

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 712  
Tuesday, September 24, 1996 1:00 p.m.  
Francis F. Campbell City Council Room  
Plaza Level of City Hall  
Tulsa Civic Center

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Abbott, Chair		Gardner	Ballentine, Code
Bolzle		Beach	Enforcement
Dunham		Huntsinger	Parnell, Code
Turnbo			Enforcement
White			Romig, Legal Department

The notice and agenda of said meeting were posted in the Office of the City Clerk on Friday, September 20, 1996, at 12:55 p.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 1:00 p.m.

**MINUTES:**

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Abbott, Bolzle, Turnbo, White, "aye"; no "nays"; Dunham "abstention"; no "absent") to **APPROVE** the minutes of September 10, 1996 (No. 711).

**UNFINISHED BUSINESS**

**Case No. 17472**

**Action Requested:**

Variance to allow required parking on a lot other than the principal use lot. **SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS** - Use Unit 15, located 3920 East Pine Street.

**Presentation:**

The applicant, **Cecil E. Ricks**, requested a continuance to enable additional advertising for this application.

**Protestants:** None.

Case No. 17472 (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. 17472 to October 22, 1996, at 1:00 p.m. to enable the applicant time for additional advertising.

**Case No. 17487**

**Action Requested:**

Variance to allow a detached bldg., which is an accessory use to a non-conforming office, to be located on a lot other than the lot containing the office, a Variance to allow required off-street parking on a lot other than the principal use. **SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS**, a Variance of required front setback from 20' to 7'; a Variance of required rear setback from 20' to 3'; and a Variance of required side setback from 5' to 3'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 23, located SW/c 5th Street and Xanthus Avenue.

**Presentation:**

The applicant, **Wayne Alberty**, 201 West 5th Street, Suite 570, representing Jim Bowers, stated the reason why this case was continued is to allow Mr. Romig a chance to respond. He further stated the members were sympathetic to the case, but needed a vehicle to accomplish the request.

**Comments and Questions:**

Ms. Turnbo asked Mr. Romig if he has found a vehicle to accomplish this request? Mr. Romig responded that he had not found any vehicle.

Mr. Gardner stated that legal has taken the position that to grant the use is a principal use variance, and therefore it is a re-zoning issue. Mr. Gardner further stated the applicant still has the right to file a re-zoning request and the Board might want to continue the case for 60 or 90 days to allow the applicant to seek a zoning change. Mr. Gardner stated the apartment on the subject property is nonconforming as to zoning and it is also nonconforming as to parking because it does not have any. He explained that the tax service across the street really does not have anything to do with this piece of property. Mr. Gardner stated that if the Board where to grant parking on the front part of the lot for the apartment structure as an accessory use to the apartment structure and if the nonconforming apartment structure is then removed, all of the parking would become illegal.

Case No. 17487 (continued)

Mr. Beach asked the applicant if he wanted to request a zoning change in light of the surrounding zonings? Mr. Alberty stated that he would not have anything to base a re-zoning request on and our hope was to find some relief through the Board of Adjustment.

Mr. Romig stated he discussed this application with two other attorneys in the office and there was no relief to be found.

Mr. Gardner stated a continuance would give the applicant time to see if he can rehabilitate the apartments, but if he cannot do this, then he really has nothing to do but try re-zoning the lot.

Mr. Alberty stated the apartment house will have to come down.

**Protestants:** None.

**Board Action:**

On **MOTION** of **TURNBO**, the Board voted 4-0-0 (Abbott, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **DENY** a **Variance** to allow a detached bldg., which is an accessory use to a non-conforming office, to be located on a lot other than the lot containing the office, a **Variance** to allow required off-street parking on a lot other than the principal use. **SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS**, a **Variance** of required front setback from 20' to 7'; a **Variance** of required rear setback from 20' to 3'; and a **Variance** of required side setback from 5' to 3'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 23; 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 1 & 2, Block 5, ABDO's addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17497**

**Action Requested:**

Variance of the public street frontage requirement (tract derives access from an improved private street). **SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6, located SE of SW/c West 73rd & 33rd West Avenue.

**Presentation:**

The applicant, **Roy Johnsen**, 201 West 5th, Suite 440, submitted a site plan (Exhibit A-1), architect's drawing (Exhibit A-2) and photographs (Exhibit A-3). Mr. Johnsen stated he is representing Dr. Steven Campbell and Dr. and Mrs. Anthony Loehr. He explained the site plan shows approximately a 22 acre parcel owned by Dr. Campbell (outlined in green) except the eastern most five (5) plus acres, which has been conveyed to Dr. Loehr. He stated that Dr. Loehr plans to build his private residence on the conveyed five (5) plus acres. The Board has heard adjoining applications in 1995 and there were concerns expressed and addressed during the hearings. Mr. Johnsen stated that the development occurred when Dr. Lester acquired some 72 acres zoned AG. He further stated Dr. Lester sold Dr. Campbell 22 acres and under a plan the two doctors had for a development of a private, secluded residential area. Mr. Johnsen stated the doctors motivation was very low density, private, exclusive and a high quality residential area. He further stated the doctors proceeded in accordance with the laws as they understood the laws to be. As the Board is aware if the tract exceeds five (5) acres you are not required to have lot split approval. Mr. Johnsen explained the doctors were proceeding with tracts exceeding five (5) acres, did not go through lot split approval, and proceeded with their development. He stated he had an opportunity to review the documents that were done and they appear to be excellent. Mr. Johnsen felt that the documents accomplished the things that they were generally trying to accomplish in zoning and subdivision regulations. He stated that on a 72 plus acre tract it appears there is potentially 13 or 14 lots that could be divided if all requirements were met. Mr. Johnsen detailed that during the hearing in July 1995, there were three (3) lots that did not have frontage on a public street and they have met all of the AG requirements, exceeds five (5) acres, no lot split was required, sufficient setbacks, etc. When the doctors applied for their building permit, it came forward that they did not have access to a public street, which require 30' of frontage and the permit was denied. Mr. Norman made an application to the Board on behalf of Dr. Lester for the three lots that were sold and existing. Mr. Johnsen stated the site plan, which is outlined in green, reflects Dr. Campbell's property and the black dash line is the proposed Loehr property. He further stated the Loehr property was conveyed and they were not aware of the problem with the frontage requirement. He explained the land was conveyed in November 1995, after the Board had acted on the previous applications. Mr. Johnsen commented that Dr. Campbell was not aware of the frontage requirement and conveyed the land to Dr. Loehr. He explained that Dr. Loehr had his plans prepared, sought a building permit and it was denied again because of the lack of 30' access. Mr. Johnsen pointed out that sanitary sewer is not available, but all of the tracts and potential tracts meet percolation requirements. He further pointed out that the lots will be served by a septic system, Creek County water has been provided with a 6" water line that goes through the center of the property and connects with a line on 73rd Street, and a line on 33rd West Avenue. He stated a mutual access easement has been created for the

street through the middle of the tract; a homeowner's association has been formed with the appropriate provisions for assessment, membership and maintenance of the common areas. Mr. Johnsen commented he has addressed the street with the Engineer on this project and indicated it was built with surfacing, sub-base, which meets the City's standards. He indicated the street is 20' in width, so it is less in width than normally found in public residential streets, but given the nature of the low density and the desire to preserve trees, it is understandable and sufficient for this density of development. He pointed out the important point is that the surface is not a substandard street, it is not an inappropriate street. Mr. Johnsen informed the Board that the earth change permit was issued to permit construction of the lake. He further informed that one home is completed and one is under construction, which are quality homes as indicated in the pictures. Mr. Johnsen indicated the Staff felt that this development would have been better done procedurally as a PUD, but at this point and given the circumstances as they exist, it is his opinion that very little, if anything, could be accomplished by requiring an expensive PUD process for the purposes of this lot split and the development is essentially done. Mr. Johnsen commented that this development will result in 11 lots. Mr. Johnsen read the minutes from previous Board meetings regarding Dr. Lester's three (3) lots and the hardship that was found during that meeting. He commented the subject development does not reflect any impact on public purpose and nothing would change if it were platted or anything accomplished by a PUD process. Mr. Johnsen stated he felt this development is a practical circumstance that requires an adjustment because of the access requirement. He closed by saying that in considering the variance normally you have to look at the purpose of the requirement and the purpose of the 30' requirement is to assure that each lot has reasonable/sufficient access and this property has good/sufficient access, so the purpose of the 30' requirement has been met.

**Protestants:** None.

**Comments and Questions:**

Mr. Bolzle asked the applicant if 27th or 28th West Avenue right-of-way abuts the property on the South? He also asked why the improvements do not go to the property, but the right-of-way abuts it? Mr. Johnsen stated the topography is rough and the street cannot be extended. He further stated there was a question of whether it abutted and he could not find the answer, but the Staff interpreted that the dead end did not meet the requirement as they perceived it.

Mr. Bolzle asked the applicant if he abuts the right-of-way and it is not possible to improve the street to serve the lot? Mr. Johnsen answered that the property does abut the right-of-way, but it is impossible to improve the street to serve the lot.

Mr. Bolzle stated by the letter of the Code the development meets the requirement, but from the practical aspect the development does not meet the requirement. Mr. Johnsen agreed with Mr. Bolzle's statement.

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 4-0-1 (Abbott, Bolzle, Turnbo, White, "aye"; no "nays" Dunham "abstention"; no "absent") to **APPROVE** Variance of the public street frontage requirement (tract derives access from an improved private street).

**SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6, per plan submitted; finding that the applicant by the letter of the Code meets the 30' access requirement, but from the practical aspect the development does not meet the 30' access requirement and 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:

Commencing at the SW/c of S/2 NW/4 Sec. 10 T-18-N R-12-E Indian Base and Meridian, Tulsa County, Oklahoma; thence due N a distance of 594.12'; thence due E a distance of 391.56'; thence on a curve to the left a radius of 300.00', a central angle of 55°04'27" a distance of 288.37'; thence on a curve to the right a radius of 195.00', a central angle of 130°48'25" a distance of 445.19'; thence on a curve to the left a radius of 520.00', a central angle of 39°21'26" a distance of 357.19'; thence on curve to the left a radius of 275.00', a central angle of 77°24'46" a distance of 371.55'; thence on a curve to the right a radius of 485.00', a central angle of 39°38'19" a distance of 335.53'; thence on a curve to the left a radius of 200.00', a central angle of 58°41'35" a distance of 204.88'; thence N 29°54'30" E a distance of 46.00' to the P.O.B.; thence continuing N 29°54'30" E a distance of 182.06'; thence on a curve to the right a radius of 350.00', a central angle of 35°46'20" a distance of 218.52'; thence S 82°35'01" E a distance of 371.24'; thence S 0°00'53" W a distance of 480.00'; thence N 69°56'26" W a distance of 657.95' to the P.O.B. **and commencing** at the SW/c of S/2 NW/4 Sec. 10 T-18-N R-12-E Indian Base and Meridian, Tulsa County, Oklahoma; thence due N a distance of 594.12'; thence due E a distance of 391.56'; thence on a curve to the left a radius of 300.00', a central angle of 55°04'27" a distance of 288.37'; thence on a curve to the right a radius of 195.00', a central angle of 130°48'25" a distance of 445.19'; thence on a curve to the left a radius of 520.00', a central angle of 39°21'26" a distance of 357.19'; thence on curve to the left a radius of 275.00', a central angle of 77°24'46" a distance of 371.55'; thence on a curve to the right a radius of 485.00', a central angle of 39°38'19" a distance of 335.53'; thence on a curve to the left a radius of 200.00', a central angle of 41°17'29" a distance of 144.13' to the P.O.B.; thence on a curve to the left a radius of 200.00', a central angle of 17°24'06" a distance of 60.75'; thence N 29°54'30" E a distance of 46.00'; thence S 69°56'26" E a distance of 657.95'; thence S 0°00'53" W a distance of 401.04'; thence S 89°40'56" W a distance of

Case No. 17497 (continued)

180.00'; thence N 42°41'24" W a distance of 735.42' to the P.O.B. **and commencing** at the SW/c of S/2 NW/4 Sec. 10 T-18-N R-12-E Indian Base and Meridian, Tulsa County, Oklahoma; thence due N a distance of 594.12'; thence due E a distance of 391.56'; thence on a curve to the left a radius of 300.00', a central angle of 55°04'27" a distance of 288.37'; thence on a curve to the right a radius of 195.00', a central angle of 130°48'25" a distance of 445.19'; thence on a curve to the left a radius of 520.00', a central angle of 39°21'26" a distance of 357.19'; thence on curve to the left a radius of 275.00', a central angle of 77°24'46" a distance of 371.55'; thence on a curve to the right a radius of 485.00', a central angle of 30°11'16" a distance of 255.53' to the P.O.B.; thence continuing on a curve to the right a radius of 485.00', a central angle of 9°27'03" a distance of 80.00'; thence on a curve to the left a radius of 200.00', a central angle of 41°17'29" a distance of 144.13'; thence S 42°41'24" E a distance of 735.42'; thence S 89°40'56" W a distance of 616.34'; thence N 10°50'58" W a distance of 491.30' to the P.O.B., City of Tulsa, Oklahoma.

**Case No. 17504**

**Action Requested:**

Special Exception to allow required off-street parking on a lot other than the lot containing the business to allow a nonconforming use unit 12a. **SECTION 1408.B. ADULT ENTERTAINMENT ESTABLISHMENTS** - Use Unit 12a, located 3410 South Peoria.

**Presentation:**

The applicant, **Southminster Presbyterian Church/Zyn Corp.**, represented by Roy Johnsen, 201 West 5th, Suite 440, submitted a site plan (Exhibit B-1), photographs (Exhibit B-5), and stated he is representing the Church as well as the operators of an establishment known as "The Drink", which occupies the premises that for years was occupied by an establishment known as the "Sunset Grill". Mr. Johnsen informed the Board that the subject property is generally located on the west side of Peoria between 34th Street and 35th Place. He stated the Staff identified the subject property as a nonconforming 12a use and he advised the Board that the property where the building is located is zoned CH. He explained that a 12a use is a use permitted by right in a CH district. Mr. Johnsen stated the parking is where the question arises on this subject property. He further stated that CH zoning was imposed along South Peoria where there is no setbacks required, nor parking required at the time. Mr. Johnsen stated that the ordinance was changed and CH districts was then required to have parking, but by that time this subject property was nonconforming as to any parking requirement. He further stated another ordinance change occurred in January 1993, whereby the Code was amended to say that if you

were an adult establishment, (this is not a sexually oriented business but a night club), which is identified as an adult entertainment establishment in our Code, that if you are a night club and your door was within 50' of a residential district and if you didn't have sufficient parking, then you had one (1) year to comply. He indicated the ordinance also stated that if a night club was within 300' of an R district and you didn't have sufficient parking on the lot, you had one (1) year to comply. He stated the ordinance has been adopted and its enforcement has primarily occurred when there is a complaint or when there is a change of occupancy. Mr. Johnsen indicated the only change on the subject property is the ownership, they are not changing the exterior of the building, enlarging, nor changing the use. He further indicated that when the new owners applied for a certificate of occupancy they were advised that they do not meet the parking requirement and that is the reason for this application. Mr. Johnsen stated the same Code that was adopted in January 1993, further provided that the Board of Adjustment as a special exception could modify those parking requirements and that is the nature of this application before you today. He commented that the subject property is owned by the Presbyterian Church and for years this particular building has been leased for night club purposes. Mr. Johnsen indicated that at one time the subject property was a restaurant, but for years and years it has been a night club. He informed the Board that he called the previous owner and as of the January 1993, when the new ordinance was adopted, the subject property was a night club and not a restaurant. Mr. Johnsen submitted the 1991 phone book listings (Exhibit B-3), which is before the 1993 ordinance change, and stated that under night clubs the Sunset Grill is listed, however, under restaurants you do not find the listing for Sunset Grill. He indicated that the Full Moon Cafe is listed in both night club and restaurant. Mr. Johnsen reiterated that the subject property was a night club before the 1993 change in ordinance and has always been a night club since the change. He informed the Board that the subject property is within 300' of a church, which happens to own the subject property. He advised the Board that the Brookside area has been studied and through zoning, Board of Adjustment applications, considerable effort has been made to achieve the maximum possible compatibility with adjoining properties recognizing the particular character of Peoria (Brookside area), as being one where night life is existing and traditionally located. Mr. Johnsen submitted an aerial map (Exhibit B-2) and approached the Board to discuss the map. He indicated the leasee has the right to use the parking owned by the church. He further indicated the retail business in the area is closed by 6:00 p.m. and the subject property doesn't open until 8:00 p.m. He explained the church does not have a Thursday, Friday, Saturday or Sunday night service and therefore when the night club is opened, none of the other businesses or the church is opened. He stated if you apply the ordinance strictly to the subject property, which is approximately 9,000 SF, 120 parking spaces are required. He further stated that the leasee has counted the parking spaces and there are 120 striped spaces immediately accessible and adjacent to the subject property.



