

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 718
Tuesday, January 14, 1997, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Abbott, Chair	Turnbo	Gardner	Ballentine, Code
Bolzle		Beach	Enforcement
Dunham		Huntsinger	Parnell, Code
White		Matthews	Enforcement
			Romig, Legal
			Department
			Linker, Legal
			Department

The notice and agenda of said meeting were posted in the Office of the City Clerk on Friday, January 10, 1997, at 1:40 p.m., as well as in the Reception Area of the INCOG offices.

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

MINUTES:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** the minutes of November 26, 1996, (No. 716).

On **MOTION** of **DUNHAM**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays", no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** the minutes of December 10, 1996, (No. 717).

UNFINISHED BUSINESS

Case No. 17580

Action Requested:

Special Exception to allow a bar in an IL district. **SECTION 901. PRINCIPAL USES PERMITTED IN INDUSTRIAL DISTRICTS** - Use Unit 12a, and a Variance of off-street loading and parking requirements for a bar. **SECTION 1212a.D. USE UNIT 12a. ADULT ENTERTAINMENT ESTABLISHMENTS;** Off-Street Parking and Loading Requirements, located 25 North Cheyenne Avenue.

Case No. 17580 (continued)

Presentation:

The applicant, **Andi Bahlinger/Runners**, requested a continuance to enable him to further discuss parking with Jim Norton of Downtown Tulsa Unlimited.

Comments and Questions:

Mr. Bolzle stated he would be in favor of a continuance because he is not in favor of the variance of the parking to zero. He would have to re-advertise for the relief of parking on another lot other than the principal lot.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **CONTINUE** Case No. 17580 to February 11, 1997, at 1:00 p.m. to enable the applicant to re-advertise for parking relief.

Case No. 17581

Action Requested:

Variance of the required 1200' spacing between outdoor advertising signs. **SECTION 1221.F.2**, Use Conditions for Outdoor Advertising Signs; a Variance of the requirements that the sign be oriented to be primarily visible from the freeway.

SECTION 1221.F.7, Use Conditions for Outdoor Advertising Signs; a Variance to allow cutouts or extensions to exceed 15% of the display surface area. **SECTION 1221.F.9** Use Conditions for Outdoor Advertising signs and a Variance to allow the sign to be supported by more than one post. **SECTION 1221.F.10**, Use Conditions for Outdoor Advertising Signs, located 10708 East 61st Street.

Presentation:

The applicant, **Jack R. Easley**, not present.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **CONTINUE** Case No. 17581 to January 28, 1997, to enable INCOG to contact applicant.

Case No. 17587

Action Requested:

Special Exception to allow used car sales in an OL zoned district with CS zoning pending. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17, located 4403 North Peoria Avenue.

Presentation:

The applicant, **J. Lyon Morehead**, 502 West 6th Street, representing Phelps Trading, Inc., stated the owner of this property intends to move an existing used car sales facility from a location further north on Peoria to the subject property. Mr. Phelps is in the process of cleaning and painting the interior and exterior of the premises. Mr. Phelps has filed an application with TMAPC for rezoning from OL to CS. He stated the zoning application has been favorably recommended by TMAPC and it is set for a hearing at the City Council on December 16, 1997. Mr. Morehead explained that the previous hearing by the Board of Adjustment was continued to address specific concerns that the Staff had raised indicating that this may not be in conformance with the Comprehensive Plan as it was amended by the North Peoria Corridor Study. Mr. Phelps and Mr. Morehead have met with Mr. Dwain Midget of the Mayor's office and have satisfied the concerns that were raised. He stated he believes the application is consistent with the Comprehensive Plan as amended by the Corridor study. Mr. Morehead indicated that the key provision of the study that affects this application is found in the first paragraph of the land use guideline section of the amendments to district plans that resulted from the study. The guidelines indicate that the area had previously been saturated with automotive and related uses that were felt to be part of the reason for the deterioration of the adjacent residential neighborhoods. Mr. Morehead read from the Corridor Study (he did not submit the Corridor Study as an exhibit). Mr. Morehead stated that the car sales activity by Phelps Trading, Inc. has been in this area for many years and would like to move from an existing location to the subject property. He further stated that the existing location is considered one of the auto sales businesses that have been mentioned in the study that is maintained and enhances the area. Mr. Morehead explained that all of the necessary licensing for this business have been obtained and the owners are trying to conform to City Codes and Zoning requirements in their attempt to move their business.

Interested Parties:

Dwain Midget, Mayor's Office, stated he did have an opportunity to talk with Mr. Morehead and Mr. Phelps about this project. He further stated that he is technically in support of this application. Mr. Midget explained that what he understands is that the applicant will be moving one automotive sales to a new location and consolidating two auto sales into the one lot. The following conditions are in agreement with the applicant: The building be used primarily for auto sales only and no auto repair or parts sold at the subject property. Mr. Midget suggested that the existing car lot looks like wrecks that are parked on the lot for sale and Mr. Phelps has assured him that the new car lot will be upgraded. Mr. Midget detailed that the lot is to be landscaped in order to adhere to some of the provisions in the North Peoria Corridor Study. The hours of operation will be 7:00 a.m. to 11:00 p.m. He requested that the Board of Adjustment take immediate action to terminate any and all variances that have expired or lapsed in the area. He stated that they were originally granted a variance for auto sales but there has not been any activity on this property. Mr. Midget requested, in

order to remain consistent with the North Peoria Corridor Study, that any of the variances that are not being used be terminated. Mr. Midget stated that he is making a formal request that immediate action be taken against any business currently operating illegally along the North Peoria Corridor. He further stated that there are several operations along the Corridor that are operating illegally. He indicated the lot at 4561 North Peoria presently has a car shop operating on the property, the Code Enforcement Officer has cited the owner and he is basically ignoring the citation. Mr. Midget stated the North Peoria Corridor is considered a development sensitive area by the Mayor's Office. He further stated the Mayor's Office can support this application with the conditions that there is no auto repair, no auto parts sales, that the lot be appropriately landscaped and screened, hours of operation are to be 7:00 a.m. to 11:00 p.m. and immediate action be taken to terminate any and all variances that have not been in operation.

Comments and Questions:

Mr. White asked Mr. Romig if the termination of variances is something the Board has jurisdiction over? Mr. Romig stated the Board did not have that authority.

Mr. Midget stated that it is his understanding that a variance which has not been in use would expire or lapse.

Mr. Romig stated that there is a provision in the Code that states that if the variance is not used within three (3) years of being granted the variance will lapse. He further stated that if the variance is used within that three (3) years then there is no provision for the variance to lapse.

Mr. Beach asked Mr. Romig if the use was started and then was abandoned for a period of three (3) years on a previous approval does the occupant still have a right to come back? He answered affirmatively.

Applicant's Rebuttal:

Mr. Morehead reiterated that he is asking for a special exception for auto sales only and not auto repair/parts sales. He indicated that Mr. Phelps intends to landscape consistent with the used car sales facility. Mr. Morehead stated the hours 7:00 a.m. to 11:00 p.m. are agreeable with Mr. Phelps. Mr. Morehead suggested the Board does have the ability to grant a limitation in time for the special exception for either as long as it is used for car sales by this applicant or that it would specifically lapse after so many months after succession of any use for used car or car sales. Mr. Morehead indicated that the current use was granted an exception (BOA Case No. 14719).

Comments and Questions:

Mr. Bolzle asked Mr. Morehead if he knew the number of cars that his client intends to have on premises for sale at one time? He stated somewhere between 8 or 10, maximum of 12. It is a neighborhood type sales lot and it is not intended to be a magnet or draw.

Mr. White asked Mr. Morehead if his client would have a problem with a limitation set on the number of cars allowed at one time on the lot? He answered negatively.

Mr. White asked Mr. Morehead what type of time limitation did he have in mind? He stated he didn't want a set time limitation so much as an indication that the exception granted would expire upon the happening of an event such as the succession of the use or the succession of use by this applicant.

Mr. Bolzle stated the Board has been cautioned, by the Legal Department, in granting variances that terminate at some point specific, the Board is on marginal legal ground.

Mr. Bolzle asked Mr. Morehead what the days of operation will be? Mr. Dunham stated it would have to be a six (6) day per week operation because they cannot open on Sunday by law.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Special Exception** to allow used car sales in an OL zoned district with CS zoning pending. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17; subject to auto sales only, there be no auto repair or auto part sales; subject to no outside storage other than the vehicles that are for sale, which shall be operable vehicles; subject to the number of cars being limited to 12, hours of operation be 6 days a week, 7:00 a.m. to 11:00 p.m.; finding that there is no variance given for reduction of landscaping that is required in the CS district; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

S 100', N 555', S 772.5', E 190', W 240', W 14.86 acres, Lot 1, Sec. 18, T-20-N, R-13-E, Tulsa County, Oklahoma.

NEW APPLICATIONS

Case No. 17597

Action Requested:

Variance of the required 30' of frontage on a public street or dedicated right-of-way to allow a lot split. **SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6, located 2123 South Atlanta Place.

Presentation:

The applicant, **Margaret A. Perigo**, 3171 East 33rd St., submitted a site plan (Exhibit A-1) and stated the subject property is south of 21st Street on a cul-de-sac, which is Atlanta Place. Ms. Perigo explained that the reason for the lot split request is because she has approximately 1 acre of land and this will be an enhancement to the neighborhood to have another residence in the 1/2 acre lot split rather than leaving vacant or perhaps farm animals being kept on the lot. Another home will raise the property values in the surrounding area. She stated that there is enough room for a home facing east and all considerations for Codes, sewers would be adhered to.

Comments and Questions:

Mr. Bolzle asked the Staff if this would be considered a prior approval lot split if it met all of the other requirements of the zoning district? Mr. Beach answered affirmatively.

Mr. Bolzle asked the Staff if the Planning Commission will see this application for a lot split? Mr. Gardner stated a lot split was filed and because it did not meet the code it was sent to this agency, but if that is the only thing that keeps it from meeting the code then it would be considered appropriate.

Mr. Bolzle asked the Staff if the City would allow residential construction in a floodplain and would the applicant have to go through the same process a commercial building would? Mr. Gardner stated that if the floodplain is a concern, that is something the City should check out as a condition of approval to be on the safe side.

Protestants:

Patricia Riley, 2117 South Atlanta Place, stated she doesn't understand where the applicant is going to place the house because of the frontage problem. The back of the lot doesn't really flood, but when there is a good rain there is a small lake in the back for several hours. Ms. Riley approached the Board to view the site plan. Ms. Riley pointed out the location of her home and how close the proposed home will be to her on the site plan submitted. Ms. Riley expressed concerns regarding the drainage and the possibility of damaging her property value. Ms. Riley stated that the neighbors are upset about the proposal.

Case No. 17597 (continued)

Mr. Romig out at 1:42

Mr. Linker in at 1:42

Applicant's Rebuttal:

Ms. Perigo stated that there is an expensive grape stake fence that does cause certain drainage problem at the moment. The architect proposed the circular driveway because of the drainage problem and drainage will be able to go down a driveway easier than turf or lawn. She suggested the owners at 2117 South Atlanta Place should install the type of fence that would allow drainage to go back into the creek area. She expressed concerns regarding drainage because the home next to the proposed home will be owned by her. Ms. Perigo indicated that the drainage has been taken into consideration as well as the contour of the land.

Comments and Questions:

Mr. Bolzle stated that if the Board was inclined to approve this application it would be subject to Stormwater Management's approval. He asked the applicant how closely did she think her neighbors' house sits to the property line from the fence? She stated the fence is not on the property line. Ms. Perigo suggested that Ms. Riley's driveway may in fact be on her property.

Board Action:

On **MOTION** of **Dunham**, the Board voted 2-1-0 (Dunham, White, "aye"; Bolzle "nay" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Variance** of the required 30' of frontage on a public street or dedicated right-of-way to allow a lot split. **SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6; subject to a permanent mutual access easement be filed of record; subject to Stormwater Management approval.

This motion failed due to a split vote.

Additional Comments:

Ms. Perigo asked the Board if this is a definite denial or can anyone else apply for a lot split in the future?

Mr. Bolzle stated that typically the Board will not hear cases again that have already been denied. He further stated that if someone re-applied for a lot split in the future the Board would have a discussion on whether or not there is a significant change that would cause the Board to hear it again.

Case No. 17598

Action Requested:

Variance of the required setback from the centerline of Peoria to allow modification of an existing non-conforming sign. **SECTION 1221.C.6. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**; and a Variance of the maximum display surface area to allow modification of an existing non-conforming sign. **SECTION 1221.C.6. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, located 3401 South Peoria.

Presentation:

The applicant, **Michael O'Brien**, 3401 South Peoria, submitted a site plan (Exhibit B-1) and photographs (Exhibit B-2). Mr. O'Brien stated the Old Brook Theater was redeveloped into a restaurant/bar with a patio area in the front part of the theater. He further stated that offices are located above the restaurant and the State Bank has a drive through behind the restaurant. He explained above the drive through there is a health club. Mr. O'Brien stated that the purpose of the request is to designate today's use for this property. He explained that the restaurant has been open for one (1) year and has received feedback from people that have yet to identify that this property has totally different use from what it once was, which was the original Brook Theater. The application is a request to add to the existing signage the wording "restaurant and bar."

