

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 737
Tuesday, October 28, 1997, 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
Cooper Dunham Turnbo White, Chair	Bolzle	Beach Huntsinger Stump	Ballentine, Code Enforcement Parnell, Code Enforcement Linker, Legal Department

The notice and agenda of said meeting was posted in the Office of the City Clerk on Monday, October 27, 1997, at 8:27 a.m., as well as in the Reception Area of the INCOG offices.

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

MINUTES:

On **MOTION** of **DUNHAM**, the Board voted 3-0-1 (Cooper, Dunham, White, "aye"; no "nays" Turnbo "abstention"; Bolzle "absent") to **APPROVE** the minutes of October 14, 1997, (No. 736).

UNFINISHED BUSINESS

Case No. 17773

Action Requested:

Approval of an Amended Site plan previously approved. **SECTION 301. PRINCIPAL USES PERMITTED IN AGRICULTURE DISTRICTS** – Use Unit 2, located 9119 East 61st Street.

Presentation:

The applicant, **Jerry W. Ledford, Jr.**, was not present at hearing.

Comments and Questions:

Mr. Beach informed the Board that the applicant has requested a continuance to November 25, 1997. He explained that the subject property was approved for church use. The applicant has applied for and received rezoning for the subject property. Mr. Beach stated that the applicant is preparing a new site plan for approval, however he is not able to be present today and would like a continuance.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **CONTINUE** Case No. 17773 to November 25, 1997 at 1:00 p.m.

Case No. 17839

Action Requested:

Variance of the number, height & display surface area of signage within a PUD 435. 435A, 435B, and PUD 285B in an RS-3, OL & OM district, located East of NE/c 68th & Yale.

Presentation:

The applicant, **Roy D. Johnsen**, submitted a letter of withdrawal (Exhibit A-1).

Case No. 17805

Action Requested:

Special Exception to allow an existing auto body repair shop in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Units 17, located 439 South Sheridan.

Comments and Questions:

Mr. Beach stated that the applicant has requested a continuance.

Presentation:

The applicant, **Merl A. Whitebook**, 2431 East 51st, #200, was present.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **CONTINUE** Case No. 17805 to January 28, 1997 at 1:00 p.m.

NEW APPLICATIONS

Case No. 17852

Action Requested:

Special Exception to allow the reconstruction of a 2-story non-conforming garage, located 1411 South Carson.

Presentation:

The applicant, **Roy Atchison**, 1411 South Carson, submitted a site plan (Exhibit B-1), floor plan (Exhibit B-2) and an architectural drawing (Exhibit B-3). Mr. Atchison stated that the subject property was severely damaged by rot and fire. He requested approval to rebuild the garage.

Comments and Questions:

In response to Mr. White, Mr. Atchison stated the south part of the building is for storage and will not be used for a dwelling.

Mr. Dunham asked the applicant if he had any intentions to use the subject property as a dwelling? He stated he would not be using the subject property for a dwelling.

Case No. 17852 (continued)

Board Action:

On **MOTION** of **TURNBO**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** to allow the reconstruction of a 2-story non-conforming garage; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

Lot 27, Block 2, Carlton Place Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 17853

Action Requested:

Special Exception to permit a drive-in bank in an OL district. **SECTION 601. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS** – Use Unit 11, located 2201 East 21st.

Presentation:

The applicant, **Jim Parker**, representing Commercial Federal Savings & Loan, submitted a site plan (Exhibit C-1), canopy site plan (Exhibit C-2) and a site layout plan revised (Exhibit C-3). Mr. Parker stated he is requesting a special exception in an OL district to allow a drive-in facility on the north end of the existing bank. He explained that a driveway area has been used for a drive-in facility for approximately 18 years.

Comments and Questions:

Mr. White stated the bank has screening in place and the drive-in has been used for several years.

Mr. White informed the Board that an interested party, Mr. Helmerich, read the staff comments before the meeting and had no objection to the application.

Board Action:

On **MOTION** of **TURNBO**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** to permit a drive-in bank in an OL district. **SECTION 601. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS** – Use Unit 11; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

S 10', Lot 10, and all of Lots 11 & 12, Block 11, Woodward Park Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17854

Action Requested:

Special Exception for a church and church accessory uses including parking on subject tract in an OL & CS zoned district. **SECTION 601 & 701. PRINCIPAL USES PERMITTED IN OFFICE & COMMERCIAL DISTRICTS** – Use Unit 2, located NW/c East Apache & North Lewis.

Presentation:

The applicant, **Eric Mikel**, 909 East 36th Street North, representing Meadow Brooks Height Association; submitted a site plan (Exhibit D-1) stated that the subject building is 3900 SF with parking for 70 cars. He indicated the subject property is currently vacant. Mr. Mikel informed the Board that he discussed the plans with the City Traffic Engineer, Darryl French, and it was determined that the church will not be impacting the neighborhood or surrounding area by using Lewis Avenue to enter and exit the parking lot.

Comments and Questions:

In response to Mr. White, Mr. Mikel stated that the tent revivals have been on the corner and the subject property is the next lot over to the north.

Mr. Dunham asked the applicant if he had any problems with screening along the north and west boundary lines? He stated he did not have a problem with screening the north and west boundary lines.

Interested Parties:

David Patrick, City Councilman for District 3, stated he has not received any calls or complaints on the application. He confirmed that he supports this application.

Board Action:

On **MOTION** of **TURNBO**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** Special Exception for a church and church accessory uses including parking on subject tract in an OL & CS zoned district. **SECTION 601 & 701. PRINCIPAL USES PERMITTED IN OFFICE & COMMERCIAL DISTRICTS** – Use Unit 2; per plan submitted; subject to the screening along the north and west boundaries; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

NW/c E. Apache & N. Lewis. Legal Description: The N 374', S 810', E 340', SE/4, SE/4, Sec. 19, T-20-N, R-13-E, City of Tulsa, Tulsa County, Oklahoma, LESS and EXCEPT the ROW of Lewis along the E side.

Case No. 17855

Action Requested:

Special Exception to allow a temporary manufactured building on property for church activities and approval of amended site plan. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** – Use Unit 2, located 4301 South Union.