**Comments and Questions:**

Ms. Turnbo asked Mr. Johnsen if the church has services Wednesday night? He stated that he is assuming that the church does have Wednesday night services, however the night club is not open on Wednesday nights.

Mr. Dunham asked the applicant if the church has Sunday services? Mr. Johnsen clarified that the Church does have Sunday services in the morning but not in the evening. He stated the operation of the night club facility is Thursday, Friday, Saturday and Sunday from 8:00 p.m. to 2:00 a.m. He indicated that on Sunday the night club may close down earlier than 2:00 a.m.

Mr. Johnsen indicated the subject property is situated about as favorably as you can find. He stated there is significant amount of parking immediately adjacent to the night club and good separation from adjoining residential properties. He further stated the church provides all of the buffer along the west boundary and along the south boundary most of it is Wendy's restaurant. He indicated the adjacent parking area is 100' away from the Southwest corner and that is the nearest point of the parking area, which is a good distance away from houses except for one home and a duplex, which have not protested to his knowledge.

Mr. White asked the applicant what the night clubs capacity is? He stated 720 based on Fire Code requirements.

Mr. Johnsen advised the Board that he observed the night club one evening at 12:00 p.m. and walked around the parking lots. He stated what he witnessed is that the area has its own ambiance with numerous eating establishments, night clubs, dance halls and there is a lot of interaction between all of the facilities. He further stated he observed that many people would park in the parking lot for the subject property, but would go to other facilities and by the same token someone might have parked at another facility, but went to the subject property. He indicated that he did not see any misconduct or troublesome behavior for the neighborhood. He further indicated that he walked to the back of the property and did not hear any music, even though there was a live band playing inside. He stated there is a business on the subject property that has been there a good number of years and an ordinance has been adopted that retroactively seeks to require additional parking and this subject property is extremely well situated and deserving for the Board to grant a special exception to allow the parking on adjacent lots.

**Protestants:**

Ms. Abbott stated the Board received a letter of protest from Amelia Gonzales.

Jim Glass, 3403 South Peoria, Suite 100, stated he is the developer of the Brook Theater and the current State Bank Building. He further stated he has been very active in the development of the Brookside area. Mr. Glass indicated the issue of parking is really not the issue with the subject property. He stated the issue is the other aspects of Use Unit 12a and he realizes that the property is within 300' of a church, which the church owns the property. He indicated he is the person who deeded the property to the church and knows the history of the subject property. Mr.

Glass stated Use Unit 12a also requires spacing 300' from additional businesses presently zoned as adult entertainment uses. He commented that the subject property does not comply in this area either. He stated Blue Rose, Sharky's, and Concessions are operating as adult businesses and the subject property is not farther than 300' from Sharky's or Blue Rose. Mr. Glass commented there is an obvious reason for the spacing requirement being in Use Unit 12a as oppose to Use Unit 12. He further commented that restaurants in Use Unit 12 where the bar is an accessory use, obviously is viewed differently by the Planning Commission and the members of City Council. Mr. Glass stated a Use Unit 12a where the bar is the primary and only emphasis of the facility. He further stated that the subject property creates a totally different makeup and a totally different impact/demand on parking. He commented the subject property as a Use Unit 12a also impacts the policing of the area and there are separate use units for that obvious reason. He suggested that the application was not advertised properly, because there is nothing about a request for a variance from the spacing requirement. He stated that Sunset Grill was located on the subject property for years, but it was Sunset Grill with the obligation to run as a restaurant and bar. Mr. Glass stated that two wrongs do not make a right and the subject night club is the same situation as with ICON. He informed the Board that they now have an opportunity to do something about a subject property that does not conform properly. Mr. Glass stated that the area cannot handle five or six hundred additional cars. He further stated that the subject property has historically operated under Use Unit 12 and they are asking for a change in use, because it is truly going to be operated as a change of use, an adult entertainment establishment. He commented the subject property may possibly comply with the parking count, but they do not comply with the spacing. Mr. Glass stated he formally opposes this application for the reason of the spacing requirement and it is a change in use. He further stated that other businesses that has changed the use has had to buy additional parking and meet new Code requirements/criteria. Mr. Glass commented that this project is out of scale for Brookside and the area cannot handle the project. He indicated that Pam Deathridge, District Zoning/Planning Co-chair, was concerned about this application.

**Comments and Questions:**

Mr. Beach stated Ms. Deathridge did not send a letter, but he did speak with her on the phone and her comments have been included in the Staff comments.

**Protestants:**

John Judd, President of Brookside Neighborhood Association, stated the associations concerns are over changing the use and setting a precedence. He further stated the property has operated under Use Unit 12 in the past. He commented the main concerns of the association are complaints received from several people in the neighborhood about excessive noise and excessive trash. He indicated that activity has increased within the two block area late at night. He explained that there is an outside band, which annoys people up to three (3) blocks away. Mr. Judd stated there

is a lot of parking on the side streets and increase in trash, broken glass, etc. He felt that the approval of this application that allows 720 occupancy will only impact the neighborhood more.

**Applicant's Rebuttal:**

Mr. Johnsen stated that Mr. Glass does not have the facts as to how this has been operated. He reiterated that January 1993, is the date that the City required the parking to be in compliance. He stated as of January 1993, and the years prior to 1993, this subject property was operated as a night club, not a restaurant. He referred to his earlier statement that the 1991 yellow pages list the Sunset Grill, former owner of the subject property, as a night club and not a restaurant. Mr. Johnsen indicated that businesses such as the Full Moon Cafe are listed under night clubs and restaurants. He addressed the spacing requirement and stated that the subject property is nonconforming and the Code did not have the retroactive provisions as to spacing as it did to parking. He reiterated that the use to the subject property has not changed and it is purely a parking issue, which the subject property must be in compliance one (1) year after the 1993 date. He expressed the opinion that the advertisement for this application is sufficient and Mr. Glass's objection is a technical one that is ill advised and not correct. Mr. Johnsen stated that the noise in the neighborhood increasing over recent months could be true since Brookside has increased in activity because people like to go down there for the ambiance. He further stated the nearest thing to the east side of Peoria, which is what the protestant is referring to is the Blue Rose Cafe and they do have outside music on the corner with no parking, perhaps three or four parking spaces. He indicated that if there is any noise in the neighborhood to the east he suspects it is coming from some other establishment than the subject property. Mr. Johnsen concluded that the subject property meets the technical and spirit of this ordinance. He further concluded it is not right to a business that has been there for years and years to effectively say that you have to close.

**Comments and Questions:**

Mr. Dunham asked if the only action the Board is to take today is the off-street parking requirement? Mr. Johnsen agreed with Mr. Dunham.

Ms. Abbott stated the Board needs to determine if the subject property is conforming or nonconforming.

Mr. Gardner stated that the ordinance under Section 1408, Adult Entertainment Establishments, sets forth the requirements for Adult Entertainment Establishments. He further stated there are only two conditions which you have to meet within one (1) year. 1) If your public entrance door is within 50' of a residential area. 2) If you are within 300' of a residential area then you must meet the parking requirement within one (1) year or go to the Board of Adjustment and seek a special exception ... "The Board of Adjustment may as a special exception reduce the number of required off-

street parking spaces on a lot or may allow the required off-street parking on a lot other than the lot which contains the business so long as the off site parking is within the owner's control, accessible, convenient and safe for patrons."

Ms. Abbott asked Mr. Gardner if it has been determined that the subject property is a nonconforming use? Mr. Gardner explained that Mr. Johnsen has offered proof that it has been a night club prior to the ordinance change, even though it had the term "Grill" in its name. He stated if the Board is satisfied then that is enough proof. The subject use would have to relocate if they could not satisfy the Board as to parking. Mr. Gardner expressed that in his opinion the only issue before the Board is the parking issue.

Mr. White asked Mr. Gardner with the 720 stated capacity what would the parking requirements be for the subject property? Mr. Gardner stated the parking requirements are based on one space per 75 SF of floor area. With 9000 SF it would calculate to 120 parking spaces. He further stated that if the subject property has 120 parking spaces then he meets the requirement of the Code. It does not mean that there might not be more people coming to the facility than you have parking.

Mr. Bolzle asked Mr. Johnsen if there was any outdoor activity on the subject property? Mr. Johnsen stated the subject property has a small area on Peoria that is open air and there are a few tables with a live band, which is audible on Peoria. He further stated there is also a band inside and neither band can be heard from the southern or western point of the parking area.

Mr. Bolzle asked Mr. Johnsen if there are activities going on in the parking lot? He answered negatively.

Mr. Bolzle asked Mr. Johnsen if the Board was inclined to approve the application would the applicant agree to a condition that there be no club or music activities conducted in the parking lot? Mr. Johnsen stated his client would agree to that condition.

Case No. 17504 (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 allow required off-street parking on a lot other than the lot containing the business to allow a nonconforming use unit 12a. **SECTION 1408.B. ADULT ENTERTAINMENT ESTABLISHMENTS**; per plan submitted; subject to there being no activities other than parking in the parking lot; finding that the approval of this application will not be injurious to the area, nor harmful to the spirit and intent of the Code, on the following described property:

Lots 55 and 56 of Burgess Acres Addition and Lot 5 and the N/2 Lot 6 and the N 140 Lot 4 and the E 100 of the N 25 Reserve Area, Block 2, Peoria Gardens Addition, City of Tulsa, Tulsa County, Oklahoma.

**NEW APPLICATIONS**

**Case No. 17498**

**Action Requested:**

Special Exception to allow Use Unit 17 uses in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17, located 1403 North Utica Avenue.

**Presentation:**

The applicant, **Pat Forsman**, 1403 North Utica, stated he applied in April for a building permit under Use Unit 15 and built the building. He further stated the tenant has moved in and when he applied for the occupancy permit the Fire Department informed him he needed Use Unit 17. He requested a special exception for Use Unit 17 in a CS district. Mr. Forsman informed the Board that the building meets all of the building Code requirements.

**Protestants:** None.

**Comments and Questions:**

Mr. Gardner pointed out to the Board that the light industrial zoning located to the west and south of the subject property allows Use Unit 17 by right.

In response to Mr. Gardner, Ms. Abbott asked the Staff why this case is before the Board? Mr. Gardner explained that his statement was for the Board's consideration while reviewing this application. He further explained that all of the applicant's neighbors to the west and south can have Use Unit 17 by right because they are zoned IL, however Mr. Forsman is zoned CS.

In response to Mr. White, Mr. Gardner stated the Board can restrict the Uses in 17 that would be appropriate for the area. He further stated if the applicant wants to sell cars in this area, there is another provision in the Code that states:...it must be more than 300' from a residential area. Mr. Gardner explained that the applicant would have to ask for the variance to allow the car sales. He further explained that when the Board makes an exception and determine that the use is appropriate for the area then you are taking in consideration all of the land use. He stated that if the Board thinks the use is appropriate for the area, even though technically he would have to come back for a variance, in effect you are saying it is appropriate.

Mr. Forsman stated there is no residential in the area, however the balance to the east along Oklahoma Street is residentially zoned, but the lots are vacant except for one home, which he owns that is zoned CS. He further stated he owns the balance of the property to Wheeling except for one home located 75' from Wheeling. He explained the area is vacant and desolate.

Ms. Abbott asked the applicant what his principal business is? He stated the business on the subject property is a car repossession office and company. He further stated he is the landlord and this is not his business. He understands that the principal business is that the leasee repossess cars and bring them in to clean the personal effects out and deliver the repossessed car to the lenders or to a lot out on 244. Mr. Forsman stated that this is not a long term storage with vehicles with broken windows, etc. He explained that the car is kept overnight, then cleaned the next day and taken to the place of storage. Mr. Forsman stated the leasee does have a couple of cars for sale, which goes hand in hand with his business and it is compatible with the area.

Mr. White asked the applicant if there is a commercial auto detailing on site as the sign states on the building? Mr. Forsman stated there is a temporary sign that says auto detailing and the owner does do detailing when he cleans the cars before they go to storage.

Ms. Turnbo asked the applicant if the detailing is open to the public? He commented he thought the public could have their cars detailed at the subject property.

Ms. Abbott stated the car sales is the issue at this time. Mr. Forsman stated the car sales is secondary to the principal use and it goes with the type of business the leasee is doing.

Case No. 17498 (continued)

In response to Ms. Abbott, Mr. Forsman stated the original special exception was for Use Unit 15, which is construction services and he had intended to lease the building to a trade such as a concrete finishing company, etc., where they would have employees who would park their cars on the subject property and take the company trucks to the work site. He commented he did not think there would be any more automobile activity under Use Unit 15 in which there could be 10 to 15 employees leaving their cars. He further commented that as he understands it, Use Unit 17 should cover everything the leasee is wanting to do on the subject lot.

Mr. Gardner explained that the Staff would support with re-zoning the subject property IL, because it would be consistent with the surrounding zoning, but he is before the Board asking for permission.

In response to Mr. Gardner, Mr. Forsman stated he would be glad to make an application to re-zone to IL, but the special exception is quicker and cleaner. He further stated the property in this area is not particularly valuable and the cost of re-zoning, when he is already surrounded by the zoning he needs, is more expensive and timely.

Mr. Bolzle stated he thought the Planning Commission would prefer to see Use Unit 17 on a CS rather than open this small lot up to any number of uses that might be allowed by right in IL. Mr. Bolzle further stated this request is a better solution for the neighborhood, because it is more limiting to the uses that are allowed there rather than a rezoning.

**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 **Special Exception** to allow Use Unit 17 auto sales in a CS district. **SECTION 701.**

**PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17; finding that the approval of this application will not be injurious to the area, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 13 & 14, Block 2, Carpenter's 1st Addition, City of Tulsa, Tulsa County, Oklahoma.

## **Case No. 17500**

### **Action Requested:**

Variance to construct additional sign on property (165' street frontage) one sign existing on Garnett. **SECTION 1221.C.9.a. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, a Variance of height limit from 25' to 40'. **SECTION 1221.D.1. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, and a Variance of the setback for a sign from a R district from 50' to 3'. **SECTION 1221.C.1.a. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, located North of the NW/c of North Garnett Road & East of I-244.

### **Presentation:**

the applicant, **Steven Mendenhall**, owner of Mendenhall Real Estate Group, submitted a plot plan (C-1), graphics layout (Exhibit C-2) and stated two months ago he completed the New Country Inn and Suites Motel located at 1034 North Garnett Road. He further stated that when he built the motel he installed a sign on Garnett road, but the motel is approximately 600' from I-244 and in a location where there are several other motels. He explained to the west of his property there is a 6 acre lot and to the north of his motel is a home owned by the corporation in a neighborhood that is becoming industrial. He further explained the 6 acres to the west, which is zoned RS, is under nonconforming use for an electrician and submitted photographs (Exhibit C-4). Mr. Mendenhall stated the neighborhood has approximately six (6) homes between an industrial area and motels. He requested the variance abutting the RS because of the six (6) acre tract. He commented that since the subject property is a nonconforming use he really did not need to request the variance. Mr. Mendenhall informed the Board that he submitted an application to the City of Tulsa for a sign and they have given him a reply as to what relief he would need from the Board of Adjustment. He submitted the response from the City of Tulsa (Exhibit C-3). He stated he needs the sign and the Days Inn, south of the subject property, had the same problem with their sign not being able to be seen from the Interstate, which the Board approved a variance to allow the Days Inn sign.