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Variance** of the required setback from the centerline of Peoria to allow modification of an existing non-conforming sign. **SECTION 1221.C.6. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**; and a **Variance** of the maximum display surface area to allow modification of an existing non-conforming sign. **SECTION 1221.C.6. USE UNIT 21. BUSINESS SIGNS AND OUTDOOR ADVERTISING**, per plan submitted; finding that this exception only requires a variance of 2.5' SF and it is a unique area that deserves this kind of variance; 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 3-6, Block 2, Olivers Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17599

Action Requested:

Variance of the maximum number of subdivision identification signs per street frontage from one to three to allow 3 subdivision identification signs (one currently existing).

SECTION 402.B.4.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS - Use Unit 21, located 91st Street South & South 92nd East Avenue.

Presentation:

The applicant, **Don Beatt**, 9214 East 90th Place, submitted an architectural drawing (Exhibit C-2), a site plan (Exhibit C-3) and photographs (Exhibit C-4). Mr. Beatt stated he is representing the Shadow Ridge Home Owner's Association who have requested the opportunity to install identification signs. He explained that he went before the TMAPC for a minor amendment to the PUD, which was approved with a stipulation that the Board of Adjustment grant this variance.

Comments and Questions:

Mr. Dunham stated he is familiar with this area and there is need for more identification.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Variance** of the maximum number of subdivision identification signs per street frontage from one to three to allow 3 subdivision identification signs (one currently existing). **SECTION 402.B.4.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS** - Use Unit 21; subject to no more than three (3) identification signs are allowed with a combined display surface area of not more than 120 SF; subject to design of the signs is consistent with the information submitted with PUD 298-15; subject to Staff approval of a detail sign plan prior to issuance of a sign permit; finding that there is a need for more identification; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Part of SW/4, SE/4, beginning 50' N, SE/c, SW/4, SE/4, thence W. 474.36', N 290.16', SE 146.68', E 234.78', NE 84.67', E 20', S 276', to POB, City of Tulsa, Tulsa County, Oklahoma.

Additional Comments:

Mr. Bolzle read the TMAPC Staff recommendations to the applicant for clarification (Exhibit C-1).

Case No. 17600

Action Requested:

Variance of the required rear yard from 20' to 15', a Variance of the required side yard from 5' to 0' on east side and 2' on west side; and a Variance of the required front yard from 25' to 16'-5" for an addition to existing non-conforming structure. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 6, located 1811 East 16th Place South.

Mr. Bolzle informed the applicants that he represents the owners of an adjacent property and he does not feel that it will affect his vote on this application, but if they would like him to abstain from the application, the application can be continued since they would need all three votes for approval.

Ms. Henshaw stated the application is correct and requested to be heard today.

Presentation:

The applicant, **Denise Henshaw**, 1803 East 16th Place, submitted a plat of survey (Exhibit D-1) and stated the request is to make the subject property more livable. The master bedroom is currently 8 1/2' x 10' with a 2' closet. She explained that they would like to expand the bedroom, add a bathroom and a walk-in closet. Ms. Henshaw stated she owns three (3) other homes along this street. The Historical Preservation Commission has approved the proposed addition.

Edward Lange, 1803 East 16th Place, stated that he had looked at other options regarding expanding this bedroom and there was no other feasible alternative. He explained that if the proposed plans came further from the side yard setback, then you would have a very odd shaped room. He stated it would be difficult to add a closet or bathroom without the variance requested. Mr. Lange commented that if they are not allowed to go with the proposed improvements, there is no other way to improve the property and bring it up to date.

Comments and Questions:

Mr. Bolzle asked the applicant if he knew how close the improvements will be to the rear property line? Mr. Lange stated it would be approximately 18' from the rear property line.

Case No. 17600 (continued)

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Variance** of the required rear yard from 20' to 15', a **Variance** of the required side yard from 5' to 0' on east side and 2' on west side; and a **Variance** of the required front yard from 25' to 16'-5" for an addition to existing non-conforming structure. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 6; per plan submitted; finding that the lot size causes a hardship to make improvements; 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 16, Block 1, Bell-McNeal Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17601

Action Requested:

Special Exception to permit used car sales in an CS district (to allow temporary storage & sale of cars purchased as part of estate). **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17, located 1531 South Harvard.

Presentation:

The applicant, **Joe Gates**, 1537 South Harvard, submitted a boundary survey (Exhibit E-1) and stated that he owns Estate Furniture, Inc., located on the subject property. He explained that in the past year he has started selling the entire estate at the estate itself, which usually includes automobiles. Mr. Gates indicated that sometimes he may have some furniture and cars that will not sell on the estate sale day and so he will bring those items to his store, which is why he needs the special exception to permit used car sales at the subject property. He stated he had plenty of room behind his store to park the cars that are not sold at the estate sale. He further stated that in the State of Oklahoma if you sell more than three cars a year then you have to have a used car sales license. He indicated that he is currently selling one to three cars a month from the estate sales. Mr. Gates explained that if he can park the cars behind his store when needed, he can continue to sign contracts to sell the whole estate, rather than piece out the sales and possibly lose opportunities to sell the whole estate. The applicant stated he owns the store property and plans to keep the neighborhood up. He does not intend to have a used car lot, but he does plan to park the cars behind the store. He indicated he will advertise the cars in the newspaper.

Comments and Questions:

Mr. White asked the Staff about the parking requirements for the furniture store itself in addition to the three spaces the applicant is asking to be used for storing cars? Mr. Beach stated the requirement is one (1) space for every 300 SF of floor area of the antique store. If he has 1800 SF then the parking requirement is 6 spaces and he has 14 spaces total.

Mr. Bolzle asked the applicant if there will be signs on the cars indicating that they are for sale? He answered affirmatively.

Mr. Dunham asked the applicant if he had a problem with a restriction that the cars be kept behind the store? He answered negatively.

Mr. Gates stated that the cars will not be parked behind his business for very long because once he receives his used car dealer license, he can take the cars to the dealer auction at I-44 and dispose of the cars.

Mr. Dunham asked the applicant if he had a problem with a restriction of no more than three (3) cars at one time parked behind the store? He stated that could be a problem if he had some cars from a previous sale still located at the store. He indicated he could live with a five (5) car limitation.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Special Exception** to permit used car sales in an CS district (to allow temporary storage & sale of cars purchased as part of estate). **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17; per plan submitted; subject to no more than three (3) cars at one time; subject to the cars for sale being parked behind the building in the indicated spaces, (no cars for sale in front of the building); 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 7, Block 1, Less W 10', Sunrise Terrace Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17602

Action Requested:

Special Exception to allow an auto sales lot in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17, located 8561 East Admiral Place.

Comments and Questions:

Mr. Beach informed the Board that the applicant did not advertise for relief from the screening requirement. Mr. Beach suggested the case be continued to enable the applicant to re-advertise and hear the full request on February 11, 1997.

Mr. Melton requested that the application be heard today because it takes about 60 days in Oklahoma to receive a license and if he waits another 30 days to hear this application it will be even later before he receives his license.

Mr. White stated the Board can hear the case today and he will need to apply for the relief on the screening at a later date.

Presentation:

The applicant, **Steve J. Melton**, 8561 East Admiral, submitted a site plan (Exhibit F-1) and stated he bought the subject property in order to operate a used car dealership. He indicated he was not aware that it wasn't zoned for used car sales, since he operated a business on the subject property from 1986 to 1991 as a used car dealership. Mr. Melton stated that there are two car dealerships within one block and there is an automobile auction across the street from the subject property.

Comments and Questions:

Mr. White asked the applicant if the subject property is currently a tire service? He answered affirmatively.

Mr. Melton stated that the tire service is not in compliance and he has given notice to the owner to move out of the subject property. He indicated he did not know that the tire service was illegally operating until he filed for the subject property to be turned into a dealership. He would like to clean up the subject property and move in the used car dealership like it was before.

In response to Mr. Bolzle, Mr. Melton stated he operated with 40 cars on the location in the past and currently he has no particular number in mind.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Special Exception** to allow an auto sales lot in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 17; per plan submitted; and subject to **CONTINUING** the balance of Case No. 17602 to enable the applicant to advertise for relief from the screening 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. 17602 (continued)

Part Lots 20 & 21, Beg. SE/c, Lot 21, thence N 138.45, SW 162.51, S 76.73, E 150, POB Less Beg. SE/c, Lot 21, thence N 18.6, W 150, S 18.7, E 150, POB, Block 7, Mingo Terrace, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17603

Action Requested:

Special Exception to the setback requirements from R district to allow a monopole tower. **SECTION 1204.C.2. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES;** Use Conditions, located East 81st Street South & Harvard Avenue.

Presentation:

The applicant, **Kevin C. Coutant**, 320 South Boston, submitted a site plan and area maps (Exhibit G-1) and stated he represents U.S. Cellular Telephone Company. He explained that the subject location is in the CS zoned district and it is not contiguous to the residential area. Since the time of the application, it has been decided the monopole tower will be 70' in height and a wooden structure. The location of the subject monopole tower will be in the east end instead of the west end and the cabinet will be on the west side. The monopole tower will meet the one to one setback from the RS district to the southwest. Mr. Coutant explained that there are AG districts to the North and West of the subject property that are undeveloped. Mr. Coutant stated that as he reads from the zoning Code, Sec. 1204C, it does not require a one to one setback fro AG districts. He further stated he was not sure that this application needs to be before the Board of Adjustment, since it meets the RS district setbacks.

Comments and Questions:

Mr. Gardner stated that the Board should be concerned that if the tower is allowed as a matter of right, then the Board has no control over conditions or provisions that the Board could impose. It may be better to determine that the Board should hear this case and require the one to one setback and the particular type and height of pole that the applicant is proposing. There are interested parties here today and they should be heard.

Mr. Coutant stated that the application was advertised and there are people here that are concerned with the application. He further stated that it will be a 70' wood monopole with antennas that are suggested in detail on page 6 in Exhibit G-1.

Mr. White stated that since the City is still in the formative stages, regarding telecommunication towers, the Board should go ahead and rule on this application and not shed any authority.

Case No. 17603 (continued)

Mr. Bolzle stated that the Board has seen other cases that abut AG districts where it is apparent that the AG district will be developed as standard RS-2/RS-3 districts. Because there is not a setback for AG, the Board did not want the tower to be abutting someone's future backyard. The Board is sensitive to setbacks from AG districts, although the Code does not necessarily provide for the setback. This could be viewed as a compliance with Comp Plan type of issues.

Mr. Bolzle asked the applicant if he knew the setback from the abutting AG district with the revised plan? Mr. Coutant stated it would be 21' from the North and the distance to the west will be considerably more than the 30' range.

Protestants: None.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Special Exception** to the setback requirements from R district to allow a 70' wooden monopole tower. **SECTION 1204.C.2. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES;** Use Conditions; subject to the site plan being reversed so that the monopole tower is to the easterly most portion of the site per the applicant's description; subject to the monopole tower being a 70' high, wood laminated tower as indicated in the applicant's presentation; subject to the monopole tower meeting the one to one setback from R district; 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, Lot 1, Block 1, Amended Plat of Part of Lot 2, Block 1, Walnut Creek Mall, an addition to the City of Tulsa, Tulsa County, Oklahoma, according to the Recorded Plat No. 3404. Being more particularly described as follows: Commencing at the W NW/c of said Lot 1; thence S 0°00'32" W, along the W line of said lot 1, for 6.00' to POB; thence due E for 35.00'; thence S 0°00'32" W, parallel to the W line, for 20.00' to a point on the N line of a water easement, said easement being recorded in Book 4077 at page 669 in the office of the Tulsa County Clerk; thence due W, along and on the W extension of said water easement, for 35.00' to a point on the W line; thence N 0°00'32" E, along the W line, for 20.00' to the POB.

Case No. 17604

Action Requested:

Variance of the front setback from 25' to 21' to construct new building. **SECTION 703. BULK AND AREA REQUIREMENTS IN COMMERCIAL DISTRICTS**, located East of the Northeast corner of East 19th Street and South Garnett.

Presentation:

The applicant, **Charles I. Murphy**, 9930 East 21st Street, submitted a site plan (Exhibit H-1) and stated Murphy Properties has been active in the area for 20 years. Approximately two (2) months ago Murphy Properties acquired three (3) lots on 19th Street. Mr. Murphy stated that there is 25' setback line and on the east end of the property there is a curve in the street. He indicated the corner of the building will be encroaching 15' and the alternative is to move all of the buildings back 4', which would be an economic hardship. Mr. Murphy explained that to move the buildings back 4' would be cutting 1000 SF out of the buildings and that would be approximately \$30,000, which changes the economics of purchasing the property and buildings. He further explained that currently all of the buildings along the street are lined up.

Comments and Questions:

Mr. Dunham asked the applicant if he knew what the use will be for this building? He stated that it would be small commercial uses and most of the space is used for storage. There are small offices in the buildings and there is no retail.

Mr. White asked the applicant if he will be repairing the screening fence along the north side that is in a bad state of disrepair? He answered affirmatively.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-0-0 (Bolze, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Variance** of the front setback from 25' to 21' to construct new building. **SECTION 703. BULK AND AREA REQUIREMENTS IN COMMERCIAL DISTRICTS**; per plan submitted; finding that the curve in the street creates a hardship; 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. 75', Lot 2, Block 1, Tri Angle Commercial Park, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17605

Action Requested:

Special Exception to permit duplex use in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS**, located 36th Street North & Cincinnati Avenue.