Presentation:

The applicant, **Gracie L. Calvin**, represented by **Pastor Isaac Calvin**, 3308 East King Street, submitted a site plan (Exhibit E-1) and stated he would like to install a 12' x 44' office-type manufactured building on the east side of the existing church building. He explained that the reason for locating the proposed building on the east side is because of the where two doors to the sanctuary and the restrooms are located. He indicated that the church needs the extra space because of the growing number of members.

Comments and Questions:

Mr. White asked the applicant what the use of the proposed building will be? He stated that the building will be used mainly for church services and activities for the youth. He explained that the activities would be for Wednesday evenings and Sunday morning services.

Mr. White asked the applicant if the proposed temporary building will be for the existing congregation or an expanded congregation? He stated the proposed building is for the existing congregation.

In response to Mr. White, Pastor Calvin stated that the proposed building will be for two years. He explained that the church would like to eventually expand the existing building or purchase additional property.

In response to Mr. Dunham, Mr. Stump stated that the proposed building would not increase the parking requirement.

Mr. Beach informed the applicant and the Board that the site plan indicates that the trailer is 6 ½' from the east property line. The requirement is a 25' setback from the east property line and the applicant has not requested relief from the required setback. He suggested that the applicant needed to re-advertise for additional relief.

Protestants:

Mike Riley, 1527 West 44th Street, stated that he shares the east property line. Mr. Riley indicated that the lot is too small for the existing building. He stated he did not want a trailer next to his property. He informed the Board that there is land for sale surrounding the church and the church could purchase more property for expansion. Mr. Riley stated the church should have to abide by the zoning. He commented that the church is a good neighbor, but he does not want a trailer house next to the property line. Mr. Riley stated he is in the process of selling his property and a trailer next to the property line might hinder the sale. He questioned if the trailer will be new or used and how many years they plan to keep the trailer on the subject property. Mr. Riley requested the Board to deny this application.

Vern Buchannon, 4336 South 28th West Avenue, stated he is the potential buyer of Mr. Riley's property. He expressed concerns with allowing manufactured housing in a residential district where the residents are not allowed to do so. He stated he is concerned with the shape the trailer will be in and could be an eye sore.

Applicant's Rebuttal:

Mr. Calvin stated he does not plan to install a used trailer, but rather install a new manufactured building. He explained that the church has improved the area by cleaning up the grounds. He indicated that the church is looking for additional property and hope to have the funds to do so in the near future.

Comments and Questions:

Mr. Dunham explained to the applicant that the east location shown on the site plan violates the setback requirement and he is not advertised for the relief needed.

After a lengthy discussion the Board informed the applicant that he needed to locate the proposed building south of the existing building and to return with a detailed site plan. The Board advised the applicant that he might need to look at a smaller manufactured building. The Board commented that the manufactured building should not be allowed as a permanent structure.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** Special Exception to allow a **new** temporary manufactured building on property for church activities and approval of amended site plan. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** – Use Unit 2; subject to the proposed manufacturing building be allowed for a period of one year; subject to the proposed building being located south of the existing building; subject to the applicant returning with a detailed site plan; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

W 150', Lot 7 & 8, Block 1, Rose Hill Ranch, City of Tulsa, Tulsa County, Oklahoma.

Additional Comments:

In response to Mr. Buchannon, Mr. Beach stated that the applicant will have to satisfy all of the concerns of Public Works when he applies for his building permit to allow the manufactured building.

Case No. 17856

Action Requested:

Special Exception to allow a museum in an IL district. **SECTION 901. PRINCIPAL USES PERMITTED IN INDUSTRIAL DISTRICTS** – Use Unit 2, located 1327 East 4th Street South.

Presentation:

The applicant, **Thomas W. Williamson**, 2501 East 51st, submitted a site plan (Exhibit F-1) and stated he would like to add to the museum, which is located in a light industrial district. He requested the Board to approve the application with the modified site plan submitted today. He explained that instead of having a 50' long strip of pavement adjacent to 4th Street, he has cut it down and made a drive off of 4th Street into the parking lot.

Comments and Questions:

Mr. White asked the applicant if the drive is the only change to the site plan? He answered affirmatively.

Mr. Stump asked the applicant for the total square footage of the museum? He stated the total square footage will be 17,637 SF.

Mr. Beach stated that the site plan indicates 23 parking spaces and they would meet their parking requirement.

Board Action:

On **MOTION** of **COOPER**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** to allow a museum in an IL district. **SECTION 901. PRINCIPAL USES PERMITTED IN INDUSTRIAL DISTRICTS** – Use Unit 2; per amended plan submitted; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

Lynch & Forsythe's Addition, Block 17, Lots 14-17, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17857

Action Requested:

Variance of required parking for a beer bar to allow the existing 38 spaces. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** – Use Unit 12a, located 1809 East 11th Street South.

Presentation:

The applicant, **Brent Morrison**, 1809 East 11th Street South, submitted a parking layout (Exhibit G-1), parking site plan (Exhibit G-2) and site plan (Exhibit G-3). Mr. Morrison stated that his proposal is a restaurant and bar combination. He explained that parking for a tavern would be one space for every 75 SF and restaurant is one space for every 100 SF. He indicated that there are 38 parking spaces, including two handicap-parking spaces. Mr. Morrison stated he had an agreement with the Hardesty Press across the street to utilize their parking lot, which would provide 15 additional parking spaces.

Comments and Questions:

Mr. Dunham asked the applicant if his restaurant and bar is open from 6:00 p.m. until 12:00 a.m.? He answered affirmatively

In response to Mr. Dunham, Mr. Morrison stated that the computer repair service would be open from 9:00 a.m. to 6:00 p.m. He indicated that the restaurant/bar would open at 6:00 p.m. and close at 12:00 a.m.

Mr. Beach informed the applicant that the drive aisle for one-way is required to be 12' wide.

Mr. White stated that the applicant did not request a variance to allow required parking to be located on another lot.

After a lengthy discussion it was determined that the applicant needed to re-advertise for the required parking to be located on another lot.

Mr. White announced that the Board received a letter of protest (Exhibit G-4).

Ms. Parnell asked the applicant if the ABLE Commission licenses him? He stated he did not sell liquor or mixed drinks.

