

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 714  
Tuesday, October 22, 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>
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Abbott, Chair  
Bolzle  
Dunham  
Turnbo  
White

Gardner  
Beach  
Huntsinger

Ballentine, Code  
Enforcement  
Parnell, Code  
Enforcement  
Romig, Legal  
Department

The notice and agenda of said meeting were posted in the Office of the City Clerk on Friday, October 18, 1996, at 11:34 a.m., as well as in the Reception Area of the INCOG offices.

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

**MINUTES:**

On **MOTION** of **TURNBO**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** the minutes of September 24, 1996 (No. 712).

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** the minutes of October 8, 1996 (No. 713).

**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**, was not present.

Case No. 17472 (continued)

**Comments and Questions:**

Ms. Abbott asked the Staff if this case had been continued before? Mr. Beach informed Ms. Abbott that the case was originally scheduled for August 27, 1996 and has been continued a number of times. He stated that originally it was determined that the legal description was inadequate and needed additional advertising for land used for parking off-site. Mr. Beach further stated he informed the applicant of the need for further legal description and has had several conversations with the applicant. Mr. Beach commented he is unsure of what the applicant would like to do at this point. He further commented the applicant indicated he may be in attendance today and the applicant is aware that he is the first item on the agenda.

Mr. Bolzle stated there is no need to keep this application on the agenda continuously and suggested the case be denied without prejudice.

**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 without prejudice**; finding that the applicant has not supplied the correct legal description; finding that Case No. 17472 has been continued numerous times without the applicant appearing or indicating his intentions.

**Case No. 17500**

**Action Requested:**

Variance of the allowable display surface area from 165 SF to 532 SF to permit a second business ground sign on the property. **SECTION 1221.D.3. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, located North of the Northwest corner of North Garnett and East I-244.

**Presentation:**

The applicant, **Steven Mendenhall**, Country Inn Suites, 1034 North Garnett Road, submitted a site plan (Exhibit A-1), location map (Exhibit A-2) and requested additional signage. Mr. Mendenhall stated he installed a sign on Garnett Road entrance, which is required by the franchise. He further stated the sign on Garnett Road cannot be seen from I-244 due to the topography of the ground. Mr. Mendenhall requested a variance to allow a sign to be erected on the west side of the subject property. He indicated that the hotel next door (Days Inn) had the same problem and was granted the same type of variance a few years ago. Mr. Mendenhall submitted photographs of the site and the sign (Exhibit A-3). Mr. Mendenhall discussed the photographs with the Board. He indicated the back of the subject property is abutted by a six (6) acre tract that is used as a business, but is zoned residential. Mr. Mendenhall stated the motel bought the house next door so that the lady to the north wouldn't be bothered by the motel traffic.

**Comments and Questions:**

Mr. Bolzle asked the applicant where the house is located? He stated the house is next door to the north. He further stated that the motel also owns the lot.

Mr. Bolzle asked the applicant how much frontage does the lot have? Mr. Mendenhall stated the lot has 80' frontage.

Mr. Mendenhall stated the highway traffic is very important to his occupancy in the motel business.

Mr. Bolzle informed the applicant that Days Inn was granted a variance that only allowed 320 SF. Mr. Mendenhall stated the existing sign is 266 SF and you are allowed 300 SF for one sign. He further stated that he is not an expert on signage, but they do need an additional sign for visibility.

Mr. Beach stated that with 165' frontage the applicant would be allowed to have 330' SF for one sign. He further stated that if the applicant has two signs, then he is allowed 165 SF total. Mr. Beach stated the applicant currently has a sign that is 266 SF on the property and technically there is not room for another sign.

Mr. Gardner stated the applicant wants to put the same size sign on the back of the subject property as the one sign on the front of the subject property. He further stated the sign on the front of the property is nearly the maximum if he had only one sign. Mr. Gardner suggested that if the back of the subject property is where the sign needs to be seen from the expressway, the applicant might be able to relocate the sign from the front to the back and put a smaller sign in the front of the subject property. Mr. Gardner commented that if the sign in front can't be seen from the highway then it doesn't need to be as large as it is.

Mr. Mendenhall stated the sign in front of the subject property and the size of the sign is required by the franchise. He further stated he has no flexibility on the size of the signs. He commented that if the motel's business is good, then the City will do good because there is a hotel franchise tax on every room that is rented. He indicated that there are no protestants present and the location of the sign will be next to another hotel. Mr. Mendenhall stated there are a few homes between two industrial districts and the homeowner's plan to request that their land be zoned commercial.

Mr. Bolzle stated the re-zoning will not effect the amount of signage that is allowed on the subject property.

Mr. Mendenhall indicated the motel owns an extra lot that is 80' x 320' to the north, but it is zoned residential.

Mr. Gardner stated that if the lot to the north was zoned commercial with 80' of frontage, it would be entitled to 160 SF of signage.

In response to Ms. Abbott, Mr. Gardner stated the applicant is asking for a 266 SF sign on the front and a 266 SF sign on the back. He further stated that with the extra lot he is only allowed 160 SF of additional signage.

**Interested Parties:**

Jim Doherty, 616 South Boston, stated that the tract is a little unique because of the topography problem, which is higher than the expressway. He further stated the subject property is located in an expressway commercial corridor in the sense that it is a developed expressway commercial area. Mr. Doherty indicated the visibility requirements for signage in expressway corridors are different and recognized as such. He further indicated that the area north of the subject property is in transition to industrial and there is very limited residential in the area. He stated the shape of the lot, the height of the lot above the expressway and the fact that it is in this corridor does make this application unique. Mr. Doherty commented that given the isolation of this tract from other uses in the area, the clustering of motel use and the fact that there has been a variance similar to this application already approved in the area, does not make extra signage at this location inappropriate.

Mr. Bolzle suggested that the signage for the subject property is self-imposed. He further stated he would not have a problem with going to 320 SF so that the applicant does not have a disadvantage in relationship to the hotel next door. Mr. Bolzle expressed a concern with this application and suggested the applicant re-zone the lot to the north and come back to the Board for more footage by virtue of the lot.

Mr. Doherty stated that the applicant has two problems with getting his square footage up: 1) If you have a single sign you have two square feet for each foot of frontage, but when you go to two signs on a lot, you cut the formula in half. Mr. Doherty further stated the intent is to encourage larger single signs rather than multiple signs on a tract. He explained that the applicant is proposing to erect a sign on the back of the lot to give him exposure to a different arterial (expressway). He stated the applicant could apply for re-zoning on the additional lot to the north, but when putting two signs on the subject property the formula is cut in half and by right he is back down to half of what he has currently. Mr. Doherty commented that it is appropriate for the Board to look at the applications for signs on a case by case basis to see if there is truly a hardship other than self-imposed. Mr. Doherty stated that the applicant does have a hardship and in this case the applicant does deserve some consideration for additional signage on the site. He further stated the customer base is expressway driven and in the expressway corridors we have recognized that larger/more signage is appropriate.

Case No. 17500 (continued)

**Comments and Questions:**

Mr. White asked Mr. Mendenhall how high is the proposed sign in the rear of the subject property? He stated the sign is 40'.

Mr. White asked Mr. Mendenhall how high the Days Inn sign in the rear is? He stated it is taller than the roof of the Days Inn Hotel.

Mr. White asked the Staff if the 320 SF granted in 1989 for the Days Inn Hotel was what the Days Inn requested? Mr. Gardner stated he did not know the width of the Days Inn tract, but if it is the tract that is just to the south of the subject property, then they have the same width of tract as Country Inn Suites. He explained they allowed them to have a sign in the front and back of the lot totaling 320 SF disregarding the ordinance that penalizes you for having two signs. He further explained that the rationale of the Board was that they were not cluttering the arterial frontage with two signs. The primary reason for reducing the amount of signage along the arterial street was to not have sign clutter on the frontage of the property.

Ms. Abbott asked Mr. Mendenhall what the purpose of the additional property that was purchased? He stated the motel bought the additional property to try and be a good neighbor so that the elderly lady wouldn't have to contend with construction and motel traffic noise.

Ms. Abbott asked the applicant what the current use of the property is? He stated it is currently vacant, but the motel's intention is that the motel manager would live in the house.

Ms. Abbott asked the Board if they would have a problem granting a variance of 426 SF, which would be 266 SF for the original sign and 160 SF for the second sign?

Mr. Bolzle stated he would vote against a variance allowing 426 SF.

**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** Variance of the allowable display surface area from 165 SF to 320 SF to permit a second business ground sign on the rear of the subject property. **SECTION 1221.D.3. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING;** subject to the subject property being allowed a total of 320 SF display surface area to be divided as the applicant chooses between the two signs; finding that the topography of the subject property hinders the visibility of the franchise required sign 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:

Lot 1, Block 1, Virah Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17508**

**Action Requested:**

Variance of the required hard surface parking to allow a gravel parking lot. **SECTION 222. MOTORIZED VEHICLES**, a Variance to permit a 6' chain link fence with inserts to satisfy the screening requirement. **SECTION 212.A.8. SCREENING WALL OR FENCE** and a Special Exception to permit Use Unit 23 in a CG district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 23, located 1111 South 129th East Avenue.

**Presentation:**

The applicant, **Paula Hamm**, represented by David Scott, stated that there were two neighbors at last month's meeting and if the Board recalls they stated that they had no objections to the application. He further stated the reason for the continuance is because the original application only listed the surface variance and it needed a fence variance plus a special exception to permit the Use Unit 23 in a CG district.

**Comments and Questions:**

Mr. Dunham asked the applicant if he needed to extend over the building setback line as the site plan indicates? He stated that Allied Towing Service has leased the subject property and that was their current purpose, but he didn't think they would have to go over the building setback.

Mr. Dunham stated he didn't have any problem with this application as long as the applicant stays behind the building setback line.

Mr. Gardner stated the setback from the center of the streets would be 100' on the subject property.

Mr. White asked the applicant if the provision to stay behind the building setback line is all right with Ms. Hamm? Mr. Scott stated it would be acceptable with Ms. Hamm.

Ms. Abbott asked the applicant if the variance for the hard surface parking to allow gravel parking is for an indefinite period of time? Mr. Scott stated the lease is short term and the property owner did not want to pave the parking in case the leasee moves out at the end of the lease.

Ms. Abbott asked the applicant what the term of the lease is? Mr. Scott stated the lease is for one year.

Ms. Abbott stated she would not have a problem with granting this variance for one year.

Case No. 17508 (continued)

Mr. Beach stated the point in the Staff comments is that the Board can grant the request for the gravel parking as long as all of the parking occurs behind the building setback line. Mr. Beach further stated that if the Board is inclined to grant the request it can be by a special exception rather than by a variance as long as it is behind the building setback line.

In response to Mr. Dunham, Ms. Abbott stated that if the use changed the applicant would be back before the Board because the Board would be granting a special exception for a different use.