Presentation:

The applicant, **Bruce A. Hall**, 1017 Elm, Dallas, Texas, representing Tulsa Crestview Housing Partners, Ltd., submitted a site plan (Exhibit J-1) and area map (Exhibit J-2). Mr. Hall stated the proposal is for 56 duplex units for 100% elderly senior housing at the subject property. He explained that he is currently the owner of the land adjacent to the subject property, which was rezoned from RS to RM to allow the 56 units. Mr. Hall stated the development is a joint venture with New Faith Baptist Church, as well as, services provided by Project Get Together of Tulsa. He further stated that the State of Oklahoma is in need of 700 new units for elderly housing. Mr. Hall indicated that a portion of the development is currently zoned CS and the site plan indicates a wrapping around of Phase I and Phase II. He stated he is purchasing 20 acres of land and reserving 5 acres for a retail development. He commented that the Comprehensive Plan indicated that there is a need for industrial and retail development on the frontage, as well as, residential on the balance of the property. The site development is consistent with the Comprehensive Plan. He explained that the site plan takes advantage of the creek running through the middle of the property and addresses the drainage issues. This project will have secured fences; there will be 32 one bedroom units; 24 two bedroom units; each apartment will have washer/dryers; full security systems throughout the project; full club house with pool; shuffle board courts, etc. He requested a special exception to wrap around the existing first phase into the second phase.

Comments and Questions:

Mr. Bolzle asked the applicant if his five (5) acre commercial reserve is on the corner of Cincinnati and 36th Street? He answered affirmatively.

Protestants:

Algerita Brooks, 4726 North Frankfort Avenue, representing Planning District 25, stated she represents the silent residents in the area. Ms. Brooks commented that the residents were hoping for commercial development on the subject property. This property has been before the Board previously with other proposed uses. She explained that the Comprehensive Plan Committee shut down what would have been a feasible area for commercial development on 56th & Cherokee Expressway. Ms. Brooks expressed concerns that the property indicated for commercial and retail will not be developed as such. Ms. Brooks questioned that the project would not turn into a treatment center? Ms. Brooks stated that there is little or no economic development in the area and no substantial way of obtaining economic development.

Applicant's Rebuttal:

Mr. Hall, stated that his organization owns the entire tract and has no association with any treatment centers. He further stated that he has developed over 3,000 units nationally and is currently proposing to build the 56 units in the next couple of months. Mr. Hall commented that it is his intention to build an elderly center.

Comments and Questions:

Mr. Bolzle asked the applicant if this is being built in conjunction with New Faith Baptist Church? Mr. Hall stated that New Faith Baptist Church is a general partner in the partnership and this is a relationship where there is no need for government funding and no subsidized money coming into this deal. He further stated the development is the profit side with a non-profit relationship. Mr. Hall indicated that New Faith Baptist Church will help provide services for the elderly, which will be coordinated with Project Get Together.

Mr. White asked the applicant if New Faith Baptist Church will relocate to the subject property? Mr. Hall stated that New Faith Baptist Church will move their location directly between the two sites that wrap around.

Mr. Dunham asked Mr. Hall if he will retain the ownership of the commercial property? He answered affirmatively.

Mr. Gardner stated that the RM-1 shaped piece of property was recently zoned by the City and permits 56 units as a matter of right on the first phase. The second phase would wrap around the New Faith Baptist Church and it will include the CS portion and that is why they are before the Board for an exception rather than going through a zoning change.

Mr. Beach stated that without the Phase II portion there is only one point of ingress/egress to the site, which creates a long dead end street into the property. If the northerly site and the connection is not approved, then the south site does not work very well and needs to be looked at from a site planning standpoint.

Mr. Bolzle asked the applicant if the south side has been platted? He stated it is in the process now.

Mr. Bolzle stated the proposal makes a lot of sense, because in his experience there is no way that retail would be built on the southside of the creek channel without extensive work being done regarding drainage. He further stated that they are wise to allow the five (5) acre commercial corner to remain commercial.

Case No. 17605 (continued)

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Special Exception** to permit duplex use in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS**; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Lot 1-4, Carl's Commercial Center, a subdivision lying in the N/2, NW/4, NW/4, Sec. 24, T-20-N, R-12-E, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17606

Action Requested:

Variance to permit 7 parking spaces to be located in the planned right-of-way of Charles Page Blvd. **SECTION 215. STRUCTURE SETBACK FROM ABUTTING STREETS**, and a Variance to allow 2 parking spaces which are within 50' of an R district to be less than 40' from the centerline of 51st West Avenue. **SECTION 1302.B. SETBACKS** - Use Unit 2, located 5000 West Charles Page Boulevard.

Presentation:

The applicant, **Rita L. Icenogle**, 4138 West Charles Page Boulevard, representing Neighbors Along the Line, submitted a site plan (Exhibit K-1) and stated that there are actually seven (7) parking spaces in front of the property that fall within the right-of-way. She explained that technically they are not required to have the seven (7) parking spaces to meet the required parking space numbers, however realistically the center will need the parking spaces for the odd times of the day when the need is higher. The second request is for the two parking spaces located on the southside of the subject property. Ms. Icenogle indicated the property to the far south is residential and commercial to the east & west. The two parking spaces are within 50' of a residential area and less than 40' in from the side street. If the two parking spaces were moved to the 40' requirement, then the center would lose 1 1/4 of the parking spaces.

Comments and Questions:

Mr. Beach asked the applicant if the two parking spaces were a part of her required parking spaces? She stated if the seven (7) spaces were approved, then she wouldn't need the two parking spaces on the far southside.

Mr. Gardner stated that it would be his opinion that Southwest Boulevard will not be improved based on its present alignment.

Case No. 17606 (continued)

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Variance** to permit 7 parking spaces to be located in the planned right-of-way of Charles Page Blvd. **SECTION 215. STRUCTURE SETBACK FROM ABUTTING STREETS**, and a **Variance** to allow 2 parking spaces which are within 50' of an R district to be less than 40' from the centerline of 51st West Avenue. **SECTION 1302.B. SETBACKS** - Use Unit 2; per plan submitted; subject to a removal contract for the seven parking spaces in the planned right-of-way of Charles Page Boulevard eliminates any possible street widening; finding that the alignment of development along Charles Page Boulevard eliminates any possible street widening; 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' of Lot 8, all Lot 9, Block 1, Vern Subdivision, City of Tulsa, Tulsa County, Oklahoma.

Shirley Abbott in at 4:15 p.m.

Case No. 17607

Action Requested:

Special Exception to allow an antenna and decorative supporting structure 86' high (PCS telephone antenna located on a church tower) in an RS-2 District and Approval of an amendment to previously approved site plan (BOA #13218). **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS**, and a Variance of the maximum height limit of 35' to 86'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 4, located 3819 South Lewis.

Presentation:

The applicant, **Lee Ann Fager/Earl Higgins/SW Bell Services (SWBS)**, 11529 East Pine, submitted a site plan (Exhibit L-1), photographs (Exhibit L-2). Mr. Higgins stated that the proposed area is at the Southside Christian Church. The proposed location is in front of the Church's activity building. He explained that the proposed tower will be 85' with a covered walkway for the patrons of the church. The tower will be constructed of the same materials as the church and will blend in with the existing church building. Mr. Higgins indicated the tower will be a 60' brick and steel structure with the top portion made of fiberglass. He further indicated the top will be 25' in height and the antennas will be behind the fiberglass so that there will be no visibility of the antennas. Mr. Higgins stated the church chapel with the cathedral ceiling measures 36' in height and the tower will be behind the chapel. Mr. Higgins detailed the following churches that have steeples or towers: 41st & Lewis with a steeple that is approximately 75'; 36th & Lewis with a steeple approximately 75'. He stated that he has been before the Board of Adjustment with an application for 36th & Lewis with a steel pole and was denied.

Lee Ann Fager, stated that occasionally SWBS has holes in their network and it is necessary to install a tower in a residential area. She further stated that the hardship in this area is that there is no commercial or industrial zoning for another mile and within the world of RF a mile means holes in the network or dropped calls. Architecturally this has been designed to look exactly like the existing structures and SWBS has used the same materials in order to accomplish the same design. The height of the tower is consistent with the other two churches within the area. Ms. Fager indicated that SWBS met with some of the neighbors in the surrounding area and there were several concerns raised by the neighbors. She stated some of the concerns deal with the existing facility and other concerns were how the proposed facility might affect or exacerbate existing problems. She indicated that SWBS is prepared to deal with the concerns raised by the neighbors. This will not be injurious to the neighborhood, but rather enhance the neighborhood by solving some of the existing problems.

Comments and Questions:

Mr. White asked Ms. Fager if the antennas will be visible? She stated the antennas will be behind the fiberglass at the top and will not be visible. She indicated the tower will be spot lit and not back lit. Ms. Fager explained that the tower has been proposed as a co-location tower site and AT&T has already agreed to co-locate on this proposed tower.

Mr. White asked the applicant if she met with a neighborhood association? She stated she went door to door within the 300' radius report that INCOG provided. Ms. Fager indicated that there were approximately 45 names on the radius report and half of the homeowners were not home. She stated that 11 people had no objection, three (3) people were in favor of the tower and the balance had some objections. Ms. Fager indicated that she conducted a neighborhood meeting, however very few people attended the meeting due to the weather. The people who did attend the meeting voiced concerns that SWBS was not aware of at the time, but are willing to address and correct those concerns.

Protestants:

Steve Schuller, representing Ann & Mike Stone, Mary Fitz, and Mary & Robert Bullock. Mr. Schuller indicated that the Bullocks and the Fitz live directly to the rear of the church property. The Stones live two doors down on Atlanta Place. Mr. Schuller submitted a petition (Exhibit L-4) and letters (Exhibit L-5) opposing the tower. Mr. Schuller read from the Zoning Code book regarding the guidelines on approving a special exception. He indicated that the proposed tower will destroy the neighborhood. The proposed tower will be an eight (8) story high structure towering over the neighboring properties and visible for several blocks in every direction. This tower is completely out of scale for the neighborhood. Mr. Schuller stated the nearest commercial areas where you expect to see a tower eight (8) stories in height is a mile

away on Brookside, which there is only one tower that belongs to Channel 2. The proposed tower will be an eye sore in the residential neighborhood. This proposed tower will dominate the view of all of the surrounding houses. Everyone surrounding the church property will be viewing this tower from their backyards and patios. This tower will completely destroy the property value of the homes because no one will buy those homes as soon as they viewed the tower from the backyards. It is unprecedented to allow an eight (8) story structure to tower over the residential neighborhood that surrounds the church property on all sides. There is no other church within one (1) mile that has a tower eight (8) stories high. Mr. Schuller stated that the two steeples mentioned earlier by SWBS are only three (3) stories to 40' high at the most. Mr. Schuller listed several churches in the area that have steeples considerably lower in height than the proposed tower. Mr. Schuller pointed out that the proposed tower will be on church property that is near the top of a hill, which will be eight (8) stories high. Mr. Schuller submitted a photograph (Exhibit L-3) with a view from the Bullock's backyard indicating how the proposed tower will appear from their backyard. Mr. Schuller pointed out that the cellular phone company is a private business and is not considered a public utility, therefore it is not necessary. He concluded that this tower will not be in harmony with the neighborhood and it will destroy the property value. He requested the Board to reject this application.

Marion Fitz, 3828 South Atlanta Place, stated she is speaking for herself and for Bobby & Mary Bullock. She indicated that her property is 60 yards due east of the proposed structure. It will literally be in her backyard and it will cast a shadow on her home. Ms. Fitz explained that 18 years ago she sold her home at 81st & Sandusky to move to her current residence so that she would not have the view of a 700' hospital from her front yard. She indicated that she has invested in her home continuously over the last 19 years to increase the property value so that it will provide a substantial amount of her retirement income when sold in the future. Ms. Fitz stated she would not have bought the house if the proposed tower had been erected 19 years ago. The impact of this tower will be devastating to the sale of her home in the near future. Ms. Fitz informed the Board that the proposed tower will be in her view at all times throughout her home. Ms. Fitz commented that the tower will not be in harmony with the neighborhood and requested the Board to deny this application.

The following protestants expressed similar issues:

Decrease in property value; safety issues; eyesore for the residents; lighting the tower at night; incompatible with the neighborhood; the tower casting a shadow on the abutting properties; the tower being eight (8) stories in height and health concerns.