Ms. Turnbo asked the applicant why he requested a restaurant with a bar if he does not sell liquor? He stated he did not know how it was requested as a bar. He explained that it was originally submitted as a restaurant.

Mr. Dunham asked the applicant if he would be selling alcoholic beverages? He stated he might add alcoholic beverages in the future. He explained that currently he plans to sell 3.2 beer.

Ms. Parnell informed the applicant that if he applies for licensing through the ABLE Commission and it is approved. The ABLE Commission will post the entrance to the property that no one under 21 years of age is admitted and that will change the Use Unit to a 12a, Adult Entertainment Establishment. She explained that the applicant would not meet the required parking if he were a 12a, Adult Entertainment Establishment.

Mr. Morrison stated he plans for the subject property to be primarily a food establishment and he has a full kitchen.

Mr. White asked Code Enforcement if the application is a restaurant until he receives the ABLE Commission permit? Mr. Parnell stated she could not determine what the applicant is requesting without a site inspection and inventory of the kitchen.

In response to Mr. Dunham, Mr. Stump stated that the restaurant would require 47 parking spaces and the computer repair service would require 8 parking spaces, if it is considered Use Unit 15. Mr. Stump stated that the applicant would need a variance from 55 required parking spaces to 47.

Case No. 17857 (continued)

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **CONTINUE** Case No. 17857 to November 25, 1997 at 1:00 p.m. in order to allow the applicant to re-advertise.

Additional Comments:

Mr. Dunham stated that the applicant will need to call Mr. Beach at INCOG and work out the re-advertisement needed for the parking issues.

Case No. 17858

Action Requested:

Variance of required 75' setback from an R district to construct a new building. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS**, located 7610 East 46th Place.

Presentation:

The applicant, **John Dellavedova**, 6020 East 56th Street, submitted a site plan (Exhibit H-1) and stated that the subject property is 2 ½ acres. The areas in the Industrial Equipment Addition are approximately 95% built. He explained that he has plans to construct two warehouses on the vacant land immediately west of the existing property. He stated he needs the 50' setback to construct the amount of the buildings necessary. The buildings will be quality office warehouse tilt-up construction. He indicated that immediately to the south the screening is in place.

Comments and Questions:

Mr. White asked the applicant if the buildings would be closer than 50' from the R district? He stated that the buildings will be 50' from the R district. He explained that the current building is setback 50'.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** Variance of required 75' setback from an R district to construct a new building. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS**; per plan submitted; finding that the existing building is currently 50' from the R district; finding that the requirements for a variance in Sec. 1607.C. have been met, on the following described property:

Lot 7, Block 2, Industrial Equipment Center III, City of Tulsa, Tulsa County, Oklahoma.

Action Requested:

Special Exception to allow a home occupation (beauty shop) in a RS-3 district. **SECTION 402.B.6.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS** – Use Unit 6, located 1121 North New Haven Avenue.

Presentation:

The applicant, **Sharon Mayes**, 1121 North New Haven Avenue, submitted a plat of survey (Exhibit J-1); floor diagram (Exhibit J-2); example of appointments (Exhibit J-3); photographs (Exhibit J-4) and letters of support (Exhibit J-5). Ms. Mayes stated she would like to have a beauty salon in her residence. She explained that she would operate the salon from inside her existing garage. There will be no alterations made to the outside of the garage.

Comments and Questions:

Mr. White asked the applicant if the entrance will be the side door on the west side of the garage? She stated the entrance will be in the front and rear.

In response to Mr. White, Ms. Mayes stated that the days and hours of operation will be Tuesday through Saturday, 9:00 a.m. to 5:00 p.m., by appointment only.

In response to Mr. Dunham, Ms. Mayes stated she knows that she cannot have a sign in the front yard.

Mr. Dunham stated that the sign is one condition, but there are several other conditions. He informed the applicant that there can be only one customer at any one time and there should be some spacing between appointments.

Ms. Mayes stated that her appointments are normally spaced anywhere from two to three hours apart depending on the service being rendered. She indicated that at no time would there be more than two people scheduled or more than two cars parking.

Ms. Turnbo asked the applicant if she understands that she cannot hire anyone to work in the salon? She answered affirmatively.

Protestants: The following protestants expressed similar concerns:

Claire Akunia, 1054 North New Haven; **Roscoe Turner**; submitted a petition of protest (Exhibit J-6); **Paul Norris**; 1120 North Oswego, adjacent property owner.

The following concerns were expressed by the protestants listed above:

Narrow streets; children playing in the street; increase in traffic; cars parked on the street; Latimer and New Haven is a dangerous intersection; backing out into the street is dangerous; New Haven is a through street from Independence to Pine, which creates heavy traffic.

Applicant's Rebuttal:

Ms. Mayes stated that the salon will be on Latimer Place and there is adequate space in the street. She indicated that she has a 7-year-old son who plays in the street and she does not see a problem with traffic. She commented that she would not be adding to the existing traffic.

Comments and Questions:

Ms. Turnbo asked the applicant why would she invest in two drying units and have three chairs for people to wait in if she will have only one customer at any one time and spaces the appointments two hours apart? She stated that some of her customers will have friends or family with them and she will need adequate room.

In response to Ms. Turnbo, Ms. Mayes agreed that two dryers going at the same time would mean that there would be two customers at the same time. Ms. Mayes explained that if a mother and daughter came in to get their hair done together, there would be one car, but she would have adequate dryers for use if needed.

Mr. Cooper asked the applicant to estimate the maximum number of customers she would see in one day? She stated five customers a day depending on what services they request. She explained that a normal day would be three customers and a good day would be five customers.

Mr. Dunham explained to the applicant that one of the concerns of home occupations is that there will be cars stacking up in the driveway. Ms. Mayes agreed that stacking cars in the driveway can be a problem and that is why she staggers her appointments so that they do not overlap.

Mr. White stated that the applicant seemingly meets the Home Occupation Guidelines. He commented that a maximum of five customers per day will not significantly increase the traffic situation in the neighborhood.

