

**COUNTY BOARD OF ADJUSTMENT**

MINUTES of Meeting No. 195

Tuesday, August 20, 1996, 1:30 p.m.

County Commission Room

Room 119

County Administration Building

**MEMBERS PRESENT      MEMBERS ABSENT      STAFF PRESENT      OTHERS PRESENT**

Alberty  
Eller  
Tyndall  
Walker

Looney, Chairman

Beach  
Huntsinger  
Gardner

Fields, Building  
Inspection

The notice and agenda of said meeting were posted in the Office of the County Clerk on Friday, August 16, 1996, at 2:01 p.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Vice Chairman Walker called the meeting to order at 1:32 p.m.

**MINUTES:**

On **MOTION** of **ELLER**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** the **Correction of Minutes** of September 19, 1995 (No. 184) showing the Case No. 1371 was approved but improperly recorded as having been denied.

On **MOTION** of **TYNDALL**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** the **Minutes** of July 16, 1996 (No. 194).

**NEW APPLICATIONS**

**Case No. 1439**

**Action Requested:**

Variance to allow two dwelling units on one lot of record. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD** - Use Unit 9 and a Special Exception to allow a manufactured home in a RS zoned district. **SECTION 410. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 9, located 1659 East 71st Street North.

Case No. 1439 (continued)

**Presentation:**

The applicant, **Richard A. Pilgrim**, 1659 East 71st Street North, submitted a site plan (Exhibit A-1) and stated he would like to install a trailer on his father's lot. He explained there is already one home existing on the subject lot that belongs to his father.

**Comments and Questions:**

Mr. Walker asked the applicant if he wanted to divide his lot to allow the mobile home? He stated his father wants to keep the ownership under one name.

Mr. Eller asked the applicant if his trailer was a 12' x 72'? He stated the trailer will be 12' x 60'

Mr. Eller asked the applicant if he will install the tie downs and skirt the trailer? He answered affirmatively.

Mr. Eller asked the applicant if water and sewer is available? He answered affirmatively.

Mr. Tyndall asked the applicant if the trailer was for his own family use or for renting? He stated he would be living in the trailer home.

Mr. Walker stated he did not see any conflict and there are much smaller lots in the area with more than one dwelling unit per lot. He further stated the applicant could get a lot split and install the trailer by right, however he would prefer to keep the land under one ownership.

**Board Action:**

On **MOTION** of **ALBERTY**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** a **Variance** to allow two dwelling units on one lot of record. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD** and a **Special Exception** to allow a manufactured home in a RS zoned district. **SECTION 410. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 9; per plan submitted; subject to tie down and skirting the manufactured home; subject to the Health Department's approval and a building permit; finding that the tract is large enough to support two dwelling units, but the owner would like to retain a single ownership, finding that the approval of this request will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code; on the following described property:

Lot 10, Block 8, Golden Hill Addition, Tulsa County, Oklahoma.

**Case No. 1440**

**Action Requested:**

Variance to permit 3 dwelling units per lot of record. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD** - Use Unit 9, a Variance of the required 2.0 acres to 1.82 acres lot area. **SECTION 300. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS**, and a Variance from the 2.2 acres to 1.82 acres per dwelling unit. **SECTION 330. BULK AND AREA REQUIREMENTS IN THE AGRICULTURAL DISTRICTS**, located 1310 West 181st Street South.

**Presentation:**

The applicant, **Roger C. Wright**, 1310 West 181st Street South, submitted a site plan (Exhibit B-1) and stated he would like to withdraw the two (2) variances of the required 2.0 acres to 1.82 acres lot area and 2.2 acres to 1.82 acres per dwelling. He explained at the time he applied for the variances he owned 5.45 acres, but now he owns over 27 acres of land. He stated he owns the property and would like to keep it under one ownership without dividing the tract. He further stated there will be only one family on the property. He explained his sister-in-law is temporary and will eventually move away. He further explained his mother-in-law has a disabled son that lives with her in the second mobile home. He stated when the trailers are no longer need they will be removed. He stated the location of the trailers were determined by the perc test. He further stated both homes are nice manufactured homes with landscaping, tie downs, skirting. He explained he prefers not to do a lot split so that he can keep the land under one ownership. He further explained he wants to provide for only one family, his family, it will not be leased, nor will it be a trailer park.

**Comments and Questions:**

Mr. Tyndall asked the applicant if one of the trailers has been installed for a while? He stated he was issued a temporary permit from the building inspector until he could come before the Board. He further stated the trailer is tied down, skirted, landscaped and has met with all of the inspections. He explained he was informed if the Board did not approve this variance he would have to do a lot split or remove the trailer.

Case No. 1440 (continued)

**Board Action:**

On **MOTION** of **TYNDALL**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** a **Variance** to permit 3 dwelling units per lot of record. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD** - Use Unit 9; per plan submitted; subject to the Health Departments approval and obtaining a building permit; subject to tie downs and skirting; finding that the lot of record is large enough to support three dwelling units, but the owner would like to retain a single ownership; finding that approval of this request will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

The N 773.64' of the E 307.00' of the following described tract of land: NW/4, Sec. 2, T-16-N, R-12-E, IBM, according to the US Government Survey thereof, being more particularly described as follows: NW/c of said Sec. 2, E 1198.76', along N line to POB; thence S 2892' to S line of said NW/4; thence E 407' along said S line; thence N 2892' to N line of Sec.; thence W 407' along said N line to POB. Tract is subject to Sec. line road right-of-way on the N. Said tract contains 5.45 acres, MORE OR LESS, Tulsa County, Oklahoma.

**Case No. 1441**

**Action Requested:**

Special Exception to allow 2 dwelling units on one lot of record. **SECTION 208. ONE SINGE-FAMILY DWELLING PER LOT OF RECORD**, located 5541 West 41st Street.