Case No. 17607 (continued)

Mike Joyce, no address given
Harrison Townes, 2685 East 38th
Marcy Thompson, 2430 East 38th
Kevin Gelts, 226 East 45th Place
Mary Ann Swain, 3868 South Atlanta Place
Leann Helmerich, 3865 South Atlanta Place
Jackie Hagland, 3927 South Atlanta Place
Susan Hedges, 2211 East 39th
Mary Jeannette Reed, 2419 East 38th
Frank Hinkey, 3449 Atlanta Place

The following names represent protestants who did not speak:

Jack Maneville, 2263 East 39th
A. Cleveland, 3849 S. Atlanta Place
Katherine Frame, 2280 East 39th Street
Terry Carlton, 2272 East 38th
Lori Stewart, 3839 South Atlanta Place
Vicki V. Zabreski, 3466 South Atlanta Place
Dorothy Brooks, 2410 East 38th
Kari Surbeck, 3832 South Atlanta Place
H.R. Hedges, 2211 East 39th
Roger Swain, 3868 South Atlanta Place

Interested Parties:

Dale Dawson, 6740 South 70th East Avenue, stated he is an Elder of Southside Christian Church. He indicated that in the absence of the Chairman for the Church he is representing the Church Board. He stated the Board of Elders recommends approval of the proposed structure. He indicated It will enhance the beauty of the campus and serve as a functional entity to the community surrounding the area. Mr. Dawson stated that during his tenure on the Church Board there has only been one complaint by a home owner, which is immediately adjacent to the campus. He explained that the complaint was concerning tree limbs hanging over the property line, which was rectified. The Church Board has no knowledge of the grievances the neighbors have raised to SWBS, however Southside Christian Church intends to be a good neighbor and will make every effort toward the grievances and make adjustments accordingly. The Church has been in severe financial straits and capital improvements have virtually been impossible. The income of SWBS in rental of the tower will allow some of these improvements to be realized and it will enhance the campus. This will also provide a covered entrance way to Oasis Center for alzheimer patients. He requested that this application be approved.

Reverend Howard Licht, 3213 Riverside Drive, stated he is in favor of the proposal offered by SWBS. Mr. Licht indicated that he has been the Senior Minister for two (2) years and has been proud to work with this congregation. The church has hit hard times and that required cutting the budget to the bone. The church was determined to serve the community regardless of their budget problems. One of the ways the church was able to serve the community was to offer the facility to different groups and agencies. Mr. Licht explained that Project Get Together and the Little Light House both began at the church and went on to become larger agencies serving the Tulsa Community. Meals on Wheels is currently housed on the church's campus, the Northeast Active Timers have an office in the church and offer programs/fellowship for vital senior citizens. The Oasis Center is housed on the church's campus and provides services for alzheimer patients. Reverend Licht listed several groups and community services that use the church facilities for their programs. He stated that the economic problems have been improving this year and the church has been able to improve some of the facilities of the church. He indicated that during the meetings with the neighbors and SWBS, the church has learned some of the esthetic and security issues that the neighbors have. He stated the church is taking the issues very seriously and will address the issues. He further stated that now the church has been offered the chance for substantial capital improvement. Reverend Licht listed the improvements: covered walkway, drop off driveway for the handicapped, landscaping and a gate for the 38th Street entrance for security. He stated that SWBS has offered the church 1/4 of a million dollars in capital improvements and tens of thousands of dollars in rental. The church has scrutinized this plan and voted unanimously for this proposal. Reverend Licht requested this application be approved.

The following names represent interested parties in favor but did not speak:

Carrie Kitterman, 200 Center Plaza, #1421
N.K. Pruitt, 4208 South Norfolk
Brocie Bell, 441 South Cincinnati
Warren Green, 2260 East 39th
Jane Brown, 8210 South Elwood
Jeff Kirkham, 1727 East 73rd Street North
R. M. Suterl, 13715 South Oak Street, Glenpool

Applicant's Rebuttal:

Leann Fager, stated this is not a trend in the industry of telecommunications. There are thirty-eight million subscribers across the country and twenty-five thousand additional subscribers signing up each day. Virtually every emergency response notification system in the country utilizes some form of wireless technology. This has become as vital and important to the operation of daily life as electricity became 100 years ago. Cellular towers are vital to our operation and we need a tower in this area, however we will abide by what ever decision is given on this proposal. We have tried

to camouflage our towers to make it more compatible with the area. Ms. Fager reminded the Board that they were turned down for an application at 36th and Lewis on one of SW Bell's buildings, which was a standard monopole. Southwestern Bell Services decided to look into hiding the antenna in order to be more compatible with the residential area. If this proposed tower does not fit, then you must find that any church steeple within the City of Tulsa does not fit. Churches are only available by special exceptions in the City of Tulsa and so this Board examines every church that is proposed. The last thing SWBS wants to be is injurious or invasive and this is the best we can do in terms of hiding an antenna.

Earl Higgins stated that protestants suggested the proposal move to different locations at 15th & Lewis or 50th & Lewis. He explained that SWBS has a cell sites on buildings at 21st & Lewis, 51st & Peoria on commercial property, I-44 & Harvard; 2300 Riverside. Mr. Higgins stated that SWBS try to locate on buildings when possible to avoid erecting towers. He explained that it is vital for SWBS to have a tower within this six square miles to cover 800 MHz. If this application is not approved, then SWBS will be back looking to cover with three more sites in the area and commercial areas, as well, to speed service to this area. Mr. Higgins stated that there is no emittance from the antennas so they are not hazardous. He explained that microwaves put more waves out then the SWBS towers.

Comments and Questions:

Mr. Bolzle asked Mr. Higgins what the dimensions are for how far this tower sets from RS district? Mr. Higgins stated that from the north it sets approximately 130', south 160', east 200' and approximately 300' to the property line, which would be the street right-of-way to the west.

Mr. Bolzle asked the applicant if the 86' tower is measured to the very tip of that point? He answered affirmatively.

Mr. Higgins stated the trees in the area are approximately 75' and he is trying to get above the trees with the tower.

Mr. Bolzle asked Mr. Romig if there are any Federal Requirements that require the Board to look upon the applications any more favorably than any other zoning request? Mr. Romig answered negatively. He stated the Board cannot discriminate.

Mr. Dunham asked the staff if the church came to this Board and asked to build this tower, without the antenna, would it be allowed? Mr. Romig stated It would still need to come before the Board because of the height restriction.

Mr. Romig stated that the real issue here is whether this is a steeple that would be allowed. He further stated the Board does not want to make a decision based on the fact that the neighbors do not want cellular service in the area.

Mr. Bolzle stated he has viewed many expensive neighborhoods abutting major college campuses that are full of smoke stacks that soar easily this high into the air with seemingly no deterioration of property value. He further stated it becomes a part of the landscape as do church steeples and other things that we begin to see as a part of building structures that we identify. There is some disagreement on how high the other church towers are in the area and if we were looking at this for a variance for a church, then that would probably become important information.

Mr. Higgins stated the City & County is trying to encourage the cellular companies to install co-locatable antennas and this is the height it will take to allow two cellular companies on this tower.

Mr. Bolzle asked Mr. Higgins if the tower was not co-locatable how high would the tower be? He stated the tower would come down to 75'. He commented that during the spring and summer the reception goes down due to the foliage.

Mr. Gardner stated the height exceptions are listed in the City ordinance and if the tower is considered one of the exceptions then the church would not need a variance for the height. He further stated Mr. Bolzle can review the list and with his architectural experience decide if this tower falls within the height exceptions from the City ordinance.

Mr. White read the list of height exceptions from the City ordinance.

Mr. Bolzle stated that if the church decided to build a tower such as proposed, then it would not be a subject of discussion.

Mr. Gardner stated that if the tower falls within the list, then the church can build the structure and then the issue would be, would the Board allow an antennae to be placed on the structure?

Mr. Bolzle stated that the proposal is a belfry or a spire and the church could build this tower.

Mr. White stated that SWBS has made great strides in this proposal compared to the proposal for 36th & Lewis.

Case No. 17607 (continued)

Mr. Bolzle stated that the tower could be built by right if the church wants to build the tower as a spire or belfry. The setback from the abutting residential property line exceeds in all but one case 2 to 1.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 4-0-0 (Abbott, Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to allow an antenna and decorative supporting structure 86' high (PCS telephone antenna located on a church tower) in an RS-2 District and Approval of an amendment to previously approved site plan (BOA #13218). **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS**, and a **Variance** of the maximum height limit of 35' to 86'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 4; per plan submitted; subject to the tower having no lighting at night; finding that the spire could be built as an accessory structure to the church without the Board of Adjustment's approval and the setbacks are more than double what would be required under any other zoning district where a tower would be allowed by right; 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:

PRT, SW, SW, Beg 457.5 E & 25S, NW/c, SW, SW; thence S 169, W 457.45, S 305, E 522.96, N 305, W 33.11, N 169, W 32.5, POB, Sec. 20, T-19-N, R-13-E, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17609

Action Requested:

Special Exception to permit a 100' monopole transmission tower in an RS-3 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 4, located East 55th Street and South Memorial Drive.

Presentation:

The applicant, **Kevin C. Coutant**, representing U.S. Cellular, 320 S. Boston, submitted a site plan and area maps (Exhibit M-1). Mr. Coutant stated he would like to amend his application for a 70' monopole transmission tower, which will be a wooden pole structure. He further stated the antennae configuration is a tightly clustered set of antennas at the top of the pole as shown in Exhibit M-1. This property is located on the west side of Memorial just north of 57th Street and the property is zoned RS-3. He explained that the property was originally set out in the dedication of Southern Plaza Addition as a recreational site. He further explained that when the subdivision was new there was a swimming pool and a small building that served as a clubhouse for the swimming pool facility. In the following years the subject property

and use has fallen in disrepair. He commented that the swimming pool has been filled in and it is a property without a use currently. The subject property is owned by the Homeowner's Association. Mr. Coutant pointed out that the subject property backs up to and contiguous to OL zoned property, which has a single story office building that is abutting this property to the east running north on Memorial. He stated that the subject property is a small parcel that will be surrounded by a privacy fence. He further stated that there will be access from 57th Street. He explained that the subject property is 75' to 80' east of the back yards of the single family residences that are to the west. The Homeowner's Association voted unanimously to lease the subject property to U.S. Cellular. He explained that U.S. Cellular has agreed to turn a budget over to the Homeowner's Association to landscape the area as they choose. He concluded that the subject property is a good location for the low tower, which sits in a low area.

Comments and Questions:

Mr. Dunham asked the applicant what will the setback from the residential area be? Mr. Coutant stated to the site, the setback is 75' and the tower itself will be another 10' and the total setback from the rear yard of Block 9 of the subdivision plat will be at least 85'.

In response to Ms. Abbott, Mr. Coutant stated the Homeowner's Association met on two occasions and voted unanimously for the proposal from U.S. Cellular.

Interested Parties:

Tim Patterson, President of the Southern Plaza Club, Inc., stated that there is full agreement of the subdivision for this proposal. He explained that he had a meeting with the homeowners that directly border the subject property first and then he had a meeting with the entire subdivision. He stated the proposal was approved by the 30 or more people that attended the meeting. He explained that the subject property has had some financial difficulties in the past years. Mr. Patterson stated the homeowners would like to retain the subject property as a buffer zone against the office district.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Abbott, Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to permit a 70' monopole transmission tower in an RS-3 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 4, per plan submitted; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Case No. 17609 (continued)

A tract of land that is part of Lot 1, Block 15, Southern Plaza, an addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof (Plat #2598) being more particularly described as follows: Commencing at a point on the Sly line of Lot 1, Block 15, Southern Plaza, said point being 66.30' Ely of the SW/c of said Lot 1, Block 15; thence N 14°48'10" E and parallel with Wly line of Block 1, Memorial Drive Office Park, an addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof (Plat #3374) for 107.91' to the POB; thence continuing N 14°48'10" E and parallel with the Wly line of said Block 1, for 30.00' to a point; thence S 75°11'50" E for 30.00' to a point on the Wly line of said Block 1, Memorial Drive Office Park; thence S 14°48'10" W along said Wly line for 30.00' to a point; thence N 75°11'50" W for 30.00' to the POB, AND, A tract of land that is part of Lot 1, Block 15, Southern Plaza, an addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof (Plat #2598) being more particularly described as follows: Beg. at a point on the Sly line of Lot 1, Block 15, Southern Plaza, said point being 47.96' Ely, SW/c of said Lot 1, Block 15; thence N23°45'17"E for 113.97'; thence S75°11'50"E for 30.00' to a point on the Wly line of Block 1, Memorial Drive Office Park, an Addition to the City of Tulsa, Tulsa County, Oklahoma according to the recorded plat thereof (Plat #3374); thence S23°45'17"W for 105.62' to a point on the Sly line of said Lot 1, Block 15, Southern Plaza; thence S89°57'37"W along the Sly line of said Lot 1, Block 15, Southern Plaza for 32.37' to the POB.

Case No. 17610

Action Requested:

Special Exception to allow a nursery and pre-school on the property as the expansion of church use. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located 4102 East 61st Street.