Ms. Turnbo expressed concerns with the additional traffic because of the children in the neighborhood playing in the street.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-1-0 (Cooper, Dunham, White, "aye"; Turnbo "nay" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** to allow a home occupation (beauty shop) in a RS-3 district. **SECTION 402.B.6.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS** – Use Unit 6, per plan submitted; subject to the Home Occupation Guidelines; subject to the days and hours of operation being Tuesday through Saturday, 9:00 a.m. to 5:00 p.m.; subject to there being one customer at any one time; subject to there being 15 minutes between the end of one appointment and the beginning of another appointment; subject to a maximum of five customers per day; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

Lot 10, Block 5, Amended Plat of Lots 1 & 36, Block 17 & Blocks 1-5 & 13, Federal Heights Second Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17860

Action Requested:

Special Exception to permit the garage as an accessory use to the hospital under Use Unit 2 in a CH district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** – Use Unit 2 and a Variance of the building setback to permit the parking structure to be constructed 46' from the centerline of E. 11th St. **SECTION 703. BULK AND AREA REQUIREMENTS IN COMMERCIAL DISTRICTS**, located SW/c East 11th Street & South Utica Avenue.

Mr. White announced that Ms. Turnbo will be abstaining from Case No. 17860.

Presentation:

The applicant, **Charles E. Norman**, 2900 Mid-Continent Tower, stated that this application represents a super block at Hillcrest Medical Center between 11th and 12th and South Utica and South Trenton Avenues. Specifically the proposed new garage will be on the property acquired last year from Rainbow Bakery and all of the property is zoned CH, which permits a parking structure as a matter of right. He explained that if the parking structure is considered as an accessory use to the hospital, it will fall under Use Unit 2 and hospitals have to have approval of the Board of Adjustment under the present code regardless of the zoning district. There is presently pending a major revision of the Zoning Code Use Units and the reestablishment of Use Unit 5, which will put hospitals back into a Use Unit that is permitted by right in the commercial districts. Mr. Norman expressed concerns that the subject property will be classified as an accessory use to a hospital rather than a freestanding garage and requests a special exception to permit a hospital garage in a CH district. He stated that the second issue involves the right-of-way width on East 11th Street. He indicated that East 11th Street is, and has been forever, classified as a secondary arterial street, which requires a right-of-way width of 100'. Mr. Norman stated that nowhere between Memorial and Main Street on East 11th is there 100' of right-of-way or 50' on either side of the centerline. This particular block, between Trenton and Utica, the right-of-way width varied between 30' and 36 ½'. He reminded the Board that in May of 1997, the Board approved a similar variance to permit the relocation of the existing power plant 40' from the centerline of East 11th Street and Hillcrest agreed to dedicate an additional 5' of right-of-way at the location to bring the total width up to 40' on the south side of the centerline of East 11th Street. The right-of-way at the subject property is 36 ½' and Hillcrest is asking the Board to approve a variance to permit the new garage to be constructed within 46' of the centerline, subject to Hillcrest dedicating to the City of Tulsa an additional 3 ½' of right-of-way. This will make a consistent 40' on the south side of the centerline and leave 6' for a sidewalk and landscaping. He indicated that there is no need for a variance on the Utica side because the garage will meet the required 50' from the centerline of South Utica.

Comments and Questions:

Mr. Cooper asked Mr. Norman if he had a site plan that is available? Mr. Norman stated the garage is being designed now therefore the site plan is not available at this time. However the dimensions are subject to the relief that is being requested.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-0-1 (Cooper, Dunham, White, "aye"; no "nays" Turnbo "abstention"; Bolzle "absent") to **APPROVE** a **Special Exception** to permit the garage as an accessory use to the hospital under Use Unit 2 in a CH district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** – Use Unit 2 and a **Variance** of the building setback to permit the parking structure to be constructed 46' from the centerline of E. 11th St. **SECTION 703. BULK AND AREA REQUIREMENTS IN COMMERCIAL DISTRICTS**, finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

All of Lots 2-8, Block 1, and all of Lots 1&2, Block 2, Hopping Heights Addition, City of Tulsa, Tulsa County, Oklahoma AND All of that part of vacated Troost Ave. described as follows: Starting at NW/c, said Lot 6, Block 1, Hopping Heights; thence S along the Wly line of Block 6, for 5.00' to the POB; thence continuing S along the Wly line of said Lot 6, for 45.00', SW/c of Lot 6; thence Wly 60.00' to the SE/c of Lot 1, Block 2, Hopping Heights; thence Nly along the Ely line of said Lot 1 for 45.00'; thence Ely for 60.00' to the POB and also All that part of the 10' wide vacated alleyway lying Wly of said Lot 1, Block 2 of Hopping Addition.

Case No. 17861

Action Requested:

Variance of the display surface area limitations of Sec. 1103.B.2.a. and Sec. 1221.D.2 to permit wall signage on the N wall of the Cinemark theater complex to wit: 4 marquee wall signs 8' high and 20' wide with a total display surface area of 640 SF; the Tinseltown USA name and logo with approximately 625 SF; and the IMAX sign with a display surface area of 128 SF. **SECTION 1103.B.2.a. USES PERMITTED IN A PLANNED UNIT DEVELOPMENT; SECTION 1221.D.2. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING** and a determination that the 20 motion picture posters 2 ½' by 4 ½' wide will not be visible from the abutting public streets and therefore are exempt from the calculation of display surface area under Sec. 1221.C.4 or a Variance to permit the 20 motion picture poster enclosures 2 ½' by 4 ½' each. **SECTION 1221.C.4.d. Use Unit 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, located East side of Mingo Valley Expressway South of East 71st Street.