**Presentation:**

The applicant, **Jack D. Lollis**, 3622 South Rolling Oaks Drive, submitted a site plan (Exhibit C-1) and stated he would like to keep his property as one lot of record and put two dwellings on the lot of the record. He explained the second dwelling will be a house he is moving in and will be a permanent structure. He stated the perc test has been completed and passed. He further stated the subject property is a two acre tract and requested the Board to approve this request.

**Comments and Questions:**

Mr. Gardner stated the property is zoned RS and it is a large tract. He further stated the applicant is aware that sometime in the future the Gilcrease Expressway will go through this property.

Mr. Lollis stated he had been told that the Gilcrease Expressway would not go through his property, but if it does go through he will deal with that issue when it comes up.

Case No. 1441 (continued)

Mr. Tyndall asked the applicant who will be living in the second house? He stated it is a relative.

Mr. Lollis asked the staff when the Gilcrease Expressway will be going through? Mr. Gardner stated there is talk about another bridge over the Arkansas River, which is the key to building the expressway. If the bridge is developed and funded the expressway road will soon follow.

Mr. Walker stated he is familiar with the area and this would not be anything contrary to the area.

**Board Action:**

On **MOTION** of **ALBERTY**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** a Special Exception to allow 2 dwelling units on one lot of record. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**; per plan submitted; finding that the approval of this request will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code; on the following described property:

Walker Heights, Lot 5, Tulsa County, Oklahoma.

**Case No. 1442**

**Action Requested:**

Special Exception to permit a 150' (monopole) cellular tower in an AG zoned district. **SECTION 220. HEIGHT EXCEPTIONS** - Use Unit 4, located 1/2 mile East & 1/4 mile South of 111th Street South & South 161st East Avenue.

**Presentation:**

The applicant, **Robert A. Hinton**, Engineering Consultant and representing U.S. Cellular, submitted a site Plan (Exhibit D-1) and stated this application is very similar to a previous application that was in the same area. He further stated the similar application was before the Board approximately two (2) months ago and was denied. He explained he has met with the neighbors, Larry & Katrina Blankenship who live immediately adjacent to the west side of the area, and one of the concerns has been the fall down radius of towers. He further explained the site was moved 110' further east to the edge of the floodplain and the tower sets back on the site 40', which will set the tower 150' from the property line. He reported when the high winds came down 1st Street, in Downtown Tulsa, approximately three (3) weeks ago, it took out all of the powerlines, however the monopole was still standing. He explained the monopoles are designed for extreme high winds. He further explained an antenna may come loose, which would be a panel (6" x 2' plastic panel), but the monopole is

not coming down. He stated the monopoles set on approximately 100,000 lbs. of concrete anchor, which will be 20' in the ground and 5' in diameter. He further stated the monopoles are designed for safety. He commented the original site was 60' x 50' and U.S. Cellular has reduced the site to 50' x 50' because of an easement that the City of Broken Arrow has in the immediate area. He stated FCC regulates transmission signals and their effects upon the neighbors in the area, as far as electrical appliances, etc., and there is no interference problems. He commented should there ever be any interference problems, the FCC requires that the company correct the problem or shut down the transmission. He indicated that U.S. Cellular is willing to install the green fencing around the tower, however the tower is far enough into the trees where no one can see the site from the houses line of view.

**Protestants:**

Katrina Blankenship, 5605 South Ash Street, Broken Arrow, stated she has concerns that the monopole tower site is still too close to the homes. She acknowledges that Mr. Hinton has proposed to move the monopole tower back 150', however, the monopole tower is exactly 150' tall. She requested the Board to require Mr. Hinton to place the monopole tower a minimum distance of 300' from any residence. She stated she feels that this would be better in the interest of safety. She explained that the 150' setback leaves no leeway for the tower to knock down trees and powerlines into her home. She felt that 300' would be ample distance should anything happen with the tower. She explained there are a lot of children in the neighborhood with very little traffic, so they are always outside playing. She stated even at 300' setback she will still be able to see the top of the tower, but the main concern is safety. She further stated that putting the setback at 300' would be doubling the height of the tower and would be appropriate.

Bill Trippet, 5001 South Ash Street, Broken Arrow, stated he has several concerns. He indicated there is a 13,000 power volt line that runs down the fence line of the property between the tower and the neighborhood. He explained there is a chain link fence that runs the length of the powerline. He fears the tower will fall down and knock the powerline into the chain link fence that could endanger everyone. He asked if the Board did approve this application to move the tower back at least 300' from the property line. He reminded the Board that approximately 43 home owners signed a petition the first time Mr. Hinton applied for this monopole tower. He commented the Hellinburg's, who own the subject land, do not want the tower near their home, instead he wants the monopole located near the residential area. He stated the monopole will bring down the home property values. He asked the Board if they turn this application down, to not hear the application again in this area.

**Applicant's Rebuttal:**

Mr. Hinton stated he did not request a site 300' away from the property line and if it was 300' away, it wouldn't be a 150' tower it would have to be a 190' tower because of the topography. He further stated the tower is controlled by radio waves, straight line communications and so forth. He commented this location was chosen after meeting with Larry and Katrina Blankenship and thought they had worked out a situation that was agreeable to everyone. He further commented he was surprised by the comments made by Mrs. Blankenship.

**Comments and Questions:**

Mr. Walker asked the applicant what agreement he thought had come out of his meeting with the Blankenships? He stated he met with the Blankenships on a Saturday and walked back in the area. He further stated there is a 24' tree in the area, referred to in conversations with the Blankenships as the climbing tree and at this point you could not see the houses. He detailed he had Tulsa Engineering come out and establish this area as the control point and move everything back so there would not be any view of the site. He stated had the Blankenships not indicated they were in agreement, he would not be before the Board today with this proposal. He commented he thought he had done the right thing in moving the tower 150' back from the property line and that the Blankenships were in agreement. He further commented the adjoining land owners are now changing their minds. He stated the purpose of the new location was to set it at such a location that it was not an eye sore to the adjoining land owners. He explained the location of the high line was established by the surveyor and he is a licensed surveyor that indicates the high line to be on their property easement.