### **Comments and Questions:**

Mr. Bolzle asked the Staff if they determined the applicant would need a variance of the allowable area? Mr. Beach stated he thought the applicant would need a variance of the allowable area. He further stated that the applicant is allowed to have 165 SF of ground signs on the subject property and the proposed sign exceeds the allowed square footage.

In response to Mr. Beach, Mr. Mendenhall stated that he is actually allowed 330 SF, but if you go to two signs then the allowed is 165 SF per sign.



Case No. 17500 (continued)

Mr. Beach stated INCOG received the application without any direction from public works or the sign inspector. He further stated there are several problems with the application as it is presented, which are pointed out in the staff comments. He pointed out the first problem is the spacing, which allows one sign for every 150 LF.

Mr. Bolzle advised that the City of Tulsa stated the action required is only for display surface area and that the applicant is allowed two signs provided that the display surface area is varied, which is what the Staff comments say. Mr. Bolzle stated the City of Tulsa didn't state any requirement for the height variance.

Mr. Mendenhall stated he made his own application and then INCOG rewrote the application because they stated the wording was incorrect. He further stated that the application that was filed was actually written by INCOG and they told him how to file the application for the needed relief.

Mr. Bolzle informed the applicant that regardless of whose mistake it is, he will need to be publicly advertised for the relief of the surface area variance. Mr. Mendenhall asked if he needed to make a new application? Mr. Bolzle stated no, that he just needed to amend the application and re-advertise.

Mr. Beach suggested that Mr. Mendenhall amend his application and re-advertise. He further suggested that he review what the sign inspector stated and amend the application to match the sign inspectors statement.

**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. 17500 to October 22, 1996, at 1:00 p.m. to enable the applicant to amend his application and review the sign inspectors suggested relief needed.

**Case No. 17501**

**Action Requested:**

Variance of the maximum allowable height of 4' for a fence in the required front yard to allow an 8' fence. **SECTION 210.B. YARDS** - Use Unit 6, located 234 East 54th Street North.

**Presentation:**

The applicant, **Mary Lee Whitehead**, 234 East 54th Place North, submitted a drawing (Exhibit D-1) and stated she wants to keep her 8' fence because she needs it for security. She further stated there is vandalism in the neighborhood and she is trying to repair her burned out home. Ms. Whitehead explained she is having trouble with contractors and haven't been able to complete the repairs. She further explained she has had her windows stolen three (3) times in the past.

**Comments and Questions:**

Ms. Abbott asked the applicant if the bottom portion of her fence is concrete or brick? She stated on the front, yes.

Ms. Abbott asked the applicant how high the brick or concrete fence measures? She stated it is 3' and she is going to put 5' wrought iron on top of the concrete or bricks.

Ms. Abbott asked the applicant how high the fence measures on both sides of the house? She stated it will be 8' with blocks all the way through.

Ms. Turnbo asked the applicant if that would be concrete blocks? She answered affirmatively.

Ms. Whitehead stated she wants to make it as hard as possible for anyone to get over her fence.

Ms. Abbott asked the applicant if the fence is 8' from the front of her property line and all the way down the side? She stated just out a little from the house.

**Protestants:**

Francis Jones, 238 East 54th Place North, submitted photographs (Exhibit D-3) and stated the fence is 8' and is made of brick all the way down. She further stated her back door faces to the west and her view is totally obstructed to the west. She explained the only way she can see to the west is to go out to the curb. She further explained that you cannot see her house when you are coming from the west to the east until you are at her driveway. She expressed concerns that if her house should catch on fire, no one would see the fire until it was too late. Ms. Jones stated it is dangerous to pull out of her driveway because she has to have her car half way out of the driveway to see around the fence. She commented the subject property was burned out about seven (7) years ago and she felt that any improvements should be done to the house, not a fence. Ms. Jones stated she had a contractor look at the brick/cement fence and was told that the fence was not built with steel reinforcements.

She further stated her contractor told her a strong wind could blow the fence down into her yard and home. Ms. Jones explained that the chain link fence has been taken down and her connections to the fence was dropped on the ground. She further explained that where the man put the cement fence up, there is concrete all down the side and it does not allow her to cut her yard because it dried.

**Comments and Questions:**

Ms. Abbott asked the protestant if she was directly east of the subject property? Ms. Jones stated she was east of the subject property and they are neighbors.

Mr. Dunham asked the protestant how long the fence has been erected? Ms. Jones stated the fence has been built within the last six months.

Ms. Turnbo asked the protestant how tall her chain link fence is? Ms. Jones stated her chain link fence is 3' or 3 1/2'.

Mr. White asked the protestant how long she has lived in her home? Ms. Jones stated she has lived in her home 20 years.

Mr. White asked Ms. Jones how long the subject property had been two-story? She stated approximately 13 or 14 years. She explained that the house was burned out approximately seven (7) years ago and no one lives there now.

Mr. White asked the protestant how long has it been abandoned? Ms. Jones stated the house has been unoccupied since the fire.

**Protestants:**

Algerita Brooks, 4726 North Frankfurt Avenue, Co-Chair District 25, stated the neighbors in the subject area called her in regards to this application. She further stated that she visited with Ms. Hunt, who lives west of the subject property, and submitted photographs (Exhibit D-3) regarding this application. Ms. Brooks commented the second story was probably built in violation of Code and the 8' to 12' retaining wall/fence are all in violation of the Code.

**Comments and Questions:**

Ms. Abbott asked Code Enforcement if they reviewed the subject property? Mr. Ballentine stated he went to the site and submitted pictures of the wall (Exhibit D-2). He further stated there was a letter for a clean up on the property since the property is not occupied and there are no commercial services. In response to the applicant, Mr. Ballentine stated he would have to stand corrected, but when he checked the home there were no services. He commented that since the applicant states there are services he will have to accept her word. Mr. Ballentine stated the property needed to be tended.

Case No. 17501 (continued)

Ms. Abbott asked Mr. Ballentine where the fence was in violation, is it in violation all the way around? Mr. Ballentine stated the fence is in violation from the front part of the house where it is over the 4' height. One portion of the fence is over 10' adjacent to the front part of the house. He explained the fence tapers down to 3' tall concrete blocks and brick combination up front with additional 5' steel on top of that, which makes it a total height of 8 1/2' to 9' tall.

Ms. Abbott asked Mr. Ballentine if the fence is taller in the rear of the subject property? He explained that he is not allowed to access the rear of the property and that his observation is from the street. He commented that he could see down the side of the house and it appeared to be at least a 6' fence on the east and west side of the property.

**Protestants:**

Jane Malone, President of Chamberlain Area Neighbors, stated she wished it were possible for all of the Board members to go out and see this house and fence. She informed the Board that she went to view the subject property for herself and could not believe it. Ms. Malone commented that whoever lives at the subject property is either extremely scared or she does not want people to see in the yard. She stated it was important to continue to enhance the looks of the neighborhood and the approval of this 8' fence in the front will not enhance the neighborhood. She requested, on behalf of the Chamberlain Area Neighbors, that the Board deny this application. She stated the allowable height is 4' for a fence in the front yard and this applicant wants a fortress. Ms. Malone expressed concerns that the fence and burned out home is a habitat for vermin. She explained the fence was made of cement blocks, wrought iron, wood and a large cement poodle on top of a pole. She commented the applicant is ignoring building codes by building a fence that is a disgraceful eye sore in the community. Ms. Malone informed the Board that the address given on Ms. Whitehead's application as a residence, 3606 North Peoria, is a vacated service station. She asked where does the applicant truly live and what is it she is trying to secure with this fence. Ms. Malone expressed the opinion that the applicant's residence should be condemned. She expressed concerns that the subject property could be hazardous to children who would be attracted to the property out of curiosity. She explained that the house is close to two (2) Tulsa Public Schools.

Virginia Franklin, 2455 North Cheyenne, representing the Reservoir Hill Addition, stated she looked at the subject property. She further stated the fence is an environmental monstrosity. Ms. Franklin expressed concerns for the neighborhoods in North Tulsa being deprived and felt the fence on the subject property does not enhance the area. She stated that by placing the fence on the subject property in the manner it was constructed is not respectful to the neighbors in the area. She further stated the houses surrounding the subject property is well groomed and people are trying to update their property. Ms. Franklin requested the Board deny this application.

**Applicant's Rebuttal:**

Ms. Whitehead stated she just wants to be left alone by all of the neighbors and dope dealers. She further stated the reason she built such a tall fence is to keep the neighbors and dope dealers away from her.

**Comments and Questions:**

Ms. Abbott asked the applicant if she occupies the residence? Ms. Whitehead stated she lives in the home sometimes and sometimes she stays with relatives. She explained she works long hours at her new job and she is trying to fix her house up.

Ms. Abbott asked Ms. Whitehead where her permanent residences is located? She stated she intends to stay at the subject property because she cannot afford to buy another house.

Ms. Abbott asked Ms. Whitehead where is she living presently until the house is livable? She stated she stays with her relatives or, on the subject property.

Ms. Abbott asked Ms. Whitehead if she had a building permit to do the renovations to the home? She stated she had one and they pulled it or something. She further stated she has to get another permit to finish the home.

**Comments and Questions:**

Ms. Turnbo stated her opinion is to deny this variance because she does not see a hardship to have over a 4' fence in the front yard. She further stated the Code allows for 4'.

Mr. Dunham stated he agrees with Ms. Turnbo.

Mr. White stated there was nothing over 4' in the entire area in the neighborhood and he is inclined to deny this application.

Mr. Bolzle stated Ms. Turnbo's comment is correct and this would require a hardship, which there has to be something peculiar about the property. He commented he did not find anything peculiar about the property and the applicant has failed to express why the fence is necessary. He further commented that in the neighborhood, all of the lots are the same size and shape.

**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 **DENY** a **Variance** of the maximum allowable height of 4' for a fence in the required front yard to allow an 8' fence. **SECTION 210.B. YARDS** - 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 61, Valley View Acres III, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17502**

**Action Requested:**

Special Exception to permit the property to be used for public library purposes (Use Unit 2). **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS**, and a Variance of the required minimum frontage on a nonarterial street from 50' to 22' to permit a lot split. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 2, located East 32nd Street & East 32nd Place, West of South Jamestown Avenue.

**Presentation:**

The applicant, **Charles Norman**, 2900 Mid-Continent Tower, representing Tulsa City/County Library System, submitted a survey (Exhibit E-1) and stated the purpose of the application is to permit the relocation of the Florence Park Branch of the library system to the property located between 32nd Street and 32nd Place. He submitted photographs of the property (Exhibit E-2). He further stated the property fronts on two (2) streets. Mr. Norman explained the Library Commission proposes to buy the site with an existing building and renovate with an expansion to the existing building. He further explained the Library Commission has acquired a vacant lot on the north side of the subject property for additional parking. He informed the Board that the property is zoned within the CS and CG zoning district, but under the zoning Code a library is a Use Unit 2 use, which requires approval regardless of the district the library is located in. Mr. Norman requested an approval for a special exception to permit the library use in a CS and CG zoned district. He stated the second part of this application is complicated and referred to the reduced copy of the survey that was filed with the application. He explained in 1962, when the library system was created, the City leased properties that were owned by the City of Tulsa on a 99 year lease to the City/County Library System, which Florence Park is part of the library system. He further explained in order to transfer the property to relocate Florence Park branch, the City of Tulsa is going to trade the land and building on 21st Street for Tract B. He stated the City had an appraisal made of Tract B and of the Florence Park Library system and Tract B did not equal in value to the 21st Street property. Consequently

the trade was adjusted so that the City would acquire Tract B and Tract C in order to make the trade the same dollar value, which would be required for public transfer of property. He explained that Tract C is only 22' wide and therefore requires approval of a variance to create a separate lot 22' wide fronting on East 32nd Place. He stated the use of the property will be for a single branch library and Tracts B/C will be leased by the City to the Library Commission for the remainder of the 99 year original lease, which will not expire until about 2062. Mr. Norman asked the Board to approve the request for a variance for the 22' lot which will be owned by the City of Tulsa, in lieu of the usual tie agreement, subject to a long term lease by the City to the City/County Library Commission for use as library purposes. He explained that the approval of the variance, along with the requested condition, will effectively tie Lot C to Lot A. He further explained that if the trade had been accomplished as originally conceived the variance would not have been needed. Mr. Norman stated the trade has been approved by the Mayor of Tulsa, City Council and the Library Commission has approved the acquisition of the subject site for the new branch library.

**Protestants:** None.

**Comments and Questions:**

Ms. Turnbo asked Mr. Norman if Tract A and Tract C will have a lease with the Library Commission? He corrected Ms. Turnbo and stated that Tract B and Tract C will have the lease with the Library Commission. He stated the Library Commission is buying Tract A out of the proceeds of the millage levee and substantial gift that has been made by the Shusterman Foundation, plus some bond fund proceeds for library purposes.

Mr. Norman reiterated that he is asking for two things, A B & C for use as library purposes and a variance to permit Tract C to be created as a separate lot owned by the City of Tulsa subject to it being leased to the Library Commission for a long term use as a branch library.

**Board Action:**

On **MOTION** of **TURNBO**, the Board voted 4-0-1 (Bolze, Dunham, Turnbo, White, "aye"; no "nays" Abbott "abstention"; no "absent") to **APPROVE** a Special Exception to permit the property to be used for public library purposes (Use Unit 2). **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS**, and a Variance of the required minimum frontage on a nonarterial street from 50' to 22' to permit a lot split. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 2; subject to library use only; subject to Tract B and C being a long term lease (2062) to the Library Commission; subject to the development standards and restrictions of the CS district; finding that the approval of this application will not be injurious to the area, nor harmful to the spirit and intent of the Code; on the following described property:

Case No. 17502 (continued)

Beginning at the SW/c of Lot 1, Block 1, Granada Addition; City of Tulsa, Tulsa County, Oklahoma; thence N0°00'00"E for 130.00'; thence S89°56'00" for 128.00'; thence S0°00'00"E for 130.00'; thence N89°56'00"W for 128.00' to the POB; and Beginning at the NW/c of Lot 11, Albert Pike 2nd Sub.; City of Tulsa, Tulsa County, Oklahoma; thence S89°56'00"E for 75.00'; thence S0°00'00"E for 140.00'; thence N89°56'00"W for 75.00'; thence N0°00'00"E for 140.00' to the POB. Commencing at a point that is SW/c, Lot 1, Block 1, Granada Addition; City of Tulsa, Tulsa County, Oklahoma; thence S89°56'00"E for 128.00' to the POB; thence N0°00'00"E for 130.00' to a point; thence S89°56'00"E for 22.00'; thence S0°00'00"E for 130.00'; thence N89°56'00"W for 22.00' to the POB; City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17503**

**Action Requested:**

Variance of the allowable accessory building from 750 SF to 912 SF. **SECTION 402.B.1.d. ACCESSORY USES IN RESIDENTIAL DISTRICTS** - Use Unit 6, located 16403 East 1st Street.

**Presentation:**

The applicant, **Robert Gary West**, 16403 East 1st Street, submitted a site plan (Exhibit F-1).

**Comments and Questions:**

Mr. White informed the Staff that the subdivision for the subject property is Rose Dew II instead of Rose Dew.

Mr. White asked Mr. West if the two existing buildings on the property will be removed? Mr. West stated one storage building will be removed, but the building on the back of the lot will remain.

