" Bolzle "abstention"; no "absent") to **APPROVE** a **Variance** to permit required parking to be on a lot other than the lot containing the principal use. **SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS - Use Unit 11;** and a **Special Exception** to waive the screening requirement along a Freeway zoned residential. **SECTION 1211.C. USE UNIT 11 OFFICES, STUDIOS AND SUPPORT SERVICES;** Use Conditions; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

A tract of land in Lots 3-7, Block 7, Oak Grove Addition, City of Tulsa, Tulsa County, Oklahoma, Beg. at the NW/c of said Lot 3; thence Sly along the W line of Said Block 7 for 240.00′; thence Ely, Parallel with the S line of said Block 7 for 125.11′; thence Nly along the E line of said Block 7, for 221.46′; thence NWly for 33.37′ to a point on the N Line of said Lot 3; thence Wly along the N line of said Lot 3 for 97.30′ to the POB., AND Lot 4, Block 3, Fifth Oak Grove Addition, Tulsa, Tulsa County, Oklahoma; less and except Beg. at the NE/c of said Lot 4; thence S 11.74′; thence NWly 20.87′; thence E 17.33′ to the POB., AND a tract of land in Lots 1 & 2, Block 3, Third Oak Grove Addition, Tulsa, Tulsa County, Oklahoma; Beg. at the NW/c of said Lot 1; thence Sly along the W lines of said Lots 1 & 2 for 77.84′; thence Ely parallel with the S line of Block 3; for 125.0′; thence Nly, along the E line of said Lots 2 & 1 for 78.39′; thence Wly, along the N line of said Lot 1 for 125.0′ to the POB AND a portion of the 16′ alley, Beg. at the NW/c, Lot 4, Block 3, Fifth Oak Grove Addition; thence Wly, along a Wly extension of the N line thereof, for 16′; thence Sly, along the E lines of Lots 5, 6 & 7, Block 7, Oak Grove Addition, for 134.77′; thence Ely parallel with the S line of Block 7, Oak Grove Addition for 8′ to the centerline of

said alley; thence Nly, along the centerline of said alley, for 10.0'; thence Ely, parallel with the S line of Block 7, Oak Grove Addition for 8'; thence Nly, along the W lines of Lots 2 & 1, Block 3, Third Oak Grove Addition, and Lot 4, Block 3, Fifth Oak Grove Addition, for 124.84' to the POB., AND the vacated W 5' of Cincinnati Ave. lying E and immediately adjacent to the E line of Lot 1, and the N 28.39', Lot 2, Block 3, Third Oak Grove Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17565**

**Action Requested:**

Variance of required rear yard from 20' to 5', a Variance of required livability space from 4000 SF to 2454 SF. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS**; and a Variance of required all weather surface to permit gravel near an existing tree. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 6, located 911 East 36th Street.

**Presentation:**

The applicant, **Rob Wall,** 911 East 36th Street, submitted a site plan (Exhibit O-1) and stated that the City of Tulsa approved a stand alone building, which is 5' off of the back property line. He indicated that he now would like to tie it into the house and it is required to be 25' off the back property line. Mr. Wall stated that he has an old River Oak Tree that is approximately 80 years old and he would rather put crushed rock approximately 20' border around the tree to keep from killing the tree.

**Protestants:** None.

**Comments and Questions:**

Ms. Abbott asked Staff if Mr. Walls met the livability requirement before this application? Mr. Beach answered affirmatively.

Ms. Turnbo asked the applicant if he needed this much concrete for a driveway? He stated he did not know how large his driveway will be.

Mr. Beach stated that if the applicant is not sure how large the driveway will be, you should not approve the case per plan.

Mr. White stated that if you have a two-car garage you will need that much concrete to get the angle necessary to enter the garage.

Mr. Dunham asked what the hardship would be to grant this application? Mr. White stated the turn radius is critical because of the size of the car.

Case No. 17565 (continued)

Mr. Bolzle stated the hardship is self-imposed.

Mr. White stated he did not see anything in the area that is over built like this proposal would be.

Mr. Wall stated he considered putting the garage on the front of the house, but that would be changing the footprint from any of the others in the neighborhood.

Ms. Abbott asked the applicant what the distance will be from the end of his existing garage and this new addition? He stated it would be approximately 35′.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **DENY** this request finding that the applicant failed to present a hardship unique to the property that would warrant the granting of the variance requests; on the following described property:

Lot 19, Block 3, Rayvern Park, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17566**

**Action Requested:**

Variance of the required 75′ setback to 50.00′ to permit an addition to an existing bldg. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS** - Use Unit 25, located 3030 North Erie Avenue.

**Presentation:**

The applicant, **Susan Torbett/Tanner Consulting**, represented by Dan Tanner, 2202 East 49th Street, submitted a site plan (Exhibit P-1) and stated he is representing Walden Machine, which is a manufacturer of small aircraft parts. He further stated the company builds interior wing struts and parts for the space shuttle. Mr. Tanner explained that the company is attempting to expand their ability to store raw metals. He stated the building will be 75′ x 150′ and he will need relief from a 75′ building line that is imposed because the adjacent property to the north remains unplatted. He indicated the existing uses around the subject property include a new City of Tulsa animal shelter and a grease recovery operation.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Variance** of the required 75′ setback to 50.00′ to permit an addition to an existing bldg. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS** - Use Unit 25; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Case No. 17566 (continued)

Lot 1, Block 1, Erie Industrial Park, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17567**

**Action Requested:**

Special Exception for Use Unit 2 (crematory) in an IL zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17, located 8714 East 43rd.

**Presentation:**

The applicant, **John Wright**, 7807 East 57th Street, stated he is asking for a special exception to install a pathological waste incinerator that would be used exclusively for the disposal of small animal carcasses. He explained the carcasses would be transported from veterinarians offices that have euthanized the animals. He further explained that the unit is manufactured by Crawford Equipment out of Florida. He stated it is constructed of UL listed components, approved, meets or exceeds nationally accepted incinerator construction standards, per the Incinerator Institute of America Publication guidelines. He explained that the chambers are formed with a minimum of 1/4" plate steel and seal welded at the seams so that no fluids or gases can escape from this unit. He further explained that the unit is absolutely smokeless, ordorless and unobtrusive operation is assured even more through a series of secondary chambers and electronic exhaust/gas scanner. Mr. Wright explained that the exhaust/gas scanner continuously monitors and controls the clarity of cremation exhaust gases. He stated that all pertinent environmental permits will be obtained. He indicated the crematory will be placed behind an automotive repair shop, which is already zoned industrial. Mr. Wright explained the crematory will be in an existing steel building behind the shop and there is no residential area within several blocks. He stated the subject property backs up to a railroad track. He explained that there will not be any need for additional parking required because the public would not have access to the crematory.