Mr. Walker asked Ms. Blankenship about her meeting with Mr. Hinton and what did she feel had been agreed to? She stated Mr. Hinton arrived at her home on a Saturday and they walked out to the new proposed site. She further stated there was no measurements that day so she had no idea how far back the tower would be until she received the notice of the meeting for today. She commented she told Mr. Hinton as far in the woods as he could place the tower the better. She stated she never heard back from Mr. Hinton after the survey to find out how far the tower would be setback.

Mr. Walker asked Mr. Gardner about the notification matter in the staff comments? Mr. Gardner stated Jim Beach may want to address that matter.

Case No. 1442 (continued)

Mr. Beach stated the 50' x 50' square is the area that was advertised, not the full lot of record. He further stated since the cellular towers have come up over the last few months, INCOG has discovered there is a potential notice problem if you go out 300' from a 50' x 50' square, you quite possibly do not notify anyone, except the landowners to the west of this parcel. He explained INCOG has attempted to adopt a policy that says that the legal description for the notice will be a lot of record to insure that anything outside the lot of record, 300' away, will be other property owners. He stated the policy was explained to the applicant and he elected not to notify beyond the 50' x 50' square, since the policy is not in writing and is somewhat informal at this point. He further stated this brings up an issue that there would be no way to move this tower without reapplying.

Mr. Alberty stated it was appropriate at this time to enter into a discussion on the differences between a Variance and a Special Exception. He further stated a test of an ordinance sometimes is what is going to rule. He explained a Variance is granted when a hardship has been determined and the strict application of the Code would grant relief based upon what is spelled out in the zoning code as a hardship. He further explained in a Special Exception there is somewhat an implied position that it is considered appropriate in an area unless certain things come out in a public hearing that would show it to be not in harmony with the spirit and intent of the Code, or that it would be injurious to the neighborhood, detrimental to the public welfare. He stated, in his view, you could place a test so difficult that it makes it totally unreasonable and based on the fact that the applicant has demonstrated that not only is it a desirable place, but it is a place the applicant has taken effort to protect a neighborhood. He further stated, in his opinion, 300' setback from the property line is an unreasonable burden to place on this applicant. He commented the industry has had to undergo a substantial burden to make the tower acceptable. He stated his comments would preface the fact that the Board denied this application before, because it was right up against the neighborhood, the owner has taken some effort to mitigate any adverse effects of the tower. He further stated he will be in favor of the application as presented today.

**Board Action:**

On **MOTION** of **ALBERTY**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** a **Special Exception** to permit a 150' (monopole) cellular tower in an AG zoned district. **SECTION 220. HEIGHT EXCEPTIONS** - 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. 1442 (continued)

A part of the SW/4, NE/4, Sec. 35, T-18-N, R-14-E, I.M., Tulsa County, Oklahoma according to the official U.S. Government Survey thereof, being more particularly described as follows: Commencing at NE/c, Lot 1, Block 6, "Chimney Ridge South", an addition to the City of Broken Arrow, Tulsa County, Oklahoma; thence S00°03'23"E along Ely line of Block 6, "Chimney Ridge South", for 30'; thence N89°56'37"E for 110' to the POB; thence N89°56'37"E for 50'; thence S00°03'23"E for 50'; thence S89°56'37"W for 50'; thence N00°03'23"W for 50' to the POB, said tract contains 2,500 SF or 0.0574 acres.

**Case No. 1443**

**Action Requested:**

Variance to allow a mobile home and existing house on an 8 acre tract zoned AG. **SECTION 209. ONE SINGLE-FAMILY PER LOT OF RECORD** - Use Unit 9, located 13325 East 126th Street North.

**Presentation:**

The applicant, **Elsa L. Ganns**, represented by Gail Haller, 1225 North Birch, Owasso, submitted a plot plan (Exhibit E-1) and site plan (Exhibit E-2). Ms. Haller stated her Aunt, Elsa L. Ganns, is getting on in years and is unable to care for the property. She further stated it would be easier if she lived on the same property with her Aunt. She explained the home her aunt is living is not livable for her and her children, so she would like to move a mobile home on her aunt's property. She commented she would have her own utilities and her aunt would have a back up if her utilities go out. She stated in a few years her son will be going off to college and her aunt will move into the mobile home with her and tear down her aunt's home. She explained that there will be two sides of the mobile home that will be visible and she plans to install a privacy fence.

**Protestants:**

None.

**Comments and Questions:**

Mr. Walker asked the applicant if there were other buildings on the property? She stated her aunt has a workshop for dog tattooing, runs and a garage. She further stated there is a silo located on the property, but they are eventually going to have someone take it down.

Mr. Walker stated the tract is large enough to support two (2) dwellings and it could be split. He further stated the property is AG zoned and a mobile home is permitted by right.

Case No. 1443 (continued)

In response to Mr. Walker, Ms. Haller stated her Aunt would like to keep the land under one ownership.

Mr. Alberty stated there is no difference in this application from previous applications, and it is a good use of a variance because the property is obviously large enough to be split at least four (4) times to permit four (4) dwelling units, which would be a matter of right. He further stated the fact that the owner wishes to keep the land under one ownership certainly is grounds for approving a variance.

**Board Action:**

On **MOTION** of **ALBERTY**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** a **Variance** to allow a mobile home and existing house on an 8 acre tract zoned AG. **SECTION 209. ONE SINGLE-FAMILY PER LOT OF RECORD** - Use Unit 9; per plan submitted, subject to Health Department approval and obtaining a building permit; subject to the mobile home being tied down and skirted; finding that the tract of land is large enough to support two (2) dwelling units, but the owner would like to retain a single ownership; and finding that the approval of this application will not be injurious to the neighborhood, nor harmful to the spirit and intent of the Code, on the following described property:

The W 610' of SW/4, SE/4, SW/4, Sec. 33, T-22-N, R-14-E, Tulsa County, Oklahoma according to the U.S. Government Survey thereof.