Ms. Turnbo asked the applicant how many square feet did the building on the back lot have? He stated the building is probably 8' x 10' with 80 SF, maybe.

Mr. White stated the building on the back of the lot would have about 200 SF.

Ms. Turnbo asked the applicant what his proposed building would be used for? Mr. West stated it would be used for storage.

In response to Ms. Turnbo, the applicant stated there would not be any electricity or running water hooked up to the proposed building.



Case No. 17503 (continued)

Mr. White stated the sketch Mr. West submitted states shop on the proposed building. Will it be a shop or storage? Mr. West stated it would be a storage building.

Mr. Gardner stated that one of the things the Board looks at when they are asked to approve an oversized accessory buildings is does the applicant have an oversized lot, but that is not the case with this application. He reminded the Board that the request does require a hardship finding since it is over 750 SF. Mr. Gardner stated the applicant would be entitled to build an accessory building, the total of all accessory buildings could not exceed 750 SF.

Mr. Dunham asked if the applicant had another accessory building besides the proposed building? Mr. White stated the accessory building on the back of the lot has 213 SF.

Mr. Dunham commented that the request is for 912 SF, but it actually measures to be 1012 SF. Mr. White concurred with Mr. Dunham.

Mr. Bolzle stated the applicant is not properly advertised for the 1012 SF variance.

Ms. Turnbo asked the applicant if he understood that he is only allowed 750 SF total for accessory buildings? She explained that if the applicant subtracted his existing 213 SF from the 750 SF allowed, there would only be 543 SF allowed.

Mr. Gardner stated that if the Board is not inclined to grant the variance, then Mr. West can build a building that meets the Code and he doesn't have to come back before the Board.

Ms. Abbott stated she is not inclined to grant the applicant a variance because the lot is only 9800 SF and his house is probably about 1200 or 1300 SF, so by granting the applicant a variance of 912 SF plus 218 SF, we are granting him a variance for an additional accessory building storage that is equal to or may even be greater than the size of his house. She commented that the approval of this variance would be unreasonable for such a small lot.

**Protestants:** None.

**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 **DENY** a **Variance** of the allowable accessory building from 750 SF to 912 SF. **SECTION 402.B.1.d.**

**ACCESSORY USES 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:

Case No. 17503 (continued)

Lot 12, Block 11, Rose Dew Addition; City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17505**

**Action Requested:**

Variance of the required setback from 11th St. from 50' to 35' to erect a new sign.

**SECTION 1221.C.6. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, located 2918 East 11th Street.

**Presentation:**

The applicant, **Bruce Anderson**, 9520 East 55th Place, representing Arby's Restaurant, submitted a site plan (Exhibit G-1), plot plan (Exhibit G-2) and photographs (Exhibit G-3). Mr. Anderson stated he would like to request a variance to install an Arby's sign at the new location. He referred to the pictures submitted and stated that the pictures were taken looking to the east and to the west from the approximate location of the proposed sign. He pointed out that looking to the west is the Coney Island Restaurant, which has a sign setting 25' from the centerline of the street and the building sets at 45' from the centerline of the street. Mr. Anderson indicated a Quik Trip is located to the east of the subject property and their sign is 30' from centerline of the street. He stated that if Arby's has to move their sign back to the 50' setback from the centerline of the Street, the pole for the sign would be 60' back into the property. He commented if the Arby's sign is setback to 60' the sign will be totally blocked from the east and west. He further commented in past history, Case No. 14474, there was a variance granted to allow a sign to be located 33' from the centerline on the subject property. He explained that the relocation of Arby's is due to the TU expansion.

**Comments and Questions:**

Ms. Turnbo asked the applicant to come forward and show her the 35' setback and is the 50' setback on the picture he submitted?

Mr. Anderson demonstrated to the Board the proposed site for the sign versus the 50' setback from the centerline.

Mr. Anderson explained that the actual pole for the proposed sign will be setting at 50', but the signs edge will be 35'.

Ms. Abbott asked Staff what the hardship for the variance that was granted for Case No. 14474?

Case No. 17505 Continued)

In response to Ms. Abbott, Mr. Gardner stated the way the Code is written, it anticipated that the City would own all of the right-of-way that shows in the plan. The plan calls for 50' and obviously the City only owns 30' on part of this lot, 35' on the other part of the lot. He commented the City is not going to buy all of the businesses just to widen the street and it is as wide as it is going to get. Mr. Gardner stated that the way the ordinance is written, it applies not only to the subject property, but to the new areas as well. He further stated the setbacks are required to be at 50' or 60' from the centerline, depending on the type of street. He concluded that when an applicant comes before the Board in an older area, the Board needs to take that fact into consideration. Mr. Gardner stated the hardship is the fact that the City has imposed a regulation over and above the amount of right-of-way they own in the area.

**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 setback from 11th St. from 50' to 35' to erect a new sign. **SECTION 1221.C.6. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING;** per plan submitted; finding that the City has imposed a regulation over and above the right-of-way that the City owns; finding the new sign aligns with other signs in the area and that the approval of this application will not be injurious to the area, nor harmful to the spirit and intent of the Code, on the following described property:

Lots 1, 2 & 3, Block 3, Pelchen Summit and Lots 1 & 2, Block 1, Signal Addition; City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17506**

**Action Requested:**

Variance to allow 2 dwelling units on a single lot of record. **SECTION 207. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**, a Variance of land area per dwelling from 8400 SF to 6,180 SF; a Variance of livability space per dwelling unit; and a Variance of required 5' side setback to 4'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS**, Use Unit 6, located 1407 South Evanston.

**Presentation:**

The applicant, **John F. Crowley**, represented by Tim Clark (owner), 4129 South Peoria, submitted a site plan (Exhibit H-1) and photographs (Exhibit H-2). Mr. Clark stated that he has owned the subject property for over 10 years and the property is an oversized lot. He further stated he proposes to move a house that he owns at 1530 South Peoria and move it onto the subject property. Mr. Clark explained the house is very much like the architecture, size and age of the neighborhood. He further

explained the southern end of the neighborhood is basically commercial and then single-family dwelling for the most part, with a couple of multi-family dwellings in the neighborhood. Mr. Clark commented that the lot appears to be large enough with the calculations he has used and it is very typical for an infill development to have setbacks and easements this size on each side of the house.

**Comments and Questions:**

Ms. Turnbo asked the applicant when the house is moved in, will the two houses share the driveway? He stated he could either put a new drive in for both houses or they could share a driveway with each having a separate garage in the back.

Ms. Turnbo asked the applicant if his proposal on driveways meet the Codes, setbacks and livability? Mr. Clark stated he is asking for a livability waiver and the lot that is created is again typical for the neighborhood, although it does not conform to the proper livability standards today.

Mr. Beach informed the Board that the Code requires that there be two off-street parking spaces for every single-family dwelling. He stated the Staff would be curious to know what the resulting livability space is, because the applicant did not state the relief needed in his application.

**Protestants:**

Elaine Lambert, 8106 North 122nd East Avenue, Owasso, stated she is representing her 92 year old grandmother who lives directly south of the subject property. She commented that her grandmother is easily distracted by activity in the area and it could devastate her life. Ms. Lambert stated her grandmother has lived next to the vacant lot forever and now Mr. Clark wants to come in and build over the 5' setback, which will be crowding her grandmother's property. She further stated that if the applicant puts two homes on the 50' lot, there will not be enough room for a driveway. She explained that most of the homes in the area are built in the middle of two 50' lots and they are small two bedroom homes.

**Comments and Questions:**

Mr. White informed Ms. Lambert that the proposed lot is 75' wide, because there are three 25' lots in this application. Ms. Lambert stated she wasn't aware of the three lots. She further stated the applicant still wants to come over 1' closer to her grandmother's property.

Mr. Beach informed Ms. Lambert that the 1' reduction is from the north side property line, which is the house that is already existing.

Case No. 17506 (continued)

Ms. Abbott asked Staff why the applicant wasn't asking for a lot split? Mr. Beach stated this is how the applicant presented the application and there is no lot split pending.

Mr. Gardner stated to the Board that if the applicant plans to finance the house separately, he will need a lot split? Mr. Gardner asked if the house will be moved in and he would own the whole lot and maintain it as two houses on a lot?

Ms. Lambert expressed concerns that the two houses will be rental homes. Ms. Turnbo explained to Ms. Lambert that the Board has no control over whether a home is rental property.

Kay McHenry stated she is a sister to the 92 year old grandmother that is protesting this application. She expressed concerns about the actual size of the vacant lot and the possibility of encroaching her sister's lot.

Mr. Dunham stated he did not measure the lot, but it looked to be larger than 25'. Mr. Dunham asked if the applicant knows how wide the vacant lot is?

In response to Mr. Dunham, Mr. White stated there is a drawing indicating the size of the vacant lot.

Mr. Gardner stated the drawing shows that all of the addition was platted into 25' lots and the majority of the houses are setting on two lots, which is 50'. He further stated that the applicant has a house on each 37.5' portion of the lot and the Board needs to determine whether that is consistent with what the area use map indicates, each portion is one of the key factors to decide whether something is being over built. He explained that if there is not at least two off-street parking spaces for both houses then they will park in the street.

Mr. Beach stated the Staff doesn't have an adequate site plan to determine what the impact of parking would be to the livability requirement.

Mr. Dunham explained to Ms. McHenry that the easement will remain 5' next to her sister's home.

**Applicant's Rebuttal:**

Mr. Clark stated he would like to clarify that there is only going to be one additional house on all three lots. He further stated that between the proposed house and Ms. Cates (92 year old grandmother) there is 13' total with 5' to the property line. He commented that he contacted Mr. and Mrs. Harold Burshen, President of Renaissance Neighborhood Association, who is in favor of this application.

**Comments and Questions:**

Ms. Abbott asked the applicant if the house that is existing sets within two contiguous lots? He answered affirmatively.

Ms. Abbott asked the applicant which two lots the house sets on? He stated 44 and 45.

Mr. Dunham asked the applicant about the livability space in the yard and parking? He stated 5200 SF versus 6100 SF and between those two is pretty average amount of livability for the neighborhood. He explained the only thing he did not anticipate is the additional parking, but that will not be a problem to add two spaces to the new location, which he would do anyway to make it feasible.

Ms. Turnbo asked the applicant where he was planning to add the two parking spaces for the proposed house? He stated he intended to replace the drive and go up the middle of the houses with parking in the rear of both houses.

Ms. Abbott stated she cannot see a hardship for this application and asked Staff why the applicant is not applying for a lot split?

Mr. Gardner stated the applicant cannot achieve a lot split without a variance of the ordinance because he would have to split a 25' lot into two 12.5' pieces added to the other 25' and they still wouldn't meet the 60' requirement of the zoning districts. Mr. Gardner stated the Board needs to decide if the intensity is appropriate or inappropriate for the area and that is based on what else is seen in the surrounding area. He further stated that if the Board sees this kind of density in the area, then that is something to consider, and if you do not see this kind of density, then you have to ask what is the hardship. Mr. Gardner commented that the staff and applicant has pointed out that there are some smaller lots in the area. He informed the Board that they need to look at the map and area and determine if that is consistent or inconsistent.

Ms. Abbott stated she has a problem with the two dwelling units on a single lot of record.

Mr. Bolzle stated that actually the applicant is putting two dwelling units on three lots of record, except that the lots are substandard and couldn't be built on. He further stated the lots do not meet the yard requirements and so the applicant could get a permit to build a home on a 25' lot.

Case No. 17506 (continued)

Mr. Gardner stated that if your lot is nonconforming and these are all 25' lots, then technically the lots are buildable because they are nonconforming as to zoning. He further stated the applicant, from a practical stand point, could not build a house on a 25' lot because it would be almost impossible to design something that a person would want to live in.

Mr. Clark pointed out that on the same block of the proposed house and on several blocks in the area, there are several duplexes or even fourplexes, which is very consistent of the neighborhood. This proposal would make a good infill to complete the block.

Ms. Turnbo asked the applicant if he plans to lay a new hardsurface driveway that will extend to the back and build two garages? He stated he did not plan to build two garages, but he did plan to have hardsurface parking in the rear of the homes. He further stated he will be removing the existing garage.

Ms. Turnbo stated she had no problem with the application because these lots are nonconforming lots.

Mr. Dunham stated the application is not inconsistent with the area.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 3-2-0 (Dunham, Turnbo, White, "aye"; Abbott, Bolzle "nays" no "abstentions"; no "absent") to **APPROVE** a **Variance** to allow 2 dwelling units on a single lot of record. **SECTION 207. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**, a **Variance** of land area per dwelling from 8400 SF to 6,180 SF; a **Variance** of livability space per dwelling unit; and a **Variance** of required 5' side setback to 4'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS**, Use Unit 6; subject to there being two off-street parking spaces located in the rear of each home; finding that the lots are nonconforming due to the small size of the lots; finding that the approval of this application will not injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lots 43, 44 & 45, Block 7, Rosemont Heights Addition; City of Tulsa, Tulsa County, Oklahoma.

### **Case No. 17507**

#### **Action Requested:**

Special Exception to allow a nursing home/Alzheimer clinic. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located West of NW/c 36th Street North and Cincinnati Avenue.

#### **Presentation:**

The applicant, **Roy Johnsen**, 201 West 5th, Suite 440, has requested a continuance to October 8, 1996. Mr. Johnsen stated he has a companion rezoning on this property and the reason is that Westview Clinic is going to expand to include a home health care facility, which takes some form of commercial zoning where it is presently zoned residentially and an Alzheimer's Nursing Home Unit. He further stated the Alzheimer's Nursing Unit is a Use Unit 2 and he could proceed with the Use Unit 2 today, but he knows that the zoning is going to have to be corrected for the home health care. He felt that since the agenda is long today and if no one objects to the continuance, then he would rather continue the case to October 8, 1996.

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

Mr. Bolzle asked the Protestants if they objected to a continuance? The protestants stated they would not object to a continuance.

#### **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. 17507 to October 8, 1996, at 1:00 p.m.

### **Case No. 17508**

#### **Action Requested:**

Variance of the required hard surface parking to allow a gravel parking lot. **SECTION 222. MOTORIZED VEHICLES** - Use Unit 1217/1223, located 1111 South 129th East Avenue.

#### **Presentation:**

The applicant, **Paula Hamm**, represented by David Scott, submitted a site plan (Exhibit I-1) and stated that Mr. and Mrs. Hamm have entered into a lease with Allied Towing to have a tow in service for disabled vehicles. He further stated the Hamms are requesting a variance of the hard surface parking to allow a gravel parking lot. He commented that the State has inspected the subject property.



**Comments and Questions:**

Mr. Bolzle asked Mr. Scott what the reason for the request other than economics? He stated the main request is economics and this is not a long term lease. He commented that if for some reason Allied Towing would want to move then you have a paved lot with no use.

Mr. Bolzle asked Mr. Scott how long the vehicles that are towed stay on the site? He guessed that if they were towed in as a wreck, maybe 30 days or until the owner claims the car.

Mr. Scott stated there is another lot within a block that does not have paved parking and another lot within one (1) mile of the subject property that does not have the hard surface parking.

Mr. Dunham asked the applicant if the lot is already existing or are you asking to expand the lot? Mr. Clark stated it is a vacant lot with fresh gravel.

Mr. Gardner informed the Board that the applicant needs to be advised that this lot permits parking, but it is like customer parking or a B&B Lot. He stated the lot does not permit storage of automobiles. He explained that storage of automobiles requires Use Unit 23, Industrial zoning. Mr. Gardner stated that Use Unit 23 may be an exception of CG zoning and he may need some additional relief.

Mr. Bolzle stated that traditionally where the Board has waived the hard surface requirement, it has been for long term storage. He further stated the approval has been in situations where there wasn't a lot of coming and going, primarily heavy equipment dealers or trailer sales where vehicles were placed on site for long term and was not brought in and out. He explained that the approval has been because of the size and weight of the vehicle would destroy a hard surface lot. He commented this application is different. He further commented that this application borders on storage use.