Mr. Bolzle stated that in the past the Legal Department has advised the Board to be real careful about granting temporary approvals. He further stated that generally if the Board found the variance to be satisfactory than it should be satisfactory permanently, except in special circumstances.

Mr. Bolzle asked the Board if it was the use that they are concerned about being on the subject property or the lack of hard surface parking? Ms. Abbott stated it would be the use that is temporary, which means that if the Board granted a permanent variance then some other use would have the advantage of the variance when in reality the Board might not want the new use to have the advantage of the variance.

Mr. Gardner stated the Board can tie the action to this specific use. He further stated the reason behind allowing gravel surface behind the building setback line were for those uses where they have storage of vehicles where you do not have a lot of movement in and out. He informed the Board that the gravel surface behind the building line can be approved by special exception and tie it specifically for the temporary storage of the vehicles until picked up for auction.

Mr. Bolzle stated the application is a temporary storage yard for an automobile towing business and that is how the Use Unit 23 should be defined.

**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** of the required hard surface parking to allow a gravel parking lot. **SECTION 222. MOTORIZED VEHICLES;** subject to the gravel parking occurring behind the building setback line and is tied to this approved use; **APPROVE** a **Variance** to permit a 6' chain link fence with inserts to satisfy the screening requirement. **SECTION 212.A.8. SCREENING WALL OR FENCE;** and to **APPROVE** a **Special Exception** to permit Use Unit 23 a temporary storage yard for an automobile towing business in a CG district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS - Use Unit 23;** finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Case No. 17508 (continued)

N/2, W/2, NW, NW, NW & N/2, S/2, W/2, NW, NW, NW, Less N 24.75', W 50', S 470.25' for St., Sec. 19, T-19-N, R-14-E, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17529**

**Action Requested:**

Special Exception to permit a 125' high cellular telephone tower in an RS-3 zoned district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 4, located Northwest corner of West Brady and South 46th West Avenue.

**Presentation:**

The applicant, **Lee Ann Fager/SW Bell Services**, represented by Vicky Hale, 100 West 5th Street, submitted a plat of survey (Exhibit C-1) and stated that SW Bell Services is proposing a 125' self supporting tower in an area that is zoned residential, however the tower itself is proposed to be constructed on a site that is of a manufacturing entity that has already received a special exception from the residential zoning. She further stated the tower will be in the far corner of the subject property. Ms. Hale submitted photographs (Exhibit C-2). Ms. Hale explained that looking directly to the north from the site is a retaining wall for Highway 64 and 51. She further explained that directly south to the proposed tower is actually the manufacturing entity. She stated that there is one residence 150' to the west and to the east there are a few residential homes across the street (approximately five).

**Comments and Questions:**

Mr. White asked the applicant how far the five homes across the street were from the tower? Ms. Hale stated in excess of the tower.

Mr. Dunham asked the applicant if the tower site is 150' away from the nearest home? She answered affirmatively.

Ms. Hale stated the tower will be 125' and there will be an 8' x 16' equipment building at the base of the tower, which is enclosed by a fence.

**Protestants:** None.



Case No. 17529 (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 permit a 125' high cellular telephone tower in an RS-3 zoned district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 4; per plan submitted; subject to the 125' setback from nearest residence; 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:

E 102, Lots 39 & 40 and all Lots 43 through 45, Block D, Vern Heights Sub-division, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17536**

**Action Requested:**

Special Exception to permit expansion of the existing auto wash facility. **SECTION 701. PERMITTED USES IN COMMERCIAL DISTRICTS**, a Special Exception to permit the construction of an automobile lubrication facility, **SECTION 701. PERMITTED USES IN COMMERCIAL DISTRICTS** and a Variance of the street frontage requirements to permit the westerly 150' of Lot 1, Block 1, Meadow Brook Village to be split from Lot 1, Block 1, Meadow Brook Village. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS**, located South and East of Intersection of South Mingo Road & East 81st Street.

**Presentation:**

The applicant, **Charles E. Norman**, 2900 Mid-Continent Tower, submitted a site plan (Exhibit D-1) and photographs (Exhibit D-2). Mr. Norman stated he is representing Arkansas Valley Properties for this application. He further stated that the Board had previously approved, several years ago, the existing car wash facility on South Mingo immediately south of the Git-n-Go store. He informed the Board that all of the properties are owned by Arkansas Valley Properties and leased to the users. He stated the initial application is to expand the existing car wash facility to the east into parts of Lot 1, Block 1, which is also owned by the applicant. Mr. Norman further stated that on the north side of the property along east 81st Street he is asking for a special exception to permit the construction of an auto lube for Citgo in accordance with plans and building specifications that has been submitted. He informed the Board that the third part of the application is technical. He explained that when the building was added for the car wash and placed it on the second lot, which is immediately behind the car wash, it triggered a Code requirement that there be a restroom facility in the building on the separate lot, even though there are restroom facilities on the complex in the front lot. He further explained that in order to avoid duplicating the restroom facility, the applicant is asking to split the west 150' of Lot 1 and tie it to Lot 4 to make the car wash operation a single lot and therefore only needing one restroom facility.

Case No. 17536 (continued)

**Protestants:** None.

**Comments and Questions:**

Mr. Dunham asked Mr. Norman if there was any problem with the tie agreement? Mr. Norman stated the approval should be subject to the execution of a tie agreement combining the west 150' of Lot 1 to Lot 4. He further stated that he has filed a lot split application for that purpose and is awaiting the Board's approval.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Special Exception** to permit expansion of the existing auto wash facility. **SECTION 701. PERMITTED USES IN COMMERCIAL DISTRICTS**, a Special Exception to permit the construction of an automobile lubrication facility, **SECTION 701. PERMITTED USES IN COMMERCIAL DISTRICTS** and a **Variance** of the street frontage requirements to permit the westerly 150' of Lot 1, Block 1, Meadow Brook Village to be split from Lot 1, Block 1, Meadow Brook Village. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS**; per plan submitted; subject to a tie agreement between the west 150' Lot 1 and Lot 4; 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:

E 100', Lot 4, Block 1, Meadow Brook Village, an addition, and part of Lot 1, Block 1, Meadow Brook Village Addition, more particularly described as follows: Beginning at the SW/c, Lot 1, Block 1; thence N along E boundary, Lot 4, Block 1 for 166.92'; thence E along the S boundary, Lot 2, Block 1 for 150.00'; thence S and parallel to the E boundary, Lot 4, Block 1 for 166.92'; thence W along the S boundary, Lot 1, Block 1 for 150.00' to POB, AND Lot 2, Block 1, Meadow Brook Village, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17538**

**Action Requested:**

Special Exception to allow an Adult Entertainment facility in an IL zoned district. **SECTION 901. PERMITTED USES IN INDUSTRIAL DISTRICTS**, a Variance of the required 300' separation from another adult entertainment establishment. **SECTION 1212a.C.3.c. USE UNIT 12a. ADULT ENTERTAINMENT ESTABLISHMENTS** and a Variance of the required 1000' separation from another sexually oriented business. **SECTION 705.B.1. LOCATION OF SEXUALLY ORIENTED BUSINESSES** - Use Unit 12a, located 4020 South Memorial Drive.

**Presentation:**

The applicant, **Douglas E. Craig**, represented by Alan Autry, 15 West 6th Street, Suite 108, submitted a site plan (Exhibit E-1) and stated his client proposes to open a upscale gentlemen's club (in the former Jade East Restaurant) unlike anything in the market. He further stated it will be more discreet, professional and more in the nature of an old time burlesque club. He explained the area is zoned IL and his client needs a special exception to put an adult entertainment business in the area. He further explained his client has requested the variances because the proposed club will only be 150' from the Caravan Club, which is directly to the west of the subject property. He informed the Board that previously the Jade East Restaurant had a lounge inside that was called the Shanghai Lounge and probably had to have a variance with regard to the Caravan Club being so close. Mr. Autry stated there is another bar across 41st Street to the south that most likely has to have a variance to operate. He further stated he also requesting a variance because of the proximity to Priscilla's, which is an adult lingerie and novelty business. He commented that the proposed club is something totally different than what Priscilla's offers and so he is not grouping two sexually oriented businesses, or at least live entertainment businesses together, which is be prohibited. He further commented that the idea of the ordinance and spirit of the ordinances is to prohibit a red light district. He expressed the opinion that the proposed club will not have any effect of being near Priscilla's and drawing a larger crowd just due to the proximity of the two types of businesses that are for totally different markets. Mr. Autry proposed to build a retaining wall around the property to help separate the areas and will prohibit direct travel from the Caravan to the subject property. He stated the signage will be discreet and there will not be anything mentioning "girls".

**Protestants:**

Sam Roop, City Councilor, 1869 South 106th East Avenue, stated he is in opposition to this application because the City Council has proposed the distance limits and this will be a clustering of adult entertainment businesses. He further stated the spirit of the ordinance is to prevent clustering. Mr. Roop commented that in his opinion this will be a clustering of adult entertainment and sexually oriented businesses. He detailed the surrounding area as follows: Memorial is Highway 64 and up the street is a Vocational Technical Center. He stated Memorial is a major thoroughfare for the City of Tulsa which goes to the Fontana Shopping Center, Woodland Hills Shopping Center and 71st & Memorial area. He commented that this application is not something that the City of Tulsa would like to have visitors to see and beware of as they come into our City. He stated he opposes this application.

Lucy Whitaker, 3853 South 82nd East Avenue, stated she has a petition with 465 names opposed to this application. Ms. Whitaker submitted the petition opposing this application (Exhibit E-3).

Jim Ferhman, 4201 South Memorial, business owner on Memorial, stated he has been a business owner on Memorial since 1986. He further stated he had the pleasure of putting out the type of businesses that are trying to go in by constructing a auto dealership at 49th and Memorial. He indicated that previously there was a gravel parking area with the Cosmic Kitty Disco and My Brother's Place, which were more appropriately known as strip joints instead of adult entertainment centers. Mr. Ferhman submitted and read a top ten list of reasons not to allow the application to be approved (Exhibit E-2). Mr. Ferhman commented that that if the Board approved this application it will be creating one more cesspool pool in Tulsa.

Robert Floyd, owner of Priscilla's, 7925 East 41st Street, stated that when he located his business on 41st Street he was located under the rules of the City of Tulsa and met all of the footage requirements. He further stated a special exception was granted but it did not relinquish the ordinance from the footage separation requirements. He commented that he occupies his business legally under the rules of the City of Tulsa. Mr. Floyd asked the Board to uphold the laws of Tulsa and deny this application because it is within 1000' of his business and within 300' of another adult entertainment establishment.

Sue Stine, owner of Crown Furniture, 7727 East 41st Street, stated she has been at the current location for three (3) years and share the building with Gut's Ministries. She further stated that her property has had trouble with broken beer bottles and debris from the surrounding adult entertainment businesses. She explained that when she comes to work in the morning she has to clean out her parking lot of debris. Ms. Stine stated the proposed application will be a bad influence on the area and will increase the crime rate. She commented that she has had her customers for over 25 years and would like to keep her customers.