**Case No. 1444**

**Action Requested:**

Special Exception to permit a children's day care in an AG zoned district. **SECTION 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 5, located 4702 East 76th Street North.

**Presentation:**

The applicant, **Ronnie Hill**, 4702 East 76th Street North, submitted a site plan (Exhibit F-1) and photographs (Exhibit F-2). Mr. Hill stated his father is 85 years old and he needs someone to look after him. He further stated his wife would like to open a daycare in their home so that she can stay close by to take care of her father-in-law. He explained he has built a house to open a small daycare facility in.

**Comments and Questions:**

Mr. Walker asked the applicant if there was more than one dwelling unit on the subject lot? He stated there are two homes on the lot of record, one being his father's home and the other home he built for the daycare. He explained there is a full service road that dead ends at his father's property.

Case No. 1444 (continued)

Mr. Walker asked the applicant if the daycare facility would be in his home? He stated he and his wife moved in with his father to help take care of him and they never moved into the new home. He further explained the new home will house the daycare, which will give his wife the ability to work at home and keep an eye on her father-in-law.

Mr. Walker asked the applicant for the size of the home? He stated it is a 3600 SF, two-story home.

Mr. Walker asked the applicant what percentage of the home will be used for the daycare? He stated he was going to live with his father-in-law and the new home will be a total daycare facility, they will not be living in the new home. He further stated immediately the 1800 SF lower level will be used and then expand to the second story. He explained there is a trailer still located on the subject property that is to be moved as soon as the buyer can arrange the moving. He further explained he had a special exception to move the trailer on the property until the new home was built and ready to live in. He stated the trailer is sold and the buyer is suppose to move it as soon as possible. He further stated the new home is framed and weathered in, but the inside is not completed.

Mr. Alberty asked the applicant if he has made application to the State Licensing Board for operating a daycare facility? He stated his wife will be finishing her last two hours of credit to be a director of a daycare.

Mr. Alberty asked the applicant if he already made application for this daycare facility to be licensed? He answered negatively.

In response to Mr. Alberty, the applicant stated he has received all the information from the State of Oklahoma for licensing a daycare. He stated he can meet all the requirements.

Mr. Tyndall asked the applicant how many children he intended to get a license for? He stated the maximum will be about 25 children.

Mr. Fields asked the applicant what the ages of the children will be? He stated two (2) years old and older.

Mr. Fields stated he didn't think the building code allows the care of 25 children in a wood frame home. He further stated he would have to check the Code.

**Protestants:**

Tom Vining, representing the Whirlpool Corporation, 7301 Whirlpool Drive, stated while he recognizes the need for childcare in the Cherokee Industrial Park area, which includes the applicant's area, he opposes a childcare facility right in the immediate industrial park area. He further stated there is significant heavy truck traffic and employee traffic that will be coming off the new interchange. He commented he is extremely concerned about the development of residential or other child services in the immediate area of the Cherokee Industrial Park. He explained from a safety standpoint that is the biggest concern and to keep a good relationship with the neighbors.

**Comments and Questions:**

Mr. Alberty asked Mr. Vining if his corporation has a corporate policy regarding childcare or do they provide on sight daycare? He stated his company provides the employees with a referral service to direct people to daycare depending on where they are located. He further stated his company has been talking with the other businesses in the Industrial park to determine if there is a way to get a child care facility out in the area.

Mr. Alberty asked Mr. Vining if his position would be somewhere outside of the industrial park? He answered affirmatively, if at all possible.

**Protestants:**

Jim Doherty, 616 South Boston, operations manager for Industries for Tulsa, Inc. (ITI), stated ITI is the entity that developed the Cherokee Industrial Park and still owns extensive land in the area. He explained he understood that this application would be an in-home occupation application and most of his remarks and research are directed in that direction. He stated apparently what the applicant is proposing is a business on sight, not occupied as a dwelling but as a business on a residential lot. He further stated the building, which was constructed as a residence, will not do for a daycare center for 25 children. He explained the area is in transition to heavy industrial, which there are four dwelling left in the section on the east side of Highway 75 and two on the west. He further explained in time the residential area will redevelop as industrial. He stated for part of his review he visited with Mr. Tommy Williams, which is the next door neighbor to the applicant. He further stated Mr. Williams is an elderly gentlemen, who has been displaced by Highway 75 already, and would like to live out the rest of his life there. Mr. Doherty stated the new interchange will be the front door of the industrial park and the industrial traffic will be severe. He commented there are three dwellings on the subject lot of record, not two. He stated only one home is occupied apparently, although he has seen lights on in the other house and it looked occupied. He further stated there is a garage on the property and it is probably a hobby operation, which there would be no zoning violations there. He explained he would question the appropriateness of a hobby operation of that scale on the same lot as the

Case No. 1444 (continued)