Mr. Gardner stated the use of the property, if it is going to be used commercially, it must be screened on the south and part of the east boundary that is abutting residential. He further stated that since the applicant is advertised for a variance of the hard surface, he may also need to be advertised for Use Unit 23. Mr. Gardner stated that if the Board approves the gravel surface and he starts his business, Code Enforcement could come in and close him down.

Ms. Abbott asked the Staff if this application should be continued to allow for further advertising? Mr. Gardner stated that the applicant would probably want the additional relief so that he can use it legally and properly.

Case No. 17508 (continued)

Ms. Abbott asked the applicant if he would like to continue his case to October 22, 1996? He stated he would like to continue the case for advertising reasons.

**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 **CONTINUE** Case No. 17508 be continued to October 22, 1996 for additional advertising.

**Case No. 17509**

**Action Requested:**

Special Exception to allow a 150' telecommunications tower in an AG district.

**SECTION 301. PRINCIPAL USES PERMITTED IN AGRICULTURE DISTRICTS**, and a Variance of requirement for all-weather surface on parking areas. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 4, located East 54th Street North East of North Lewis Avenue.

**Presentation:**

The applicant, **Earl Higgins/John Kirby/Southwestern Bell Services**, 11529 East Pine Street, submitted a site plan (Exhibit J-1), photographs (Exhibit J-3) and stated he would like to erect a 150' monopole and an 8' x 16' building on the subject property.

**Comments and Questions:**

Ms. Abbott asked the applicant why he needed the 150' monopole height? He stated the RF Engineer picked this height to achieve the coverage necessary.

Ms. Abbott stated the Board received a protestant letter (Exhibit J-2) and stated the letter expressed concerns about the telephone service improving in the area and if the telephone lines will continue to go down during storms. Mr. Higgins stated that the letter is about telephone service and this application is for cellular phones.

**Protestants:**

Mr. Bill Conley, 5200 North Lewis, stated he opposes the cellular telephone being erected in his neighborhood. He further stated the neighborhood is only two (2) blocks long and from Lewis it dead ends. He explained that most of the people living in the area are long time homeowners and there are one or two rental properties. Mr. Conley stated the telecommunications tower interferes with plans for the future with some land he owns in the area. He explained that his son is presently living on the land and he plans to build a home on the same land, but he is reluctant to do so if the telecommunications tower is allowed in the area. Mr. Conley stated the proposed site for the telecommunications tower and concrete block building will be in the view of his front door. He commented that the view would not be very scenic. Mr. Conley stated

the area is zoned for farming and residential and he thought the telecommunications tower would need commercial zoning since it is commercial business. He further stated that it seems that this application is a foregone conclusion because they have gone to the expense of getting the property surveyed and putting stakes out. Mr. Conley commented he hoped that the telecommunications tower people could find another place to erect this pole. He informed the Board that the tower will be approximately 300' or less from Mr. Lewis's home and 40' from the property line. He further informed the Board that the same is true to his property. Mr. Conley expressed concerns that the tower would be too close to existing homes and property lines.

Mr. Jerry Lewis, no address given, stated he owns the property east of the site proposed, which is 5 acres. He explained that he intends to build his daughter a home on the five (5) acres and the tower will be within 75' of the home. He stated that it is very unsightly when you open your front door and you are under a tower. Mr. Lewis stated it is not in his best interest for the telecommunications tower to be erected at the proposed site. He commented that the owners of the property for the proposed telecommunications tower did not elect to put the tower close to their home, but put it as close to his home as they could. He requested that this application be denied.

**Applicant's Rebuttal:**

Mr. Higgins stated he approached both the protestants prior to approaching the Whitakers. He explained that the Whitakers own five (5) acres where the proposed site will be located. Mr. Lewis owns the next five (5) acres to the east, which is 330' wide and Mr. Conley owns ten acres to the south. Mr. Higgins stated the telecommunications company has to survey all the property to figure out where the proposed site will be located and it is done out of their own expense, but it is not done out of anticipating that the application will be approved. He commented that there have been times that the applications have been denied. Mr. Higgins stated that SW Bell Services try to make the site pleasing to the neighborhood. He further stated the building is not a concrete building, but a pre-cast aggregate building that is appealing to the eye. He explained that the proposed tower is a monopole telecommunications tower and will look like light standard poles, which you see at the interchanges of expressways.

**Comments and Questions:**

Mr. Dunham stated the entire five (5) acres was advertised and asked if there was any reason the tower couldn't be relocated away from the existing residential area? Mr. Higgins stated the tower site was located in the east away from the property owner's home and kept it away from the other property owners, but is on the property line. He further stated he could move the tower to the north, but it cannot go too far into the northeast direction because it is a floodplain area.

Mr. Dunham asked the applicant how much further north he could move the telecommunications tower? He stated approximately 200'.

Mr. Dunham asked the applicant if moving the tower 200' would move it farther away from the protestants? He stated it would move the tower further back into the property and it would be farther away from the protestants.

Ms. Abbott asked the applicant if by moving the tower 200', would that move it closer to any other houses in the area? He answered negatively.

Ms. Abbott asked Mr. Conley and Mr. Lewis if the new site proposal would be acceptable to them?

Mr. Lewis stated that a yes or no answer regarding the telecommunications tower is hard to give. He further stated that no matter how far back he places the tower, it will still be in his front door view. Mr. Lewis stated that no matter where they place the tower it will be next to his property line, but if the Board is inclined to approve then he would like the tower back to the north as far as they can place it.

Mr. Conley stated that his only reservation is that the telecommunications tower is going to create problems for other close neighbors if this tower is moved away from his property line.

Mr. Gardner stated that there is normally a 25' setback in an AG district, but people usually set their house back 50' or more. He further stated that where they are proposing this tower would be basically in the front yard and so if you built houses on either side it would be very close to them. He explained that if the tower was moved back in what would be the rear yard of those properties then it would not be the same esthetically as in the front yards of potential houses. He further explained that if you moved the tower toward the west boundary, then the houses that abut on Birmingham are much smaller lots and would be closer to the tower. He stated that if the tower was on the east boundary and at least behind any potential building, then it would be in the rear yard and have less effect than if it was in the front yard.

In response to Mr. Gardner, Mr. Higgins suggested the tower could be moved straight back north 200' from the road and that would be in the back yard of the properties.

Mr. Bolzle stated the Board has seen numerous telecommunication tower applications recently. He further stated he cannot recall a tower located this close to a residentially developed area. He commented that the towers are usually located in developed commercial areas, industrial areas, adjacent to office buildings, or in large opened 20 acre tracts. Mr. Bolzle stated the towers are usually far away from the potential developing residential areas.

Case No. 17509 (continued)

Mr. White stated that there are two towers located in the northwest of the proposed site in a similar density of residential neighborhood. He commented that both towers are taller than the proposed tower.

Mr. Bolzle stated that some towers were allowed by right until the change in the Code approximately two (2) years ago in the AG district.

Mr. Gardner stated that towers are permitted by right in a commercial or industrial district and they have a one to one setback from residential. He explained that if there was a 150' tower then the tower would have to setback 150' from the abutting residential lot. Mr. Gardner stated he did not mean to imply that the proposed site is appropriate, but that only if the tower was moved further to the north it would be more appropriate than what they are proposing.

Ms. Turnbo stated she agreed with Mr. Bolzle in that usually the towers are located in commercial areas or large acreage's and feel that this location is inappropriate.

**Board Action:**

On **MOTION** of **BOLZLE**, the Board voted 4-1-0 (Abbott, Bolzle, Dunham, Turnbo, "aye"; White "nays" no "abstentions"; no "absent") to **DENY** a **Special Exception** to allow a 150' telecommunications tower in an AG district. **SECTION 301. PRINCIPAL USES PERMITTED IN AGRICULTURE DISTRICTS**, and a **Variance** of requirement for all-weather surface on parking areas. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 4; finding that the applicant failed to present a hardship unique to the property that would warrant the granting of the special exception and a variance request; finding that the tower was too close to the single family lots; on the following described property:

S/2, W/2, W/2, NE, NW, Sec. 8, T-20-N, R-13-E, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17510**

**Action Requested:**

Variance of the floor area ratio from .5 to .61 for construction of a 3 story hotel/motel. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 19, located 3215 South 79th East Avenue.

**Presentation:**

The applicant, **Green Country Motel Investments, Inc.**, represented by Kalpesh V. Desai, 3215 South 79th East Avenue, submitted a site plan (Exhibit K-1), plot plan (Exhibit K-2) and stated there are other hotels in the area and there are other hotels being developed in the area presently. He further stated that the other hotels in the area have had to apply for this variance. He explained that he wants to make the best use of all the land and get the most rentable units developed on the site available.

**Comments and Questions:**

Mr. Gardner asked the applicant how much square footage his hotel will have? He stated the building will have 29,400 SF.

Mr. Gardner stated that if the applicant's property was zoned OMH he could have about 100,000 SF, but he is only asking for 29,000 SF as a variance. He further stated that if there is something unique and unusual about this and you have taken that into consideration before is that there is considerable OMH within the general district and also to IL zoning.

Mr. Bolzle stated that he thinks the Board is saying that this is a really high intensity district and that is why they have been so free in granting variances in the past.

**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 floor area ratio from .5 to .61 for construction of a 3 story hotel/motel. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 19, per plan submitted; finding that the subject property abuts OMH and IL property; finding that the area is zoned for high intensity; and finding that the approval of this application will not be injurious to the neighborhood, nor the spirit and intent of the Code, on the following described property:

Beginning at a point in the S boundary of Lot 3, Block 1, Interchange Center, an Addition to the City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17511**

**Action Requested:**

Variance to allow a 6' masonry (rock) fence in the front yard. **SECTION 210B. YARDS**  
- Use Unit 6, located 1270 East 25th Street.

**Presentation:**

The applicant, **Michael Lodes**, 1270 East 25th Street, submitted a site plan (Exhibit L-1) and photographs (Exhibit L-2). Mr. Lodes stated his property is located on the southwest corner of 25th Street and Peoria. He informed the Board that they approved this request several months ago, however his builder was confused about what he actually wanted as far as from the 30' setback line to 25th Street. He explained that the Board approved a 10' masonry fence along the Peoria side. He further explained that he is changing the application to request that the fence come to within 10' of the corner across 25th Street going west 10' to create a corner. He commented that the Board had originally approved 10' then drops to 4' to the corner. Mr. Lodes stated the reason he is asking for the fence to be raised to 6' is to block traffic noise from Peoria, which seems to be getting worse everyday. He indicated there are homes that have fences similar to what he is requesting and submitted pictures of the fences. He stated the fence will not cause a traffic problem and will help eliminate the noise and traffic from Peoria. He commented that his lot is double wide and the fence is not ruining the looks of the house and it is setback from the curb according to Code. He further commented that his fence abuts Mrs. Zinc's wall that she built along Peoria and they are trying to make all of the fences blend in with the neighborhood.

**Comments and Questions:**

Mr. Dunham asked the applicant if there was a similar fence across the street from his property? He stated the one across the street is along Peoria and all the way down 25th Street. He commented he did not want to build a fence all the way down 25th Street as a fortress, but he does want to screen Peoria from his view.

Ms. Turnbo asked the applicant if he was asking for 6' high fence along Peoria between the 30' setback line and the front property line and for 10' along 25th Street? He answered affirmatively.

Mr. Dunham asked the staff about the required removal contract? Mr. Gardner stated it is customarily a procedure that is done as a condition of approval. He further stated the removal contract means that if the Board was to approve this application with the condition of a removal contract and the City were to buy additional property for some reason, the applicant would have to remove the fence at their expense rather than the City's expense. Mr. Gardner commented the Board will have to look at the neighborhood and determine whether that will ever be a reality.

Mr. Beach informed the Board that in July when the Board originally heard this case, they made a specific condition of approval which follows: per plan submitted; subject to a removal contract. Mr. Beach stated the per plan ties the approval to the first part of the fence and not the section between the building setback line and the property line. He further stated that part of the original request was to also grant a variance to

Case No. 17511 (continued)

allow this fence to be in the planned right-of-way of Peoria and the Board granted that request per plan submitted. Mr. Beach indicated that the applicant has not requested the additional relief and so he is not properly advertised correctly to have the fence in the planned right-of-way. He stated the applicant is asking for the relief of the 6' high fence, but he also needs relief to have it in the planned right-of-way so that it is consistent with your previous approval.

Mr. Gardner stated that the Board did approve a 4' wall in the planned right-of-way and he was properly advertised the first time. He further stated the only difference now is that the applicant wants to go 2' higher. Mr. Gardner indicated that since the applicant had been advertised previously and it was approved for the wall being 4' high in the planned right-of-way as oppose to 6' maybe that will satisfy the notice requirement.

Mr. Romig stated that the Board previously allowed the wall to exist and now the applicant is requesting an additional 2' on top of the wall, which is already in the right-of-way so it is properly advertised.

Mr. Bolzle stated he would agree with the Board that it was a subject of discussion and the intent of the Board's action was to grant the 4' in the right-of-way.

The Board agreed with Mr. Bolzle's statement.

**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** to allow a 6' masonry (rock) fence in the front yard. **SECTION 210B. YARDS** - Use Unit 6; per plan submitted; subject to traffic engineer approval; finding that there are other walls of this type in the neighborhood and that approval of this application will not be injurious to the area nor harmful to the spirit and intent of the Code; on the following described property:

Lots 1-2, Block 10, Sunset Terrace, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17512**

**Action Requested:**

Special Exception to allow automobile sales in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17, located 9075 East 31st Street.

**Presentation:**

The applicant, **Tedisue Witcraft**, represented by Jim Witcraft of Green Country Pawn, requested his application to be withdrawn.



**Case No. 17513**

**Action Requested:**

Variance of the required 20' rear yard to permit an addition to an existing dwelling.  
**SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 6, located 10303 East 23rd Place South.

**Presentation:**

The applicant, **Kenney Russell**, 10305 South 76th East Avenue, submitted a site plan (Exhibit N-1) and stated he is the general contractor. He further stated he has been contracted to build a room addition for the Reiser's. He explained that he has discovered that the room that they propose will have a setback of 14.7' versus the 20' so he is requesting a 5.4' variance. He further explained that the Reiser's need this room because Mrs. Reiser has a problem negotiating stairs. He stated the owners want to move their library, which is upstairs, down to the proposed area.

**Comments and Questions:**

Ms. Abbott asked the applicant if there is any reason why the addition could not be more rectangular than square? He stated that right on the other side of the existing fireplace is the bathroom window and they do not want to block the window. Mr. Russell explained that the reason the owners have decided on this layout is because of their bookshelves and furniture.

Mr. Bolzle asked the applicant if this would be one room or multi-rooms? He stated it would be one room.

Mr. Russell stated he did some calculations and the addition meets the footage.

Mr. Bolzle stated he fails to see a hardship that would warrant an approval.

In response to Mr. Bolzle, Mr. Russell stated he had a letter from Mrs. Reiser's surgeon.

Mr. Bolzle explained to Mr. Russell that there is no real hardship other than the owners desire to have a room this large. He informed Mr. Russell that the Board typically grants variances like this one because there is a physical feature about the lot that creates a hardship that would prevent the owner from adequately using the lot without the variance. He stated that is not the case here.

**Interested Parties:**

Mr. Reiser, owner of subject property, 10303 East 23rd Place, stated the bookshelves upstairs require that he has the maximum amount of space as possible. He further stated he would like to have as many windows as possible and the natural light.

Case No. 17513 (continued)

**Comments and Questions:**

Mr. Bolzle stated that there is not a hardship here and the Board would simply be reducing the required backyard. He further stated the Board is required to find a hardship for a reason and it does not exist with this application.