John Roy, 9018 East 38th Street, Vice President of the Fulton Neighborhood Association, stated the association covers the area from Memorial to Mingo, 31st to 41st Street. He further stated the association represents 1560 households within the area. He commented that there was an article in the paper about wanting citizens to participate more in city planning and his organization plans to do so today. He asked the Board to indulge him while he asked the audience who was against this application to stand up (several people from the audience stood up).

Gene Callahan, Superintendent of the Tulsa Technology Center, 6111 East Skelly Drive, stated one of the major campuses is located at 3420 South Memorial. He further stated he represents more than 1,000 young men and women who attend school at the Limley Campus each day. He commented that there are 150 employees on the Limley Campus with classes closing at 10:00 p.m. He further commented that there is heavy traffic in and out of the center, which served 15,000 adult people last year in the night classes and another 15,000 in industry training. He explained that

Case No. 17538 (continued)

the majority of the classes are held at the Memorial site. He stated he is opposed to this application and asked the Board to deny this application. He further stated the Board should deny this application because it does not follow the basic guidelines that the City Council and Board of Adjustment has set in place.

Brad Beasley, 100 West 5th Street, Suite 800, representing JMT Investment Company (Thomas Cadillac) and Rosalee Menskee. Mr. Beasley stated JMT Investment Co. is the property owners of the Thomas Cadillac location and Ms. Menskee owns the property contiguous to the north of the Jade East property. He further stated his clients are opposed to the application. Mr. Beasley pointed out that in order for the Board to approve the special exception it must be found that the proposal will not be injurious to the neighborhood or the public welfare. He commented that the prior protestants have stated the reasons that this application will be injurious to the neighborhood and the public welfare. He further commented that for the applicant to obtain the variance he must show a hardship. Mr. Beasley requested that this application be denied.

Richard Rosedall, 4111 South Memorial Drive, representing Fred Jones Company, stated Fred Jones Company occupies the property of 4111 South Memorial Drive, 4122 South Memorial Drive and 4111-B South Memorial Drive. He further stated Fred Jones Company strongly oppose this application.

Mel Cruz, 8551 East 33rd Place, retired classroom teacher, stated he objects to this application of another adult entertainment, sexually oriented business in the neighborhood. He further stated there are young students at Robert Fulton Elementary and William G. Skelly Elementary Schools in the area. He requested the Board to deny this application.

Nancy Mackey, 7918-B East 40th, representing Ralph Peacock, Bob Sturgess and E. J. Buchannon. She further stated the business has been located in the area for 35 years and they own two properties immediately adjacent to the subject property. Ms. Mackey informed the Board that she has recently sold property to a company right behind the subject property, which the owner has invested a great deal of money on his property. She commented that there is already a lot of activity in the area and the property owners are continually repairing damages to their property.

Ms. Abbott stated there are two letters of protest delivered to the Board. She explained the letters are from Councilor Terry Doverspike and Lois Thomas Dupree of Thomas Cadillac (Exhibit E-2).

**Protestants:** Names and address of parties opposing but did not speak at the meeting:

Philip Dietz, 721 East Fargo, Broken Arrow  
John Schrawger, 3838 South 93rd East Avenue  
Marge Bennett, 3832 South 93rd East Avenue  
John & Barbara Keith, 9018 East 32nd  
Jay B. Swartz, 8913 East 33rd Street  
Carl & Hilda Mallonee, 8161 East 31st Street  
Irene Fenster, 3834 South Delaware  
Joel & Rita Lenfestey, 9209 East 40th Street  
Glen & June Cockrell, 9043 East 40th Street  
Joe Stall, 3815 South 92nd East Avenue  
Manuel F. Agullar, 10833 East 7th Street  
Joyce F. Ziegler, 7966 East 41st  
Lisa J. Ziegler, 9902 East 43rd, Suite C  
Patricia & William Ellis, 9423 East 36th Street  
Lauretta Beach, 3125 South 88th East Place  
Joyce Crawford, 3361 South Memorial  
La Verne & Geo Foster, 8260 East 37th Place  
John & Lis Deupree, 6437 South Oswego  
Jean Thomas, Thomas Cadillac, 5813 East 58th Street  
J. C., 3939 South Memorial  
Frederick C. Leurman, 9430 East 38th  
Linda Fumar, 4201 South Memorial  
Linda Carns, 3940 South Memorial  
Sig Schmir, 3270 South Memorial  
Merter B. Hasty, 4979 South 76th East Avenue

**Applicant's Rebuttal:**

Mr. Autry stated the owners understand the concerns of the neighborhood and certainly their concerns will be taken in to consideration. He further stated the club owners will not tolerate any crime on the premises. He commented that the club will be run very professionally and quietly.

**Comments and Questions:**

Mr. Bolzle asked the applicant to restate his hardship for the variances requested? Mr. Autry stated the building has been vacant for several years and Ms. Jin has been unable to find anyone to take occupancy. He further stated his clients have been looking for a location for three (3) years and have considered other locations. He commented that the subject property is the best location for keeping in with the area.

Case No. 17538 (continued)

Ms. Abbott informed the applicant that the hardship has to be attached to the land and Mr. Bolzle asked you what the hardship that is attached to the land? He stated to the land specifically, the subject property presents an excellent opportunity to place this type of business in the area. He further stated the subject property needs a variance due to the nearness of the Caravan and Priscilla's.

**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** the request 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:

N 150', S 400', W 300', E 350", SE, SE, Less E 10' for street, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17539**

**Action Requested:**

Special Exception to allow an 80' monopole telecommunications tower in a RS-2 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 4, located 3601 South Lewis Avenue.

**Presentation:**

The applicant, **Earl Higgins/SW Bell Services**, represented by Vicky Hale, 100 West 5th Street, submitted a site plan (Exhibit F-1) and stated her client is proposing to erect an 80' monopole, which will be located at the corner of 36th and Lewis. She further stated that has on the north east corner there is an electric power station with power poles that are 75' to 80' tall. Ms. Hale indicated that on the south west corner there is a fire station and located across the street on the south east corner is the Southwestern Bell Telephone Company office building. She explained that there is a church across the street from the subject property to the west. Ms. Hale stated the proposed site for the monopole will be in the parking lot behind the Southwestern Bell Telephone Company office building. She further stated it will be closer to the Lewis Avenue side of the corner. Ms. Hale submitted photographs (Exhibit F-4 and F-5) and explained the monopole will be 80' in height. She pointed out the different power poles and telephone poles in the area, as well as the approximate height of the various poles. Ms. Hale compared the wireless tower to the height of the trees in the photographs.

**Comments and Questions:**

Mr. White asked the applicant if there is a residence in the proposed area? She stated there is a residence behind a fence with a substantial amount of foliage.

Ms. Hale indicated the residence is farther than 80', which is the height of the tower.

Ms. Turnbo asked the applicant if the towers that are located across the street are 75' in height? Ms. Hale stated the towers across the street are 75' to 80' in height.

**Protestants:**

Mike Joyce, stated he owns the property to the east of the parking lot that Ms. Hale indicated was hidden by the foliage and to the south of the Southwestern Bell office building. He vehemently objects to the construction of this tower. He explained he has plans to expand his property to the rear setback lines and to the side setback lines. He further explained that he fears that if the tower were to fall it will hit his property. He commented that the foliage Ms. Hale indicated is deciduous foliage and so for a period of six (6) months of the year the tower will be an eye sore. He further commented the eye sore will reduce the value of his property. He indicated the homes surrounding the area range in the value of \$150,000 to \$2.5 million dollars. He stated the homes are within a 600' radius of the proposed site. He stated the tower is unsightly and will reduce the property values. He further stated the tower will interfere with the development of his property. He questioned the health risk of communication towers being constructed in a neighborhood. Mr. Joyce stated that Southwestern Bell has no hardship for their existing use and they do not need to put the tower in the neighborhood. He requested the Board to deny this application.

Mike Kelsebeck, 2460 East 36th Place, stated that he is also representing two neighbors, Ed & Jo Sullivan, 2438 East 36th Place. Mr. Kelsebeck explained that he is opposed to this application for all the reasons that Mr. Joyce previously mentioned. He commented he does not see the relevance in the utility towers on the easement across the street from the subject property. He further commented that there has not been a hardship presented. Mr. Kelsebeck stated that he and his neighbors oppose this application.

Herb Beatty, 2445 East 36th Street, stated he did not see how the Board could possibly approve this application today because proper notice has not been given to the neighbors by Southwestern Bell. He further stated he owns property within 80 yards of the subject property and found out about the hearing because a neighbor called him. He explained that the subject property is the center of six (6) square miles of residences and churches. He commented that the applicant has not presented any reason or need for the tower. He further commented that to erect this tower in the middle of a residential neighborhood is inappropriate.

**Comments and Questions:**

In response to Ms. Abbott, Mr. Beach informed the Board that the notices were mailed out on October 11, 1996, and the requirement is ten days prior to the hearing, which would make it 11 days prior to the meeting that it was mailed out.



Mr. Beach asked Mr. Beatty to indicate on the map where his property is located.

**Protestants:**

Phyllis Connelly, 3537 South Zunis Court, stated she lives in the two story condominiums. She further stated the neighborhood is an old established neighborhood. Ms. Connelly commented the three other buildings located near the subject property are low profile with landscaping efforts to make them fit in with the neighborhood. She further commented that she did not see how an 80' pole will fit into the low profile of the neighborhood. She expressed concerns of the tower being highly visible and detrimental to the neighborhood.