daycare facility. He commented that on this large lot there is no reason to stick a two story house 20' from the adjoining neighbor's house. He expressed the opinion that it is a very callous disregard of the welfare of the neighborhood. He commented the applicant has claimed the house is 3600 SF and the foot print is 30' x 60' which is 1800 SF, but look at the photographs and see if the Board believes that it is a 3600 SF home. He explained Mr. Williams would have been present today, but he had a doctor's appointment. He commented Mr. Williams did relate stories to him about trouble with vermin, rats, bugs, cockroaches, etc. from the trailer. He stated the house has been completed for quite some time now and it was a condition of approval from the Board that the trailer be removed when the house was completed. He commented the applicant does not have a good track record. He stated the notice shows the shape of the lot, but if you look at a detailed drawing the wedge shape is even more pronounced, apparently the State acquired a triangular portion of the land that lies between the dedicated road and this property. He further stated the applicant is showing a crossing of the State property and it is not inappropriate, but he doesn't know if the applicant has permission to use the State property. He explained the applicant does have access to a public dedicated street on the east edge of the property, but according to the drawing there appears to be some question on constructing the driveway according to the plot plan presented today. He stated there is another problem on the plot plan that has been presented, it shows parking right up against the east fence looking right into Mr. Williams' front yard. He explained if this was a commercial business the Board would require a 6' screening fence. He asked the appropriateness of installing a 6' wood screening fence right up against the neighbors yard. He commented he wouldn't want the parking in his front yard, and it does no good for the area. He further commented installing a 25 child daycare facility 20' from a residence of an elderly family just shows a callous disregard. He stated the access road amounts to a private driveway with four houses on it now. He further stated the traffic comes out on to 76th Street North very near the corner of Whirlpool Drive. He explained there was an application before the Board approximately six (6) months ago from a church who wanted a daycare/school operation and after meeting with the industrial people, they decided to change their design and move the daycare/school to the north away from 76th Street North. He stated he cannot support this application because it is poorly done, it is a poor concept and it is a business on a residential lot, not a home occupation. He further stated this application is not good for the area and urges the Board to deny this application.

**Comments and Questions:**

Ron Fields, Building Inspector, stated that if there are more than five (5) children and cannot be put into a basic wood frame building. He further stated the building would have to meet the fire codes.

**Applicant's Rebuttal:**

Mr. Hill, stated he spoke with his neighbor before the meeting today and he did not express any problems with this application. He further stated there is no foundation for the rat and vermin issue because the land is kept mowed and clean. He explained that he rebuilds old mustangs as a hobby and the garage is 100 yards from the daycare. He stated that he talked with Mr. Williams about the childcare facility and Mr. Williams referred him to the people he needed to talk to for obtaining a license to run a daycare. He further stated there is a daycare going in right across the street from the subject lot in the same area. He explained he is not in the industrial site, but outside the industrial site.

**Comments and Questions:**

Mr. Walker asked the applicant if he was aware of the Building Inspectors comments concerning more than five (5) children would require special-fire codes? He stated he did know about the fire codes and he has received the information on the regulations/codes. He further stated he has two accesses to the street, not just one.

Mr. Hill stated the lot is a well groomed, mowed and clean. He further stated the trailer house is supposed to be moved out next week if the buyer can make the arrangements. He commented the house is a two story house and Mr. Doherty can refer to the building permit on how many square feet the house contains.

Mr. Alberty asked the Staff if the special exception is a use permitted in an AG district? Mr. Gardner stated the use can be approved as a special exception. He further stated under the State law children can be in the individuals home and can keep up to seven children, including their own pre-school age children without any requirement for zoning. He explained that when you keep more than seven (7) children in your home you are classified as a commercial daycare and you are required to meet whatever the requirements for that kind of daycare, including zoning, building codes, fire codes, etc.

Mr. Walker stated there is no question about the applicant's intent for the commercial use of the home for the childcare facility.

Mr. Tyndall asked if there is a change contemplated in the area to change it to industrial? Mr. Doherty stated the area is in transition to Industrial, although the current zoning is AG and the Comp. Plan does anticipate a transition. He further stated the small stretch of property where the applicant is residing is likely to remain residential for at least another decade. He explained he is currently discussing with the YWCA and has offered to donate a tract of land for a childcare facility.

Case No. 1444 (continued)

Mr. Alberty stated he can see the opposition to this application is primarily one of a fair competition aspect. He further stated the market place will determine if the subject lot is the appropriate location. He commented that there needs to be diversity in what is offered. He further commented the Codes certainly would permit this application and so it is not a situation where it is a violation of a Code. He explained if the subject property had direct access from this property on to 76th Street North, there would be some real concerns, however, the access from this subject lot is to a service road, which would provide for an intersection. He stated the location may not be a good location for childcare and likewise it may not be a good location for a residence, but it is evident people are living there. He further stated he could support this application as a zoning issue. He commented the building is a totally different issue, we may get approval for this as a use, but the applicant may not pass with the State and County and that is not the Board's place to determine these issues.

Mr. Tyndall stated he is uncomfortable with the number of children in this facility and the grand scheme of things.

Mr. Walker stated the house has never been lived in and the building permit may not have been closed on it and so a new permit would be required at this stage of the game.

Mr. Fields stated the applicant will have to come up to fire codes before opening a daycare center.

Mr. Tyndall stated the parking is not as well placed as it could be adjoining the neighbors property when there seems to be adequate amount of area for parking and to be relocated. He further stated he didn't think a screening fence would be totally appropriate but it would be better than having the mobile home setting there.

Mr. Alberty stated there seems to be some issues unresolved and the county inspector has a big say in this facility. He further stated he would like more input and have the applicant meet with the county inspector. He indicated the applicant should return to the Board within a month and report whether he can comply with the requirements of the county inspector. He commented the Board's action may be moot if the applicant can not meet the requirements. He suggested the case be continued to September 17, 1996 to allow the applicant to meet with the county inspector.

Mr. Walker stated the applicant will need to come back before the Board with a better site plan.

Case No. 1444 (continued)

Mr. Alberty stated there is no question that the site plan could not be approved in the condition it has been presented. He further stated the applicant needs to meet with the county inspector and amend his site plan before coming back to the Board for approval. He explained there are too many issues that are unresolved with this application today.

**Board Action:**

On **MOTION** of **ALBERTY**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **CONTINUE** Case No. 1444 to September 17, 1996, at 1:30 p.m. to enable applicant to meet with county inspector and amend his site plan.

**Case No. 1445**

**Action Requested:**

Variance of the 60' height requirement to allow 150' monopole telecommunications tower. **SECTION 220.C. HEIGHT EXCEPTIONS** - Use Unit 4, located 13216 East 103rd Street North.