Presentation:

The applicant, **Kevin C. Coutant**, 320 S. Boston, representing Kirk of the Hills Presbyterian Church, submitted a site plan and area maps (Exhibit N-1). Mr. Coutant stated the Kirk of the Hills property is located on 61st Street. He explained that the church proposes to build an education wing, which does not require a special exception for construction. The structure falls within the Code without special relief, but the reason this application is before the Board is because part of the new structure will be used for a pre-school. He explained that the pre-school has been in operation at the church for several years. The State requirements for pre-schools have become more rigid, more demanding, safety & health concerns and the church is in a position where they would either have to face the prospect of retro-fitting their existing structure or build a new structure to meet the State requirements. He explained that

Case No. 17610 (continued)

previously the pre-school has been operated in the church as an accessory use and did not require a special exception. Mr. Coutant stated the architecture of the building will be compatible with the existing architecture. He further stated he had a meeting with the neighbors who abut primarily to the south of the subject property. Mr. Coutant requested that the application be granted with the following conditions: per site plan as submitted; parking configuration may be subject to a certain amount of modification (with at least 20 more spaces); limit the hours of operation to (9:00 a.m. to 2:30 p.m.); limit enrollment to 300 children; during construction keep open and maintain a fire lane; keep construction hours 7:00 a.m. to 7:00 p.m.; and the proposal is for pre-school only.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Abbott, Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to allow a nursery and pre-school on the property as the expansion of church use. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2; per plan submitted; parking configuration subject to modification but must provide 20 more spaces than current; subject to operating hours of 9:00 a.m. to 2:30 p.m. - Monday through Friday; subject to maximum enrollment of 300; subject to maintaining an open fire lane along the south boundary during construction; subject to construction hours being 7:00 a.m. to 7:00 p.m.; subject to being a pre-school only; 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 396', W 660', Lot 2, Sec. 4, T-18-N, R-13-E, I.B.M., Tulsa County, Oklahoma, and all of Livingston Park, Block 1, an addition to the City of Tulsa, Tulsa County, Oklahoma, less and except the portion thereof subsequently platted as Livingston Park South, an addition to the City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 17612

Action Requested:

Variance of the required parking for an adult entertainment establishment from 23 to 14. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2, located 3945 East Admiral Place.

Presentation:

The applicant, **Patricia A. Vercellini**, 926 North Harvard Avenue, submitted a site plan (Exhibit O-1), plot plan (Exhibit O-2), and photographs (Exhibit O-3). Ms. Vercellini stated she has been established at the subject property for five (5) years and is currently applying for a liquor license. She commented that she has always

Case No. 17612 (continued)

been respectful of her neighbors behind the facility and other businesses in the strip mall. Ms. Vercellini stated her hours are 12:00 p.m. to 2:00 a.m. and the businesses in the mall close at various times, (9:00 a.m. to 8:00 p.m. or 10:00 p.m.)

Comments and Questions:

Mr. Gardner asked the applicant what brought her before the Board? She explained that she wants to apply for a liquor license and that is what has brought her before the Board of Adjustment.

Mr. Gardner asked the applicant if the uses in the mall have stayed primarily the same in the last three or four years? She stated there have been some changes. She explained that there is a new restaurant, a paper company, beauty & tanning salon, and a pool hall. She commented that she has been in the mall the longest.

In response to Mr. Gardner, the applicant stated she has room behind her establishment, where she has installed a horseshoe pit. She further stated there is approximately 50' behind her facility.

Ms. Vercellini stated that her customers do not park in the residential area.

In response to Mr. Gardner, the applicant stated the pool hall is the only business that stays open late into the night and it is located at the opposite end of the mall. She stated she has no problems with parking in the shopping center.

Mr. Dunham asked the applicant if she has ever had a parking problem during the day? She answered negatively. She explained that most of the businesses in the mall have short term traffic.

In response to Mr. Dunham, the applicant stated that the hours of operation will not change, the only thing changing is that she is applying for a liquor license.

Protestants:

Roger Larkey, stated he owned the property at 3925 East Admiral Court, which he currently leases out. He expressed concerns regarding the property value of his rental property. He explained that he is very aware of what type of activity happens when a bar sells liquor, because he is a building inspector/supervisor for the City of Tulsa. He further explained that he deals with Code Enforcement and complaints received on activity that accompanies this type of business. Mr. Larkey commented that there will be more activity when the beer bar turns into a liquor bar. He requested the Board to deny this application and hold up the zoning laws that were written for the required parking.

Case No. 17612 (continued)

Roscoe Turner, Chairman of the Sequoyah Area Neighborhood Association, Inc., stated he has several problems with this application. Mr. Turner indicated that the beer bar turning into a liquor bar will be detrimental to the area. He stated that the neighborhood association is very interested in revitalizing the area.

Jerry Rhoades, 839 North Marion, expressed the same concerns as the previous protestants and requested the Board to deny this request.

Applicant's Rebuttal:

Ms. Vercellini stated she has been established for five (5) years and has worked very hard to make her facility a decent bar. She further stated she has never had trouble from the police nor will she allow trouble in her facility. She commented she is very respectful and considerate of the people in her mall and the residents behind her bar. Ms. Vercellini stated she does cut off her customers if they have had too much to drink. She requested the Board to approve this application.

Comments and Questions:

Mr. Dunham asked the applicant if she anticipates any change in her business due to the new liquor license? She stated the business may pick up a little.

Mr. Bolzle asked the applicant how long she has been established and how many bars have been in the existing property? She stated she has been there five (5) years and there were two bars previously.

Mr. Bolzle asked the Staff why the applicant is before the Board and if the Code differentiates between beer bars and liquor bars? Mr. Gardner stated that the establishments that were non-conforming as to parking had one year to relocate and this establishment apparently never came up because there was not a change in the particular type of license until now.

Mr. White asked the Staff if the Board were inclined to turn this application down, what would that mean for the applicant? Mr. Gardner stated the applicant would have to relocate her establishment.

Mr. Dunham stated the protestants failed to mention if there was a parking problem and that is the issue.

Mr. Beach stated that based on the square footage given, the parking spaces indicated are the correct number of spaces required for the uses. He further stated that if the shopping center was full and with all of the uses, the center would need 78 parking spaces. He explained that 24 parking spaces are devoted to the bar and 32 parking spaces to the pool hall. He commented the shopping center has considerably less parking than is required for the different uses. The site plan shows a total of 43 parking spaces.

Case No. 17612 (continued)

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 4-0-0 (Abbott, Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Turnbo "absent") to **APPROVE** a **Variance** of the required parking for an adult entertainment establishment from 23 to 14. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 2; per plan submitted; subject to approval for three years, finding that the subject property is non-conforming and has been established for five (5) years; finding that the use is not changing, but the owner is applying for a liquor license; 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 26-29, Block 2, Federal Heights, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 17613

Mr. White announced that he will be abstaining from this case.

Action Requested:

Variance of required 30' of frontage to 0' to permit a lot split or in the alternative, a Variance of required 30' of frontage to 20' to permit a lot split. **SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6, located 38th & South Yorktown.

Presentation:

The applicant, **Philip Doyle**, represented by Steve Turner of Turner & Associates Architect, 5550 South Lewis. Mr. Turner submitted a survey (Exhibit P-1) and an area map/plat (Exhibit P-2). Mr. Doyle stated he represents Karen Nelson, the owner of the property. He further stated he sent a letter of the proposal to the residents within 300' of the subject property. He explained that the owner would like to split the subject property into two lots. Mr. Turner stated the owner is not the same owner who came before the Board several years ago to split the same property into four lots. Mr. Turner indicated that the owner will retain the westerly lot and build a home for herself. He explained that the westerly lot will be approximately a 1/2 acre in size and the easterly lot will be 9/10 of an acre and limited to one single family residence. He commented the easterly lot will sell in excess of \$200,000. The two proposed lots will be in scale with the surrounding neighborhood. Mr. Turner stated the tract is a large tract of land (1 1/2 acres), but it is limited to 47' of frontage at Yorktown and 37th.

Comments and Questions:

Ms. Abbott asked the applicant if there was some type of mutual access for the lots that are being split? Mr. Turner stated there will be a 20' access easement that will go back to the westerly lot.

Mr. Gardner stated the applicant advertised in the alternative and so the Board has a choice of which configuration they think is more appropriate. He further stated the Board will need to decide if it is appropriate to have an ownership handle versus an easement.

Protestants:

Linda Bennett, 2024 East 37th, stated she prefers one home on this lot, although two lots are acceptable to the neighborhood. She expressed concerns regarding the first option of zero frontage and prefers the 20' of frontage. She commented that traffic is a concern because of the children in the neighborhood. Ms. Bennett informed the Board that there is a 6' underground storm sewer and, in the 1984 flood, water completely submerged the access to the subject lot. She expressed concerns regarding soil erosion on the back of her lot, which abuts the subject property. She explained that the owner of the subject lot installed a 6' to 8' high fence around the subject property and it did not comply with flood zoning requirements. The owner did go back and fix the retaining wall so that flood water could flow through. Ms. Bennett stated she is concerned about what the lot split will do to the value of the property and the possibility of changing the character of the neighborhood. She expressed concerns regarding the setbacks for the proposed home on the lots. She requested the Board to use the second alternative so that the west lot has actual ownership and the frontage is split to 20'.

Connie McFarland, 2215 East 37th Street, stated she is across the street from the subject property. Ms. McFarland explained that she is very active with her home owner's association and that most of the neighbors are in favor of the two lots. She expressed concerns regarding the character of the neighborhood. Ms. McFarland stated she supports the 20' frontage option rather than the 0' frontage. She indicated she is concerned about the separation of the two lots and the setbacks. Ms. McFarland expressed the same concerns as Ms. Bennett. She requested that the stormwater issue be addressed before the lot split is allowed.

Comments and Questions:

Ms. Abbott asked the staff if the building permits would go through stormwater management regarding flooding and erosion? Mr. Gardner stated that if that is a concern the Board should make the approval subject to Stormwater Management review.

Ms. Abbott asked the staff if, in terms of setbacks for RS-2, a lot split will have to follow the normal setback regulations? Mr. Gardner stated it will have to follow the Code and if there is a panhandle then obviously the front yard becomes the yard abutting the street. He further stated that when you have an irregular shaped lot the panhandle could not be built upon, but merely functions as an access handle from the road to the lot.

Case No. 17613 (continued)

Mr. Gardner asked the applicant how he intended to get water and sewer to the lot? Mr. Gardner informed the applicant that the City of Tulsa will not accept an easement.

In response to Mr. Gardner, Mr. Turner stated it was his intention originally to have the flag lot and the Staff suggested the 0' of frontage with a mutual access easement filed of record.

Mr. Gardner stated he told the applicant that they needed to advertise in the alternative so the Board could consider the flag lot as an option. He explained that the reason he told the applicant to advertise in the alternative is because if he wants water and sewer to the lot it will have to be done with a flag lot. The City will not approve an easement to put a line across another property.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-0-1 (Abbott, Bolzle, Dunham, "aye"; no "nays" White "abstention"; Turnbo "absent") to **APPROVE** a **Variance** of required 30' of frontage to 20' to permit a lot split. **SECTION 206. STREET FRONTAGE REQUIRED** - Use Unit 6; per plan submitted; subject to a review of the drainage before any building permits issued; 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:

Tract A, W 120', Lot 8, Block 10, Highland Park Estates, an Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof, Less and Except the S 18' thereof AND Tract B, Lot 8, less S 18' and less the W 120' thereof, Block 10, Highland Park Estates, an addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof, AND W/2, of vacated Terwilleger Blvd. lying adjacent to Lot 8, Block 10, being more particularly described as : Beg. at SE/c, Lot 9, Block 10, Highland Park Estates, an addition to the City of Tulsa, Tulsa County, Oklahoma; thence SWly direction along a curve to the left having a radius of 275.93', for 210.60' to a point; thence in a Ely direction for 50.00' to a point; thence in a NEly direction along a curve to the right having a radius of 225.53', for 235.53' to a point; thence a NWly direction along a curve to the right having a radius of 175.00', for 7.92' to a point; thence in a Wly direction, for 81.64' to the place of beg., and known as 3740 S. Terwilleger Blvd.; TOGETHER WITH a tract of land more particularly described as follows: commencing at a point in the NEly boundary of Lot 9, Block 10, Highland Park Estates Addition, to the City of Tulsa, Oklahoma, and 139.6' from the NE/c thereof; thence in a SEly direction along the Sly projection of the NEly line of said Lot 9, for 66.46' to a point of curve; thence around a curve to the left, having a radius of 174.80', for 2.35' to the POB; thence continuing to the left along said curve having a radius of 174.80', for 47.31' to a point, said point being on line with the Ely projection of S boundary of said Lot 9, Block 10, Highland Park Estates Addition; thence due W along the Ely projection of said S boundary of Lot 9,

Case No. 17613 (continued)

Block 10, Highland Park Estates Addition, for 62.64'; thence N 44°16'58" E, for 44.50' to POB, AND Access Easement to Tract A: a strip of land 20' in width lying in a portion of Lot 8, Block 10, Highland Park Estates, an addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof, and in a portion of vacated Terwilleger Blvd. lying adjacent to Lots 8 & 9, Block 10, said strip being 20' S & E of a line more particularly described as follows, to wit: Commencing at a point in the NEly boundary of Said Lot 9, 139.6' from the NE/c thereof; thence in a SEly direction, along the Sly projection of the NEly line of said Lot 9, for 66.46' to a point of curve; thence around a curve to the left, having a radius of 174.80', for 2.35' to POB; thence S 44°16'58" W, a distance of 44.50' to a point on Ely projection of the S Boundary of Said Lot 9; thence due W, along the Ely projection of said S boundary of said Lot 9, for 19.0' to the SE/c of said Lot 9, the same being the NE/c of said Lot 8; thence continuing due W, along the N line of said Lot 8, to a point 120.00' E of the NW/c of said Lot 8, said point also being the end of said strip of land.