**Comments and Questions:**

Mr. Bolzle asked if the crematory is in a separate building on the backside of the subject property? He answered affirmatively.

**Protestants:**

David Rich, 2140 South Harvard, stated he is the original developer of the subdivision when it was zoned industrial. He further stated the zoning is for the purpose of combining similar and compatible uses. He commented this use is neither compatible or similar. Mr. Rich stated he represents the property manager of the property immediately next door to the subject property. He stated the property manager is vehemently opposed to this application and feels that it will be detrimental to his

leasing of the property. He stated he is a certified real estate appraiser and a use like this next door to your property will demean the value of the property.

Bill Shillinger, 8273 South Harvard, stated he owns the property immediately to the east of this property. He further stated he is concerned that making this special exception will hamper his ability to lease the property that he owns at a fair price. Mr. Shillinger commented that if and when he decides to sell the property and have to disclose the use of the area around the property, he feels that the crematory will lower the value of his property. He opposes this request.

Vera Belcher, 4732 South 69th, stated she owns one of the buildings in this area, which is her main source of income as a widow. She further stated she felt the crematory will effect her income.

**Applicant's Rebuttal:**

Mr. Wright stated the unit will be totally self contained and would have absolutely no effect on the environment. He further stated that if you didn't know it was there, it would be completely invisible to the public.

**Comments and Questions:**

Mr. Dunham asked the applicant how the carcasses are brought to the premises and how long are they usually stored? Mr. Wright stated the carcasses are usually gathered from veterinarians and transported in a truck to the proposed building. He explained the carcasses are immediately cremated.

Mr. Bolzle requested the applicant to explain the process of the crematory.

Mr. Wright explained that the animals are stored in freezers at the veterinarians office and then are picked up in a covered pickup and brought to the crematory. Once the truck arrives at the crematory it will enter through a garage door and unload the animals. He explained that the garage door is closed during the unloading and no one would see the animals being unloaded. He further explained that there is no odor, ash, smoke or exhaust from this unit. He stated the unit is custom built and it will be the only unit in the City limits. He explained that the closest crematory is in Bartlesville, Oklahoma. He further explained that the City of Tulsa has a unit similar to the proposed unit, however it is not available to veterinarians.

Ms. Turnbo asked the applicant where the carcasses have been going since there is nothing available in Tulsa? He stated currently the carcasses are taken to the landfill.

Mr. White asked the applicant if the crematory is inspected from time to time? He answered affirmatively. Mr. Wright stated there is very little maintenance to the crematory and that the exhaust is monitored continually.

In response to Mr. Bolzle, Mr. Wright stated there is no need for a large stack to be built, just an exhaust vent that clears the roof.

**Board Action:**

On **MOTION** of **TURNBO**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Special Exception** for Use Unit 2 (crematory) in an IL zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17; subject to unloading of carcasses inside the building; subject to carcasses being frozen when they arrive; subject to carcasses being delivered in a covered truck; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 19, Block 1, Southplace Industrial Park, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17568**

**Action Requested:**

Special Exception to permit a car wash in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17, located SE/c 46th Street North & North Cincinnati Avenue.

**Presentation:**

The applicant, **Will Keith,** 6 South 109th E. Avenue, submitted a site plan (Exhibit Q-1) and stated he is representing the owner and would like to install a 24 hour coin operated car wash on the subject property. He further stated the owner is currently leasing and operating a car wash on another lot, but will be moving to the subject property. He indicated that the present car wash will be torn down when the new car wash is operating.

Mr. Roy Moses, stated he owns the building south of proposed car wash, stated he does not want the car wash going in because there is a day care in the abutting property to the south. Mr. Moses indicated that there is a car wash north and east of his property, which causes problems. He stated kids hang out at the car wash, drive recklessly and sometimes you can hear shooting in the area. He objects to a car wash going in next to the day care center.

**Comments and Questions:**

Ms. Abbott asked Mr. Moses how close the daycare center will be to the subject property? He stated it is adjoining properties.

**Protestants:**

Algerita Brooks, Planning District 25, 4726 North Frankfort Avenue, stated she has discussed this application with several neighbors and residence. She further stated their concerns are the fact that currently Planning District 25 is under revision and the 46th & Cincinnati area is a development incentive area. She commented that the current car wash is never kept up, breeds a number of hazardous things in the neighborhood. She further commented that the residence in the area of the current car wash is suffering from the unkempt car wash. Ms. Brooks stated the traffic in this area is horrendous and the car wash will bring more traffic. She gave a detailed account of the different businesses in the area. She stated there is high rates of speed, loud music, etc. Ms. Brooks commented that the concerns of the neighbors is not only the traffic but a health hazard. She further commented that the neighborhood does welcome new business in the area, however, there has to be consideration of the elementary school that is located up the street. Ms. Brooks explained that the neighborhood has been petitioning the traffic engineering department about the traffic and safety of the children in this area.

**Applicant's Rebuttal:**

Mr. Keith stated the issues as far as health and safety, he believes that the car wash he will be providing will be far greater than the current car wash. He further stated that there will be a grease interceptor and will be approved through the building permitting process. He commented that he will not be creating any undo hazards in the area and will be supplying a genuine need for a place that people can clean their vehicles. He further commented that he cannot dictate people not speeding through the area, but he can provide speed bumps to alleviate the speed. Mr. Keith stated he feels that he can enhance the area by providing a nice, new facility for people who have the need to clean their cars. He further stated that the new design will actually open up the area to where it is less likely for people to congregate in an area that is secluded behind other businesses. He commented that the issue of groups congregating is a valid concern for this area. Mr. Keith stated the property immediately south of the subject property is vacant, unless the daycare is further south than he realizes. He commented that this type of business does not entice gang activity and it is a positive influence on the neighborhood.

**Comments and Questions:**

Ms. Abbott asked the applicant if the current car wash is operated by the same owner of the proposed car wash? He commented the owner has been leasing the other car wash, but he does not own the property itself.