**Presentation:**

The applicant, **Earl Higgins/SW Bell Serv.**, 11529 East Pine, submitted a site plan (Exhibit G-1) and stated SW Bell Services request a variance for a 150' monopole telecommunications tower in an AG zoned district. He further stated Mr. Barnett has 9 1/2 acres and there is a 80 acre tract next to Mr. Barnett's land that has not been developed.

**Protestants:** None.

**Comments and Questions:**

Mr. Walker asked the applicant how far away from the edge of the property will the tower be located? He stated there is a 100' x 100' easement from Mr. Barnett next to his east property line and the structure will be approximately 50' from the east property line. He explained the tower will be away from Mr. Barnett's home, his brother's home and is not close to the neighbors to the north.

Mr. Walker stated he dislikes the applications for telecommunication towers that place the easement next to adjacent property and the adjacent landowner does not enjoy the benefit of the lease.



Case No. 1445 (continued)

In response to Mr. Walker, Mr. Higgins stated there is a high voltage power line that runs through the land and he is trying to stay clear of the power line. He explained the power line runs across Mr. Bennett's property and the telecommunications tower could not be moved west because of the power line.

**Board Action:**

On **MOTION** of **TYNDALL**, the Board voted 3-0-1 (Alberty, Eller, Tyndall, "aye"; no "nays"; Walker "abstention"; Looney "absent") to **APPROVE** a **Variance** of the 60' height requirement to allow 150' monopole telecommunications tower. **SECTION 220.C. HEIGHT EXCEPTIONS** - Use Unit 4; per plan submitted; finding this utility has location criteria that determines the height and the area it will serve and finding that the approval of this request will not be injurious to the area, nor harmful to the spirit and intent of the Code, on the following described property:

SE, SE, NW & Beg. SECR E/2, SW, SE, NW; TH W 151.23', NE 363.48', S 330.44' to POB, LESS .58AC CO RDS & LES, Tulsa County, Oklahoma.

**Case No. 1446**

**Action Requested:**

Variance of the 60' height limitation to allow a 150' monopole telecommunications tower. **SECTION 220.C. HEIGHT EXCEPTIONS** - Use Unit 4, located 10324 North Yale Avenue.

**Presentation:**

The applicant, **Earl Higgins/SW Bell Serv.**, 11529 E. Pine St., submitted a site plan (Exhibit H-1) and stated the Colson's own five (5) acres that abuts commercial property. He further stated the telecommunications tower will be located in the back of the five (5) acres away from the residential areas located nearby. He explained the telecommunications tower will be placed near the commercial property.

**Protestants:** None.

**Comments and Questions:**

Mr. Walker asked the applicant how close will the telecommunications tower be located to the rear property line? He stated the tower will be within 50' of the rear property line, which abuts commercial property.

**Board Action:**

On **MOTION** of **TYNDALL**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** a **Variance** of the 60' height limitation to allow a 150' monopole telecommunications tower. **SECTION 220.C. HEIGHT EXCEPTIONS** - Use Unit 4; per plan submitted, finding this utility has location criteria that determines the height and the area it will serve and finding that the approval of this request will not be injurious to the area, nor harmful to the spirit and intent of the Code, on the following described property:

S 202, N 1246, E 647, E/2, NE, Sec. 16, T-21-N, R-13-E, 3ac, Tulsa County, Oklahoma.

**Additional Comments:**

Mr. Alberty stated the Board may need to get some direction from Staff regarding telecommunication towers. He further stated the Board has been approving the applications randomly and if there are no protestants the towers have been approved. He asked the Staff if there is a study underway as far as locating criteria? Mr. Gardner stated the City of Tulsa is conducting a study regarding telecommunications towers. Mr. Gardner further stated that one of the concerns the City has is that when technology changes and the towers are no longer needed, who is going to take down the towers. He suggested the Board may want to consider a condition that when the tower is no longer needed that the owners have to take down the tower. He also states that telecommunication companies should share towers.

Mr. Alberty asked the Staff if the study for the City could be presented to the County Board of Adjustment so that it could be adopted as policy. Mr. Gardner stated the Staff would be glad to share whatever information the study reveals.

Mr. Higgins stated that in Little Rock, Arkansas, Southwestern Bell Serv. recently exchanged their P.C.S. system with AT&T and now Southwestern Bell Serv. has the P.C.S. license for all of the cellular for Little Rock and surrounding Arkansas. He explained the City of Little Rock had a meeting with all of the cellular companies and coordinated tower sharing. He stated Southwestern Bell installed 15 sites in Tulsa and didn't put up a tower because they used existing buildings to try to solve some of the esthetics around Tulsa. He further stated Southwestern Bell is trying to work something out with AT&T. He stated the idea of sharing towers is possible and Southwestern Bell does not put up towers unless they have to. He explained the leases that Southwestern Bell has signed state that the property has to be restored to the original state when their 20 year lease is up.

## Additional Comments (continued)

Mr. Walker asked Mr. Higgins if you can put more than one antenna on a tower? He answered affirmatively. He stated the towers already in existence may not be strong enough to hold but maybe one other customer. He explained Southwestern Bell had to improve the One Com towers to accommodate their equipment. He further explained that One Com is at 900 MHz and Southwestern Bell is at 1900 GHz, so there is no problem with being on the same tower.

Mr. Walker suggested that the Board could require that any towers erected, should be built sound enough that they can share with other companies.

## Case No. 1447

### Action Requested:

**Variance** of required lot width, lot area, land area to permit a lot split. **SECTION 330. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6, located NW/c 129th East Avenue and 126th Street North.

### Presentation:

The applicant, **Jerry B. Haywood**, 12624 North 129th East Avenue, submitted a site plan (Exhibit I-1) and stated he owns 5 acres, which he would like to split. He further stated he would like to retain 1 1/4 acres for his home and sell the rest of his property.