Case No. 17614

Action Requested:

Appeal the decision of an Administrative Official that the use is classified as Use Unit 8 - Multifamily Dwelling and Similar Uses, located 245 West 12th Street.

Presentation:

The applicant, **James G. Norton/Downtown Tulsa Unlimited (DTU)**, 320 South Boston, Suite 101, submitted a copy of the zoning code that defines residential treatment center (Exhibit Q-1) and an application for Federal Assistance with attachments (Exhibit Q-2). Mr. Norton stated he is requesting the Board of Adjustment to interpret a decision made by a zoning official. Mr. Norton explained how DTU became established and the responsibilities of DTU. He further explained the different members of the organization. Mr. Norton stated that DTU has been registered as the neighborhood association for District 1 for the downtown area. Mr. Norton explained that DTU has a contract with the City of Tulsa to sweep the streets, clean the sidewalks, maintain the 5th & Main Malls, hang banners/Christmas decorations, to promote special events and put on festivals, etc. He further explained that the contract specifically recognizes planning and development issues. Mr. Norton stated it is DTU's obligation, under the contract with the City, to review, comment and advocate positions regarding the Comprehensive Plan, the zoning ordinance and land use issues. DTU, as an organization, has been before this Board to support similar uses in the past. He explained that DTU is currently working with two social service agencies to provide them with appropriate locations in the Downtown area. He commented that it is very important that the Board understands that the issue today is not the location of a use unit 2 use. Mr. Norton stated that the Comprehensive Plan,

which the City Council has adopted, identifies 245 West 12th Street and the environment surrounding it, as an opportunity site. The opportunities are for redevelopment. He explained that this area was identified by a market research company as the most compatible area for residential development in the City of Tulsa. Mr. Norton commented that Center Plaza Apartments, which is in this area, has recently been sold and being converted into condominiums. Mr. Norton expressed the importance of home ownership versus rental. He stated that the 1996 third penny sales tax extension included four million dollars for residential development in south central downtown. The City has requested developers to submit their ideas list for two pieces of property as preferential sites for residential development. One of the sites is the vacant parcel between 8th & 11th in front of Center Plaza Apartments, which is only a half block from the subject site. The second site is a two square block area bounded by Main, Boston, 8th and 10th, which is only three blocks from the subject site. Mr. Norton indicated that DTU is working with the City of Tulsa on the Tulsa project, which includes a new 16,000 seat arena five blocks away from the subject site. He listed several other projects that are proposed which will only be five blocks to a half mile away from the subject site. Mr. Norton listed several new re-developments that are taking place and several that are already open for business in the downtown area. Mr. Norton stated the projects slated for the Downtown area total approximately twelve to fifteen million dollars of public money for re-development and that is not considering the private dollars. The public and private investment is starting to happen, which is why we need a zoning code and a process that DTU can rely upon in order to represent, to the developers, the codes. Mr. Norton stated that the appeal is based on the fact that Freedom Ranch submitted an application in May of 1996 to HUD for a \$503,000 grant for the sober housing apartment project located at 245 West 12th Street. This site is a vacant 2 story apartment unit with each unit containing approximately 380 SF. He indicated that on page 32 of the application, Freedom Ranch identified a community need of transitional housing for chronic substance abusers as a high priority need for the community. He further indicated pages 40 through 42 of the application to HUD states the services that will be provided, in connection with the grant, are as listed: assignment of case managers to every resident; in-home counseling; assignments and visits by a home health care nurse; assistance providing diapers; assistance with transportation; assistance with childcare; a risk and relapse assessment; and the residents of 245 West 12th have to sign a contract that states they will remain clean and sober and will subject themselves to random urinalysis test. Mr. Norton stated that page 40 states that the residents of 245 West 12th are required to be participants of the First Wings of Freedom Program. They are also required to execute a contract to remain drug and alcohol free, plus they are required to have children. Mr. Norton pointed out that page 40 of the application also states that counselors/supervisors would be officed and housed on site. He further pointed out that counseling would be provided on site. As a condition to receive the federal dollars, Freedom Ranch had to show HUD a zoning clearance permit. Mr. Norton stated that on November 13, 1996, Freedom Ranch

applied for a zoning clearance permit and submitted the HUD application as evidence of what would be undertaken at this location. He indicated that Mr. Ackerman ruled that Freedom Ranch was a Use Unit 2 requiring a public hearing before the Board of Adjustment. He stated Mr. Ackerman's ruling should remain in effect, because the ruling was not appealed. Mr. Norton explained that a week later, November 20, 1996, Freedom Ranch came back before the zoning official and said they wanted a permit for a multi-family use. The applicant was issued a permit on November 26, 1996, for a multi-family use. Mr. Norton pointed out that the zoning officer attached and made Freedom Ranch sign a memorandum of understanding stating that if Freedom Ranch provides the services and rules that they have indicated to HUD on their application, then this new zoning clearance permit does not apply. He stated that the zoning clearance permit and memorandum were submitted to HUD as evidence that they did comply. Mr. Norton questioned what changed between November 13, 1996, when the applicant was ruled a Use Unit 2 and November 20/26, 1996, when the applicant was ruled a Use Unit 8, multi-family use? He contends that Freedom Ranch told the City it would amend their application to HUD to remove the on-site offices from the 245 West 12th Street location. Mr. Norton commented that the services outlined in the application would be impossible to provide off-site. He further commented the only reasonable conclusion is that moving the services and offices off-site was ruled by the zoning officer to re-classify the applicant from a Use Unit 2 to a Use Unit 8/multi-family use. The mere fact that moving the offices to another location caused the ruling to change and that fact is a crucial point. Mr. Norton stated he would contend, that the memorandum of understanding between the zoning officer and Freedom Ranch is clear that if Freedom Ranch provides the services indicated in their application to HUD, then they are not a multi-family use. The subsequent amendment of the application to move the on-site services off-site establishes the fact that the zoning officer ruled that on-site offices/services is the sole determining factor distinguishing a Use Unit 2 from a Use Unit 8. Mr. Norton contended that there are a number of other factors that the zoning official should have considered. Mr. Norton listed several factors as follows: Is the facility intended for occupancy by the general public or a specific group of people? He stated the application submitted to HUD lists a specific group of people (participants of the First Wings of Freedom Program). Does residing at the facility require a resident to give up some personal freedoms, i.e. if you live here, do you have to act in a certain way? The answer is yes, because the resident has to sign a contract stating the resident will not use alcohol or drugs and subject themselves to a random urinalysis testing. Mr. Norton questioned what would happen to the resident if they do not go to all of their counseling sessions, do they throw out the resident? Is the environment in the apartment building highly structured? As defined by the zoning code, Mr. Norton stated the environment in the apartment building is highly structured. There are multiple in-home counseling sessions, there are multiple in-home visits by home health care nurses, there is a monthly assessment and other meetings/counseling sessions that are required of the residents of this facility. Mr. Norton commented that the afore mentioned services constitutes a highly structured living environment. Is the facility allowed to restrict its resident population in

violation of the Civil Rights Act? Mr. Norton stated it is allowed to limit the population to women only and women with children. Mr. Norton questioned if the public could rent an apartment at 245 West 12th? He answered that the public could not rent an apartment unless the applicant is a graduate of the First Wings of Freedom Program, submits to random urinalysis testing, etc. Are services provided to the residents which are not normally provided by a landlord in the City of Tulsa? Mr. Norton stated he did not know of a single apartment complex that provides counseling, urinalysis testing, bus tokens, home health care nursing, childcare or diapers. If this apartment was a Section 8 complex then there would not be a need for an appeal because it is a use by right in the Central Business District. Mr. Norton submitted that the above tests would clearly distinguish the use being proposed at 245 West 12th Street as a Use Unit 2/residential treatment center and not a Use Unit 8/multi-family use. Mr. Norton read the definition of a residential treatment center from the Code. He contended that the definition of a residential treatment center does not address whether offices or services are on-site or off-site, but it does include a facility where those services are provided. Mr. Norton reminded the Board that their job is to review the Code and make interpretations of the Code, as well as the ordinances. He concluded that reasonable people would agree that this issue of a Use Unit 2/residential treatment center versus a Use Unit 8/multi-family use is one that needs to be addressed. Mr. Norton stated that if the Board agreed that the Freedom Ranch Apartment is a Use Unit 8/multi-family use, this would mean that all a similar service provider in this City had to do is move the offices of the services across the street or across town and it is automatically considered an apartment complex. He requested the Board to think of other Use Unit 2 uses and the implications this will have on the City of Tulsa. Mr. Norton suggested the Board look at what the Freedom Ranch comes closest to the Code and decide if it is a residential treatment center or multi-family use. He submitted that most people will conclude that the Freedom Ranch comes closest to being a Use Unit 2/residential treatment center. He stated being so classified would require a public hearing before this Board. Mr. Norton explained that when the Code was amended, Use Unit 5 was eliminated so that a public hearing would be required and neighbors, residents and property owners could provide input before these uses were established. Mr. Norton stated that Mr. Ackerman's ruling of November 13, 1996, is correct and should be sustained. Mr. Norton asked the Board to make a ruling and interpretation of the Code on whether this use is an apartment complex/Use Unit 8 or whether in fact it is a residential treatment center/Use Unit 2.

Protestants:

Kay Bridger-Riley, 8908 South Yale, representing Freedom Ranch, submitted a memo packet (Exhibit Q-3) and stated the reason this issue has become so complicated is simply because Mr. Norton and DTU cannot prevent Freedom Ranch from operating under the Code. Ms. Bridger-Riley advised the Board that Freedom Ranch was not trying to hide anything and the reason they attached the application to HUD to their zoning clearance permit was to let everyone know what their intentions

were. She stated that the City of Tulsa's legal council, Mr. Michael Romig, advised her to apply for a multi-family residential permit and not attach the application. She further stated she did as advised and the zoning clearance permit was then granted. Ms. Bridger-Riley advised that Mr. Norton's request that the Board sustain the November 13 ruling of Mr. Ackerman is not at issue today and there was no appeal from the ruling on November 13th. Ms. Bridger-Riley indicated that there have already been three public hearings on this issue and referred to Tab E of Exhibit Q-3, which describes the continuum of care plan, which explains all of the public hearings that were held, exactly why the application was made and who attended the public hearings. She stated that the Freedom Ranch application is an application for permanent residential multi-family housing. She indicated the apartments will be sober housing and there will not be any services offered on site. Ms. Bridger-Riley stated that the definition of a residential treatment center does not apply to this housing. This is not a highly structured environment, people do have to sign a contract stating that they will remain clean and sober to live in the apartments. Ms. Bridger-Riley compared the proposed apartments to the various apartments in Tulsa where you have to agree not to have pets or the housing is strictly for the elderly. She indicated that the sober housing is protected under the Fair Housing Act. Ms. Bridger-Riley stated she is having a difficult time determining how the Board would like her to respond to the protest of DTU. She further stated that there are people present who can address the need for the apartment complex. She requested some clarification as to what the purpose of the public hearing is for? She asked if the public hearing is it to determine what the use is?

Comments and Questions:

Mr. Bolzle stated the issue is whether or not this is a multi-family housing as defined under the Code or is this a residential treatment center or some other defined category under Use Unit 2. The Board many times interprets the actions of the zoning officials as to being correct or incorrect when appeals are filed, which Mr. Norton has done. Mr. Norton has made his case and now you need to make your case however you feel it needs to be made to give the Board enough information to make a decision as to why you believe this is a multi-family housing versus residential treatment. If you have information you wish to bring to the Board this is the time to do so.

Protestants:

Ms. Bridger-Riley stated the residents of this program have been clients of First Wings of Freedom, which is a program that operates at 12 East 12th Street. The clients have already been through a full array of alcohol and drug treatment. She explained that after the client has finished treatment, they are free to go anywhere to live. She stated the purpose of this program is to provide a place where the graduates can live where it is drug and alcohol free. Ms. Bridger-Riley requested Mr. King, Director of First Wings of Freedom, to explain their program.

Comments and Questions:

Mr. Bolzle asked Ms. Bridger-Riley if the sole purpose of this program is to provide a place for the residents to live that is alcohol and drug free? She stated the program is also to find the residents permanent housing as described on the need and continuum of care. This is a place where the clients can go rather than moving back to neighborhoods where there are drugs and alcohol.

Mr. Bolzle asked Ms. Bridger-Riley if the other services that are provided to the residents are optional (counseling, etc.)? She stated that living at this apartment house is optional.

Mr. Bolzle asked Ms. Bridger-Riley if the counseling or treatment issues are optional treatments for the residents? Mr. David King, Freedom Ranch, 16 East 16th Street, stated it is a voluntary place to live for the graduates of the treatment program. If the graduates choose to live in this apartment building, they must sign an agreement that they will stay drug and alcohol free. The City of Tulsa stated there was a need for this service and requested First Wings of Freedom to provide this service. If the clients are going to stay alcohol and drug free, part of that involves going back to the First Wings of Freedom Building to continue after-care groups, support groups, vocational groups, etc.