Presentation:

The applicant, **Charles E. Norman**, 2900 Mid-Continent Tower, submitted an architectural drawing (Exhibit K-1) and a site plan (Exhibit K-2). Mr. Norman stated that the subject application is part of the proposed Corridor District Site Plan and Planned Unit Development ("PUD") on approximately 55 acres, which was approved by the Planning Commission in September and approved by the City Council two weeks ago. The overall PUD contemplates and permits commercial development on the 71st Street frontage and on an 18-acre tract, located south of 71st Street and backing up to a drainage channel and across from Hampton South (single-family subdivision area). The proposed use in the PUD is a major motion picture complex called Cinemark. This facility will contain up

to 20 motion picture theaters within a large building which is at least 400' long east and west. The sidewalls are approximately 260' north and south and the building height is 50' in some parts of the building, because of the size of the auditoriums on the inside. The purpose of the application is to request approval of a sign package for the facility. Mr. Norman indicated that because of the height and width of the building, the north wall facing 71st Street will have an area of over 20,000 SF. The building will have a front width of at least 400' and within the PUD you are permitted to have 2 SF of sign area for each lineal foot of wall to which it is attached. If the building has a front wall that is 400' wide, he would be permitted the maximum of 800 SF signage. He commented that the subject property is approved for commercial use and if it were zoned commercially he would be allowed 3 SF of signage for each lineal foot of wall, which would permit approximately 1200 SF. He stated that the total sign package that was presented to the Planning Commission included all of the signs in this package except for the IMAX sign. He explained that the IMAX is a new type of theater that has multiple projection and a 3-D realistic experience. He stated that the signage on the front wall consists of the name of the complex in the center, the four marquees on the side, which have five lines on each board to indicate the name of the movie in each theater, and the IMAX sign will be alone on the far left. He indicated that there will be 20 cases on the outside for the typical movie posters, which are 2 ½' x 4'. They are technically classified as a sign if they are visible from a public street. This building is approximately 700' to the south of 71st Street and with respect to the posters they will not be visible from the public street, but they may be visible from an interior collector street that goes through the larger development area. Mr. Norman requested that the posters be determined not to be signs or in the alternative grant the variance to allow the posters. He concluded that the total area of signage requested is 1390'. He stated that if the building is 400' wide he would be permitted 800 SF of sign area. He informed the Board that he applied for and the staff recommended approval of a ground sign near the expressway and 71st Street that would have had an area of 280 SF. He requested permission at the Planning Commission to waive the ground sign and transfer the 280 SF to the sign package, which would make a total of 1,020 SF. He stated he also asked the Planning Commission to permit him to count the east and west walls of the building and move the signage to the front. He explained that no wall signs are permitted on the east wall of the building and the west wall faces the expressway, which will have one sign for Tinsel Town. He stated that if the Board totaled the signage on the three walls, the proposal will be considerably less than what will be permitted by the length of the walls. He explained that there will be more extensive landscaping on the south side of the entire project, which faces the Hampton Hills residential area. He indicated that the Hampton Hills Homeowner's Association is supportive of this proposal. Mr. Norman pointed out that the IMAX sign was not in the original proposal, which was added after the Planning Commission meeting. He requested the application be approved with the submitted information, subject to the final detailed site plan being approved by the Planning Commission.

Comments and Questions:

Mr. Cooper asked the applicant if he is waiving his rights to the monument sign and the west wall? Mr. Norman stated that there will be one sign on the west wall for Tinsel Town, which is smaller than the maximum permitted. He commented that the proposed signage represents only 7% of the area of the north wall.

After a lengthy discussion it was determined that Mr. Norman will have to go back to the Planning Commission for a detailed site plan and a detailed sign plan approval. It was further determined that the IMAX sign, which was added after the initial Planning Commission approval, will have to be approved by the Planning Commission.

Mr. Dunham asked staff to verify what the Planning Commission approved for the subject property. Mr. Stump stated that the Planning Commission approved 2 SF per lineal foot of building wall to which the signs are attached, plus 280 SF.

Mr. Norman stated Mr. Westervelt's comments were that the proposal should be approved subject to Board of Adjustment's approval of the proposal. The motion reflected that the proposal is approved subject to the conditions as recommended by the staff and modified by the Planning Commission. Mr. Norman commented that he believes that the Planning Commission's intent was that they had no problem with the sign package (not including the IMAX proposal), with the Board approval of the technical variance.

After lengthy discussion Mr. Stump stated he would convey the Board's position that the Board is not endorsing the IMAX sign, but referring it to the Planning Commission for approval.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Variance** of the display surface area limitations of Sec. 1103.B.2.a. and Sec. 1221.D.2 to permit wall signage on the N wall of the Cinemark theater complex to wit: 4 marquee wall signs 8' high and 20' wide not to exceed in total display surface area of 640 SF; the Tinseltown USA name and logo not to exceed in total display surface area 625 SF; per plans submitted; and the IMAX sign not to exceed the display surface area of 128 SF, **subject to Planning Commissions approval. SECTION 1103.B.2.a. USES PERMITTED IN A PLANNED UNIT DEVELOPMENT; SECTION 1221.D.2. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING;** and a determination that the 20 motion picture posters 2 ½' by 4 ½' wide will not be visible from the abutting public streets and therefore are exempt from the calculation of display surface area under Sec. 1221.C.4. **SECTION 1221.C.4.d. Use Unit 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING;** finding that the requirements for a variance in Sec. 1607.C. have been met, on the following described property:

A tract of land that is part of NE/4, Sec. 7, T-18-N, R-14-E, E of IBM, Tulsa County, State of Oklahoma, according to the US Government survey thereof, being more particularly described as follows, to-wit: starting at the NE/c, Sec. 7; thence N89°46'10"W along the Nly line of Sec. 7 for 1087.49'; thence S00°13'50"W for 25.00' to a point on the Sly ROW line of E 71st St. S.; thence S84°06'54"W along said Sly ROW line for 539.70' to the POB of said tract of land; thence S00°13'50"W for 237.50'; thence S89°46'10"E and parallel with the Nly lie of said Sec. 7 for 401.00'; thence S27°08'11"E for 0.00' to a point of curve;

Case No. 17861 (continued)

thence SEly along a curve to the left having a central angle of 2°56'15" and a radius of 220.00' for 11.28' to a point of reverse curve; thence SEly and Sly along a curve to the right having a central angle of 29°56'44" and a radius of 150.00' for 78.40' to a point of tangency; thence S00°07'42"E along said tangency for 399.81'; thence S89°46'10"E and parallel with the Nly line of said Sec. 7 for 50.16'; thence S00°07'42"E for 397.67'; thence N88°03'20"W for 793.68' to a point of curve; thence Wly, NWly, and Nly along a curve to the right having a central angle of 87°55'43" and a radius of 119.00' for 182.62' to a point of tangency; thence N 00°07'37"W along said tangency for 524.61'; thence N32°35'47"W for 113.63' to a point on the Ely ROW line of the Mingo Valley Expwy; thence N00°07'37"W along said Ely ROW line for 120.08'; thence S89°46'10"E and parallel with the Nly line of Sec. 7, for 442.29'; thence N 00°13'50"E for 232.14' to a point on the Sly ROW line of E 71st St. S.; thence N84°06'54"E along said ROW line for 50.29' to the POB.