### Comments and Questions:

Mr. Walker stated in order to grant a variance the Board requires a hardship and that hardship needs to be based upon some physical features. Mr. Haywood stated the lot width is 330' wide at the front with the access and in order to do a lot split there must be 200' of frontage for each lot.

Mr. Gardner stated that if the applicant split his property east and west down the middle, each lot would have a minimum of 2 acres or 2.2 land area, but he wouldn't meet the 200' frontage requirement. The only necessary variance would be the frontage.

Mr. Alberty asked the applicant if his intent is not to create more than two lots? He answered he only wants two lots.

Mr. Alberty stated the hardship is in fact the zoning itself. He further stated if the subject property was zoned RS, which it is across the street, the lot split could be done if the zoning was changed.

In response to Mr. Alberty's statement, Mr. Haywood stated he would like to keep his land zoned AG.

Case No. 1447 (continued)

Mr. Haywood stated there can never be more than two lots because the land will not perc and the sewer line is across the street that would require a hook-up. He explained the land in the back end of the property could never have a home occupying it because the sewer line hook-up is too far away.

**Board Action:**

On **MOTION** of **ALBERTY**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE Variance** of the required lot width to permit a lot split. **SECTION 330. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6, subject to splitting land into two lots with each having 165' frontage; finding that the property has only 330 feet of frontage, that this split would meet lot and land area requirements and finding that the owner would like to remain under AG zoning; finding that the approval of this request will not be injurious to the area, nor harmful to the spirit and intent of the Code, on the following described property:

N/2, SE, SE, SE, Sec. 32, T-22-N, R-14-E, Tulsa County, Oklahoma.

**Case No. 1448**

**Action Requested:**

Variance of 30' required frontage on a public street to 0' to allow a 20 acre tract to be split. **SECTION 207. STREET FRONTAGE REQUIRED**, located East of South 129th East Avenue & South of 181st Street South.

**Presentation:**

The applicant, **Allen Locke**, 13222 East 183rd Circle, Bixby, submitted a site plan (Exhibit J-1) and stated Lot 25 is adjacent to the twenty (20) acres that he would like to split. He further stated he had a buyer who would like to buy eight (8) acres and there is a dedicated easement for the people who own land behind the subject property. He explained 400 acres was sold at auction behind the subject property. He commented there is a right of way against his home and two other neighbors to the west, which abuts the back of their properties and to meet the county requirements he would have to clear the 60 acres and put in a county road with bar ditches. He stated right now there will only be one house or at the most three homes. He indicated he would like to divide the land into 8, 5 & 7 acre tracts. He further stated he will probably keep the 7 acres next to his home. He would like to install a private drive to service the one home for the eight (8) acres. He stated the lots will have covenant requirements requiring 3,000 SF minimum and he will have to extend the water line from Bixby.

Case No. 1448 (continued)

**Comments and Questions:**

Mr. Walker asked the applicant what has prevented him from going through the normal process of platting the land and developing it? He stated the cost of the road development, which would be approximately 427' in length and would have to meet county standards. He further stated he would have to clear out trees that abut two neighbors homes.

Mr. Tyndall asked the applicant what type of standards will he have on the private drive? He stated it would be a private driveway with 3" gravel.

Mr. Tyndall asked the applicant if the gravel drive would bother the neighbors? He stated the driveway is less bothersome than putting in a county road.

Mr. Alberty asked the applicant if this is where a right of way was offered and filed and has the county accepted the right of way? He stated the right of way was established for the auction.

**Protestants:**

Ken Rothwood, 13216 East 183rd Circle, Bixby, stated his lot is adjacent to Mr. Locke's lot and would not be too happy having any of the trees that are directly next to the easement cleared because he would like some of that natural feel. He expressed some concern about the quality of the road that would be behind his property. He questioned how well the road would be maintained and if it would be gravel?

Doris DeArman, stated she owns 50 acres in the undeveloped area and she wanted to know if the application affected her land in anyway. She wanted to know if the private drive would come near any of her land and if so, can she extend it later on? After Mr. Locke showed Ms. DeArman his plans she stated she did not have a problem with his application.

Michael Oaks, Rural Route 1, Box 349, Sand Springs, stated he owns 20 acres west of Mr. Locke and wanted to find out more information on how this would affect his property. He further stated he wanted to make sure everything that was developed was up to standards and would not bring down his property value.

Mr. Alberty stated that Mr. Oaks is concerned about standards and if this application was approved there would be no standards other than what Mr. Locke would elect to do. He further stated if the Board grants a variance on the subject property, then the Board in affect would be waiving all of the County's ability to insure that the land is developed according those adopted standards. He commented regardless what is done today, the County really doesn't have any say in it, if someone doesn't follow the standards, if the Board waived the standards, which is what Mr. Locke is asking the Board to do today.

Case No. 1448 (continued)

**Interested Parties:**

Gary Campbell, 4209 West Quincy, Broken Arrow, stated he is the interested party of the southern tract that is in question. He further stated without the variance he will be landlocked.

**Comments and Questions:**

Mr. Oaks asked the Board to explain the County standards for a road?

Mr. Alberty stated that if you own land in Tulsa County and you want to sub-divide the land to create lots, than you have to follow the sub-division platting process. He explained that the sub-division platting process has certain requirements and one of the requirements is that all lots must have frontage on a dedicated street in order to obtain a building permit. He further explained that most of the protestants today do not abut a dedicated roadway. He commented the protestants in effect have bought landlocked properties and without a variance they can't build a home on the property. He further commented what the land owner in effect has is a beautiful piece of property that they cannot build on. He stated if the Board grants a variance today it will waive the County's right to come and enforce their regulations. He further stated the Board has been asked to approve a variance in the past on this same property and the Board denied to do so.

In response to Mr. Alberty's explanation of County standards regarding roads, Mr. Oaks stated he opposes Mr. Locke's application.