Mr. Bolzle asked Mr. King if the people who come to First Wings of Freedom initially are brought to First Wings of Freedom by the police or voluntarily? Mr. King stated the clients come voluntarily to this program and they are not correctional clients. He further stated the clients are people from the streets of Tulsa who have been identified as being drug addicts, who are either pregnant or they have small children. The majority of the women are minorities from the North side of Tulsa. Mr. King further commented that the application to HUD is not Freedom Ranch's application, but rather it is the City of Tulsa's application that was a two year process. He explained that there were three public meetings held and the committee of priorities stated that this is the number two priority for the City of Tulsa as a need for homeless women with small children. They do not have a place to go where they can be safe and sober. Most of the women will go back to the projects where there is an abundance of drugs and that is a tough time to survive or stay sober and clean. Mr. King stated that it was decided 1 1/2 months before the issue came up with DTU that the apartments were needed for more women and kids, so it was decided to not provide any services on site.

Janice Ponds, Director of First Wings of Freedom, stated that First Wings of Freedom is a residential treatment facility for substance abusing women and their children. She further stated that once the women enter into their program, which is voluntary, they are coming forth and asking for help. The children are in treatment as well as the mothers and the focus is to preserve the family. She explained that the program is divided into three different phases. Once the women finish the three phases they are

equipped with tools to help them live a clean and sober lifestyle. She stated that during the third phase some of the women become students at Tulsa Community College and some women obtain employment. Ms. Ponds explained that one of the biggest challenges the women have is to make a decision to either go back to the environment they left before entering the program, which is a relapse trigger, or they are faced with the fact of being homeless. She further explained that the clean and sober living facility is to address the above mentioned issues. She compared the clean and sober living facility with Burning Tree, Park Villa and Sheridan Ponds. She stated the women will simply live in the apartments while being employed or attending school and so by their own choice they choose to live in the apartments because it speaks to their desire to maintain clean and sober lifestyle. She stressed how important it is for the women to stay connected to other people with similar goals.

Comments and Questions:

Mr. Bolzle reminded Ms. Bridger-Riley that the hearing is not whether the organization is a good organization, but simply the Board is trying to understand how the facilities are used in conjunction with one another.

Ms. Abbott asked Ms. Bridger-Riley if the residents of this facility have to attend counseling or is it strictly voluntary? She stated that living in the apartments is voluntary and they will receive support services, which are offered off site.

Ms. Abbott asked Ms. Bridger-Riley how the services were funded? Ms. Bridger-Riley stated the services are part of the grant application. She detailed the grant is for subsidized rent, services received off site and to renovate the facility.

Ms. Abbott asked Ms. Bridger-Riley if the women would be subsidizing a portion of their own rent? Mr. King stated that the rent is handled the same as Sec. 8 apartment houses in Tulsa. There will be a sliding scale of what the rent will be and it will be based on what the City and HUD have determined. Mr. King stated that the grant will subsidize their rent and utilities only.

Mr. Bolzle asked the Staff if the apartment building was next door and treatment was provided in the building next to the apartment, would that make a difference? Mr. Bolzle stated that it seems that it doesn't really matter where the treatment is given, but part of the occupancy requirement here is that there be a continued relationship with a treatment facility. The funds are linked together and the facilities are linked together, whether they are 15 miles apart or next door. He stated that the scrutiny of a public hearing determining the appropriateness of a Use Unit 2 will not be detrimental to First Wings of Freedom or Freedom Ranch. Mr. Bolzle further stated that to say that this is multi-family housing under the Code opens the door to all kinds of abuses.

Case No. 17614 (continued)

Mr. Dunham stated the critical issue is the fact that treatment is required for occupancy.

In response to Mr. Dunham, Mr. King stated that no treatment is required.

Mr. Dunham asked Mr. King if someone could live in his apartment project and not go to First Wings of Freedom's programs or not go to your treatment center? He answered affirmatively. He stated there are dozens, if not hundreds, of graduates of this treatment program that are living all over Tulsa in apartment projects and they are coming back to First Wings of Freedom to take drug screenings voluntarily. He further stated the graduates meet in what is called after-care groups, which is not a treatment in any definition of the word.

Mr. White asked Mr. King if the residents have to come from the program to get into the apartments? He answered affirmatively.

Mr. White asked Mr. King if the residents have to be monitored to make sure that they are still within the bounds of the definition of the graduates of the treatment program? He answered affirmatively. Mr. King stated just like the graduates in Tulsa renting other apartment houses, which are not Use Unit 2.

Ms. Abbott asked Mr. Romig why the apartment was classified as a Use Unit 8? Mr. Romig stated he had a meeting with Mr. Jackere, Mr. Linker, Mr. Ackerman and several other groups. He further stated they went over three definitions in the Code: residential treatment center, transitional living center or multi-family dwelling. The residential treatment center definition being: providing a residential facility, providing diagnostic therapeutic services, counseling, treatment, long term room/board and a highly structured environment. The initial indication, under the application provided, was that it was no longer valid, that this particular site was going to be used for residential only and could not come under that definition. He stated the definition that came closest was transitional living: community based residential facility that provides short term (120 days or less) room and board in a supervised living environment utilizing counseling, rehabilitation services, etc. Mr. Romig commented it was his understanding that the program expects the women to be there for two years and they do not provide room and board, but in fact will be paying rent for the room. He further commented that the women will not have the supervised living environment at the apartment facility. He stated the group then looked at the definition of multi-family dwelling: A building containing three or more dwelling units. This is exactly what the apartment building has. The consensus was that the issue is about what treatment and services will be provided at this particular apartment building. He commented that it becomes an enforcement issue rather than a zoning decision. Mr. Romig listed the different arguments that have been raised against the multi-family: it is not open to the general public, rent is completely subsidized and it provides services that are not

normally provided. He further stated that they looked at what uses were included under Use Unit 8, which included: life care retirement center, fraternities and sororities, elderly retirement, community group home, convent, monastery or novitiate. These uses would meet most of the objections that have been raised to this particular site. The group that reviewed all of the above mentioned uses felt that the application did not meet any of the definitions and the applicant has a right to specify what use they want to make of a property. If someone wants to contest the use, then they have the burden of showing it is fraudulent or provide concrete evidence that it is not what the property is being used for.

Mr. Bolzle stated that the applicant is attempting to say that there will be treatment or counseling that is linked with this residential use, in other words, one does not exist without the other.

Ms. Abbott stated that the key is that one could exist without the other.

In response to Ms. Abbott, Mr. Romig agreed with Ms. Abbott's statement. He explained that when you look at the definition it talks about a residential facility providing diagnostic services and this particular piece of property is simply a facility that is providing residence. There is nothing else that goes with it.

Mr. Bolzle asked if a treatment center is granted on one lot and then right next door to the treatment center there is housing that is specifically used to house people who are benefiting from that treatment center, would that not be an expansion of the treatment use? Mr. Romig stated yes, if you can link the apartment to the fact that they are in treatment in a highly structured environment with room/board and treatment.

Mr. Bolzle stated the apartment does not fit any of the definitions.

Mr. Romig agreed with Mr. Bolzle's statement. He stated that when something does not fit the definitions, then you look for the one that comes closest.

Ms. Abbott stated that one facility exists because of the other facility, but the apartment could exist without the First Wings of Freedom program. She further stated the key issue is not so much a support group, because there are many multi-family dwellings that have restrictive covenants, (no pets, 55 Plus, etc.). She explained that the key issue is that if someone leaves this treatment facility they can go and live wherever they want to live provided they can afford to. Ms. Abbott stated that if the graduate left the treatment center and lived in an apartment somewhere in Tulsa, but still came back to First Wings of Freedom for support, that is a voluntary act. The graduate would be living in a multi-family unit, but it wouldn't be maintained by First Wings of Freedom. Ms. Abbott stated the support group is not support in the sense of counseling services or anything like that, this person chose to go to the support group.

Case No. 17614 (continued)

Mr. White stated that if the graduate goes to live anywhere in Tulsa other than the apartments maintained by First Wings of Freedom, they are not required by contract to remain clean and sober.

Ms. Abbott stated that the graduate may not be required to remain clean and sober, but they may have other restrictions of that particular apartment.

Mr. Bolzle stated the intent of the Code did not anticipate this kind of situation where an organization goes out and obtains a grant for treatment, on-going counseling, rent subsidy, etc. for defined individuals. He further stated that the group can break the services in half and say that part of it is treatment and part of it is not. It seems to be that the intent of the Code was to have a public hearing about these kinds of uses that involve counseling, treatment, group home activities, etc., which are defined under the Code. It is obvious this use before us does not fit any of those specific definitions and there is something missing. When you have uses that are linked with counseling, group home activities, treatment, etc., they deserve to have a public hearing. Mr. Bolzle stated that their location deserves to be fully explored in an open forum, public process. There is no risk to Freedom House to rule in Mr. Norton's favor and stated that this in fact is a Use Unit 2 and it is linked directly to the services being provided both by the funding source and by the way it is being operated. It deserves to have a hearing before the public on its merits.

Ms. Bridger-Riley stated that the use under the building code goes to the property itself. She further stated that the location where the services are provided (12 East 12th Street) has gone through a public hearing. To say that anytime you are connected with some sort of treatment you have to have a hearing on whether or not you can live somewhere is not part of the Zoning Code. She stated that this is an enforcement issue versus a zoning issue. She further stated that there will not be any services provided in the apartment facility. Ms. Bridger-Riley indicated that if the Board is saying that because the program has special housing for sober people, the program will have to apply for a special exception is a clear violation of the Federal Fair Housing Act. Ms. Bridger-Riley reiterated that the apartment house will not have any services provided on site and it is strictly a residential facility provided for people that have agreed to stay clean and sober.

In response to Mr. Bolzle, Ms. Bridger-Riley stated that there are a lot of people all over town who move into apartments or homes which are involved in treatment.

Mr. Bolzle stated that the apartments or homes that people live in all over town who are in treatment somewhere else do not live in apartments or houses that are owned by the treatment center they are visiting.

Ms. Abbott asked Ms. Bridger-Riley if drug addiction and alcoholism would be considered a disability? She answered affirmatively.

Mr. Romig stated that when you have been through a treatment program then it is a disability under both Fair Housing and the Disabilities Act. He further stated that current use of drug and alcohol would not be.

Mr. Bolzle asked Mr. Romig if the Board were to uphold the appeal and overturn the ruling of the zoning officer will the Board be in violation of the Fair Housing Act?

Mr. Romig stated yes, it is his understanding that the Board would be in violation of the Fair Housing Act if they upheld the appeal and overturned the ruling of the zoning officer.

Ms. Abbott asked Ms. Bridger-Riley if the HUD grant states, after treatment, that once the person lives in this facility they are required to be a part of the support services? Mr. King stated that it is not a requirement in the grant, but that it is obviously the whole purpose for the grant.

Ms. Abbott asked Mr. King if the participation in support groups after treatment is strictly voluntary? He answered affirmatively.

Ms. Abbott asked Mr. Romig for an explanation of the difference between a convent and this facility? Mr. Romig stated it would be the clientele and who could live there.

Interested Parties:

Roy Johnsen, representing 21st Properties, Inc., stated that his client is a property owner within the vicinity of the proposed facility. He further stated that he endorses Mr. Norton's commentary, but there are a couple of points that need to be made. Mr. Johnsen addressed the question of the violation of the Fair Housing Act if the Board were to uphold the appeal and overturn the ruling of the zoning official. He stated that to require hearings to determine if there are legitimate land use questions does not violate the Act. If it is purely based on prejudice against those who are recovering from substance or alcohol problems that is a violation. Mr. Johnsen requested Mr. Romig to clarify his statement that if the Board determines, based on its best judgment, practical knowledge of the ordinance, understanding the spirit and intent of the Code, that this use is most similar to the uses listed in Use Unit 2 and that a hearing be required for a special exception, which they may or may not receive, there is no violation of the FHA or ADA.

Comments and Questions:

Mr. Romig stated he could concur with Mr. Johnsen's statement. He further stated that when a hearing is required of somebody because of a disability, then you may be violating ADA.

Mr. Johnsen stated that Mr. King previously stated that the graduates do not have to have treatment. He explained that the application that Freedom Ranch provided does not say the same. If Mr. King considers treatment to be when you are in detox, and counseling, home and environment is not considered treatment, then maybe that is what he means by no treatment provided. The point is there are services being provided, (counseling, urinalysis, setting out a program to keep the graduates safe and sober, signing a contract or agreement, etc.), all of which are a part of the "treatment". He stated that the graduates have a history of substance abuse and this is not a typical multi-family dwelling. He further stated that Use Unit 2 combines all of the above mentioned uses that may or may not be appropriate in certain locations and that is the spirit of this ordinance. Mr. Johnsen requested the Board to uphold the appeal and require a hearing so that we can have a hearing on the merits.

Protestants:

Tejuana Smith, stated she is currently in treatment at the First Wings of Freedom. She further stated that she knows what it is like to be on the north side of Tulsa. Ms. Smith commented that it is very hard to maintain your sobriety when you return to the same environment. She stated she would like a safe and clean environment for her and her children to live in. She explained that she did not want her children to grow up around drugs and alcohol. Ms. Smith stated the facility will give her a second chance and an opportunity to become a clean and sober mother in a clean and sober environment.

Interested Parties:

Andy Osborn, 410 West 7th Street, Central Park Condominiums, representing Crescent Heights Investment, which is the real estate firm developing the Central Park Condominiums. He stated he is also representing Central Park Homeowner's Association, which has 400 residents in the complex. He explained that Crescent Heights is currently in a multi-million dollar phase renovating Central Park Condos. Mr. Osborn stated the homeowners are concerned that their property values will suffer with subsidized housing in the vicinity. He further stated he opposes any type of subsidized housing in the neighborhood. Mr. Osborn commented that he supports Mr. Norton's comments.