**Protestants:**

Robert Vaughn, 7009 South Peach, Broken Arrow, stated he is the owner of the business that is directly in front of this car wash. He further stated he owns the property that the current car wash is on. Mr. Vaughn explained that he has been in business 21 years. He further explained that this is the second owner of the car wash. He stated the current owner of the car wash does not keep the car wash up. He indicated that there is trash stacked up ankle deep with debris everywhere. He stated the current owner of the car wash also owns a car wash at 32nd & North Peoria that has been vacated for several years. He further stated he has offered to buy Mr. Walker out. Mr. Vaughn explained that he has remodeled his building and would like to have a facility that doesn't take away from his existing building. He further explained that Mr. Walker didn't seem to be interested in the buy out so when he lease was up it was not renewed. Mr. Vaughn stated he has to destroy the car wash and rebuild a new car wash. He further stated there will not be any need for two car washes in the area. Mr. Vaughn informed the Board that if a car wash is installed in this area and not attended, then a crowd situation gets out of control.

Larry Washington, 958 East 61st Street, stated he leases the property adjacent to the proposed car wash from Mr. Moses. He explained he has been on the property since June, 1996. He further explained that since he has been on the property he has seen violence, cursing, shooting and fighting. He commented that he has witnessed car jacking and windows broken. He further commented that where he plans to put the playground is right next to the proposed car wash. Mr. Washington opposes this application because of the problems indicated.

**Applicant's Rebuttal:**

Mr. Keith stated that there may be extra screening required because of the day care and if there is the owner will definitely install the screening. He indicated the owner does have an attendant for the car wash during the daytime. He further indicated the owner employs two people from the area. Mr. Keith stated there is not an attendant at night because this is not a business that warrants an attendant at night.

**Comments and Questions:**

Mr. White asked the Staff if the owner of the property who wants to rebuild the existing car wash will have to come before the Board for approval? Mr. Beach stated he did not find any record of approval for the existing car wash. He further stated the owner claims to have been located on the current property for 21 years, which is since the adoption of the Code. He indicated that the owner will have to come back before the board for approval of the re-constructed car wash.

Mr. Bolzle stated the use of the subject property is the issue and this is one of those situations where there is a use that would be allowed with an exception in a CS district, but it is not appropriate abutting residential properties. He further stated this is a situation where you have a lot of traffic, late night traffic, lights, activity all abutting a residential property and that is not appropriate.

**Board Action:**

On **MOTION** of **BOLZLE,** the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **DENY** a **Special Exception** to permit a car wash in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17; finding that the approval of this application will be injurious to the neighborhood and will not be in harmony with the spirit and intent of the Code, on the following described property:

NW/4, Sec. 13, T-20-N, R-12-E, Tulsa County, Oklahoma, Beg. 50.00´ E of the W line, 330´ S of the N line of said Sec. 13; thence N89°50´00″E, for 150´; thence N 00°07´04″E, for 30´; thence N89°59´00″E, for 129.52´; thence Due S 161.62´ to a point, said point being NE/c Lot 15, Block 4, Suburban Acres 4th Addition; thence S79°05´55″W along the N line of said Lot 15, for 112.07´; thence N00°07´04″E, for 52.29´; thence S89°59´00″W for 169.86´ to a point on the E R/W line of Cincinnati Avenue; thence N00°07´04″E along said R/W 100.49´ to the POB, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17569**

**Action Requested:**

Special Exception to allow a 110´ cellular tower in an AG district. **SECTION 1204.C. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES,** located 10910 South Sheridan Road.

**Presentation:**

The applicant, **Lee Ann Fager/SW Bell Services**, represented by Robert A. Huffman, Jr., 100 West 5th, Suite 1000, submitted a site plan (Exhibit R-1) stated that SW Bell Services is seeking a special exception in order to construct a 100´ cellular antenna, which is a monopole and is the safest pole used today. He further stated SW Bell Svcs. propose to install the pole on a 5 acre, heavily wooded tract. He indicated the 5 acres is located at 109th and South Sheridan, which is currently zoned AG. Mr. Huffman explained that the pole will be located more than 110´ from any residentially zoned district and also more than 110´ from any residential

structure. He stated the Staff case report indicates the pole will be closer than 110' from a structure, but that is not correct. Mr. Huffman pointed out to the Board that this is not the traditional cellular tower, this is a tower that will provide a new type of service, which is known as the Personal Communications Service or "PCS". He stated the PCS is the new generation of cell phone service, which will give customers additional options, such as caller ID, paging, etc. He further stated that the networks are currently being constructed all over the U.S. in major metropolitan areas and in fact the PCS system in Dallas is scheduled into service soon. He explained that for Tulsa to continue to compete with these other areas, Tulsa will also need to offer their citizens the same type of PCS service. We recognize that building towers in this type of an area is a sensitive issue, but we are operating under quite a hardship in this area, because there is no other area that is zoned sufficiently to allow us to construct this tower. Mr. Huffman stated he thinks that SW Bell Services has a positive solution for the proposal, which will allow SW Bell Services to serve all of the customers in the area with the least amount of intrusion. Mr. Huffman introduced Mr. Lowell Jones, an architect for SW Bell Services, who will describe in more detail exactly what the area looks like.

Mr. Lowell Jones, Construction Manager & Architect for SW Bell Services, 11529 Pine Street, discussed the proposal with the Board and explained the proposal packet and site plans (Exhibit R-1). He indicated the compound will be an 8' x 16' hut with wood siding, shank shingles and a cedar fence around the compound. He explained the monopole will be painted the same gray & black color that the tree trunks are and since the trunks never change color, the monopole will be the same color. He stated the trees are very dense and the trees are approximately 70' to 80' tall. He further stated there will be a stone path to the site. Mr. Jones commented that as illustrated in Exhibit R-1 the monopole and compound is difficult to see through the trees. He stressed that SW Bell Services is trying to be as sensitive to the area as possible and realize that looks mean everything. He stated that during construction there will be as few trees removed as possible. He further stated there will not be a road going to the tower.