Case No. 17862

Action Requested:

Special Exception in an OM and OL district to amend a previously approved site plan to add an addition to the existing church and school buildings containing 22,000 SF. **SECTION 601. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS – Use Unit 2, located 7700 South Lewis Avenue.**

Presentation:

The applicant, **Charles E. Norman**, 2900 Mid-Continent Tower, representing Victory Christian Center, submitted a site plan (Exhibit L-1) and stated the subject property was approved for church and school use in 1987 when the property was zoned AG. He explained that at the time of approval there was a Master Plan that incorporated additional buildings. The property was re-zoned to OM/OL districts because at the time church and schools were permitted by right under Use Unit 5. He explained that the Code was amended and abolished Use Unit 5 and placed churches and schools in Use Unit 2, which requires Board of Adjustment approval in all districts. The City Council will be amending the Use Units and will re-instate Use Unit 5, which will permit this addition to the Victory Christian Center as a matter of right, but they have not approved the amendments at this time. Mr. Norman stated he is requesting the special exception subject to the bulk and area requirements of the OM/OL districts.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** in an OM and OL district to amend a previously approved site plan to add an addition to the existing church and school buildings containing 22,000 SF. **SECTION 601. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS – Use Unit 2, subject to meeting the Bulk and Area Requirements of the OM/OL districts; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:**

Case No. 17862 (continued)

Lot 1, Block 1, Victory Christian Center, an addition to the City of Tulsa, Tulsa County, Oklahoma according to the recorded plat thereof.

Case No. 17863

Action Requested:

Special Exception to allow 180' monopole. **SECTION 301. PRINCIPAL USES PERMITTED IN AGRICULTURE DISTRICTS** – Use Unit 4 and a Special Exception to reduce the required setback from R district to 50' from N; 150' from W. **SECTION 1204.C.3.g. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES**, located 9610 South Garnett.

Presentation:

The applicant, **Lee Ann Fager**, representing Southwestern Bell, 11525 East Pine, submitted a map (Exhibit M-1), lease site plan (Exhibit M-2), plot plan (Exhibit M-3) and a location map (Exhibit M-4). Ms. Fager stated that the proposal is to collocate on AT&T's tower, which exists at 150' on the Grace Fellowship Church and School property. She indicated that Grace Fellowship owns approximately 80 acres, which is 1320' x 2640'. She stated that AT&T installed a 150' monopole on the subject property and at the time the 150' monopole met the required setbacks. Ms. Fager further stated that over the last two years the owner of the property to the north re-zoned the property into an RS-3 district with a PUD overlay. She explained that the re-zoning of the north property and the new Tower Ordinance caused the AT&T tower to become non-conforming. She indicated that the tower more than meets the required setbacks to the south and east. The west side has a 30-acre tract that borders the Grace Fellowship Property that is designed as an Overland Drainage Easement. She stated that after the tower is increased by 30', in order to collocate, it will be approximately 950' from the closest residential structure. She indicated that the tower site, which is on the north side of Grace Fellowship property, lays directly beside the connector road for the South Loop. She stated it would be very difficult to build a single-family residential home because it would be very difficult to gain access to the home. She requested that the Board reduce the required setback from the residential district to the west because of the drainage portion of the property and to the north because of the possible dedication of the land to the Turnpike Authority for the South Loop. She explained that the City did provide for some increase in height for towers based on collocation, but unfortunately the tower, as it sits, does not meet all of the required setbacks.

Comments and Questions:

Mr. White asked the applicant if the existing tower will be coming down and replaced with the 180' tower? Ms. Fager stated that the existing tower is unable to accommodate two companies' equipment and will be replaced with the 180' monopole.

Board Action:

On **MOTION** of **COOPER**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** to allow 180' monopole. **SECTION 301. PRINCIPAL USES PERMITTED IN AGRICULTURE DISTRICTS** – Use Unit 4 and a **Special Exception** to reduce the required setback from R district to 50' from N; 150' from W. **SECTION 1204.C.3.g. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES**; per plan submitted; subject to the 180' monopole replacing the 150' monopole; finding that due to the road design for the South Loop the property is unlikely to be developed; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

Lot 1, Block 1, Grace Fellowship Church and School, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17864

Action Requested:

Special Exception to permit a single family dwelling in a CH zoned district, located 3601 East Admiral Place.

Presentation:

The applicant, **Charlene A. O'Connor**, represented by John Isabella, 2745 East Skelly Drive, submitted a site plan (Exhibit N-2) and a plot plan (Exhibit N-1). Mr. Isabella stated he is trying to satisfy the staff's concern in regard to parking. He indicated that he has a copy of the certificate of use and occupancy, which shows that the bar area is 4800 SF. He stated that with the 4800 SF the parking requirement should be 66 parking spaces and there are approximately 73 parking spaces.

Comments and Questions:

Mr. Stump stated that there were 64 parking spaces required for the bar and two for the single-family home, which makes it a total of 66 required parking spaces.

Mr. Isabella stated he believes that the required parking is satisfied.

Protestants:

Roscoe Turner, Chairman of Sequoyah Area Neighborhood Association, submitted a petition (Exhibit N-3) and stated that according to the notice he received the request is for a variance to have a residence in a CH zoned district. The parking spaces were not mentioned in the notice. He explained that the Board considered this action in Case No. 15542. He stated that during the hearing of Case No. 15542 it was conditioned that the upstairs was to be utilized for storage only. He commented that he has been notifying the City for quite some time that the upstairs has been utilized as a residence. He stated that the Board's provision for storage has never been adhered to because people have been living upstairs ever since the Board heard Case No. 15542. Mr. Turner requested on the behalf of the Neighborhood Association that the application be denied.

David Patrick, City Councilman District 3, stated he has received a significant number of calls and complaints on the subject property. He indicated that every one of the complaints and calls were objecting the application. He stated that in 1992 it was determined that it was not proper to have a residence at the subject property and the conditions have not improved since then. He commented that the conditions are worse than in 1992 and it is still not proper to have a residence at the subject property. Mr. Patrick requested on the behalf of the residents in the surrounding area that the application be denied. Mr. Patrick indicated that the current business is not in compliance and they do not have a certificate of occupancy.