**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 the required 20' rear yard to permit an addition to an existing dwelling. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE 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:

Longview Lake Estates, Blocks 23-29, Lot 6, Block 28, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17514**

**Action Requested:**

Special Exception to allow a home occupation (beauty shop) in a RS-2 district. **SECTION 402.B.6.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS** - Use Unit 13, located 9901 East 13th Street.

**Presentation:**

The applicant, **Roseann Rolph**, 8957 East Newton Place, submitted a site plan (Exhibit O-1) and stated the subject property is currently for sale. Ms. Rolph indicated that she would like to purchase the home to put her hair salon in, but she wanted to get approval before she purchased the home. She explained that she would like to put the salon in the existing third car garage, which is an existing building. Ms. Rolph stated she proposes to install a hard surface parking for the customers.

**Comments and Questions:**

Ms. Abbott asked the applicant what her hours of operation will be? She stated she will be open Tuesday through Saturday 9:00 to 5:00 p.m. She further stated there will be one operator and one chair.

Ms. Abbott asked the applicant if she was familiar with the home occupation guidelines? She stated she received information regarding compliance with the guidelines.

Case No. 17514 (continued)

Ms. Abbott asked the applicant how many customers will be in her salon at one time? She stated there is never any more than one in her chair and one waiting. She further stated there will only be two cars parked out side at a time. She elaborated that usually one patron is waiting and the other is leaving.

Mr. White asked the applicant what changes she was planning on making as far as the entry into the salon? She stated the only change she needs to do is take out the garage overhead door and put in a picture window with an entry door.

Mr. White informed the Staff that the garage door faces the side of the yard. He asked the Staff if it would be a problem if the applicant made the changes to the entry as she has proposed? Mr. Gardner stated the ordinance address the issue of making changes to the residence that basically detract from it looking as a residence. Mr. Gardner stated that the applicant could put a passenger door on one side of the existing garage door. He further stated that the Board will have to decide if putting a picture window and a door where the garage door exists change the residential appearance. Does it look like an office?

Mr. White stated there are actually two garages on the subject property. He explained that one is a two-car garage and then there is a single car garage that she is going to convert.

Mr. White asked the applicant if there was a passenger door at the back of the single car garage? She answered negatively.

Mr. Bolzle stated the intent of the Code is that the house will look like a residence. He further stated a person can make a modification or renovation to the property and have it still look like a residence. He commented that she is not eliminating all of her garages, she is taking one unit and modifying the use.

Ms. Abbott stated the applicant's entrance would not be seen from the street.

In response to Ms. Abbott, Ms. Rolph stated the entrance to the salon will face an empty lot.

Ms. Abbott asked the applicant if the vacant lot was part of the subject property? She answered affirmatively.

Mr. Bolzle asked the applicant if she will be offering tanning beds or a nail salon? She stated it will strictly be a hair salon.

**Protestants:**

None.

**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 allow a home occupation (beauty shop) in a RS-2 district. **SECTION 402.B.6.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS** - Use Unit 13; per plan submitted; subject to there being no tanning or nail salons; subject to there being a hair salon only and 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:

Beginning 685.98' E, 1120' S, NW/c, Gov., Lot 1; thence S 200', E 237.2', N 200', W 237.2', to POB, LESS, beginning 685.98' E, 1320' S, NW/c, Lot 1; thence N 50', E 30'; SEly curve to the right 67.79', E 145.86', S 25', W 237.2' to POB, Sec. 7, T-19-N, R-14-E, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17515**

**Action Requested:**

Special Exception to permit a Bed & Breakfast Inn with 12 guest rooms and special events usage of existing 1600 SF ballroom. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** and a Variance of the all-weather surface requirement for parking. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 2, located 1414 South Galveston.

**Presentation:**

The applicant, **Jim D. Shofner**, representing Anita Shofner and Cathy Collins, 4143 East 31st Street, submitted a site plan and proposal (Exhibit P-1) and stated that the application is requesting the use of the property at 1414 South Galveston as a Bed and Breakfast. The building itself is the McBirney Mansion and under Unit Use 2 the subject property by special exception can be used for a Bed and Breakfast. He indicated the building has the ability to have 12 rooms and he is requesting the use of 12 rooms. He stated the ordinance also provides for no cooking in the rooms and that is his intent that no cooking will be allowed. Mr. Shofner cited that the property cannot be used as a public restaurant and there will be no restaurant services available. He indicated the only food that would be served is breakfast and 4:00 p.m. tea. He further indicated that along with the Bed and Breakfast ordinance there is a special events use and with this particular application the special events have been broken down in two categories: 1. Fifty (50) or less persons in special events without any limitations as to the number per year, small receptions, small weddings, anniversaries, etc. 2. Fifty (50) or more; up to 200 persons, up to 15 times per year. Mr. Shofner detailed the second part of the application concerning the variance of the all weather surface parking and stated that the ballroom located in the basement is 1600 SF, which would be designated as the special event space for large events. He stated he is required to have off-street parking to equal one space for every 40 SF, which would

be 40 additional off-street parking spaces. He proposed locating the 40 off-street parking spaces required at the bottom of the hill in the southeast corner of the property.

**Comments and Questions:**

Mr. Dunham asked the applicant if the proposed site for the parking would be the southeast or southwest? Mr. Shofner stated that according to the site plan, it is located at the longest part of the triangle, which is Galveston and Riverside Drive. Mr. Shofner stated that because of the nature of this piece of property and because of the terrain it sets on, the view from the front door of this piece of property it is down hill to Riverside Drive and then the Arkansas River. He further stated he is proposing a parking lot in this corner as one option and requested a variance that this parking lot be in an non-all-weather surface. He explained that there is a product that is a grid lattice work that lets the surface be hard enough to drive on but yet lets the grass grow up and be mowed just like a lawn. He further explained this would eliminate looking at a parking lot at the bottom of the hill from the front view of the mansion. He commented that this variance is one that allows the beauty to be maintained of the area. He indicated that the parking at the events would be handled by valet parking to protect the lattice work. Mr. Shofner stated that he has recently discussed with a member of the Tulsa Historic Preservation Society about locating the parking in other places and he is not opposed to a different location, but it will depend on what the Tulsa Historic Preservation Society would like to do in that regards. He further stated there is an easement on the subject property and the easement is one of scenic open space and architectural facade easement, which was granted in 1987. He explained that with this type of easement there are certain obligations that stay with the subject property. Mr. Shofner referred to the site plan and proposal submitted earlier (Exhibit P-1). He stated the City of Tulsa and the Oklahoma Historic Preservation Society is in charge of owning and overseeing of the facade/open air space. He further stated he has contacted both the City of Tulsa and the Oklahoma Historic Preservation Society, and the Attorney General is now reviewing the facade along with the proposed use of the property for their approval. Mr. Shofner stated the issue of the variance of the hard surface parking versus the use of the parking lot at the bottom of the hill are basically two different issues. He explained that he is required by the Code to have off-street parking and that is not a variance to that requirement. He further explained the variance is to change the surface to one that is not unsightly for the proposed purposes. He stated that the Historic Preservation Society has the final determination on whether he can put a parking lot of this property. Mr. Shofner submitted photographs (Exhibit P-4) which indicated the land that is proposed for the parking. He demonstrated to the Board with a map the approximate square footage that the parking lot would involve. He stated there are presently 24 parking spaces on site and if you re-measure the area there could be 26 parking spaces. Mr. Shofner further stated that the requirements for the Bed and Breakfast are one for each room and two for the residents, which will require 14 parking spaces. He commented the subject

property will have roughly 10 to 12 parking spaces available beyond the minimum requirements for the Bed and Breakfast.

**Comments and Questions:**

Ms. Turnbo asked the applicant if he talked with the Tulsa Preservation Commission or the Tulsa Historical Society? He stated he talked with the Tulsa Preservation Commission.

Ms. Turnbo asked the applicant if he has submitted a formal presentation before the Tulsa Preservation Commission or talked with the staff? He stated he has only talked with the staff and there has not been any presentation at this time.

Ms. Turnbo asked the applicant if anyone will be living in the McBirney Mansion? He stated there will always be an owner in the residence.

**Interested Parties:**

Anita Shofner, 1851 East 31st Place, stated that the subject property is part of Tulsa's past. Ms. Shofner presented the past of the owner, James H. McBirney and the McBirney Mansion. She stated the mansion has 12,000 SF and is currently vacant. Ms. Shofner informed the Board that the mansion has had several different uses and the property has not succeeded as light office space. She stated that in 1978 the McBirney Mansion was placed on the National Register of Historic Places and at that time the facade easement was granted to the Oklahoma Historical Society along with the City of Tulsa to maintain the character and historical significance of the building and grounds. She detailed that her plan is to restore the McBirney Mansion to its former glory as a residence filled with family and guests. She stated that the National Trust of Historic Preservation welcomes this reuse of properties and has established an award category for Bed & Breakfast Inns because... "This type of establishment has not only supported countless building rescues, but also introduces their guest to the pleasures of living, if only temporary, in a historic house." Ms. Shofner submitted a Historic Preservation article (Exhibit P-2). She stated that the McBirney Mansion is a perfect site for special events and most events will be for under 50 people. She further stated occasionally there will be larger events such as a wedding, general meeting of a non-profit group, etc. Ms. Shofner informed the Board that she is committed to address the neighbors concerns regarding traffic congestion and parking.

Cathy Collins, 3147 South Zunis Avenue, stated she contacted the neighbors in the area of the subject property to discuss the proposed project. She commented that she visited with a very small group of neighbors and explained the plans along with pictures to the group. Ms. Collins stated there was a very positive response from the neighbors contacted. She further stated she delivered a letter of explanation to neighbors within a three (3) block radius and the response was in favor of the project.

Ms. Collins indicated that with the letter, she included a survey asking the residence of their opinions on various aspects of the project. She stated she distributed 150 letters and surveys with a return envelope. She further stated that to date she has received 52 surveys. She informed the Board that they have a copy of the survey in the proposal (Exhibit P-1). Ms. Collins reported the results of the survey she has received to date. She stated that 94% were in favor of the mansion being a Bed & Breakfast, 89% in favor of small (less than 50 people) special events being held at the mansion, 25% were against the mansion being used for large events (up to 200 people) approximately 15 times a year and 75% were in favor of the tile grid versus asphalt or cement for the parking area. Ms. Collins stated that after the survey had been distributed, she had a meeting with the neighbors and explained the larger events along with the proposed plans, which at that time they had a more favorable response. She explained that she is on the meeting calendar for October 10, 1996, with the Tulsa Preservation Commission ("TPC") and the Oklahoma Historical Society. She further explained that she has kept the TPC apprised of the meetings with the neighbors and progress of the project. She stated that TPC has sent a letter with the description of the project to Oklahoma Historical Society and the Attorney General for approval.

**Comments and Questions:**

Ms. Turnbo asked Ms. Collins how many staff members will be on duty at a time? She stated that a Bed & Breakfast of this size is going to require at least one person to help with cleaning and one person for yard service.

Ms. Turnbo asked Ms. Collins if she and her partner will be running the Bed & Breakfast? She answered affirmatively.

Ms. Turnbo asked Ms. Collins how many times per year she planned to have special events with 50 or less people? She stated she would like to have unlimited number of events. She explained that this will be a Bed & Breakfast Inn first and hopefully will have guests.

Ms. Turnbo asked Ms. Collins if she expects to have special events with 50 or less seven (7) days a week? She stated she would rather not be restricted on the special events for 50 or less people, but she hopes that she will have a house full of guests. She explained that when the house is full of guest, she will not be having special events with 50 or less people that would interfere with her guests.

Mr. Gardner stated that there is enough on site parking to accommodate probably the special events with 50 or less people. He further stated that the only time the project would go over and would need additional parking is when they have the larger special events with 200 plus people. He explained that the valet parking was intended to be for only the events where the parking would be used at the bottom of the hill.

In response to Mr. Gardner, Mr. Shofner stated that the only time they would need the extra parking is for the larger special events.

Ms. Turnbo asked the applicant if the laundry would be done on the premise or have a laundry service? Anita Shofner stated that there is a laundry facility in the house and could handle the volume of laundry anticipated. She further stated that she has obtained estimates from linen services and for obtaining commercial washers/dryers. She explained that she will have to work with this at first and decide the best procedure for the Bed & Breakfast.

Ms. Turnbo asked the applicant if there will be caterers coming in to do the special events? She stated she will only be preparing breakfast for her guests and tea in the afternoon. She further stated that catering will be necessary for the special events.

**Interested Parties:**

Jack Williamson, 1224 South Galveston, stated he is in favor of this project because he feels that vandals will destroy the property if it isn't moved into right away.

Glenn Dura stated he lived in the Olympia Town Homes, which is directly across the street from the subject property. He further stated he did not have an objection to the Bed & Breakfast, but he does feel that the traffic caused by unlimited functions, even under 50 or less, could be a problem. He commented that people attending the functions do not always use off-street parking, even if it is provided, will park in the street throughout his neighborhood. He submitted surveys and protestant letters (Exhibit P-3). He stated he would be in favor of anything that could maintain the property and if a Bed & Breakfast will be economically viable, then that would be wonderful.

Jim Norton, President of Downtown Tulsa Unlimited, Chairman of Planning District 1, stated that he resides at 1322 South Guthrie, which is half a block from the subject property. He further stated that he has the pleasure of living in a home on the National Register and he is very excited about the possibility of the McBirney Mansion being turned into a Bed & Breakfast. Mr. Norton stated he is supportive of this application. He expressed concerns that the Use Unit 2 would be specified as a Bed & Breakfast only and requested the Board to restrict any outside amplification after 9:00 p.m. Mr. Norton stated he lived in Charlotte, North Carolina for a number of years where they use the grids to have the grass growing up through them and they worked very nicely. He commented the addition of the Bed & Breakfast in this proximity of the central business district as simply an additional tool for our businesses and companies to use and certainly would support this use. He requested the Board to approve this application with the conditions mentioned above.



**Comments and Questions:**

Ms. Turnbo asked Mr. Norton if he had a problem with the possibility of seven (7) nights a week having 50 guest or less attending a special event? He stated it would not bother him because he does not believe you can run a Bed & Breakfast and have that many events. He further stated his understanding is that with 50 or less there is parking on site. He commented that in order to have the mansion saved, an active use and an appropriate use is needed. He further commented that if the Bed & Breakfast has special events with 50 or less seven nights a week that is no problem.

Ms. Turnbo asked Mr. Norton if he had a problem with the possibility of 200 or more people at a special event possibly 15 times a year? He stated that it would not be a problem.

Mr. Beach stated he received a phone call from a gentleman from the City/County Health Department who expressed a concern that anything over four (4) rooms is considered to be a lodging facility and must have commercial equipment. Mr. Beach further stated he relayed this information to Mr. Shofner.

Mr. Shofner stated Mr. Beach is referring to Title 63, Section 1-1200, which is a two paragraph state law that simply states that if you have more than four (4) rooms you have to pay \$5.00 for every 10 rooms that you have to get a hotel license and meet what ever the State says you must do as far as health regulations. He further stated that the way he perceives this to be set up, since there is essentially no cooking, he will need a commercial type refrigerator. Mr. Shofner indicated that the Bed & Breakfast will be under the State Statutes in regards to complying with the Hotel Statute.

Mr. Gardner stated the State law was changed to allow you to have up to four (4) rooms to be utilized, two per room without a sprinkler system, but the subject property is already sprinkled, which allows the applicant to go more than four (4) rooms.

In response to Mr. Gardner's statement, Mr. Shofner stated the mansion has sprinklers, alarms, smoke detectors and was updated about three or four years ago. He detailed that the mansion has a security system, exit lights and emergency lights in the stairways.

Ms. Turnbo asked the applicant if he would have any problem with the condition of no amplification outside after 9:00 p.m.? He stated his clients would not have a problem with that condition.

Mr. Bolzle asked the Board how they would define loud noise after 9:00 p.m.? Ms. Turnbo stated amplified sound.