**Protestants:**

Tom Tompson, 11010 South Sheridan, stated he lives on 5 acres south of the proposed site. He further stated that the digital cellular phone service is already available in Tulsa and we do not need a tower in south Tulsa so that we can have the new service. He explained he has stood where the proposed site was indicated to him and it is not the same site that they are showing in the pamphlet. He stated the trees are approximately at best 75' tall, which will make the tower about 20' to 30' above the trees. He further stated the proposed land is not level and this pamphlet is a misrepresentation of the true site. Mr. Tompson commented that he moved out on his property 24 years ago and cleared the land himself physically. He further commented that he chose the area for a certain way of life. He stated the

tower is not in keeping with the surrounding area. He further stated that there are arterial areas which would be better suited for this tower. Mr. Thompson indicated that there are cellular poles at 121st and South Memorial, 61st & Memorial. He asked why the cellular poles or towers are not located on the arterial roads, which would make more sense on a commercial arterial area, then out in a wooded area. Mr. Thompson stated he understands and appreciates the cellular companies solving their problems, but the phones are not used in the woods. He further stated the phones are used while driving down arterial roads. Mr. Thompson questioned the distance in which a cellular phone will broadcast? He understands that a cellular phone can broadcast 2 miles and Memorial Drive will more than cover the two mile area that they are speaking of. Mr. Thompson indicated that any decision on this application should be tabled for later, since INCOG is doing a study on towers and there will be some revisions of the ordinances. He stated that a real estate agent has told them that the property will be de-valued because of the tower.

Steve Schuller, 320 South Boston, representing surrounding property owners, stated that Carol and Barbara Joyner, who own the property immediately to the north of the subject property. He indicated the Joyner's own approximately 10 acres and their home is just rear of the center of their property and would immediately north/almost adjacent to the location of this tower. He stated Elsie Mitchell owns the 80 acre tract immediately to the west and border on the subject property. He further stated that the Thompson's property is immediately to the south and their residence is located in the center of their 5 acres. Mr. Schuller reminded the Board that they must find that the use will not be injurious to the neighborhood or otherwise detrimental to the public welfare. He stated this tower will destroy the neighborhood. Mr. Schuller described the surrounding property as an elegant rural/residential area with nice homes on large lots. He indicated that Forest Park South neighborhood is immediately to the north that is also characterized by large homes on large lots. He stated the rural character of this entire area has been carefully preserved by the scale of development. He further stated the only reasonable development of Ms. Mitchell's property to the west is the same sort of single family residential development, emphasizing the rural, gently rolling character of the area. He commented that tower is proposed for 110´ height, which is equivalent to a 11 story building extending way above the trees. He further commented the tower is approximately 4´ in diameter at the base and gets a little smaller as it goes up. He stated this sort of tower, especially with this height and mass, will be extremely unsightly for at least a mile, if not farther. He further stated the tower may be invisible through the trees on Mr. Wilkinson's property, but it will certainly be very visible from all of the surrounding properties. He commented that a tower this large and all the gear on top will be hard to miss. Mr. Schuller stated that this tower will be a blight on the neighborhood and directly harm the Joyner's property next door, which is almost adjacent to their home. He explained the tower's location will be so close to Ms. Mitchell's property that it would effectively foreclose her from any

opportunity to develop the area of her property within the vicinity of the tower. He stated no one will buy a lot or a house that close to such a high 11 story cellular tower. He further stated that his clients have discussed this with real estate brokers and appraisers who have all told them that their property values will plummet being right next door to such a high unsightly tower. He explained that the developers of Ms. Mitchell's 80 acre tract of land has told her that the value of her land will substantially decrease and will be next to impossible to design a development in the vicinity of the tower. Mr. Schuller submitted a petition from the Forrest Park South Neighborhood and some of the surrounding neighborhoods in the vicinity who's views will be destroyed by this tower (Exhibit R-3). Mr. Schuller submitted a letter (Exhibit R-2) from one of the neighboring property owners.

Ted Larkin, 5293 East 93rd, architect and builder, stated he has a couple of concerns with this application. He further stated the Thompson's property has a large land swell in the last west half of the property and has a 12 to 15 acre watershed into the area. He explained the tower location is included in the watershed and so any kind of development is of great concern. He stated he has not seen any proposal of an access road and the property is 660′ deep and the road would have to be 400′, unless they have access from an adjoining property. He further stated he hoped the Board would deny or at least defer their decisions until INCOG has adequate guidelines.

Carol Joyner, 10808 South Sheridan, stated he is directly north of the property. He explained that his screened-in porch would be looking right directly at the tower. He further explained the tower will be 110′ away from his porch. Mr. Joyner stated he can see all the way through to the Thompson's property and can see his tractor in his back portion of his acreage in the summer time. He further stated that in the winter time it will be more visible because the foliage will be gone. Mr. Joyner explained that he has already done all of the engineering and have the platting of the land with the City's approval. He further explained that he is ready to develop except that he is waiting on the zoning. He stated he will be developing 20, 1/2 acre lots in the next year. He further stated that this tower will be detrimental to his development. Mr. Joyner expressed the same concerns that his attorney, Steve Schuller, had previously expressed. Mr. Joyner stated he hoped the Board has not been swayed prior to the hearing and have any preconceived ideas, because he trusts the Board to protect him as a home owner.

**Comments and Questions:**

Ms. Turnbo informed Mr. Joyner that the Board does not discuss the cases before the hearing date with the applicant or staff. She stated that if a Board member has discussed the application beforehand, they abstain from the vote.

**Protestants:**

Jim Norton, 3020 South Yorktown, representing Mrs. Mitchell, stated she has owned the property to the west of the subject property and it has been in her family for 40 years. He explained that Ms. Mitchell's husband passed away approximately 20 years ago and since that time she has sold off bits-n-pieces of property as the primary source of her income. Mr. Norton stated that he has been told by numerous people that if the tower is placed near the property, it will seriously effect the value of her property. He request that the Board deny this application.

Chuck May, 4225 East 84th Place, stated he is a son-in-law of Ms. Mitchell and expressed the same concerns as Mr. Norton. He indicated there are dangers due to radiation exposure of which the property owners know next to nothing. Mr. May read an article from the San Diego Association of Governments, December 1995, "Wireless Communications Facilities Issues Paper". He requested the Board to turn down this application until further studies can be done on the real health issues.

Bob Taylor, 10927 South Granite, stated his home is located across the field of Ms. Mitchell. He further stated he concurs with previous protests. Mr. Taylor indicated areas that are fully developed with 1/2 acre estate housing and informed the Board that the map the applicant is using is out of date. He further indicated future substreets that originated from a previous approved PUD by the Planning Commission for a future residential development.