Nancy Long, 3536 East Admiral Court, stated that there is not enough parking for the subject property. She indicated that the customers of the club park in the neighborhood and in the business parking lots. She commented that according to the Tulsa Police Chief, the subject property is one of the five problem clubs in Tulsa. Ms. Long stated that she does not want the club in her neighborhood and feel it is a nuisance. She commented that she cannot imagine having a single-family dwelling over the bar. She requested that the Board deny this application.

Pat Carson, stated he owns the liquor store across from the subject property. He indicated that he was at his property from 10:30 p.m. to 1:30 a.m. having tow trucks and the Police Department removing cars. He commented that the constant problems are getting old and are a nuisance.

Candy Parnell, Code Enforcement, stated that Gabriele has leased the facility to Ms. Collum, who owns the Grand Palace. She indicated that Ms. Collum knocked out some walls and expanded the floor area in violation of the previous approval by the Board of Adjustment per conditions. She stated that Ms. Collum claims that Gabriele did not give her any information on the previous Board approval and did not realize she could not expand the building. Ms. Parnell explained that the building is very large and it was limited to a certain amount of floor area and an occupancy load of no more than 200 people. She stated that due to the illegal expansion, Ms. Collum now has an occupancy load of approximately 350 people. At this time, Ms. Collum has applied for a new certificate of occupancy and zoning clearance permit, which will allow for the expanded space. Ms. Parnell stated she is not sure the occupancy and zoning clearance permits will be approved. The application before the Board today has nothing to do with the club use itself, however when the neighbors describe to the Board the parking problem in the immediate area, the Board cannot imagine unless they drive to the area around 11:00 p.m. She indicated that the club parking takes over the shopping center, the health food facility, liquor store parking and all of the property up and down Admiral. Ms. Parnell stated that the club is not meeting parking at this time and she is not sure they will be able to meet the parking.

Comments and Questions:

Mr. Dunham asked Ms. Parnell if the club is actually operating in a larger area than what was approved previously? She stated that the club has illegally expanded the floor area.

Mr. Beach stated that earlier protestors referenced a Board case in 1992 where the Board denied residential use on the subject property and that is not accurate. He explained that the Case in 1992 was an Appeal of the Decision of an Administrative Official that residential uses existed and the Board upheld the decision of the Administrative Official and denied the Appeal. They found that, in fact, there were residential uses on the subject property. There was no approval of residential uses in 1992 or denial of the residential use.

Applicant's Rebuttal:

Mr. Isabella stated that it appears that the required parking spaces are met and whether there are enough spaces he does not know. He further stated that it also appears to him that the complaints deal with the bar and not the residence over the bar. He commented that he has not heard anything that shows granting an allowable exception would in anyway impair, impede or adversely effect the health, welfare or safety of the neighborhood.

Comments and Questions:

Ms. Turnbo stated that with the problem Ms. Parnell described and the neighbors' description of the parking problem it would contribute to the existing problems to have a single-family residence on the subject property.

Mr. Dunham asked Code Enforcement why the club is able to continue business if they have illegally expanded by 50%? Ms. Parnell stated she does not have the authority to close down a business, however, the Fire Marshall does. She explained that the Fire Marshall cut the club's occupancy load back to 100 people due to the condition of the building, such as cutting through a fire wall, multiple extension cords, moved the dance floor back into a warehouse area with overhead doors, etc. Ms. Parnell stated that Code Enforcement told Ms. Collum to apply for a new occupancy permit and she has applied. She explained that now the building inspector will be involved once the permits are released. She stated that it will fall back on the Fire Marshall to control the number of people that are entering the building and any violations.

Board Action:

On **MOTION** of **TURNBO**, the Board voted 4-0-0 (Cooper, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **DENY** a **Special Exception** to permit a single family dwelling in a CH zoned district; 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:

W 64.5', S 14', Lot 8 & W 64.5' Lots 9 & 10, Block 1, Lamb Addition AND S 40', Lot 10 & all Lots 11 & 12, Block 1, Sequoyah Hills Addition, City of Tulsa, Tulsa County, Oklahoma.

OTHER BUSINESS

Case No. 17841

Action Requested:

Request to reconsider. Special Exception to amend previously approved site plan. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS**, located 6727 South Sheridan Road.

Comments and Questions:

Mr. Beach explained to the Board that Case No. 17841 was considered on October 14, 1997, and the applicant is not satisfied with the Board's action. The applicant would like the Board to reconsider the request. He explained that the Board is only to decide whether to re-hear the original request at some time in the future. If the Board does decide to re-hear the request, it will be re-advertised and set for public hearing at a future date.

Ms. Turnbo asked the staff if the Board was to re-hear a case, does it not have to have a significant change? Mr. Beach stated that the Board has to decide, based on the argument of the applicant, whether there is something substantially different about the request or something that would compel the Board to hear the case over again.

Mr. Stump reminded the Board that, according to Robert's Rules of Order, someone voting on the prevailing side must make the motion to reconsider hearing the case.

Mr. White stated that Case No. 17841 was heard October 14, 1997, because there was one person present in opposition and he represented the neighborhood association. Mr. White further stated that the applicant was not present and the staff did try to contact the applicant by phone. Mr. White concluded that the protestor stated he could not be present if the case was continued and therefore the Board heard the case.

Presentation:

The applicant, **Diane Gollnick**, representing Fellowship Lutheran Church, stated that in August there was a complaint with a storage unit behind the church. She indicated that she was told to submit a site plan to the Board of Adjustment showing the location of the storage unit. She stated that she applied at INCOG and was told she may not need the relief, but they would check and get back with her. She further stated she received a phone call from Mr. Beach stating that she did need to do a modified site plan, because the previously approved site plan did not indicate a storage unit. She explained that she was instructed to bring a check to INCOG for an application fee and for notices of the hearing to all concerned parties. Ms. Gollnick stated that she never received notice of the hearing and on October 14, 1997, she received a phone message from Mr. Beach at 1:00 p.m. to find out why she was not at the hearing. She explained that she did not receive the phone message until 2:45 p.m. and by the time she arrived the meeting had adjourned. She stated she returned to INCOG and talked with Mr. Beach with regard to the notice not being sent. Mr. Beach looked up the notice list and found that the notice had been sent to the church, but the address was a lot and block number. The notice was returned because it was not a mailing address. She stated that had the notice been sent to the address on the application, she would have been notified and would have been at the meeting. She indicated that she was prepared to present the case, but did not know the date and time of the meeting. She requested the Board to reconsider the application so that she has time to present her case.