Case No. 17515 (continued)

Mr. Bolzle asked the Staff if the Garden Center and Harweldon, that is used similarly, do either have restrictions to the number of events that they can have a year? Mr. Gardner stated they did not and the primary difference between those uses and the proposed application is that is a non-profit community type service as oppose to a private business in this instance. Mr. Gardner stated that the Garden Center and Harweldon was approved as a community/cultural facility without limitations.

Mr. Bolzle asked Mr. Shofner if the primary use is as a Bed & Breakfast and accessory to that is the uses for special events? Mr. Shofner stated the Bed & Breakfast is the primary use and the special events will be accessory use. He further stated the statute deals with Bed & Breakfast and the special events are an additional paragraph to the ordinance.

Mr. Bolzle stated so that the neighborhood is clear and the record is clear that the approval is not for a place for special events as a primary use, but as an adjunct to the Bed & Breakfast. Mr. Shofner agreed with Mr. Bolzle.

Mr. Bolzle stated that Ms. Turnbo has been involved with the Preservation Commission and he himself has been involved both the Preservation Society and the Tulsa County Historical Society welcome this use. He further stated the hope has always been that there will be a long term permanent use for this residence and grounds that are very historical to the City of Tulsa.

**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 **Special Exception** to permit a Bed & Breakfast Inn with 12 guest rooms and special events usage of existing 1600 SF ballroom. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** and a **Variance** of the all-weather surface requirement for parking. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 2; subject to there be no outside amplified music/noise after 9:00 p.m.; subject to the number of special events with more than 50 people in attendance be limited to no more than 15 per year and the approval of the special events are subject to approval of State Historical Preservation office of a parking lot adequate to hold the required number of cars (40) on site and the location be approved by the State Historical Preservation office; subject to the all-weather surface being the open blocked type paving stones that allow grass to grow through; subject to the special events for 50 people or more to be limited to 200 people; 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:

All of Block 12, Except Lots 1 and 21, N 20' of Lot 20, Block 12, resubdivision, Blocks 4, 5, & 12, Childers Height Addition, Blocks 1, 9, 10 & 14, Norrell Park Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17516**

**Action Requested:**

Special Exception to permit duplex dwellings on both lots. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 7, located South of 24th Street & 91st East Place.

**Presentation:**

The applicant, **David Nelson**, represented by Perry Dunham, submitted a site plan (Exhibit Q-1), plot plan (Exhibit Q-2) and stated he is the real estate broker involved in the transaction. Mr. Dunham requested a new special exception be granted that would allow duplexes to be constructed on the subject property. He stated the action was previously approved on April 15, 1976, Case No. 9008, but due to the fact that the two lots were not built on within two years, the special exception lapsed. He explained that Lot 12 and 13 were included in this special exception and were built on at the time of approval. Mr. Dunham stated the action is in compliance with the area since the two lots abut duplexes on both the east and west side. He further stated the three lots to the north of the subject property are zoned for duplexes currently. He explained that the two lots are the only lots left on the block that either do not have duplexes erected on them or are not zoned for duplexes.

**Comments and Questions:**

Mr. Gardner stated that the access to the lots is on East 91st Place and you actually go through duplex zoning to access the lots. Mr. Dunham agreed with Mr. Gardner's statement.

Mr. White stated there are duplexes all around the subject property and there are single-family dwellings to the south of the subject property.

**Protestants:** None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Abbott, Bolzle, Turnbo, White, "aye"; no "nays" Dunham "abstention"; no "absent") to **APPROVE** a **Special Exception** to permit duplex dwellings on both lots. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 7; 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:

Lots 10 & 11, Block 1, Memorial Acres Resub, Lots 1-6, Block 4, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17517**

**Action Requested:**

Variance of the required rear yard from 25' to 21' in an RS-2 district. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6, located 5905 South New Haven.

**Presentation:**

The applicant, **Paul Moore**, requested this case to be withdrawn.

**Ms. Abbott Out at 4:50 p.m.**

**Case No. 17518**

**Action Requested:**

Special Exception to allow a mini-storage in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 16, located 229 South 49th West Avenue.

**Presentation:**

The applicant, **Johnie Leon Mayhan**, 5360 West 12th, submitted a site plan (Exhibit S-1) and stated he owned the subject property where he has an upholstery shop located on the west side of the property. He further stated he has a little rental space for Claws & Paws for a dog grooming facility. He explained he would like to build a mini-storage on the subject property. Mr. Mayhan submitted photographs (Exhibit S-2). Mr. Mayhan discussed the pictures and site plan with the Board. He explained that he is surrounded by businesses.

**Protestants:** None.

**Comments and Questions:**

Mr. White asked the Staff if the applicant would have to have a drive inside the screening fence and go to the west to exit on 49th as opposed to exiting onto 3rd street? Mr. Beach stated the Code is very specific and states that for mini-storage the access must be to an arterial street and he is not advertised for any relief from that requirement.

In response to Mr. Beach's statement, Mr. Mayhan stated there is a entrance and exit on to 49th Street, as well as 3rd.

Mr. White stated that according to Code, Mr. Beach says that the entrance on 3rd will not be acceptable for the mini-storage.

Case No. 17518 (continued)

In response to Mr. White's statement, Mr. Beach stated that the Code states that there must be access to an arterial street, but he is not sure that it says you cannot have a secondary access to a non-arterial street. He further stated he would have to review the Code.

Mr. White asked the applicant if he would be erecting a screening fence? He stated he would erect what ever the City requires.

Mr. Beach stated that the Code states that the developed site shall have frontage and an access to an arterial street. He commented that does not mean he can't have access to a non-arterial street as well.

**Board Action:**

On **MOTION** of **TURNBO**, the Board voted 4-0-0 ( Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Abbott "absent") to **APPROVE** a **Special Exception** to allow a mini-storage in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 16; 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:

Beginning at 465' N, 50' E of the SW/c said NW SW; thence N parallel to the W line said Sec 4 for 148.05'; thence NEly for 218.5' to NW/c of Lot 38, Block 1, Hayden-Lewis 2nd Addition; thence SEly 160.06' to SW/c said Lot 38; thence SWly for 283.35' to POB, EXCEPT the Easterly 60' thereof, City of Tulsa, Tulsa County, Oklahoma.

**Ms. Abbott in at 5:00 p.m.**

**Case No. 17519**

**Action Requested:**

Variance of the required 150' frontage on an arterial street in an IL district to 125' and 25' to permit a lot split. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS** - Use Units 14, 15, 23 & 25, located East side of Mingo Road between 54th Street and 55th Street.

**Presentation:**

The applicant, **Charles E. Norman**, 2900 Mid-Continent Tower, submitted a site plan (Exhibit T-1) and stated this application involves an acre and half tract on the east side of South Mingo Road that was assembled by virtue of previous lot splits. He further stated the last lot split occurred in 1987, which was used as a lumber yard by Southeast Lumber Company. He explained the front part of the subject property has been converted to a Veterinarian Hospital. Mr. Norman submitted photographs (Exhibit T-2) and stated the pictures indicate the present status of the property. He commented the rear property has several buildings that have been used for lumber storage, general storage and warehousing purposes. He stated there is a separate gate and separate entrance to the rear part of the property. Mr. Norman stated it is important that the Board see the existing condition of the frontage of the subject property. He explained the subject property has no access to East 54th Street, nor to East 53rd Street. He further explained that by the previous lot split the rear part of the property, Tracts A & B, have no access to Mingo Road except through Tract II. Mr. Norman stated the purpose of the application is to divide the rear part from the front and not change the physical appearance of the property or use at all. He further stated the application is for a variance of the frontage on South Mingo Road to permit the Tract in the back to be served by the existing driveway, gate and fence that is 25' wide. He explained that this will reduce the frontage of the veterinary hospital to 125' and in effect make no change to the physical conditions that apply to the property. He stated the property is zoned in an IL district and all of the uses that are permitted would be the same. The rear part of the property has been leased for uses separate from the veterinary hospital for some years and this would accomplish the legal change of the ownership, but not the change of the uses. He explained that the subject property consists of parts of four separate lots that were tied together by previous lot splits. He further explained that now he would like to separate the back property from the front property.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 4-0-1 (Bolze, Dunham, Turnbo, White, "aye"; no "nays" Abbott "abstention"; no "absent") to **APPROVE** a **Variance** of the required 150' frontage on an arterial street in an IL district to 125' and 25' to permit a lot split. **SECTION 903. BULK AND AREA REQUIREMENTS IN THE INDUSTRIAL DISTRICTS** - Use Units 14, 15, 23 & 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:

A tract of land NW/4, SW/4, Sec. 4, T-19-N, R-12-E, I.B.M., Tulsa County, State of Oklahoma, according to the U.S. Survey thereof, described as follows: Beginning at 465' N, 50' E; thence N parallel to the W line for 148.05'; thence Nely for 218.5' to NW/c of Lot 38, Block 1, Hayden-Lewis 2nd Addition; thence Sely 160.06'; thence Swly for 283.35' to POB, EXCEPT the Easterly 60' thereof, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17520**

**Action Requested:**

Special Exception to allow a drive-in restaurant in a CS district. **SECTION 701.**

**PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 18, located NE/c 91st Street & South Yale.

**Presentation:**

The applicant, **Sack and Associates**, Ted Sack, representing NEO properties/Sonic Drive-In, 111 South Elgin, submitted a site plan (Exhibit U-1) and stated the subject property is located east of the NE/c of 91st Street and South Yale. He further stated the property lies just east of the Quik-Trip site. He requested a special exception for a drive-in restaurant in a CS district. Mr. Sack explained he will need to come back before the Board for the necessary frontage on a dedicated street. He further explained he would like the use heard today and continue the balance of the application for the next meeting. He stated the subject property is sharing the access easement with Quik-Trip and the abutting property owner. He further stated he has a usable frontage of 160' because he has a 35' mutual access easement on the east and also on the west. He detailed that across the street to the southeast corner of the intersection is an Arby's, a strip center with a couple of restaurants, and then to the east a Yale Cleaners.

**Protestants:** None.

**Comments and Questions:**

Mr. Beach informed the Board that INCOG has received additional advertising fees and the advertisement has been written. He further stated if the Board is inclined to approve this application, then they may want to continue the balance of the application to October 8, 1996.

Mr. White asked the applicant what is the 17.5' easement on the north side? He stated that it is a roadway that currently comes back to the west boundary and it is one of the accesses for Quik-Trip.

Mr. Sack stated that the subject property is subject to a plat and a sub-division plat has been submitted on the property.

**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 allow a drive-in restaurant in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 18; 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, and **CONTINUE** the balance of this application to October 8, 1996 at 1:00 p.m.; on the following described property:

Case No. 17520 (continued)

SW/4, SW/4, Sec. 15, T-18-N, R-13-E, City of Tulsa, Tulsa County, Oklahoma, being more particularly described as follows: SW/c, Sec. 15; thence S89°59'09"E for 285.50'; thence N00°03'45"W for 58.00' to the POB; SE/c, Lot 1, Block 1, Quiktrip No. 78R, an addition to the City of Tulsa, Tulsa County, Oklahoma; thence continuing N00°03'45"W for 221.00'; thence S89°59'09"E for 125.00'; thence S00°03'45"E for 229.00'; thence N89°59'09"W for 22.50'; thence N00°03'45"W for 8.00'; thence N89°59'09"W for 102.50' to the POB.

**Case No. 17521**

**Action Requested:**

Special Exception to allow a church in a RS-2 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located East side of South 129th East Avenue and East 13th Street.

**Presentation:**

The applicant, **Loay M. Suffer**, P.O. Box 691746, submitted a plot plan (Exhibit V-1) and stated he would like to build a community center that will be a mosque as well as a center for activities. He explained that he has not bought the land yet because he wanted to go through the application process first.

**Comments and Questions:**

Ms. Abbott asked the applicant if the prayer hall will have pews or chairs? He stated it is just a room with a carpet.

Ms. Turnbo asked the applicant where his parking would be located? He stated the parking will be in the front area that is facing 129th East Avenue and it is 155' across.

Ms. Turnbo asked the applicant how many parking spaces will there be? He stated approximately 100 parking spaces.

Ms. Turnbo asked the applicant if he was aware that he cannot have any parking in the required front yard?

In response to Ms. Turnbo, Mr. Gardner stated the required front yard would be 85' from the centerline of 129th East Avenue and as long as he stays behind the 85' setback from the centerline, then he is not in the required front yard.



Case No. 17521 (continued)

Mr. White asked the Staff if the applicant could consider 13th Street as the front yard? Mr. Gardner stated 13th Street has not been improved and there is no street or access from 13th Street. He further stated you can get to the back of the property by going down 14th Street, but he plans to enter from 129th East Avenue.

In response to Mr. Gardner, Mr. Suffer stated he will comply with the 85' setback for the parking area.

Mr. Bolzle stated if the Board is inclined to approve this application, the applicant needs to return with an accurate site plan.

Mr. Beach stated that an accurate site plan would be required when he applies for a building permit.

In response to Mr. Bolzle, Mr. Suffer stated he would prepare an accurate site plan if this application is approved and the subject property is deemed an appropriate site.

Mr. Bolzle asked the applicant how often the facility will be used and how many people will be attending the facility? Mr. Suffer stated that the mosque would be used just like any other church activity or Sunday School. He further stated he anticipates the subject property to be used on a daily basis. He explained that on Friday and Saturday the activity will be very large. He further explained that on Sunday he will have a Sunday School. Mr. Suffer stated that during various holidays the facility will be used more so than other times of the year.

Mr. Bolzle asked the applicant if the activities will be conducted inside, except for the playground area? He answered affirmatively.

Ms. Turnbo asked the applicant if the mosque will be used by the members only, or if it will be rented out for other activities? He stated it will be used by members of the mosque only and will not be rented out for conferences, etc.

Mr. Bolzle stated that in terms of how this application is characterized, it is really a church/mosque use and not community center use, which implies that the public can access the facility.

Mr. Suffer stated the reason he called the mosque a community center is because it will be used for birthday parties, celebrations, etc. Mr. Gardner informed Mr. Suffer that churches do this as well and it is still considered church use.

**Protestants:**

Mary Hill stated she owns the property and business located at 1115 South 129th East Avenue and she does not have any objection to the facility being built. She expressed concerns regarding septic system problems. She stated the area is in desperate need of a sanitary sewer system. Ms. Hill expressed concerns regarding more septic tanks being installed in the area, which will be necessary for this facility. She stated the septic systems do not work when there is a lot of rain and any building in the area would only impact the problem. She explained that there is a creek that runs across this property and with a septic tank installed there will be more problems with the systems not working.

**Comments and Questions:**

Mr. Beach stated that this is a difficult area and there are some geologic structures under the ground that inhibit development. He further stated that if the Board were to improve this application then it is subject to a plat and issues regarding sanitary sewer would be handled through platting.

**Protestants:**

Carolyn Carter, owner of Transcontinental Supply, which is located at 1217 South 129th East Avenue, stated she does not have a problem with the church being built. She further stated the neighborhood would like to see a PUD before anything is built.

**Comments and Questions:**

Mr. Bolzle asked the Staff to explain the differences between filing a PUD application for this use and a plat that the applicant will be required to file.

Mr. Gardner stated that normally under straight zoning, what ever zoning is approved is what uses are permitted and the Board never sees a site plan. He indicated that only the building inspector would see the site plan and determine whether to issue a building permit or not. He explained that the Board of Adjustment in reviewing special exception uses is much like a PUD in the sense that the Board wants to see something as to how it will be laid out on the ground, etc. Mr. Gardner stated the earlier comment about the site plan coming back before the Board before any permits are issued would be a way of seeing how it is going to actually look and fit on the ground. He further stated that a PUD would be more detailed, such as building height and landscaping, but it is similar in the sense that the Board wants to look at a specific plan to see how the land is going to be developed.