Vickie Cleveland, City Counselor for District 8, stated she has received numerous telephone calls on this application. She further stated her major concern is that all of the major companies are moving in and they do not share poles. Ms. Cleveland commented that the competition element and looking at what has happened at other cities, you begin to see a forest of poles, via different companies servicing the same area. She stated that INCOG is trying to put rules and regulations in place and that needs to occur first, before anything else is allowed to go in. She further stated that if the Board is considering approval of this application, she asked that there would be some way that the leases would be very short term with a renewal necessary within one year. She commented that the tower should not have an automatic right from then on before the rules are in place to allow it to stay. She further commented that the tower has a permanent impact on other property owners. Ms. Cleveland requested the Board to hold off their decision until rule changes are in place or set up the approval where it is not permanent and can be changed.

**Applicant's Rebuttal:**

Mr. Huffman stated that this application is not the traditional cell service. He explained that this is a PCS service and is not available at this time. Mr. Huffman stated that SW Bell Services are very sensitive to neighborhoods and what type of atmosphere the neighborhood has. He commented that SW Bell Services has gone out of their way to try to install something that will blend in and be in harmony with the surroundings. He further commented that this type of service requires poles at integrals that does not allow us to put them in other areas and also serve the people that will be living in the area. He explained that there will be people who will want this service and SW Bell Services will not be able to provide it since they do not have a tower. Mr. Huffman submitted photographs of PCS towers (Exhibit R-4). He commented the PCS towers are not as large as the towers for cellular phones. Mr. Huffman stated that in regard to towers de-value property, no one has ever presented any of the real estate people or developers at the hearing that could testify, or at least discuss the de-value property issue. He further stated that people claim that it is possible that the value of their property could be less and that is purely speculation.

**Comments and Questions:**

Ms. Abbott asked the applicant what the duration of the lease will be? Lee Ann Fager, SW Bell Services, 11429 East Pine, stated the term of the lease is initially set for 20 years with a cancellation provision, which can be exercised by either Mr. Wilkinson or SW Bell Services of one year after the initial three year period. She explained that this is unusual for SW Bell Services lease terms, however, because the area is in transition and a significant amount of residential development is planned, Mr. Wilkinson requested a one year cancellation clause and SW Bell Services needed at least three years to recoup the investment. She concluded that after three years, either Mr. Wilkinson or SW Bell Services can cancel with a one years notice.

Ms. Fager stated that in regarding to the tower not being installed on Memorial Drive, a PCS system is a form of cellular that is a little more sensitive then traditional cellular. She further stated that the provider does not have that much of cushion in terms of the network placement of towers. She explained that 1/4 of a mile is about as far as a provider can go. She further explained that Memorial Drive would obviously be a mile away and that would leave a gaping hole in the network. She stated that a gaping hole would result in dropped calls and would have to come back before the Board with a request for another tower.

Mr. Bolzle requested Ms. Fager to explain the distance in towers again? Ms. Fager stated that because of the placement of the towers within the network, the provider generally only has a 1/4 mile of cushion. She further stated that the provider is given a search area by their RF Engineers and told that they can go 1/4 mile radius out from the search area. She explained that to move the site from Sheridan to Memorial Drive simply because there is commercial zoning on Memorial, would not technically be feasible.

Ms. Fager questioned the sub-division also upsetting the rolling rural setting as well as the tower, when they are sub-divided in as small as 75 to 9,000 SF lots? She stated the tower has been setback 110´ from each surrounding property line and more so in the case of the south surrounding property line (from a standpoint of safety after meeting with Staff). She commented that SW Bell Services has covered the safety issues with regard to fall zones concerning towers. Ms. Fager concluded with a comment that the zoning in the City of Tulsa allows towers by right in commercial and industrial zones. She further concluded with a question of what would happen to a resident who abuts a commercial site that is erecting a tower and what happens to the value of their property and does anyone care? She stated that no one has ever provided evidence of anywhere else in the country that a tower has actually effected a property value.

**Applicant's Rebuttal**:

Mr. Jones, SW Bell Services, addressed the issue regarding an access road and stated that there will not be an access road. He explained that there will be a footpath to the tower. He reiterated that SW Bell Services is trying to be as sensitive as possible and try to hide the tower as best possible. He commented that he did not say the trees were 100´ tall, rather that they are 75´ to 80´ tall. He stated the tower will stick up above the trees. He further stated that after a while a tower is much like a utility pole and it will not dominate the view from your home. Mr. Jones stated that in question to the radiation issue, the FCC has allowed cellular/PCS has been allowed for 15 years and if there was a public safety, as far as radiation, then they would close down the towers. He further stated that a PCS system is not a toy and SW Bell Services is not spending millions of dollars for a toy. He commented that SW Bell Services counts on everyone to buy this service and SW Bell Services offers a superior service to cellular. He further commented that SW Bell Services can offer a better service for the citizens of Tulsa.

**Comments and Questions:**

Ms. Abbott asked Mr. Jones if he had another PCS Tower constructed anywhere in Tulsa? He stated there is a tower north of Tulsa on the road to Bartlesville. He further stated the antenna on PCS systems can be stacked vertically and the antennas are only 8′ wide and 10″ long. He explained that the antennas are stacked on top of each other and clustered close to the poles so it doesn't have an out reaching arm like the cellular towers.

Ms. Abbott asked Mr. Jones where the tower was located? He stated the tower is near Ochelata as you are going to Bartlesville.

Ms. Abbott asked Mr. Jones what the farthest distance between towers can be? He stated that SW Bell Services is building towers about 4 miles apart. He explained that cellular towers was first built 10 miles apart and as the business increased there was a need for closer towers. He further explained that a cellular tower can handle only so many voice channels of a load. He stated if you have 20 voice channels, that is 20 simultaneous phone calls going at that spot and when you start to get fast busy signals or your phone drops dead, then you know you need another tower in the area. He further stated that they started cell splitting and would go on five mile radiuses to 1/2 mile if your in a clustered, dense area where there is a lot of traffic. Mr. Jones explained that PCS systems offers a bonus in that it will offer paging, short messaging and much more responsive inside large dense buildings. He further explained that cellular tends to not have quite the signal strength to get inside a large building. He stated PCS systems is one of those technologies that reaches just a little bit further and stronger signal at 1900 MHz where cellular is at 800 MHz. He further stated the antennas have to be closer but the closer they are, the lower to the ground they will be. Mr. Jones commented that 55% of the new projects are for new towers he has going into Tulsa and 38% are on roof tops or we are co-locating on existing towers. He further commented that SW Bell Services is co-locating with a cellular carry now on seven different sites.