Frank Henke, 3449 South Atlanta Place, stated he lives 1/2 block from the proposed site and has lived there for 25 years. He explained he received notice about this hearing when a notice was placed on the windshield of his car. He further explained that in a day and half he hasn't had the opportunity to explore this application. Mr. Henke stated the application is improper, unnecessary and inconsistent with any reasonable planning policy. He commented that neighborhood character is probably one of the most essential objectives of modern zoning ordinances. He further stated the zoning ordinances are developed to provide a geometric consistency to the neighborhood. Mr. Henke commented that the proposed tower is out of character with this neighborhood. He stated he discussed this application with Jerry Lasker at INCOG and was informed that the Board has been inundated with requests for exceptions for towers, antennas. He further stated this issue is the issue of trying to expand or establish a business in some sort of prohibited area. He commented that the staff report points out that clearly this proposal is contrary to the District 6 plan, which is part of the Comprehensive Plan for the Tulsa Metropolitan Area. He further commented that the subject area is designated as low density and for residential uses. Mr. Henke stated he has been a member of the Economic Development Commission and is currently a member of the Economic Development Foundation. He explained that over the past 35 years he has been involved in hundreds of economic development initiatives in the City of Tulsa. He further explained he knows the applicant company quite well and he has some knowledge of telecommunications within the City of Tulsa. He stated that since SW Bell Services has made a request to build an 80' monopole telecommunications tower, he presumes this tower is to receive or transmit telecommunications. He further stated that based on his experience, he can say unequivocally that Tulsa has a great over capacity of telecommunication capability. Furthermore, to grant SW Bell Services this type of an exception, when you consider that there are scores of telecommunication companies in this community and hundreds more who would like to do business here, this is contrary to all public policy that he is aware of. Mr. Henke listed the different telecommunication companies in the area: LDDS, TCI, US CELLULAR, DOBSON WIRELESS, BROOKS FIBER PROPERTIES, SPRINT, MCI & AT&T. He commented that the Board can imagine what the problem is going to be if you multiply it by all of these

telecommunication companies that are going to be requesting similar exception and variances in the City. He stated the newspaper indicated that Chickasaw Telecommunication Services of Sulphur was just certified to solicit local exchange telephone customers in this City. He further stated this will give the Board an idea of how this business is expanding and gives the Board some indication of what the complications are going to be relative to the problem moving forward. He commented that it seems to him that there is no public necessity to grant this exception. He further commented that the proposed tower is not in compliance with the zoning ordinance and the application should not have been filed. He stated applications for special exceptions for various permits must be decided in accordance with the Code as the Board is aware. He further stated the Code does provide for a special exception for antennas in Section 217, the question is whether an 80' monopole telecommunications tower is an antenna within the meaning of that definition. Mr. Henke commented that the Code imposes on the Board of Adjustment, the requirement that special exceptions be granted only if the special exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This case report states that the subject tract is abutted on the north, east and west by RS-2 zoning and on the south by RS-1 zoning. He informed the Board that the report further states that the Code requires a setback of 1' for every foot of height of tower when it is located on a tract, which abuts a residential zoning district. He stated that in as much this tract, according to the staff report, has the dimensions of 110' x 160' and the maximum amount the tower could be erected under that particular exception provisions would be 55' based on the width measurement. He questioned if the telephone company has measured the towers across the street because he did not think that the numbers cited were correct. Mr. Henke stated the Board should deny this request because the construction of the tower is totally unsuited to the neighborhood, it is contrary to the designation provided in the Comprehensive Plan for the Tulsa Metropolitan Area; it is not in harmony with the spirit and intent of the Code, it is injurious to the neighborhood and it is unnecessary for the economic development of this community. He further stated this application is contrary in every respect to an urban development plan and the zoning laws established to provide it.

David Inhoffe, representing his mother, Evelyn Inhoffe, 2425 East 36th Place, stated the tower that is proposed by SW Bell Services will basically be practically in her backyard. He further stated that there is a similar tower at Admiral and Sheridan behind the telephone building and it is an eye sore in an industrial area. He commented the tower will certainly be an eye sore in an urban area where his mother resides. He stated his main concern is possible health hazards with a transmission pole of this size. He indicated that there is currently an on going study for long term, low level, exposure to radio frequency signals. He requested SW Bell Services to inform him what other communication devices might be placed on this tower and what will be the specific levels of emissions from this tower, which will be in his mother's

back yard 50' away. Mr. Inhoffe asked if SW Bell Services had any publications in regard to level of emissions and possible health effects.

**Applicant's Rebuttal:**

Ms. Hale stated the telephone wireless industry is expanding and is growing by leaps and bounds. She further stated because the industry is growing so fast and because people want to have good service on their cellular phone, the companies have to build antenna towers. Ms. Hale explained that pursuant to the City of Tulsa's zoning an entity or company has the right to install a tower if it is not in an AG or RS district. She further explained the right is there so long as the setback line requirements are met. She stated the companies would not have to come before the Board for approval if the company wanted to erect a tower in a commercial zone as long as the 1 to 1 ratio is met. She further stated the company would like to be able to erect towers in commercial or industrial areas alone, however, the company can not do that if the company wants to have cellular service in a residential area. Ms. Hale informed the Board that if someone wants to drive up and down 36th and Lewis and expect good service there has to be a tower within a reasonable proximity of the location. The same is true for any other residential location. Ms. Hale stated that the subject location is on the parking lot of Southwestern Bell Telephone Company building, which since it is a utility, the company would not have to have a special exception for structures or facilities used on their own property. She commented that SW Bell Services has come before the Board to make everyone aware that SW Bell Services is distinct from SW Bell Telephone Company (affiliates). Ms. Hale stated the Board has a very clear standard that they have to follow with respect to special exceptions. She further stated that a special exception cannot be injurious to the neighborhood or otherwise detrimental to the public welfare and SW Bell Services are aware of the standards. She reminded the Board that Congress enacted the Telecommunications Act of 1996, which is a Federal Act that does not pre-empt the Board's ability to regulate the antennas, towers and wireless services. She stated the Telecommunications Act does place some limitations upon what the Board can do in denying location of the towers. She further stated that there are certain provisions in the statute which says that the local Board cannot discriminate among the wireless service providers who come in asking for a location for their tower. She detailed that the Board cannot do anything that would have the effect of prohibiting the provision of personal wireless services. She explained that the ordinances cannot be to the extend that whatever the company does, it can not get a tower erected. Ms. Hale stated that in the event that a tower citing is denied, it has to be based upon substantial evidence and that does not mean speculation. She further stated the denial cannot be based upon speculation of what might happen to the property values, nor on any speculation, but the denial has to be based on substantial evidence and a written report. She commented that there has not been any substantial evidence heard on this application. She touched on the comment that the 80' pole would be out of character and inconsistent with the neighborhood. She reminded the Board that

she submitted pictures, which shows a power substation across the street from the subject property that takes up yards with extremely tall towers that run up and down 36th Street. Ms. Hale commented that she does not know of any health hazards and she does not have any documentation to provide the protestants. She indicated she could probably gather some information to respond to the protestant's specific questions. She further indicated she does not know anything about the notices and maybe Mr. Beach can address the notice questions. Ms. Hale informed the Board that SW Bell Services did not give notice because they are not required to give notice, however she indicated she is sure the Staff complied with the notice requirements. Ms. Hale stated she does not believe that a tower in this location of the parking lot of the SW Bell Telephone building, across the street from a power substation, across the street from a parking lot shielded by foliage and trees is injurious to the neighborhood or otherwise detrimental to the public welfare.

**Comments and Questions:**

Ms. Abbott asked the applicant what other communication devices will be placed on this tower? Ms. Hale stated antennas will be the only devices placed on the tower.

Mr. Beach informed the Board that there were two or three references to notice given and records in the file indicate that notice was properly given. He further stated that what is required is that all owners of property within 300' of the subject tract are notified by letter and an ad is placed in a newspaper of general circulation. He summarized that all the requirements have been met on this application. Mr. Beach informed the audience that if there was anyone who had a question about whether their property was within 300', they can contact the INCOG office.

In response to Ms. Abbott, Mr. Beach stated that it appears the protestant who stated he was 80 yards from the subject property is actually outside the 300' radius.

Ms. Turnbo stated she had a problem with this tower strictly because across the street there are huge towers and also in front of the building there is a cluster of three telephone poles very close together, which is rather odd looking. She further stated along 36th Street there are towers and it is too many towers for one neighborhood. Ms. Turnbo commented the reasons above become harmful and damaging to a neighborhood.

Mr. White stated the Staff comments stating that the this requirement should be extended to those towers located in residential districts in order to provide the same protection to surrounding residential properties. Mr. White further stated namely the 1' in height and 1' horizontal. He commented that the protestant that lives immediately to the east is a concern that if the tower ever did fall it would be over on his property, if not his home. Mr. White stated he is inclined to deny this application on the above concerns.

Case No. 17539 (continued)

**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 **Special Exception** to allow an 80' monopole telecommunications tower in a RS-2 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 4; finding that the approval of this application will be injurious to the neighborhood and will not be in harmony with the spirit and intent of the Code, on the following described property:

Oakview First Addition, Lot 5, Block 3, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17540**

**Action Requested:**

Variance of the rear setback from 25' to 21'; and a variance of the side yard setback from 10' & 5' to 8' to 5' to construct an addition to the dwelling. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6, located 2310 South Birmingham Place.

**Presentation:**

The applicant, **Michael E. Holdgrafer**, 2310 South Birmingham Place, submitted a plot plan (Exhibit G-1) and a site plan (Exhibit G-2). Mr. Holdgrafer stated the purpose of his application is to seek a variance of the rear setback from 25' to 21' and a side setback from 10' & 5' to 8' & 5'. He commented that he has lived at the subject property for over 10 years and recently decided to expand from a 2 bedroom, 1 1/2 bath to a 3 bedroom and 2 bath home including a new kitchen and a casual living area. He explained the expansion is needed to raise a family and create a enough living space for the family without having to move to a larger home. Mr. Holdgrafer stated in the past five (5) years several homes were granted variances to expand toward the street. He explained that after reviewing the plans, he chose to move toward the rear and side yard, which would not encroach on any of the utility easements. He indicated the hardship he faces is that the lot is zoned RS-2 and a minimum lot in RS-2 is 75', however his lot is a narrow lot that is 69'. Mr. Holdgrafer stated his lot is non-conforming and it is impossible to modify his plans to fit the lot. He further stated the expansion will enhance the neighborhood in consistency with a trend of remodeling and improvement to the neighborhood that is going on in the area.

**Comments and Questions:**

Ms. Turnbo asked the applicant if he needed relief from the livability space?

Case No. 17540 (continued)

In response to Ms. Turnbo, Mr. Beach explained that there is a livability space requirement which is defined as the amount of land left on the property after you subtract for the house and the driveway. He further explained that in a RS-2 district the requirement is 5,000 SF remaining. Mr. Beach informed the applicant that this is an issue that may come up when he applies for his building permit and he may need to come back before the Board to seek relief from the livability requirement.

Ms. Turnbo asked the applicant if the proposed expansion will be 21' from the back property? He answered affirmatively.

Ms. Turnbo asked the applicant how many SF he is adding to his home? He stated he will be adding roughly 1,150 SF and the existing home is currently 980 SF.

Ms. Turnbo asked the applicant where the utility easements are located on his property? He stated the electric comes across the back of the lot and then comes in on the north property line. He explained the electric will feed into the new addition from the north property line. He further explained that the sewer runs to the front and the sewer line runs along the southern property line towards the street. He indicated that the water and gas utilities come in from the front of the subject property.

Mr. White stated in regard to Ms. Turnbo's question about livability space, there will still be 7,000 SF livability space left.

**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 **APPROVE** a **Variance** of the rear setback from 25' to 21'; and a variance of the side yard setback from 10' & 5' to 8' to 5' to construct an addition to the dwelling. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6; per plan submitted; finding that the lot is narrow and a nonconforming RS-2 lot; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 2, Block 1, Quinlan Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17541**

**Action Requested:**

Special Exception to allow a 150' self-supported telecommunications tower in an AG district. **SECTION 301. PRINCIPAL USES PERMITTED IN AGRICULTURE DISTRICTS** - Use Unit 4, located 12000 East 31st Street.