Case No. 17521 (continued)

Mr. Bolzle stated the Board and TMAPC will be fulfilling, by site plan review and by platting, a majority of the requirements that would be investigated under a PUD. While the applicant is not filing a PUD through the Planning Commission, the Board's review is probably going to be close to as detailed as would a PUD. Mr. Bolzle stated that certainly the additional platting requirement will identify utility issues, drainage issues, etc. He further stated there will be a review in the plat of the sub-division regulations or use restrictions that would be part of the process. He explained the plat will be reviewed by the Planning Commission.

**Applicant's Rebuttal:**

Mr. Suffer stated he shares the Protestants concerns and it would be nice to have a sewer in the area. He further stated that this is an issue he will need to look into before purchasing the property.

**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 **Special Exception** to allow a church in a RS-2 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2; subject to applicant returning with a detailed site plan for the Board of Adjustment's approval; 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:

Romaland, Block 5, Lots 1, 2 & 8, City of Tulsa, Tulsa County, Oklahoma.

**Mr. Bolzle out at 5:25 p.m.**

**Case No. 17522**

**Action Requested:**

Special Exception to allow construction of a church building for church offices and parking. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located SE/c of Admiral Boulevard and Jamestown.

**Presentation:**

The applicant, **D. Kenyon Williams, Jr.**, 624 South Denver, Suite 202, representing Cross Town Church of Christ, submitted a site plan (Exhibit W-1) and stated the application is a result of a review of the zoning in conjunction with the building permit application. He further stated the church has been operating at this location since 1939 on the adjacent parcel to the east. He explained that the subject parcel, for which the special exception has been requested, has been operated as additional church parking for the church since 1960. He further explained that the access to the parcel is on Jamestown and the church is bounded along both tracks by I-244. Mr. Williams stated that basically it is a land locked parcel. He commented the church has grown recently and needs to take some of the existing old structure for classrooms. He further commented that the subject property is needed for church offices. He detailed that to the east there are a few residences, rental properties and a small commercial operation to the south. He advised that this would be low impact use, although the church offices will operate Monday through Friday. He commented there is no indication that the neighborhood is against this application.

**Protestants:** None.

**Comments and Questions:**

Mr. White stated this is an excellent use in an area that needs some help.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Abbott, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** to allow construction of a church building for church offices and parking. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2; 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:

Lots 6, 7 and 8, Block 2, Walnut Park Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17523**

**Action Requested:**

Special Exception to allow a public airport in various zoned districts. **SECTIONS 401, 701, 901. PRINCIPAL USES PERMITTED IN ... SEVERAL DISTRICTS** - Use Unit 2; a Variance of the 3 yr. time limit on to utilize a Special Exception for future airport development on "Tract 6". **SECTION 1608.D. TIME LIMITATION ON SPECIAL EXCEPTIONS.** and a Variance to allow airport accessory uses on lots other than where principal uses are located. **SECTION 1800. DEFINITIONS**, located North of Gilcrease Expressway between 73rd East Avenue and North Mingo Road.

**Presentation:**

The applicant, **DWAIN GARNER/TULSA AIRPORT AUTHORITY**, 7526 East Young Place North, submitted a site plan (Exhibit X-1) and a plot plan (Exhibit X-2). Mr. Garner stated that this variance is coming about through review committee of a building permit for the said parking lot. He explained that the parking lot is for expansion of the current airport parking garage, which will be expanded to the south. He stated the expansion will be bound by the existing parking garage, the Radison Hotel, the Gilcrease Expressway and other airport property. He explained that the subject property was once a sub-division in the 40's and 50's, Douglas & Highland Acres. He further explained the sub-division was vacated in 1981 when the airport purchased the property and it is owned by the City of Tulsa. He stated the zoning was not changed when the property was purchased and the subject property connects to several different zoning districts, as well as, several different outlines that have been approved for airport use. Mr. Garner pointed out that the subject property is zoned RS-3, which is left over from the plat. He indicated that there is a small portion of IL zoning that has been included for the parking lot and was acquired for possible hotel expansion, but was never developed. In talking to representatives from INCOG, they stated that the most appropriate action for this was to get a special exception since no district allows airport use by right. He explained that this application was the most economical, time wise and logical means to proceed. He indicated that Tract 6 is the main portion of the airport and it includes the runways, commercial uses, terminal buildings and etc.

**Comments and Questions:**

Ms. Abbott asked the applicant when the three (3) year time period will end for the special exception that has been approved? Mr. Garner stated he is asking for a variance on the three (3) year time period to an indefinite time with this special exception.

Mr. Gardner stated that any special exception requires that it be utilized within a three (3) year time period, but when it involves this much area it is not realistic to require that the applicant develop the land or lose the special exception. He further stated that the applicant is asking for a variance on the time period. Everything that is within the dashed line on the site plan is under application today, but most of the property owned by the airport authority was previously approved by Board application.

**Protestants:**

Clyde Box, 3898 North Memorial, stated he has owned his property for 23 years. He further stated he owns a small machine shop. Mr. Box approached the Board to indicate where his property is located on the map. He requested that the Board not approve this application. He expressed concerns that streets would be closed that go through to his property. Mr. Box read a lengthy history and expressed concerns regarding this application. He commented that the airport authority is ruining his business and trying to take his land from him by closing streets and cutting him off from the airport authority's sewer connection.

**Comments and Questions:**

Ms. Abbott asked the applicant to approach the Board and indicate where the property for the special exception is located in regards to the Protestants property.

Mr. Gardner stated that everything within the dotted line is under application and the protestant is excluded from the application. He indicated that the Protestants property is the IL zoned property on the map.

Mr. Garner stated that the dotted line has been researched to determine what exact properties, deeds and contiguous areas that the airport does actually own.

Ms. Turnbo asked Mr. Garner if he was proposing to close Memorial? Mr. Garner stated he is not closing any streets. He further stated he appreciates the Protestants concerns. He commented he doesn't believe he can close a street with airport use.

In response to Mr. Garner, Mr. Gardner agreed with his statement concerning street closings. He stated that the dedicated right-of-way cannot be used for airport use unless the street is closed and that would be a separate hearing and process before the City Council.

Mr. Garner stated that this application does not include the problems with closing of utilities or closing of streets. He further stated that all the airport authority is asking for is airport use and all the properties they own. He explained that the requests today is so the airport authority will not have to come back for approval on each separate parcel.

Ms. Abbott asked the applicant what the access to the Protestant's property is presently? Mr. Garner stated that the access would remain the same and there will not be any closing of streets with this application.

Mr. Gardner stated that any public road to which the Protestant has access to that has not been vacated is still accessible. Mr. Gardner further stated that there is nothing in this application that closes any of the public roads.

Mr. Romig stated that if Memorial was to be closed, as long as the protestant has his ownership there, the road will be closed south of his property so that he is not closed off from the Port Road.

Mr. Box asked why the airport authority couldn't show that they are not cutting him off on the west side. He stated the airport authority has intentionally been trying to destroy him for 10 years. He further stated he does not trust anything the airport authority states.

Mr. Gardner stated the street closing issue and utility issue is not before the Board today. Mr. Box has an industrial type use that wouldn't be something necessarily incompatible with the airport. There has to be a willing buyer and a willing seller or you have to condemn the property and take it. If the airport authority chose not to condemn the property then he doesn't lose his property and it can be used as in the past. He commented that there is no request to vacate any streets (either on the east or west) and so he maintains what ever rights he has always had.

Ms. Abbott asked the protestant if he understood Mr. Gardner's statement? Mr. Box stated he understood Mr. Gardner's statement; however the airport authority had his property in condemnation and then dropped it. He further stated he wants to make sure his access streets are left open and that he has the right to connect to all of their sewers lines and don't cut him out. He asked why he couldn't have the right to connect to the airport authority's sewer lines? He stated the airport authority is destroying his property gradually and he is trying to prevent this from happening. He requested in writing the right to hook up to the airport authority's sewer line.

Mr. White asked the protestant if he is currently connected to the sewer line? Mr. Box stated he is not hooked up to a sewer line presently because there are no sewer lines available. He further stated that if this application is approved, he will be totally isolated from airport property and he would have no way of getting a sewer line to his property.

Mr. Gardner stated the Protestant's property is zoned IL and there is a metal building on the property. Mr. Gardner asked the Protestant if he applied for a permit to build the metal building? Mr. Box stated he did receive a building permit for his metal building.

Mr. Gardner asked the Protestant if he applied for a plat waiver from the Planning Commission on his property? Mr. Box stated the land was platted before he bought the property.

Mr. Gardner informed the Protestant that since 1970 property that has been rezoned by a private party requires platting or replatting in this case before a building permit can be issued. Mr. Gardner stated that if the protestant did not apply for a waiver, then there was a building permit that was apparently issued in error without meeting that platting requirement. Mr. Gardner commented he is not sure how the protestant received a building permit, but that is not an issue for this Board. Sewer is the responsibility of the private property owner when the land is platted. He stated that the Planning Commission usually does not waive the plat requirement without sanitary sewer. He further stated the protestant may have a building that does not meet all the zoning requirements.

In response to Mr. Gardner, Mr. Box stated he understands Mr. Gardner's statement, but he is trying to stop the airport authority from cutting him off from anything. He further stated the airport is owned by the City and he should have the right to connect to their sewer line. He requested the Board to continue the application so that he can get the right to hook up to their sewer in writing.

Mr. Gardner stated that if there wasn't sewer available to begin with, and you built a building without sewer and you still don't have a sewer, what rights are the City taking away from you?

Ms. Abbott stated the only concern today is that the protestant has access to his property and the access is secure.

Ms. Turnbo stated the protestant does have access to his property.

Mr. Dunham stated that this application would effect the access, because they could not shut down the road.

Ms. Abbott stated the only thing the Board is going to rule on today is a special exception to allow airport use in various zoning districts, which has already been explained that it does not include closing any public street right-of-ways. She further stated the protestant will still have access to his property from Memorial. Ms. Abbott informed the protestant that the variance requested today is to eliminate the three (3) year time period.

Ms. Turnbo asked Mr. Box if he has ever requested a meeting with the Tulsa Airport Authority? Mr. Box stated he has been to the Tulsa Airport Authority many times and they have fought this issue for 10 years.



**Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Abbott, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **APPROVE** a **Special Exception** to allow a public airport in various zoning districts. **SECTIONS 401, 701, 901. PRINCIPAL USES PERMITTED IN ... SEVERAL DISTRICTS** - Use Unit 2; a **Variance** of the 3 yr. time limit to utilize a **Special Exception** for future airport development on "Tract 6". **SECTION 1608.D. TIME LIMITATION ON SPECIAL EXCEPTIONS.** and a **Variance** to allow airport accessory uses on lots other than where principal uses are located. **SECTION 1800. DEFINITIONS;** 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:

Commencing at the NW/c, Sec. 23; thence N89°59'18"E for 50.00'; to the POB; thence N00°04'18"E for 31.496'; thence N82°18'42"E for 50.462'; thence N00°04'18"E for 246.421'; thence N 81°34'53"E for 725.308'; thence N62°22'44"E for 380.044'; thence N81°34'53"E for 401.652'; thence S84°22'56"E for 515.388'; thence N81°34'53"E for 344.6'; thence N78°44'51"E for 71.124'; thence along a curve to the left a radius of 2241.82' for 1276.802'; thence N45°44'22"E for 785.887'; thence N40°03'26"E for 190.74'; thence along a curve to the right a radius of 3155.464' for 261.314'; thence S45°51'23"E for 60.628'; thence S73°05'27"E for 224.027'; thence S86°53'42"E for 60.042'; thence S87°30'20"E for 455.17'; thence N89°59'36"E for 65.675'; thence N00°00'24"W for 906.823'; thence N35°08'39"E for 173.692'; thence N45°44'22"E for 714.919'; thence along a curve to the right a radius of 3455.99' for 419.296'; thence N39°01'09"E for 100.029'; thence N55°05'28" for 97.204'; thence along a curve to the right a radius of 3455.99' for 1970.535'; thence S89°50'24"E for 5.848'; thence S00°01'10"E for 267.657'; thence along a curve to the left a radius of 441.97' for 236.17'; thence S30°38'09"E for 259.29'; thence along a curve to the right a radius of 320.89' for 156.905'; thence 89°50'46"E for 27.0'; thence S00°01'14"E for 1748.31'; thence S89°51'16"E for 1270.769'; thence S00°01'24"E for 285.872'; thence S11°16'36"W for 51.034'; thence S00°01'24"E for 430.10'; thence S44°58'36"W for 42.426'; thence S00°01'24"E for 50.00'; thence S45°01'24"E for 42.426'; thence S00°01'24"E for 359.9'; thence S11°20'24"E for 50.96'; thence S00°01'24"E for 700.00'; thence S11°16'36"W for 51.034'; thence S00°01'24"E for 450.00'; thence S44°58'36"W for 70.71'; thence N89°53'36"W for 10.90'; thence S45°01'42"E for 100.267'; thence S00°01'42"E for 2210.233'; thence S89°58'18"W for 10.00'; thence S00°01'42"E for 60.00'; thence N89°58'18"E for 10.00'; thence S00°01'42"E for 270.00'; thence S89°58'18"W for 10.00'; thence S00°01'42"E for 1350.495'; thence N89°51'46"W for 1923.982'; thence S00°00'27"W for 230.037'; thence N89°51'37"W for 971.34'; thence S35°48'51"W for 123.1'; thence N89°51'37"W for 279.433'; thence S00°01'54"W for 409.935'; thence S34°12'15"W for 356.071'; thence S02°14'31"W

for 285.19'; thence S2°11'05"W for 202.233'; thence S2°32'43"W for 93.048'; thence S2°17'54"W for 1026.588'; thence N89°52'01"W for 65.736'; thence S00°02'45"E for 1320.96'; thence N89°52'52"W for 1603.348'; thence N00°03'36"W for 25.00'; thence N89°56'27"W for 556.959'; thence N83°49'04"W for 281.72'; thence N43°03'23"E for 621.74'; thence N46°56'37"E for 36.66'; thence N52°30'52"W for 199.67'; thence N45°17'30"W for 82.271'; thence N50°15'19"W for 243.353'; thence S64°30'18"W for 3.59'; thence N18°34'52"W for 6.208'; thence N50°15'19"W for 75.776'; thence N43°44'59"W for 60.80'; thence N39°05'35"W for 50.31'; thence N28°03'47"W for 209.50'; thence N75°33'19"W for 127.79'; thence S79°12'39"W for 55.76'; thence N89°56'26"W for 436.95'; thence N78°16'11"W for 226.67'; thence N00°01'04"W for 40.00'; thence N89°56'17"W for 598.00'; thence N54°23'35"W for 85.83'; thence N89°59'16"W for 332.63'; thence N81°59'30"W for 295.266'; thence N81°52'35"W for 69.37'; thence along a curve to the right a radius of 410.00' for 585.458'; thence N00°03'40"W for 588.71'; thence along a curve to the left a radius of 290' for 241.984'; thence N00°01'10"E for 75.00'; thence N89°58'50"W for 752.388'; thence N00°05'47"W for 5242.16'; to the POB, City of Tulsa, Tulsa County, Oklahoma.

### **OTHER BUSINESS**

### **ELECTION OF OFFICERS**

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Abbott, , Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Bolzle "absent") to **ELECT** Bruce Bolzle to the office of Secretary for the City Board of Adjustment.

### **Action Requested:**

Discussion of citizen's concerns regarding storm water run off problems near 25th Street & Peoria.

Discussion (continued)

**Comments and Questions:**

Mr. Gardner informed the Board that a letter was received from the neighborhood complaining that the Board had approved variances and therefore created runoff problems for the area. Mr. Gardner stated the INCOG staff can not find any action that was approved.

Mr. Gardner informed the Board that INCOG will continue to investigate the complaint and discuss any findings at the October 8, 1996, Board of Adjustment meeting.

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

Date approved: 10-23-96  
  
Chair