Ms. Abbott asked Mr. Jones what the closest PCS Tower you have to this location? He stated probably out at the airport on 2-44 at Temple and Sheridan where there is a 75′ monopole. He further stated SW Bell Services has another 75′ monopole near the airport. He explained the subject monopole is a little taller because of the density of the vegetation and the slope of the land. He further explained that had SW Bell Services gone a little further south, into the bottoms, near the turf farms, the tower would have to be 200′ tall. He stated that they try to stay up in elevation to keep the height down on the towers.

Mr. Dunham asked what the time frame on a study on towers from the Committee will be? Mr. Beach stated that he cannot answer that. He further stated he knows that there is a committee that exists of a number of representatives from different departments around the City, including several people from INCOG and Public Works. He explained that the committee is working on creating an ordinance.

Mr. Beach informed the Board that if they are considering a continuance or wanting more input, he may be able to get a report from the committee to present at the next meeting. He stated he was not sure what the committee's status is at this time.

Mr. Beach stated that in general the ordinance will cover issues such as spacing requirements, co-location, physical factors regarding the location and there will still be questions regarding compatibility.

Mr. Bolzle stated the Comprehensive Plan becomes a part of the decision process, because it is part of the ordinance and it is something the Board considers in making zoning decisions. He further stated that the Comprehensive Plan calls for this to be developed as a residential area and it will develop as a residential area. He asked if the Board should allow a use, like this tower just because it located in the area first, to control how the residential area develops or does the Board take into consideration how the residential area is going to develop naturally in making a decision on whether on not to allow this kind of use? Mr. Bolzle stated that in a couple of cases earlier the Board discussed how the area was developing in order to make these decisions. He further stated his problem with the subject property is that there are areas that will logically develop for commercial uses and the Board knows the guidelines the City uses in determining where commercial districts are going to be, where office districts are going to be located and where residential districts are going to be located. It is possible to locate the towers in areas where logically commercial zoning is going to occur. Mr. Bolzle stated he agrees with the protestants to the extent that when a tower goes in an area, it will create certain zones around that tower that are not going to be readily developable consistent with the development of the other area. He further stated you will not have the quality of housing and the value of lots consistent with the balance of the area.

Mr. Dunham questioned whether this tower will de-value property.

Mr. Bolzle stated that Use Unit 4 is for essential services, such as public protection and utilities. He further stated that in his opinion, this is nothing different then the six oil lube places that want his business. He explained that this is competition for a commercial product and this Use Unit is provided for the location of towers that are essential to public safety and essential to utilities, which in my opinion means water, gas, electric and telephone services that are provided by single carriers. He further explained that is why the single carriers deserve protection and they deserve the

rights to have uses in residential areas that we might not otherwise grant because they are monopoly types of businesses. He stated this is a competitive business and is it right to put this tower in an area where everyone knows it is going to develop in a single-family detached lot?

Mr. Dunham stated the property values are very high in the subject neighborhood and they will be high whether there is a tower in the area or not.

Ms. Abbott stated that the Board has seen quite a few of the towers in residential areas and the Board will be setting a precedence that indicates that a commercially competitive business can locate in a residential area. She further stated she has a problem with this action. She explained that this is a competitive business and it is not like PSO where if they weren't allowed a tower, there wouldn't be any electricity. She stated this is a business of competitive nature and we are trying to locate this in a residential area, which would be setting a precedent saying that a competitive business (commercial) can locate in somebody's back yard.

Mr. Dunham asked if the Board has approved towers in residential areas previously? Ms. Abbott stated the Board has approved towers in residential areas in the past. She further stated the fact that this area is AG zoned, she can see where the tower could be located here, but this is considered high intensity residential developing area.

Mr. Bolzle stated he does not recall approving any tower applications in strictly developable residential areas. He further stated he does recall approving towers in areas where either it was residential or abutting residential areas that where floodplain or had some other problems. Mr. Bolzle asked if there is not deterioration of property values by virtue of a tower, what is the detrimental effect and why aren't they allowed by right? He stated the Staff has given the Board the direction that towers are not allowed by right and there is something unusual about the towers that prevents them from being in every residential area. He further stated it is the Board of Adjustment's job to look at situations and determine whether they are appropriate. Mr. Bolzle commented that there is nothing unusual about this area and it will develop fully as single-family detached housing. He further commented that there is not anything that compels him to make a decision to allow this tower in this area. He stated that if it is approved then the Board is saying that they should be allowed by right in residential areas, because there is nothing unique about this area or cause the Board to believe it should be allowed by special exception. Mr. Bolzle commented that the subject area is not adjacent to an area that is an unbuildable hillside or cliff.

Ms. Abbott stated that she is taken the view as to what is the use. She further stated that this is a commercial use, even though there is not a parking requirement or SF requirement, it is still a commercial use because it is for a commercial purpose. She commented that until the City has an ordinance, then a commercial use would be prohibited in an residential area.

Ms. Turnbo stated she agrees with Mr. Bolzle and Ms. Abbott.

**Board Action**:

On **MOTION** of **TURNBO**, the Board voted 4-0-1 (Abbott, Bolzle, Dunham, Turnbo, "aye"; no "nays", White "abstention"; no "absent") to **DENY** a **Special Exception** to allow a 110´ cellular tower in an AG district. **SECTION 1204.C. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES**; finding that the approval of this application will be injurious to the neighborhood and will not be in harmony with the spirit and intent of the Code, on the following described property:

N/2, NE, SE, SE, Sec. 27, T-18-N, R-13-E, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17570**

**Action Requested:**

Special Exception to construct a building to manufacture ice & cold storage in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 15, located SE/c South 89th East Avenue & Admiral Place.

**Presentation:**

The applicant, **Michael B. Tolson**, 801 Reunion Center, representing Century Ice, submitted a site plan (Exhibit S-1) and a plot plan (Exhibit S-2). Mr. Tolson stated the ice company needs to expand their facility in a CS district. He further stated the subject property is surrounded by IL on the north, CS to the south/west and CG to the east. Mr. Tolson commented that this is a mirror application to one that this Board reviewed in 1978, which was at that time for an expansion of the then existing facilities to allow the manufacturing and storage of ice on the premises. He stated that Century Ice would like to construct an additional building that will increase by 100% the capacity to store ice. He further stated this will not entail the manufacturing of ice, but it will allow the ability to store the ice that is manufactured at the existing facility. Mr. Tolson explained that it will be a separate structure but it will be connected to the existing structure by virtue of some passage ways (tunnels). He further explained that he does not have any architect renderings at this time, but the request will allow a use that is consistent with the existing use in the area. He stated that the request will allow Century Ice to do some things on site that will

improve the area esthetically and will also relieve some traffic congestion at the intersection of 89th & Admiral Avenue. He indicated this application will benefit the surrounding area. He stated he discussed this application with a number of the neighbors to the south and west of the subject property. He further stated the neighbors have not voiced any objections to this application. Mr. Tolson explained that this application is a time sensitive matter for the applicant, because as an ice manufacturer's peak season starts in the Spring and extends to the Summer and into the Fall. He further explained it is necessary to obtain this special exception approval today so that the permits can be put in place to begin construction. Mr. Tolson stated that currently the facility, during the peak seasons, is having to truck in ice from the plant in Muskogee and this is a hindrance and expense.