**Presentation:**

The applicant, **Lee Ann Fager/SW Bell Services**, represented by Vicky Hale, 100 West 5th Street, submitted a plat of survey (Exhibit H-1), a plot plan (Exhibit H-2) and a site plan (Exhibit H-3). Ms. Hale stated that SW Bell Services is proposing to build a 150' self supporting tower at 31st and Garnett, which is on the property of the Garnett Church of Christ. She indicated the tower location is in the far Southwest corner. She explained that toward the back of the subject property is a stream and foliage.

**Comments and Questions:**

Mr. Dunham asked the applicant if the tower location is in the southwest corner?

Mr. Beach stated that the tower location is in the south center of the subject property.

Ms. Hale stated the tower will be inside the fence that surrounds the bus barn.

Ms. Hale asked Mr. Beach if the application was for a 150' tower? He answered affirmatively.

Ms. Hale stated she would like to correct the application and stated the tower will be 100' in height. She further stated that SW Bell Services have plans to beautify or clean up the area that runs along a creek in the back of the church. She indicated that to the north of the subject property there are some duplexes and multi-family dwellings. She further indicated that there are residences on the opposite end of the property.

Ms. Hale, the Board and protestants reviewed the site plan and plat of survey.

Ms. Abbott announced that Mr. White will be abstaining from this case.

**Protestants:**

Bill Ledbetter, 12003 East 33rd Place, stated the tower will be in his back yard with a fence between the two properties. He further stated he opposes this application because he does not want to look at it. Mr. Ledbetter explained he is already having to look at the Church's barn. He stated he has already cleaned the area as much as he could and there is not much more they can do with it.

Gene Thomas, 12012 East 33rd Place, stated he objects to this application because of the reasons stated previously. He further stated that a tower that high attracts lightning and if it was to fall in his direction it will fall on his home. He commented the applicant did not address the health hazards on this application.

**Comments and Questions:**

Both protestants were asked to show the Board where their homes were located in regards to the location of the tower.

Mr. Thomas stated the church has plenty of room in their parking lot and raw property and suggested that tower be moved away from everyone.

**Applicant's Rebuttal:**

Ms. Hale stated she is not sure where the two protestant's live, but the tower site is well within the distance required, the one to one ratio. She further stated no one is closer than 100' to the proposed site for the tower. Ms. Hale explained that in the Telecommunications Act it states that no state or local government may regulate the placement of the personal wireless services facilities on the basis of the effects of radio frequency emissions to the extent that such facilities comply with the commissions regulations. She indicated that SW Bell Services complies with all the regulations pertaining to radio frequency emissions. She stated there are no safety or health hazards.

**Comments and Questions:**

Mr. Dunham asked the applicant if the tower could be moved further west or north?

Mr. Earl Higgins, SW Bell Services, stated that the tower could be moved further north, but the church wants to keep it down in the bus barn area. He further stated that the location is 200' from any house and there are trees all along the creek. He explained the tower can not be moved south or west because of the floodplain.

Mr. Dunham asked the applicant if the tower could be moved into the northwest corner of the bus barn area (fenced area)? Mr. Higgins stated he could accept moving the tower to the northwest corner inside the fence.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 4-0-1 (Abbott, Bolzle, Dunham, Turnbo, "aye"; no "nays" White "abstention"; no "absent") to **APPROVE** a **Special Exception** to allow a 100' self-supported telecommunications tower in an AG district. **SECTION 301. PRINCIPAL USES PERMITTED IN AGRICULTURE DISTRICTS** - Use Unit 4; subject to the tower being located in the northwest corner of the fenced bus barn area; subject to the tower being 100' in height 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:

NE, NW, LESS N 50' and LESS all of Garnett Village Addition, Sec. 20, T-19-N, R-14-E, City of Tulsa, Tulsa County, Oklahoma.



### **Case No. 17542**

#### **Action Requested:**

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

#### **Presentation:**

The applicant, **Roy D. Johnsen**, Staff requested a continuance for November 12, 1996, 1:00 p.m. to correct advertising.

#### **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. 17542 to November 12, 1996 at 1:00 p.m. to enable Staff to correct advertising.

### **Case No. 17543**

#### **Action Requested:**

Special Exception to permit a restaurant & accessory uses as an accessory to the River Parks. **SECTION 402. ACCESSORY USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 12, located 21st Street and Riverside Drive.

#### **Presentation:**

The applicant, **Jackie Bubenik**, 707 South Houston, Suite 202, submitted a site plan (Exhibit J-1) and stated that in 1976 the Urban Renewal Authority developed a plan and constructed park facilities in this general area, which included a restroom and concession facility. He further stated that at that time he erroneously assumed that appropriate permits were granted to operate a concession or cafe type operation. Mr. Bubenik indicated that early this year the River Parks Authority received an application to operate a restaurant in the concession stand, which would serve sandwiches, salads, snacks, soft drinks, as well as, beer and wine. He stated that the River Parks Authority, under the assumption that they had proper permits, granted a concession for the restaurant. He further stated upon application for the necessary permits, the concession operators found that indeed the River Parks Authority did not have the appropriate permits. He requested that the special exception be granted so that this facility can be operated as a concession stand.

**Protestants:**

Mary Lynn Brown, 4613 East 26th Street, representing Betty Brown (mother) and stated her mother is the co-owner of the property at 1935 South Cheyenne. Ms. Brown explained that when she received the notice she called INCOG and they were unable to give her any additional information. She further explained that she was instructed to call Mr. Bubenik and he told her that the people leasing the concession stand at 19th and Riverside wanted to sell wine and imported beer. She stated she was told the applicant wanted to fence in an area about 100' and install tables and chairs. She further stated that according to the notice mailed out the property in question is at 21st and Riverside Drive, not 19th and Riverside Drive. Ms. Brown indicated the area in concern runs 2200' not 100'. She expressed concerns regarding the discrepancy between what she was told verbally and what the notice stated. She further expressed concerns regarding the introduction of the sale of alcohol into a city park. She commented that she realizes River Parks is not under the authority of Tulsa Park and Recreation Board, however, the Tulsa Park and Recreation Board prohibits the sale of alcoholic beverages. She stated she opposes the sale of beer and wine in a city park facility because the parks are for everyone who might not want to bring their children to the park if alcohol is sold and consumed at the park. She further stated she has personally had enormous trouble with transients and vandals, which do not need a convenient source of alcohol to attract more to the area. She commented that to grant alcohol sales over an area 2,200' in length at 21st and Riverside would set a precedence. She requested the Board to consider denying permission to sell alcohol along any location of Riverparks. Ms. Brown questioned if the City will be liable for any injury claims resulting from accidents caused by customers of the concession stand who drove home under the influence? She stated there has been a crime problem in Riverparks and with the availability and consumption of alcohol it will increase the crime problem. She further stated there has not been any hardship shown and there is a potential for harm. She concluded that Riverparks should serve the interest of citizens of Tulsa and not the commercial interest of a few individuals.

**Applicant's Rebuttal:**

Mr. Bubenik stated that when he received the phone call inquiring about the area in question (legal notice), he was quite frankly in shock as she was because the area of operation in which the cafe will be operating will be an area of approximately 50' x 100' and the Riverparks is not seeking a permit to operate in that entire stretch of the river. He explained that the operation that will be placed in the concession stand will be beneficial to the community and it will provide a wholesome area for families to enjoy wine as well as food. He stated the River Parks Authority feel that this application is in the public's best interest to have this operation in the concession stand. He further stated that in regard to liability all concession operators regardless of size and type are required to have insurance that names both the River Park Authority as well as the City of Tulsa and Tulsa County as additional insured. He indicated the River Parks Authority has liability insurance which names Tulsa County and the City of Tulsa as additional insured.

**Comments and Questions:**

Ms. Turnbo asked the applicant what the hours of operation for the concession stand will be? He stated the concession stand will close at 10:30 p.m.

Hillary Cockrel, operator of concession stand, stated the hours will be 10:30 a.m. to 10:30 p.m.

Ms. Turnbo asked the applicant if the sale of alcohol will end at 10:30 p.m.? He stated affirmatively.

Ms. Turnbo asked the applicant if the Board was inclined to approve the special exception will he mind if the Board narrowed the area down to the 50' x 100'? He stated the plan that was submitted has the correct dimensions.

Mr. Bolzle asked the applicant why the extra land area inside the fence? He stated the additional land was included in case they needed additional tables set up.

Mr. Beach informed the Board, that to clear up one point regarding the sale of beer in City Parks, it is allowed on the gulf courses.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Special Exception** to permit a restaurant & accessory uses as an accessory to the River Parks. **SECTION 402. ACCESSORY USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 12; per plan submitted; subject to confining the operation to the 50' x 100' area which is indicated on the site plan; subject to limiting the operation to the existing building; subject to the hours of 10:30 a.m. to 10:30 p.m.; 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:

Sec. 12, T-19-N, R-12-E, Tulsa County, Oklahoma, Beginning at the intersect of 21st St. and west right-of-way of Riverside Dr.; thence N for 2,200' along the W right-of-way line of Riverside Dr.; thence W to the E bank of the Arkansas River; thence S for 2,200' along the E bank of the Arkansas River; thence E to the POB, City of Tulsa, Tulsa County, Oklahoma.

## **Case No. 17544**

### **Action Requested:**

Special Exception to permit RV parking as an accessory use to the Tulsa Moose Lodge. **SECTION 402. ACCESSORY USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located Southwest of 7th Street and Garnett Road.

### **Presentation:**

The applicant, **Dan Freitus**, 1106 East 7th , submitted a site plan (Exhibit K-1), photographs (Exhibit K-2) and stated the plan shows the location of the 10 hookups for the RV's. He further stated that the RV hookups, in the past, have been abused by members for winter storage of their RV's. He indicated that the abuse will no longer occur. Mr. Freitus explained that each and everyone of the RV's have been removed and now the Moose Lodge would like permission to use the hookups for people from out of town who attend special events. He further explained the RV's would only be there Friday and Saturday night. Mr. Freitus indicated that the members will have to come to him personally for permission to park in the lots. He further indicated that the lodge has intentions of paving the spaces. He commented that some of the RV's were not owned by Moose members and he had to find the owners to have the RV's removed. He stated the lodge owns all of the land from the creek to the street and from Garnett to 330' past the property line, which the lodge recently purchased. He further stated that all of the functions held at the lodge are done so without any problems and the motor homes will be there once or twice a year. He explained that there are 2300 lodges in the United States and the lodge has visitors from all over from time to time. He further explained that if a lodge member from another club is passing through town, they will usually visit one night and then be gone the next day.

### **Comments and Questions:**

Ms. Turnbo asked the applicant if he indicated that once or twice a year for special occasions the motor homes will be brought in Friday and Saturday, then leave Sunday? He answered affirmatively.