Comments and Questions:

Ms. Turnbo stated she felt that the notice issue is a legitimate reason to rehear the case.

Mr. Beach stated that INCOG sends notice to the applicant, as a matter of courtesy but, it is not a requirement. He explained that all property owners within 300' of the subject property are notified and the names are obtained from the County Assessor's Office. The record received from the Assessor's Office shows an address for Fellowship Lutheran Church as being 61st & Sheridan, which was returned because it was not a mailing address. He explained that the standard procedure for when an applicant comes in is that the applicant signs the application that states they agree with everything that is contained on the application. He stated that there is a third sheet given to the applicant that describes the meeting date, time and place. Mr. Beach indicated that the third sheet is missing from the subject application, which would indicate that it was given to the applicant.

Ms. Turnbo asked the staff if it is up to the applicant to make sure they know when the hearing date is? Mr. Beach stated that it is the applicant's responsibility to know when the meeting is being held.

Ms. Gollnick stated this application was a little different than the standard because the application was filled out and left at INCOG. She explained that after she was informed to come to INCOG to pay the fees, she just left the check and never saw the application again. She concluded she never received anything from INCOG regarding the hearing date. Ms. Gollnick concluded that she assumed since she was paying for notices to be sent, that she would receive a notice.

Mr. Dunham stated that in his opinion the applicant was not aware that she was supposed to be present for the October 14, 1997 meeting.

Mr. Linker informed the Board that if they decide it is reasonable to re-hear the case and the protestant needs a continuance the Board can grant a continuance at that time.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-1-0 (Dunham, Turnbo, White, "aye"; Cooper "nay" no "abstentions"; Bolzle "absent") to **APPROVE** the **Request to reconsider**: a **Special Exception** to amend previously approved site plan. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS**; subject to the protestants being notified and given the opportunity to be present for the re-hearing of Case No. 17841.

On **AMENDED MOTION** of **DUNHAM**, the Board voted 3-1-0 (Dunham, Turnbo, White, "aye"; Cooper "nay" no "abstentions"; Bolzle "absent") to **APPROVE** **Request to reconsider**. a **Special Exception** to amend previously approved site plan. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS**; subject to the re-hearing be scheduled at the earliest possible date that the protestant can be present, but not to exceed more than 90 days.

Case No. 17849

Action Requested:

Request to reconsider. Variance of required setback from centerline of Union. **SECTION 703. BULK AND AREA REQUIREMENTS IN COMMERCIAL DISTRICTS**, a Variance to permit a structure in planned right-of-way. **SECTION 703. BULK AND AREA REQUIREMENTS IN COMMERCIAL DISTRICTS** and a Special Exception to permit a drive-in in a CS zoned district. **SECTION 704.C. SPECIAL EXCEPTION USES IN COMMERCIAL DISTRICTS, REQUIREMENTS**, located West side of Union, North of West 51st Street South.

Comments and Questions:

Mr. Stump reminded the Board that Thomas Cooper is the only member who can make a motion to reconsider the case because the other members did not vote on the prevailing side.

Presentation:

The applicant, **Ted Sack/ Sack & Associates/Inc.**, representing Sonic Drive-in, stated that the case was denied with a split vote because there was not a full Board present. He requested that the case be reconsidered with a full Board present. Mr. Sack indicated he was surprised that there were protestants present because the property is in disrepair and the owner does not have the means to clean up the land. He stated he felt that the neighborhood would be in support of the application since the property would be cleaned-up and developed. Mr. Sack indicated that by re-considering the application, it would give him a chance to meet with the neighbors and try to work out the issues before the next meeting. He stated that Sonic tries to be a good neighbor and they want to be a good neighbor. Mr. Sack informed the Board that a fast food restaurant could go into the same location and would not have to come before the Board. He commented that a fast food restaurant could have drive-through windows and lights that would not have restrictions on them. Mr. Sack concluded that the main reason for reconsidering the hearing is to give him a chance to meet with the neighbors and present the application to a full Board.

Comments and Questions:

Mr. White asked Mr. Sack if he has met with the neighbors since the meeting? He stated he has not met with the neighbors that were present, but the two neighbors directly behind the subject property are in favor of the application.

Mr. Cooper stated he has some concerns with an applicant coming before the Board without the Homeowner's support then, when the applicant is rejected, coming back and asking to be reconsidered and stating he can do a better job with the neighbors if he had more time. The methodology does not work very well.

In response to Mr. Cooper, Mr. Stump stated an applicant can amend their site plan and re-apply to the Board. The Board can choose to rehear the case if there is substantial change.

Mr. Cooper suggested that the applicant should, in the future, come to the Board with the Homeowners and request the case to be reconsidered.

Mr. Sack stated that he discussed the issue with Mr. Romig and he made the comment that the case was not presented to a full Board and there was a split vote. He indicated that Mr. Romig stated he would recommend to the Board that they reconsider this case since it was turned down on a split negative vote.

Ms. Turnbo stated that when the Board has a quorum present the vote should stand. She commented that reconsidering the case because there was not a full Board is bogus because if that were the case the Board could never have a vote unless there are five people present.

Mr. Stump stated that it is a dangerous precedent to set stating that unless you have a full Board that every case can be reconsidered. He further stated that there is no guarantee that there will be a full Board at the next hearing set for reconsideration.

Mr. Cooper stated he would not make a motion to reconsider Case No. 17849. He suggested that the applicant significantly modify his site plan and work with the neighbors before re-applying with the Board.

There was not a motion made to reconsider Case No. 17849 and therefore it will not be reconsidered.

There being no further business, the meeting was adjourned at 4:13 p.m.

Date approved: _____

NOVEMBER 25, 1992



Chair