Mr. Bolzle commented that he felt the Board has had adequate input to make a determination, or at least he has, and he is willing to make a motion. He further commented that he did not believe the Code ever anticipated this kind of use, as

being defined under multi-family use. He stated this facility deserves to be fully explored in a public hearing on its use.

Ms. Bridger-Riley requested the floor respectfully:

Ms. Bridger-Riley reminded Mr. Bolzle that he disqualified himself in a previous hearing because he represented an adjacent property owner and it is her understanding that Mr. Bolzle represents, or has represented in the past, 21st Properties.

In response to Ms. Bridger-Riley, Mr. Bolzle stated he represented 21st Properties years ago and Freedom Ranch tried to make that an issue in the previous case and the court threw it out.

Ms. Bridger-Riley stated the court threw out the issue previously because it was untimely made. She further stated she is trying to make a timely objection to Mr. Bolzle voting or respectfully ask him to disqualify himself since he has represented 21st Properties, which owns all of the properties surrounding Freedom Ranch.

Mr. Romig explained to Ms. Bridger-Riley that a Board member is left to his own conscience on whether he has a conflict of interest and if Mr. Bolzle feels that he can sit objectively on this case, then he will be allowed to sit and vote on the matter.

Mr. Bolzle explained to Ms. Bridger-Riley that he has not represented 21st Properties in any manner since the last occurrence prior to the previous case and there has been no additional representation. He reminded Ms. Bridger-Riley that the previous representation was minimal and was fully heard by the court and dismissed. He stated he is confident he can rule as an objective member of the Board.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-1-0 (Bolzle, Dunham, White, "aye"; Abbott "nay" no "abstentions"; Turnbo "absent") to **UPHOLD** the Appeal and **DENY** the decision of an Administrative Official that the use is classified as Use Unit 8 - Multifamily Dwelling and Similar Uses, on the following described property:

Lots 10 & 11, Block 1, George B. Perryman Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 17615

Action Requested:

Special Exception for a Health Club in an IL zoned district. **SECTION 901. PRINCIPAL USES PERMITTED IN INDUSTRIAL DISTRICTS** - Use Unit 19, located 5899 South Garnett.

Presentation:

The applicant, **R.S. Looney**, 5445 South 99th East Avenue, submitted a site plan (Exhibit R-1) and stated his request is for a health club in an IL district. He further stated he owns the property surrounding the subject facility. Mr. Looney indicated he has designated 53 parking spaces within the vicinity of the health club to be used by the health club.

Comments and Questions:

Mr. White asked the applicant if the parking is located on the health club property? He answered affirmatively.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Abbott, Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** for a Health Club in an IL zoned district. **SECTION 901. PRINCIPAL USES PERMITTED IN INDUSTRIAL DISTRICTS** - Use Unit 19; 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 200', Tract 1, S/2, Lot 3, Block 1, Springfield Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17616

Action Requested:

Special Exception to permit a model airplane facility in an AG & CS zoned district. **SECTIONS 301 AND 701. PRINCIPAL USES PERMITTED IN RESIDENTIAL AND COMMERCIAL DISTRICTS**, a Variance of required parking from 4274 to 45. **SECTION 1220.D. USE UNIT 20. COMMERCIAL RECREATION: INTENSIVE** and a Variance of required all weather surface to permit parking on gravel & grass. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 20, located on Northeast corner 31st and Lynn Lane.

Presentation:

The applicant, **Ross Weller**, representing the City of Tulsa's Park and Recreation Department, 1710 Charles Page Boulevard, submitted a site plan (Exhibit S-1), a previous approved plan (Exhibit S-2) and stated this application is for the Glue Dobber's Remote Control Airplane Club. He explained that the previously approved plan called for the development of the aerodome in the middle of the mile section. Mr. Weller stated that they have moved the facility to the bottom quarter of the section because this has several advantages for the Glue Dobber's and area residents over the previously approved location. This will increase the offset to 177th Street to 425', which is an option he did not have previously. The no-fly-zone will be twice the size as that shown on the previous site plan. He explained that this will give the members about 60 acres of flight zone that will be all on City property. This will move the club a little farther away from A.B. Jewel water supply and it will also provide the club an additional opportunity, when they do have the one or two special events a year, to have an egress on 31st Street.

Ms. Abbott out at 6:33 p.m.

Interested Parties:

Cliff McGee, President of Glue Dobbers, 6440 South Lewis, Suite 2000, stated that the location of the proposed site plan is the Lynn Lane Reservoir. He further stated the Glue Dobbers are moving their site and the City is offering this proposed site. He explained that the club will have further distance between the existing residents and the flying area. Mr. McGee stated the park is allowing the club to lease the entire area, which means there will not be any development underneath the area where they may be flying. He expressed that the no-fly-area is very important. Mr. McGee explained that his club is a charter member of the national organization and they have a fly/safety code. The code stresses that you cannot fly behind the flight line and the flight line is represented on the site plan (Exhibit S-1). There will not be any flying permitted west of the flight line, which is toward the property owners. Mr. McGee stated the parking issue has already been addressed. He further stated the use of the property will be limited to daylight hours, seven (7) days a week and there will be very minor permanent structures placed on the property. He explained that the structures will be a covered shed area and a flag pole. There will be no lighting involved in this project and there will not be any night time use on this property. He requested the Board to approve this application.

Protestants:

James Mounty stated he has leased the subject property for eleven years from the City of Tulsa's Park Department. He further stated he has not been contacted regarding this proposal. He explained that he keeps horses on the South end of the land and cattle on the North end of the land. He stated he has just as much right to be there as the Glue Dobbers.

Comments and Questions:

Mr. Bolzle explained to the protestant that this is a matter the Board cannot resolve. He further explained that he would have to work this issue out with the City of Tulsa's Parks Department. This is a private legal issue rather than a land use issue.

Applicant's Rebuttal:

Mr. Weller stated it is true that Mr. Mounty has a month to month lease and has carried the lease for an extended time with the Parks Department. He further stated the Parks Department does anticipate the termination of Mr. Mounty's lease. He commented that the letter should have already been mailed to Mr. Mounty. Mr. Weller indicated that there have been telephone conversations between the Parks Department and Mr. Mounty that indicated the termination was eminent. He stated the Parks Department looks for recreational use opportunities. The Glue Dobbers are not unique in their partnership with the City of Tulsa. He explained that the Parks Department has partnerships with Soccer Clubs, Ball Clubs, Square Dance Clubs and a wide range of clubs.

Comments and Questions:

Mr. Bolzle asked Mr. Weller how close the drive to the Glue Dobber's Field is to the last residence? He stated the drive is farther south then it appears.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** a **Special Exception** to permit a model airplane facility in an AG & CS zoned district. **SECTIONS 301 AND 701. PRINCIPAL USES PERMITTED IN RESIDENTIAL AND COMMERCIAL DISTRICTS**, a **Variance** of required parking from 4274 to 45. **SECTION 1220.D. USE UNIT 20. COMMERCIAL RECREATION: INTENSIVE** and a **Variance** of required all weather surface to permit parking on gravel & grass. **SECTION 1303.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS** - Use Unit 20; 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 1295, SW, Sec. 13, T-19-N, R-14-E, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17617

Action Requested:

Special Exception to permit an existing nursing home in accordance with as-built survey and in accordance with non-conforming status of initial construction and previous Board actions permitting expansion (BOA 15916 & BOA 15083) as pertains to setbacks & landscaping. **SECTIONS 401 & 701. PRINCIPAL USES PERMITTED IN RESIDENTIAL AND COMMERCIAL DISTRICTS** - Use Unit 2; and a Special Exception to modify screening requirements. **SECTION 212.C. SCREENING WALL OR FENCE**, located NE/c 36th Street North & Columbia.

Presentation:

The applicant, **Roy D. Johnsen**, 201 West 5th, Suite 440, submitted a site plan (Exhibit T-1) and stated he is trying to wrap in a number of approvals and a number of facts into a current special exception grant that in effect would say this facility is approved "as built". He explained that a majority of the nursing home was nonconforming, since it was built approximately thirty (30) years ago. He further explained that his client bought the property and went through a couple of expansions. Mr. Johnsen informed the Board that the nursing home lies in three (3) zoning districts. He stated that when the nursing home did the last expansion, the parking area extended slightly further than the site plan reflected. Additionally, the ordinance has been changed to require a screening fence along the parking area, which has been changed since the application was previously submitted. Mr. Johnsen explained that his client (Mr. Buford) owns all of the property to the east and extending over into the expressway. He commented that this is an excellent facility under one ownership with the adjoining properties within the common ownership.

Comments and Questions:

Mr. Bolzle asked the applicant why he requested a special exception to modify screening requirements? Mr. Johnsen stated the property to the north is commercial and there is no screening required, but along the east of the subject property there is a parking area that is zoned residentially.

Mr. White asked if the applicant's client owned the residence on the southeast part of the nursing home itself? Mr. Johnsen stated it is part of the ownership and he does not want to screen from his own property.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 4-0-0 (Abbott, Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to permit an existing nursing home in accordance with as-built survey and in accordance with non-conforming status of initial construction and previous Board actions permitting expansion (BOA 15916 & BOA 15083) as pertains to setbacks & landscaping. **SECTIONS 401 & 701. PRINCIPAL USES PERMITTED IN**

Case No. 17617 (continued)

RESIDENTIAL AND COMMERCIAL DISTRICTS - Use Unit 2; and a **Special Exception** to modify screening requirements. **SECTION 212.C. SCREENING WALL OR FENCE**; 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 Lot 8, Barrett & Evans Subdivision, Tulsa County, Oklahoma, according to the recorded plat thereof, being more particularly described by metes and bounds as follows, to-wit: Commencing at a point in the W boundary of said Lot 8, for 40.00' N of the SW/c of said Lot 8; thence N00°03'07"E along the W boundary of said Lot 8 for 425.00'; thence N89°52'08"E for 117.61'; thence N61°07'49"E for 74.54'; thence N82°25'43"E for 136.16'; thence S00°01'34"W for 69.95'; thence S24°03'06"E for 26.07'; thence due E for 18.31'; thence S0°54'51"W for 212.73'; thence due W for 101.37'; thence S30°35'11"W for 27.92'; thence S8°31'31"W for 67.75'; thence S00°01'34"W for 72.00' to a point in the N right-of-way line of E 36th St. N; thence S84°17'23"W along said right-of-way line for 100.50'; thence due W along said right-of-way line for 118.03' to the POB, City of Tulsa, Tulsa County, Oklahoma.

Case No. 17618

Action Requested:

Special Exception to permit a printing shop in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 15, located 2757 South Memorial.

Presentation:

The applicant, **Richard Polishuk**, 224 East Skelly Drive, submitted a site plan (Exhibit U-1) and stated the subject property is the old Homeland Building at 27th and Memorial. He further stated that Speed Sprint would like to expand and therefore, move into the Homeland Building. There will be no additional demands for parking. He explained that his client has a computer form shop in the same shopping center and he will be moving this shop into the expansion to keep everything under one roof. Mr. Polishuk stated that since this will no longer be considered a copy shop, but a print shop his client has to have a special exception for Use Unit 15.

Case No. 17618 (continued)

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 4-0-0 (Abbott, Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to permit a printing shop in a CS district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Unit 15; subject to the approval being for the abandoned grocery building only; subject to Health Department approval; finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

Part of Lot 9, Beg. 5 E, NW/c; thence E477.10', S573.50', SW114.84', NW50', SW147.47', NW208', SW133.07', N572.64', POB less Beg. 5.05NE, SW/c thereof; thence N49.04', E5, S48.17', SL, SW5.05, POB, Block 2, City of Tulsa, Tulsa County, Oklahoma.

OTHER BUSINESS

Case No. 17608

Action Requested:

Refund requested for withdrawn application.

Comments and Questions:

Mr. Beach stated the Staff recommends a \$138.00 refund.

Board Action:

On **MOTION** of **BOLZLE**, the Board voted 3-0-0 (Bolzle, Dunham, White, "aye"; no "nays" no "abstentions"; Abbott, Turnbo "absent") to **APPROVE** Case No. 17608 be refunded \$138.00; finding that this case was withdrawn before the hearing date.

Item No. 27

Action Requested:

Set date for training session for the Board of Adjustment

Comments and Questions:

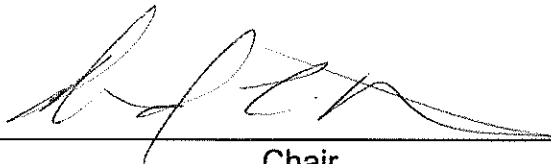
Mr. Beach explained that the Staff would like to have a joint session between the City and County Boards of Adjustment. He suggested the session from 11:00 a.m. to 1:00 p.m., February 4th or February 7th.

Item No. 27 (continued)

The Board agreed on February 4th, from 11:00 a.m. to 1:00 p.m., at the INCOG offices.

There being no further business, the meeting was adjourned at 6:45 p.m.

Date approved: FEBRUARY 11, 1997


Chair