Ms. Turnbo asked the applicant if he also indicated that Moose members would be using the RV parking while passing through town? He explained that Moose members visit other lodges while traveling and that would occur from time to time.

Ms. Turnbo asked the applicant how often Moose members will be coming in for visits for one or two nights? He stated his lodge has only had two visitors so far this year and there are only two functions planned each year. He further stated the lodge recently had a convention and there were only six motor homes attending Saturday only. He informed the Board that there are no sewer or water hookups for the motor homes.

Mr. Dunham asked the applicant if this is something that would occur on a regular basis? He answered negatively.

Ms. Abbott asked the applicant if he had a problem with locating this accessory use near the west edge of the lodge?. He stated he could string electricity down through the west edge, but that is property recently purchased and it is land that the lodge would like to use for a park.

**Interested Parties:**

Jim Doherty, stated Councilor Justis asked him to look at the subject property and there had been some previous abuses on the RV parking. He further stated he met with the former director and two councilors on site and walked the site. Mr. Doherty explained the subject property is isolated and the only residence close by is a residence that fronts on Garnett. He further explained the reason the applicant would like to park the RV's at this point is that it is the parking lot and isolates the use from the residential use further to the west. He stated there are 10 electric hookups already in place. He further stated there is no water or sewer hookups and this is not a RV park. He commented the use is well separated from residential uses and given the occasional usage, with the restrictions the lodge has adopted, this will not be an inappropriate use or detrimental to the neighborhood.

**Comments and Questions:**

Mr. Bolzle asked Mr. Doherty if he thought screening would be appropriate? He stated screening to the east would be appropriate, but the north should be left open for security reasons.

**Interested Parties:**

Councilman David Patrick, stated that the Moose Lodge has always been an asset to the City of Tulsa and they have been located at the subject property for over 17 years. He further stated the RV park is a convenience for the Moose Lodge members. He commented he is in support of this application.

**Additional Comments:**

Candy Parnell stated the only thing she has a concern with is that previously most of the recreational vehicles were owned by people who lived in town and parked them in anticipation of drinking too much alcohol and didn't want to drive home. She further stated she received numerous complaints on the subject property from several residences in the area. She commented that there are no protestants present today to support or oppose this application. Ms. Parnell stated she does not have a problem with this application if it will be limited to only the members of the lodge from out of town that are coming through. She further stated she cannot think of reason why the local members would need to store or park their recreational vehicles on this property.

Case No. 17544 (continued)

Mr. Freitas stated he agreed with Ms. Parnell's statements. He acknowledged that the members took advantage of the parking spaces for recreational vehicles. He stated that when he became Regional Director, he found out that the members were using the subject property for storage of their recreational vehicles, he cleaned it out and there are no longer any recreational vehicles parked there.

Mr. Dunham asked the applicant if the application should be approved would he pave the area? He stated he would have no problem with paving the spaces.

Ms. Abbott asked the applicant if the subject property was in the City right-of-way? He stated the subject area is 25' in from the centerline of 7th Street. He further stated the electric outlets are 28' from the centerline of 7th Street.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Abbott, Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; no "absent") to **APPROVE** a **Special Exception** to permit RV parking as an accessory use to the Tulsa Moose Lodge. **SECTION 402. ACCESSORY USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2; per plan submitted; subject to the recreational vehicles belonging to out of town Moose Lodge members; subject to a maximum stay of 48 hours; subject to electrical hook ups available only; subject to the surface being paved and a screening fence installed separating the residence to the east; subject to a maximum of 10 hook up sites; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

N 317.5' of Lots 24 & 25, Block 2, East Eleventh Park Subdivision AND Lot 1, Less the E 162.0', Block 2, East Eleventh Park Subdivision, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17545**

**Action Requested:**

Special Exception to allow a community center, Use Unit 2, in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 2, located 5000 West Charles Page Boulevard.

**Presentation:**

The applicant, **Rita L. Icenogle**, Executive Director of Neighbors Along The Line, 4138 West Charles Page Boulevard, submitted a site plan (Exhibit L-1), a plot plan (Exhibit L-2) and stated the proposed site will be a site for a social services agency community center. She further stated that the structure will be a one story structure. Ms. Icenogle explained that the immediate east neighbor is a heating & air conditioning company and the immediate west neighbor across the street is a tire company.

**Comments and Questions:**

Ms. Abbott asked the applicant what the nature of the community center will be? She stated the community center will house Neighbors Along The Line, which is an agency that has been in the area for 20 years. She explained the agency provides a free medical clinic, food pantry, GED services and literacy services. She further explained the agency building will also be available to agencies throughout Tulsa for sateliting of their facilities. Ms. Icenogle stated she expects to have entities such as: Credit Counseling Services, AA meetings, and hopefully more agencies will like to utilize the building for a satellite location once a week. She further stated that this in accord with the Charles Page Revitalization Plan for the area that was approved by the council last week.

Ms. Turnbo asked the applicant if there will be a headstart program? She stated originally it was part of the plan, but subsequently Sandy Park Apartment Complex and Mark Twain Elementary started a headstart program and it is no longer necessary.

Ms. Turnbo asked the applicant what the hours of operation will be? She stated the hours will be 8:00 a.m. to 10:30 p.m.

Ms. Icenogle stated that the agency has met with the neighborhood several times and shared information with the neighbors. Ms. Icenogle submitted information that was handed out to the neighbors (Exhibit L-3).

Ms. Turnbo asked the applicant if the plan meets the setbacks? She stated all the site plans meet or exceeds the City of Tulsa's Codes.

**Protestants:**

Owen J. Bell, 5113 West 7th and 5117 West 7th, stated he would like to know what the size of the building will be? He further stated that at the other two locations where this agency has been located there was trouble with the neighbors regarding parking. He indicated that there was not enough parking at the agency's previous locations.

**Ms. Abbott out at 3:40 p.m.**

**Comments and Questions:**

Mr. Bolzle stated the dimensions on the site plan show the building to be 60 x 85.

Mr. Bell asked Mr. Bolzle how many parking spaces the agency is proposing? He stated the site plan indicates approximately 24 parking spaces.

Case No. 17545 (continued)

Mr. Bell stated that the residence in the area are retired and do not need more traffic in the area. He further stated he did not think the agency should be open past 6:00 p.m. or 7:00 p.m.

**Applicant's Rebuttal:**

Ms. Icenogle stated that in regard to the parking issues the approximate size of the building is 5,000 SF and her understanding is that the building has adequate parking. She further stated that part of the issues over the last 20 years with parking has been that the agency has had to take the kinds of facilities that they could get in the neighborhood, which often meant there was not good parking facilities. Ms. Icenogle commented that the building will enhance the property values in the neighborhood and the agency will be serving the neighborhood. She indicated the agency has programs for the elderly and it will serve the neighborhood where it is located. She commented that the subject property use to be a grocery store and the agency will not have any more activity than a grocery store would have been.

**Comments and Questions:**

Mr. White asked the applicant how the new location compared to the old location in regard to parking? She stated the current location has about 1200 to 1400 SF and there are no delineated parking spaces, but it probably holds maybe 15 parking spaces.

Mr. Beach stated he counted 17 parking spaces on the plan that Ms. Icenogle submitted and since this is a Use Unit 2, the Board can impose whatever parking requirements it thinks are necessary.

Mr. Bolzle asked Staff if there is not a standard in the Code for parking for Community Center Use? Mr. Beach stated the Code does have a standard and it is one for every 500 SF, which will require 10 parking spaces for 5,000 SF.

Mr. White asked the applicant how many staff will be employed at the agency? She stated there will not be a change in staff and there are currently four employees. She further stated that the employees work at alternating times.

Mr. White asked the applicant if the 8:00 a.m. to 10:30 p.m. hours of operation were seven days a week? She stated that currently the agency operates Monday through Friday. She further stated that obviously as you expand a building then you will expand the hours of operation. She explained that the hours she has given the Board are anticipated hours of operation. She further explained that the GED students are usually young mothers and the hours are decided whenever they get off or have a baby-sitter. She indicated that the GED program that the agency is associated with closes at 7:00 p.m. She commented that she did not want to completely eliminate the possibility of being open on Saturday. She further commented she did not anticipate there being a need for the agency to be open on Sunday.



Case No. 17545 (continued)

**Board Action:**

On **MOTION** of **DUNHAM**, 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 community center, Use Unit 2, in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL 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:

W 26', Lot 8 and all of Lot 9, Block 1, Vern Subdivision, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17546**

**Action Requested:**

Variance of the setback from Cameron St. from 50' to 32' to install proposed storage silos. **SECTION 903. BULK AND AREA REQUIREMENTS IN INDUSTRIAL DISTRICTS** - Use Unit 25, located 215 North Denver Avenue.

**Presentation:**

The applicant, **J.D. Smith**, 116 South 43rd West Avenue, representing the Borden/Meadow Gold Company, submitted a plot plan (Exhibit M-1), a site plan (Exhibit M-2) and stated the Borden/Meadow Gold Company has been in business in Tulsa at the same location since 1926 (70 years). Mr. Smith read a detailed history of dairy plants and locations in Oklahoma and indicated that currently there are only six (6) dairy plants in Oklahoma today. He stated that Borden/Meadow Gold is the only dairy in Tulsa. He indicated that the company lost 3.8 acres which was proposed for development of the plant to the new jail site. He stated the company is having to relocate their development plans and that is why he is before the Board. He further stated that the company has asked the City Engineer to consider closing one block of the 200 West Cameron Street. He explained that the City Engineer, Mr. Sutter and the Traffic Department, Mr. French are both in favor since the 300 and 400 blocks of West Cameron are both set up for closing. He indicated that the company has proposed to buy two lots that abut the alley on the north side. He requested a variance to pour a 12" thick slab, 14' x 28' adjoining the existing building and extending out 14', which 7' will be on the R-O-W. He explained that the proposed slab site will support two stainless steel refrigerated tanks which have to set level to comply with the Health Department requirements. He further explained the tanks are 12 1/2' in diameter and about 16' tall and will hold about 12,000 gallons. He stated

Case No. 17456 (continued)

the product is made for the Bama Company and held until ready for delivery. He further stated the Bama Industries produces products sold in many areas, including Red China, Indonesia and other World Markets. He indicated that Bama is in the process of doubling their production and therefore, Borden/Meadow Gold must be ready to produce the Bama Company's requirements. He stated the alternate source closest to the product Borden/Meadow Gold produces is located in Louisville, Kentucky.

**Comments and Questions:**

Mr. Bolzle asked the applicant if the pad runs into the street improvements? He stated it will be 47' from the centerline.

Mr. Gardner stated that there is a 80' right-of-way like most of the streets downtown and so the setback should be 40' to 32'. He further stated that the applicant is wanting to encroach 8' into the 40' but it is still outside of the paved street area. He explained that the City Council will have to approve the right-of-way encroachment. He stated that our Staff recommended of closing Cameron Street, but he did not know the status on the actual closing.