**Comments and Questions:**

Mr. Beach asked the applicant how much SF the building has and how much will there be after the expansion is built? Mr. Tolson stated the building presently has about 2100 SF freezer space and this new expansion will increase it by 8100 SF. He commented that the company will have about 12,000 SF of total developed space on site.

Mr. White asked the applicant if Century Ice owns the property to the south where the house is apparently going to be torn down? He stated the property to the south was recently acquired with the intention of providing any parking or necessary storage needs consistent with the CS district. He further stated that the structure illustrated on the plans is a burned out shell, which will be cleared and removed from the property, fill will be brought in and the site will be leveled up. He indicated there will be a screening fence installed across the south side to insure privacy for the neighbor to the south.

Mr. Beach stated that the newly acquired lot is not part of the legal description for this application. He further stated that if Century Ice is trying to meet required parking on this lot, then this application is not properly advertised.

In response to Mr. Beach's statement regarding parking, Mr. Tolson stated that as far as the area that is the subject of the application there are 14 spaces that exist currently and under CS, special exception and Use Unit 15, we would be required to have one space for every 400 SF, which would be 30 spaces on site. He indicated that there is a portion of the site to the north, of the existing building, can be made available for parking to the extent it is necessary to meet the additional 16 spaces.

Case No. 17570 (continued)

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Special Exception** to construct a building to manufacture ice & cold storage in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 15; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

N 236.30′, Lot 1, Block 5, Day Suburban Acres Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17571**

**Action Requested:**

Variance of required side yard from 15′ to 5′-7″ to permit a new residence. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6, located 22nd & Troost.

**Presentation:**

The applicant, **Pat Fox**, represented by Roy Johnsen, 201 West 4th, Suite 440, submitted a site plan (Exhibit T-1) and stated he is representing the contractor and purchasers of the subject lot, which is George & Sherry Demere. Mr. Johnsen further stated the subject property is zoned RS-2, but it was platted in the early 1930's and the tract is irregular in shape. He explained that the frontage, which is basically on 22nd Street, is much narrower than the rear property boundaries and there is also a 90° jog in the north boundary. He further explained that Troost runs northeast to southwest forming the eastern boundary of the subject property at an angle and as a consequence you have irregular boundaries to deal with. Mr. Johnsen submitted photographs (Exhibit T-3) and stated the pictures deserve close scrutiny because they give a real feel for the practical circumstances of the property. He stated that immediately north of the subject lot is the five story office building that has been constructed at the SW/c of 21st & Utica. He further stated the property on the SW/c of 21st & Utica is zoned CH and there is no setback from abutting public streets. He explained that because of the track to the north being narrow in its north/south dimension, that building is built extremely close to the street, including what is used as Troost or Utica along the east boundary. Mr. Johnson stated the structure being built for the Demere comes at an angle because of the street and the closest to the street point is the SE/c of the garage. He further stated the NE/c of the garage will meet the required setback and the subject lot happens to be one of the larger lots. Mr. Johnson commented he calculated the subject lot to be over 12,000 SF and it is zoned RS-2. What is proposed is a single-family dwelling that

will contain 3,580 SF of living area plus a two-car garage, which he estimates at 400 SF and a drive. He

Case No. 17571 (continued)

stated the City Code gives a guideline on how big of a house should be put on a lot and that is done by the livability space requirement. Mr. Johnson defined the Codes livability space requirement. He explained that with a 12,000 SF lot and a house that is 3,580 SF (plus garage and drive), there will be approximately 6500 SF of livability space or open space. He further explained that the Code requires 5,000 SF of livability space in an RS-2 District. Mr. Johnson commented that the structure is not too great for the lot, but because of the lot's shape and the way Troost comes in at an angle, you simply cannot build this large of house on this lot without a variance. He pointed out that there are buildings and improvements north of the subject lot that are nearer to the street than the proposed home will be. Mr. Johnson stated there is not an open space problem to the east of the subject lot and there is no house to the south of the subject lot until you go to south of 22nd Street. He further stated that from a visual stand point, from an openness stand point and from any sort of traffic consideration (Troost is a one-way south) he did not believe there was any adverse effect or any contrary impact to the spirit of the ordinance. Mr. Johnson reviewed minutes from prior cases in the area where variances were approved. Mr. Johnson stated that this application will not be detrimental to the neighborhood.

**Protestants:**

Mike Tolson, 801 Union Center
Juniel Saunders, 1572 East 22nd St.
Donna Paddock, 1573 East 22nd St.
Raised the following concerns:

Placement of the home on the subject lot; City of Tulsa considered closing Troost Street that is immediately adjacent to the property; The lot is sizable and could be developed without variances; Utica Plaza created the precedence in which the applicant refers; there is no hardship that exists; Michael Fox and John Bumgardner has seriously damaged the livability of the neighborhood by overbuilding on the corner of 21st & Utica (Utica Plaza); pedestrian walking is difficult due to Utica Plaza; does not match the neighborhood; request that instead of approving a variance to encroach, require the architect conform to the rules and install sidewalks in the neighborhood; commercial traffic and contractors using their driveways for a turn around; current setbacks are minimum as written and should be able to conform.

Ms. Turnbo announced that a letter of protest was received from J.T. Jewell, Jr.

**Comments and Questions:**

Ms. Turnbo asked Ms. Paddock if the neighborhood has organized and gone to Public Works or City Counselor requesting Troost being closed? She stated she has talked to the builder and he was willing to go to the expense to close off Troost if he was allowed to have a parking lot in the area. She further stated the neighborhood rejected the proposal. She explained the City has no objection to closing Troost, but who is going to pay the expense of closing the street.

Ms. Turnbo asked what the expense to close the street will be? Mr. Tolson stated the expenses are from removing the asphalt, curbing and installing turf.