Mr. Dunham asked the applicant if this will be a temporary or permanent structure? Mr. Smith stated that is hard to say, because in the dairy business sometimes the processes outlive their usefulness very quickly. He further stated that the 12" slab could be removed within 2 hours if ever needed and the tanks can be picked up with a crane.

Mr. Smith stated that his company anticipates that when Cameron Street is closed that they will have all of the right-of-way and then the company will not need this relief.

**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 **Variance** of the setback from Cameron St. from 40' to 32' to install proposed storage silos. **SECTION 903. BULK AND AREA REQUIREMENTS IN INDUSTRIAL DISTRICTS** - Use Unit 25; per plan submitted; subject to the City Council approving the use of the right-of-way; subject to a removal contract if the street is not closed; finding that the silo's have to be located in a certain area and application has been made to close Cameron Street; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 1, Block 31, Original Townsite of Tulsa, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17547**

**Action Requested:**

Variance of the frontage requirement to permit construction of new residence.  
**SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6, located 11275 South Quebec.

**Presentation:**

The applicant, **Jeffrey Levinson**, 35 East 18th Street, representing Mr. & Mrs. Andrew McKay, submitted a plat of survey (Exhibit N-1), a site plan (Exhibit N-2) and stated he is requesting a variance due to a lack of required frontage on a public street. He further stated this variance strongly feels consistent with the public good and enforcement of Section 206 will place an undo hardship on the McKay's. Mr. Levinson stated the McKay's purchased the property in March of 1996 and it is approximately a 7.25 acre tract. He explained the tract had a very large home and that house was demolished in order to build a new house. He stated that there are public recorded instruments that give the occupants of the subject property right to go through Whit Acres. He further stated that the Whit Acres access has been used since 1970 by Dr. Shaddock without any objection. He indicated that there are no neighbors present today to object to this application. He further indicated that Mr. McKay has visited with his neighbors and they do not object to his request.

**Comments and Questions:**

Mr. Beach informed the Board that he became aware of a couple of things recently that are not on the staff reports. He stated there was another Board of Adjustment action which approved this same variance of frontage on this tract in the late '70's, which is more than three years ago. He further stated that in July 1996, the property was zoned RE, but on the case report it shows the property zoned AG. He indicated that a PUD was approved south of the subject property that made a condition of approval of this Board's approval of this frontage requirement.

**Presentation (continued):**

Mr. Levinson stated the PUD has gone through the City Council and his has been approved. He further stated 114th Street will be extended and he has a commitment from the Developer of Prestige Properties, Inc. that they will grant Mr. McKay a suitable access right on to the private street (114th Street). He indicated that 114th Street borders on Mr. McKay's property and there will be plenty of opportunity for access. Mr. Levinson stated that when the McKay's builder went to the City for a demolition permit and now the house is no longer there. He further stated the builder mentioned the plans to rebuild a home when he applied for the demolition permit. He explained that his client has put \$5,000 in escrow to plug the City sewer system and was told that when he built his new home and the new system was hooked up he would receive the \$5,000 back. His client later received a notice that because of the Code requiring public frontage, his building permit will not be approved. He concluded that there is no detriment to the public good and when the house is built the

Case No. 17547 (continued)

neighborhood will be better off. He stated the public will have enhanced access. He further stated there will be an incredible hardship upon his client if this variance is denied, because then he cannot receive a building permit and it will also be unfair because of the confusion with the City. Mr. Levinson requested the Board approve the variance.

**Comments and Questions:**

Mr. Dunham asked the applicant if he will still have the continued access through Whit Acres in the interim? He stated his client will still have the same access through Whit Acres and when Prestige is developed there will be a private access on to 114th Street.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Bolze, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Abbott "absent") to **APPROVE** a **Variance** of the frontage requirement to permit construction of new residence. **SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

A tract of land in the NE/4, Sec. 33, T-18-N, R-13-E, I.B.M., Tulsa County, Oklahoma, more particularly described as follows: Beg. SW/c, NE/4; thence N89°59'00"E for 1320.97'; thence N00°00'20"W for 775.50' to the POB; thence W for 94.19'; thence along a curve to the left having a central angle of 54°46'20" and a radius of 165.00' for 157.73'; thence S35°13'40"W for 8.13'; thence along a curve to the left having a central angle of 35°09'47" and a radius of 215.00' for 131.95'; thence S00°03'53"W for 71.05'; thence along a curve to the right having a central angle of 27°02'19", and a radius of 360.00' for 169.89'; thence along a curve to the right having a central angle of 23°21'00" and a radius of 25.00' for 10.19'; thence N43°24'08"W for 346.92'; thence N46°35'52"E for 85.10'; thence N26°51'13"E for 167.25'; thence N00°00'27"W for 527.57'; thence N89°59'03"E for 420.00'; thence S00°00'20"E for 544.65' to the POB, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17548**

**Action Requested:**

Special Exception to amend a previously approved site plan to allow expansion of an existing parking lot. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located 1215 South 135th East Avenue.

Case No. 17548 (continued)

**Presentation:**

The applicant, **David P. Nienhuis**, 450 South 92nd East Avenue, submitted a site plan (Exhibit O-1) and stated he is a member of the Church that has requested the special exception. He explained the church would like to expand their parking lot. He further explained the parking lot will also be used as a hardsurface play area for the children. He stated the extended parking lot will also allow the church to install a fence, which will limit access to vehicles being able to use their parking lot on weekends.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 3-0-0 (Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Abbott, Bolzle "absent") to **APPROVE** a **Special Exception** to amend a previously approved site plan to allow expansion of an existing parking lot. **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 7 & 8, Block 1, Romoland Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17549**

**Action Requested:**

Variance to allow a sign with a display surface area larger than 300 SF, which is visible from an R district to be located within 200' of the R district. **SECTION 1221.C.1.b. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, located 2932 East 38th Street North.

**Presentation:**

The applicant, **Fine Outdoor Advertising, Inc./Stephen A. Schuller**, 320 South Boston, submitted a site plan (Exhibit P-1) and stated the subject property is an irregularly shaped land on the east side of U.S. Highway 75 north of 36th Street North, which is zoned IL. He further stated the property to the north of the subject property and between Mohawk Boulevard is also zoned IL, which presently has industrial or commercial uses on the property. He explained that to the west and south of the subject property is U.S. Highway 75. He further explained that the bridge over Mohawk Boulevard is just to the northwest of the subject property. Mr. Schuller stated that the land to the east of the subject property is zoned RS-3, single family/residential, but they consist primarily of commercial and agricultural uses. He further stated the north end of 38th Street North and Mohawk Boulevard is the SPCA animal shelter facility. He detailed that the land to the south directly east of the subject property is mostly vacant land and for a long time it has contained long term

storage of industrial materials, as well as, parking for trucks and automobiles. He stated that within this residentially zoned area in the immediate vicinity of the subject property there are actually very few residences. He explained that 38th Street North dead ends at the north end of the subject property. Mr. Schuller stated that a pertinent provision of the zoning Code requires that an outdoor advertising sign, which is a use permitted by right in the IL district, with a display surface area larger than 300 SF, which is visible from a residentially zoned property, notwithstanding the uses of the property in this residentially zoned district must be setback at least 200' from the RS district. He further stated that at the widest point of the subject property near the north end of the property is probably no more than 145' or so wide. He explained the subject property is a remnant of land in an irregular shape, which is remaining after the land had been appropriated for Highway 75. He stated the exceptional narrow shape tract is impossible to have anything setback 200' from the residentially zoned property to the east. He further stated that the literal enforcement of the zoning Codes 200' setback requirement results in the unnecessary hardship. He commented that granting this variance from the setback requirement will not cause substantial detriment to the public good, nor impair the spirit, purpose and intent of the zoning Code. He further commented that the subject property and the surrounding lands are industrial and commercial in character. He indicated the sign is located as close to the expressway as possible and would be situated approximately 115' from the residentially zoned district. He requested the Board to grant the variance requested.

**Comments and Questions:**

Mr. White asked the applicant if the sign is over 115' tall? Mr. Schuller answered negatively.

**Board Action:**

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Bolzle, Dunham, Turnbo, White, "aye"; no "nays" no "abstentions"; Abbott "absent") to **APPROVE** a **Variance** to allow a sign with a display surface area larger than 300 SF, which is visible from an R district to be located within 200' of the R district. **SECTION 1221.C.1.b. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**; per plan submitted; finding that due to the irregular shape of the land it will be an unnecessary hardship to enforce the 200' setback requirement; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Case No. 17549 (continued)

Beg. NE/c, E/2, E/2, SW/4, SE/4, Sec. 17, T-20-N, R-13-E, Tulsa County, Oklahoma; thence N89°55'12"W for 58.42'; thence S62°06'03"W for 88.35'; thence N89°W for 27.0' more or less to the East right-of-way line of US Highway 75; thence S01°15'E for 89.0', more or less, to a point of curve; thence Sely on a curve to the left having a radius of 698.5' and an arc length of 476.8'; thence S28°37'E for 16.3'; thence S17°18'E for 204.0'; thence S28°37'E for 37.3'; thence Sely on a curve to the right having a radius of 297.0' for 45.8' to a point on the E line; thence N on the E line for 879.1', more or less to the POB, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17550**

**Action Requested:**

Special Exception to allow a mini storage in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** and a Special Exception to modify the screening requirement to allow the perimeter building walls to provide the required screening. **SECTION 212.C.2. SCREENING WALL OR FENCE** - Use Unit 16, located East 31st Street and 129th East Avenue.

**Presentation:**

The applicant, **Carlile Roberts**, represented by Charles Norman, 2900 Mid-Continent Tower, submitted a site plan (Exhibit Q-1) and stated his client has purchased the vacant Food Lion store on the north side of East 31st Street, which is east of 129th East Avenue. Mr. Norman submitted photographs (Exhibit Q-2) and explained that there is approximately 2 1/2 acres of land that is undeveloped on the east side that is adjacent to apartments. He further explained that on the north side and east side there is a 17 1/2' light utility easement, which prohibits construction on the easement. He stated the building walls from the north and east boundaries adjacent to the apartments will be 17 1/2' distance. He explained the 17 1/2' distance between the building and apartments will be landscaped with grass and shrubs. He further explained that there is a 100' setback from the centerline of 31st Street required, which creates an additional 50' setback from the property line. He detailed the 50' setback will also be grass except for the small number of parking spaces for visitors to the complex. Mr. Norman stated the specifications require that the exterior of the walls be architectural concrete, which means concrete poured in place with outside frame having a pattern that is distinctive from bare concrete and certainly does not include concrete block construction. He further stated the site plan will result in 20% of the area being in open space with landscaping in accordance with the landscape chapter of the zoning code. He commented that this is an appropriate use for the area where there is a large concentration of multi-family dwellings and possible users of the facility.