**Applicant's Rebuttal:**

Mr. Johnsen stated that regarding closing Troost is not relevant to the setback request being made today. He commented that the setback request is justified and appropriate whether Troost is open or closed. He stated that the property immediately north of the subject property is zoned CH and under the ordinance the CH zoning has no setback from the right-of-way. He further stated that to his knowledge the Board has not granted any variances on Troost or Utica. He indicated that there may have been some variances granted on 21st Street. He reiterated that all of this is irrelevant to his case. He pointed out that immediately abutting within the same block of the subject property on Troost, the north half is basically zoned CH and the buildings are permitted to go right to the right of way line. He indicated that the buildings in the CH zone have been built to the right of way line in this area. He explained that the relevance of the CH zoned district, not that there have been some variances granted and that is a precedence, but that is what is permitted and that is what has happened north of the subject property. He reminded the Board that in the past the Board has been mindful of what is the nature of buildings along that street. He stated that this house is the only house along the street and then there is 22nd Street. He commented that as far as view or openness issues, they are satisfied by the existing right of way because there is a lot of right of way. He agreed that the owners could build a smaller home, but the proposed home will not impact the neighborhood. He stated that there is no traffic issue on Troost with this application because the access to the garage is off 22nd Street. He further stated that there is 12′ from the closest point of the garage to the curb and within that 7′ of unused right of way is where a sidewalk is normally constructed if one is needed and constructed by the City. He explained that there will not be any encroachment on pedestrian movement and there will still be a grassed area.

**Comments and Questions:**

Ms. Abbott asked the applicant how the garage access being on 22nd Street will affect the livability area? He stated he has calculated livability in on the drive and the numbers he has given was with the access in account. He commented that the proposal is still well above the 5,000 SF requirement.

Mr. Dunham asked the applicant if the drive will actually be on 22nd Street and go along the eastern boundary line? He answered affirmatively.

Ms. Abbott asked the applicant why the house could not be moved more to the west 4'? Mr. Johnsen stated if the house was moved 4' west it still would not meet the setback from Troost. He indicated that a less of a variance would be required, but it still wouldn't meet the setback and a variance would still be required.

Mr. Johnsen stated there is a private covenance that has a mandatory building line within the 9' line and the developer is trying to maximize the three lots. He further stated that there were three lots together and the middle lot is only 50' and so by adding the 9' building line it will make the middle lot more livable.

Mr. Bolzle asked Mr. Johnsen how much frontage is on 22nd Street? He stated there is 61' of frontage on 22nd Street.

Mr. White asked the applicant if there will be a two car garage that opens on the south? He answered affirmatively.

Mr. Johnsen stated that if there is no public purpose served by literally applying the restrictions then that is one of those standards of variances that it is not necessary that the ordinance be applied.

Mr. Dunham stated the protestants have a valid point that the architect could design a house to fit the lot. He further stated the applicant has a point that the house will not be detrimental to the neighborhood the way it is laid out.

Mr. Bolzle stated the frontage on 22nd Street is equal to many of the lots in this same RS-2 district and so a house of compriable size and shape could be built on this lot as exists in the neighborhood. He further stated the triangle that abuts the subject lot is a bonus to the subject lot. He commented that the encroachment on CH's he does not agree with. He further commented the application is wholly self imposed and the applicant has failed to prove a hardship.

Mr. White agreed with Mr. Bolzle that the hardship is self imposed. He stated that with a 12,000 SF lot there is ample room to redesign and fit the house within the guidelines of the Codes.

Case No. 17571 (continued)

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **DENY** a **Variance** of required side yard from 15′ to 5′-7″ to permit a new residence. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6; finding that the applicant failed to present a hardship unique to the property that would warrant the granting of the variance request; on the following described property:

Lot 8, Block 1, Terwilleger Terrace, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17573**

**Action Requested:**

Variance of the minimum lot width for AG district of 200′, down to 109.56′. **SECTION 303. BULK AND AREA REQUIREMENTS IN AGRICULTURE DISTRICTS** - Use Unit 3, located 1/4 mile West of Elwood, North side of 91st Street.

**Presentation:**

The applicant, **Jean Little/Frisco Title Co.**, no address given, stated that after adding a strip for access to the public road way it brings the average lot width down.

**Comments and Questions:**

Mr. Bolzle stated he didn't see where the 109.56′ is? Mr. Beach stated that the 109.56′ is the average lot width because of the narrow strip that runs down to the street to provide for the frontage. He further stated that the average lot width is calculated based on the area of the lot divided by the longest side.

Mr. Bolzle asked the applicant how large the total tract is? She stated that it is approximately 4 acres.

In response to Ms. Turnbo, Mr. Beach explained that the subdivision regulations state that a lot cannot have more than three side lot lines and so the Planning Commission will have to approve a waiver of the subdivision regulation during the lot split.

Mr. White asked the applicant if this request for the transfer of the house on the back of the land? She answered affirmatively.

Case No. 17573 (continued)

**Board Action**:

On **MOTION** of **BOLZLE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Variance** of the minimum lot width for AG district of 200', down to 109.56'. **SECTION 303. BULK AND AREA REQUIREMENTS IN AGRICULTURE DISTRICTS** - Use Unit 3; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

A tract of land E/2, SW/4, SE/4, Sec. 14, T-18-N, R-12-E, I.B.M., Tulsa County, Oklahoma, commencing: SE/c of said Sec. 14; thence N89°51'12"W for 1356.15'; thence N00°04'48"E for 859.06'; thence N89°51'45"W for 240'; thence S00°04'48"W for 30' to POB; thence N89°51'45"W for 35.32' to a point of curve having a radius of 63.65' and a chord length of 48.72'; thence right 50'; thence N44°51'22"W for 208.14'; thence N00°01'12"E for 165.80'; thence N44°56'09"W for 234.79'; thence S89°51'45"E for 393.57'; thence S00°04'48"W for 497.45' to POB and commencing at SE/c, Sec. 14; thence N89°51'12"W for 1356.15' to POB; thence N00°04'48"E for 859.06'; thence N89°51'45"W for 240'; thence S00°04'48"W for 30'; thence S89°51'45"E for 210'; thence S00°04'48"W for 829.06'; thence S89°51'12"E for 30' to POB, City of Tulsa, Tulsa County, Oklahoma.

There being no further business, the meeting was adjourned at 6:15 p.m.

Date approved: 12-10-96

Charley A Abbott

Chairman