Case No. 17550 (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 a mini storage in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** and a Special Exception to modify the screening requirement to allow the perimeter building walls to provide the required screening. **SECTION 212.C.2. SCREENING WALL OR FENCE** - Use Unit 16; per plan submitted; subject to exterior walls on the boundary line of the property be pattern type concrete; subject to there being no concrete block; 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:

East 350' of Lot 1, Food Lion East 31st St. Addition, City of Tulsa, Tulsa County, Oklahoma.

**Case No. 17551**

**Action Requested:**

Variance to allow a patio and 4' screening wall within the required setback from S. St. Louis Ave. & E 15th St. S. **SECTION 215. STRUCTURE SETBACK FROM ABUTTING STREETS** - Use Unit 12, located 1525 East 15th Street.

**Comments and Questions:**

Ms. Turnbo asked why the Board was hearing this application since it had been denied before? She further asked if there was anything different in this application? Mr. Davis stated that the application came before the Board two years ago and was improperly presented, which resulted in the application being turned down. He further stated he has redesigned the proposal and is properly presenting it now.

Mr. Bolzle asked Ms. Turnbo if the applicant's response answered her question? She stated she will have to see the presentation to know what is different.

Mr. Davis stated that the original application was presented with a parking variance request and there is absolutely no requirement for the parking variance in this application.



**Presentation:**

The applicant, **James P. Boswell**, represented by Lonnie Davis, 1503 East 21st Street, submitted a site plan (Exhibit R-1) and stated that according to Code his client is entitled to have an outdoor dining area which does not exceed 10% of the existing building. He further stated he has requested a variance on the setback and with the Board's approval he will have to go to the City for permission to encroach on the right-of-way. Mr. Davis explained that the request for the outside dining on the west end of the building is because he did not want to encroach on any of the off-street parking spaces since the area is already impacted with parking.

**Comments and Questions:**

Mr. Bolzle informed Mr. Davis that he was on the Board at the time of the first application and parking had nothing to do with his decision to deny the request.

**Protestants:** (continued)

Mr. Davis submitted a list of competitors who have outdoor dining (Exhibit R-3) and stated he is requesting a variance on the setback and claiming a hardship because a majority of the competitors in the area provide outdoor dining. He further stated the community mode is changing with a vast increase of outdoor dining. Mr. Davis commented that his competitors have been granted setback variances by this Board and they are identified on the list. He further commented that all he is asking the Board to do is give his client the same consideration that their competitors have been given. Mr. Davis submitted photographs (Exhibit R-2) and stated the photographs are of the competitors who have outside dining areas. He advised the Board that the only alternative his client will have is to impact some of the off-street parking the restaurant has, which he prefers not to have to do so.

**Comments and Questions:**

Mr. Bolzle asked the applicant how many of his competitors have built in the street right-of-way? He stated one that he can say with certain, which is Blue Rose Cafe.

Mr. Bolzle asked the applicant if Blue Rose Cafe was given the right to build in the street right-of-way by this Board? He stated he thought the cafe received permission from the City, but they did receive a setback variance from this Board.

Mr. Gardner reminded the Board that when they look at this type of application they need to make sure what the centerline is. Mr. Gardner explained that for example the right-of-way from the centerline on Peoria is 50' according to the Plan and they need to have a variance to set within that planned right-of-way, but most of the time the right-of-way is only 30' or 35' that the City actually owns. He further explained that usually the applicant is wanting to build on their own property but within that 10' or 15'. Mr. Gardner stated he is not sure about the Blue Rose Cafe being in the street right-of-way.

Case No. 17551 (continued)

Mr. Davis stated the Blue Rose Cafe was Case No. 15895. He further stated that the S & J Oyster and The Brook are not encroaching the right-of-way, but they did receive a setback variance from this Board.

Mr. Bolzle stated that the discussion at the previous meeting, which did not center at all on the accompanying parking variance, was that 15th Street and the abutting service streets, St. Louis being the heaviest traffic carrying street of all, being busy, full of traffic and sight lines were so difficult that pushing the side walk to the far edge of the paving was unsafe and detrimental to the area, traffic flow, sight lines and pedestrian traffic. He commented that Cherry Street has a substantial amount of pedestrian traffic.

Mr. Davis stated that along 15th Street, or Cherry Street, the sidewalk is against the curb all the way up and down. He further stated that along St. Louis directly to the west of the subject property the sidewalk comes to the curb. He commented that his client is not doing anything different that is not already in the area.

Mr. Bolzle commented that the applicant is doing something different in that he is wanting to have a patio that is in the street right-of-way. Mr. Davis stated he is wanting the patio in the street right-of-way, but he will not be pushing people out into the street. He further stated there is already curb side walks in the area.

Mr. Bolzle stated that when the side walk is at the curb it occurs when the side walk is either wider, the full width, or there is a landscape area. He further stated the side walks are not confined by a wall to a narrow 4' stripe to walk on between the curb and the street. Mr. Davis stated that Mr. Bolzle's statement is correct.

Mr. Davis explained that the pictures show a 6' side walk and across the street there is 5 1/2' side walk that runs a whole block with a wall. Mr. Davis stated that if the Board was inclined to approve this application he would not object to an increase in the setback to match the other side walks on 15th Street, which are 6'.

**Protestants:**

Robert Johnson, 1426 South Trenton, stated he has lived on his property for 42 years. He further stated he has seen his neighborhood deteriorate to the point that when you go out in your front yard you find beer cans because of the restaurants on 15th Street. He commented the trash and debris is on Trenton, St. Louis and the alley behind his home. He stated he picks up trash and debris out of his yard and garden everyday. He further stated the side walk Mr. Davis is talking about is in Cherry Street, which is about 8' wide and if he puts tables out on the side walk then people cannot walk around the block. He voiced that the restaurants are deteriorating a neighborhood that has stood for over 50 years. He stated the parking in the area is lacking and he cannot even park in front of his home. He submitted photographs demonstrating the

parking problem in front of his home during the lunch hour and dinner time (Exhibit R-2). Mr. Johnson stated that with more and more restaurants going in the area it is agitating the parking problem. He further stated the liquor street across the street from the subject property has a tremendous parking problem with customers for the restaurant parking in his parking lot. Mr. Johnson explained that customers park in front of the houses and the home owners cannot park in front of their own homes, which is a hardship for his neighbor/uncle who is confined to a wheel chair. He commented the restaurant does not need to increase in an area that is already setup for family dwellings and has for 50 years. He stated you cannot turn left off of St. Louis because of the pear trees restricting the view and if you install a patio with tables, people, etc., then the view will be that much more restricted, which will cause further traffic hazards. He further stated that the restaurant patrons park in the alley and take his uncle's parking spaces that are cabled off. He expressed concerns that the Board may approve more increase area for dining when there is already an impact on parking.

Jim Thomas stated he manages property immediately north of the Full Moon Cafe and across the street on South St. Louis. He expressed concerns of the noise problem from the Full Moon Cafe and beer bottles left in front of his property on South St. Louis. He stated that the restaurant patrons tear down his picket fence in front of his property. He expressed concerns that Full Moon Cafe may have an outside band on the patio they have proposed to build, which will add to the noise. He stated it will be harder to keep tenants in the neighborhood because of the noise, litter and parking problems. He further stated that property needs to be purchased and parking lots need to be built. Mr. Thomas requested that if the Board were to approve this application if there could be some stipulations that the restaurant's employees clean up the debris left by their patrons. He stated that there are other business owners along the Cherry Street that do police the area and make sure the debris is picked up before the next day of business.

Claire Treas, 1440 South Trenton, stated she is sure that a couple of the windows have been broken in her home from the level of the noise. She further stated she is awoken many Friday and Saturday nights by the noise from the parking lot of the Full Moon Cafe. She indicated she has called the manager and he does try to calm down the noise. She expressed the same concerns of the previous protestants. Ms. Treas stated she too has trouble with trash and debris from the patrons of the restaurant. She further stated she has watched the employees clean the parking lot and throw the debris in the alleyway, which usually ends up against her back fence. She commented that outside dining will bring more people to the restaurant and more noise. She explained that company cannot come and see her because there is no parking available and sometimes she cannot park in front of her own home.

**Applicant's Rebuttal:**

Mr. Davis stated that there is no question that this commercial area is parking impacted. He further stated his client would like to buy property and make more parking available, but when you try to buy the adjacent properties the cost is too high. He agreed with the neighbors that their area is impacted by the parking problems, but it is not an issue before the Board today. Mr. Davis stated his client has the right to have outside dining and if he cannot put it on the west side then he will have to put it on the east side, which will further impact parking because we will have to take existing parking spaces out of use. He further stated that his client's outside dining request will not have a more negative impact if the Board approves this variance. He commented the Board's denial will have a negative impact on the area. Mr. Davis reminded the Board that they have granted a similar variance to his competitor directly across the street. He stated he is only asking for the same consideration the Board gave to his competitor across the street. He further stated his client has right to outside dining and he will have outside dining, but he would prefer not to have a negative impact on parking by having to take existing parking places.

**Comments and Questions:**

Mr. Gardner asked the applicant what the square footage for the Full Moon Cafe is presently? He stated 4600 SF.

Mr. Gardner asked the applicant how many parking spaces did the Full Moon Cafe have? He stated he could not answer that.

Mr. Gardner asked the applicant if he had less than 46 parking spaces? He answered affirmatively.

Mr. Gardner informed the applicant that the Full Moon Cafe is non-conforming as to parking and he cannot make his use any more non-conforming by eliminating parking spaces. Mr. Davis said he could by substituting parking spaces.

Mr. Gardner stated he cannot reduce the number of parking spaces. Mr. Davis stated it is true he cannot eliminate the total number of parking spaces. He further stated he currently has under lease from the property owner immediately to the north 14 spaces, which he leased under the anticipation of the expansion. He commented he did not have to maintain that lease and there is some question if he would if he cannot come to amenable terms with them.

Mr. Bolzle stated he has gone back to read the minutes from April 26, 1994, where the action requested was a variance of the required setback from the centerline of east 15th Street and South St. Louis from 50' to 42' and from 25' to 19' respectively to permit the construction of a deck. Mr. Bolzle commented that the current application is different from the original in that it ask for 2' more of deck.

Case No. 17551 (continued)

Mr. Bolzle stated he is the only current member who was on the Board at the time of the original request. Mr. Bolzle commented that he will state the reasons he stated earlier that he is opposed to the approval of this application. He further commented that the applicant is allowed to have outdoor space, but the deck is dangerous because of the sight line, traffic and pedestrian problems.

**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** to allow a patio and 4' screening wall within the required setback from S. St. Louis Ave. & E 15th St. S. **SECTION 215. STRUCTURE SETBACK FROM ABUTTING STREETS** - Use Unit 12; 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, 33 & 34, Block 12, Re-Amended Plat of Forest Park, City of Tulsa, Tulsa County, Oklahoma.

There being no further business, the meeting was adjourned at 4:45 p.m.

Date approved: 11-26-96

  
Chair