**Applicant's Rebuttal:**

Mr. Locke stated the private drive will be 12' and graveled versus 25' graveled road opened to the public. He further stated to install the road would greatly impact Mr. Rothwood because he would lose all of the trees behind him for 60'. He explained this will be a private drive to service one home. He further explained that the covenants require that each home brings in 12 tons of gravel a year to apply to the road. He commented if he puts in a county road there will be people driving through all the time to dump things. He further commented the impact on the neighbors is less with just a private drive. He stated it doesn't waive the rights to the county totally because of the other twenty (20) properties owners in the area. He further stated if the other owners wanted to continue the road, the county rights for the owners have not been waived. He commented if he sub-divides his land, he will have to divide into smaller lots and bring more traffic in the area.

**Comments and Questions:**

Mr. Walker stated he is not comfortable with granting this variance and he doesn't think it is appropriate (doesn't meet hardship test) for the Board to do so.

Case No. 1448 (continued)

Mr. Alberty stated this situation is something that really concerns him, because there is a lot of innocent people who have bought into this without realizing what they actually have. He further stated what has been done with this land sale was perhaps fraudulent representation and it is one of those situations where it is let the buyer beware. He explained that all the reserved right of way is good for is to give you a right to access your property, but it does not give the right to convey, title or build anything on the property. He stated he is opposed to development done this way (self imposed hardship).

**Board Action:**

On **MOTION** of **ALBERTY**, the Board voted 4-0-0 (Alberty, Eller, Tyndall, Walker, "aye"; no "nays"; no "abstentions"; Looney "absent") to **DENY** a **Variance** of 30' required frontage on a public street to 0' to allow a 20 acre tract to be split. **SECTION 207. STREET FRONTAGE REQUIRED**; finding that the applicant failed to present a hardship unique to the property that would warrant the granting of the variance request; on the following described property:

E/2, SE, NW, Sec. 4, T-16-N, R-14-E, Tulsa County, Oklahoma.

**Case No. 1449**

**Action Requested:**

Special Exception to amend a previously approved site plan. **SECTION 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 5, located SE of 96th Street North and 129th East Avenue.

**Presentation:**

The applicant, **Arvie Knight**, represented by Charles Helso, 9732 North 145th East Avenue, submitted an amended site plan (Exhibit K-1), proposed site plan for bus barn (Exhibit K-2), letter of proposal (Exhibit K-3) and letters of approval from the neighbors (Exhibit K-4). Mr. Helso apologized for any wrong doing that the church may have done in the past and stated the letter he sent to the Board explains what has transpired since 1988 when the initial site plan was filed.

**Comments and Questions:**

Mr. Walker stated he had a question about the letter Mr. Helso submitted. He stated the letter states: "In the following years both the church, pastor and part of the board changed and neither the new pastor or board members were aware of any changes of the approved site plan ...". Mr. Walker stated he is unfamiliar with anyone serving on a board where they have undergone any kind of growth, building, addition, or development of any sort, that would state that they did not know that they had to get approval. Mr. Helso stated the church hired an outside construction firm to put the proper construction plans together and get the proper plans, approvals and building permits. He further stated the church thought at that time that everything was per the rules and regulations.

Mr. Walker asked if the church board was aware that any changes to the approved site plan would require Board of Adjustment approval? He stated the church did know that there were rules and regulations that had to be followed, but the church board thought the professional construction company was taking care of the requirements.

Mr. Walker commented the letter states a private consultant was hired to do the plans and take care of the approvals, permits, etc. He stated the church may have legal recourse against the construction company.

In response to Mr. Walker's comments, Mr. Helso stated that the construction company felt that since an expansion structure was shown on the original site plan representing the gymnasium, that makes it larger than the initial site plan had shown was permissible and that being the case the church board felt they were doing right. He further stated the individual who applied for the second building permit was a completely different individual and he did jump the gun on a couple of things. He explained the actions of the second individual has caused some problems with the neighbors and this Board.

Mr. Helso stated the church already has a building permit for the revised plan before the Board today. He detailed that there are trees to the back of the east side of the property for screening. He stated there will be a retaining wall the length of the recreational building. He commented he personally met with the people that had opposed the original location of the building and Ms. Williams, who was the strongest advocate of the placement of the building, to show her what the church has proposed. He explained that he worked out an agreement that if the new plans were agreeable with the Board then it would be agreeable with the neighbors. He further explained the first part of his application is the existing site plan showing what the Church has to date with the trees and retaining wall, which allows an 18' clear span on the back property line for emergency vehicles.



Case No. 1449 (continued)

Mr. Walker asked what slope it would be and if a vehicle could really get through to the back property line? Mr. Helso stated it would be a flat slope when the retaining wall is installed. He explained the revised site plan is a culmination of input from Mr. Gardner and other comments and directives the Church has received to date from the neighbors and the Board of Adjustment. He further explained Ms. Williams and Dr. Lenhart were asked to put a letter together with the previous parties who expressed concerns to sign for today's meeting. He stated Ms. Williams went to each of the neighbors and gave them a copy of the existing plan under construction as well as the proposed location of the bus barn. He further stated the neighbors agreed with the plans. He indicated the bus barn will not be as high as the church and it does cover up most of the water cooling tower that the neighbors had expressed some concerns over. Mr. Helso stated the proposed barn will be 40' wide and will be approximately 80' in length. He further stated the neighbors had no problem with the proposed location of the barn as long as the church kept the building as tight to the existing buildings within reason. He commented the proposed plans have been looked over by INCOG, Mr. Fields and it is his understanding that everyone feels the Church, up to this point, has done everything like it should have been done in the beginning.

Mr. Walker stated he does not see much difference in the new amended plan than the one submitted at the last meeting that was denied. Mr. Helso stated the location of the bus barn is a completely different than the previous proposal.

Mr. Walker stated that what he has been concerned with has not been addressed in this proposal. He further stated that any additional structure should be located behind (west of) the line of the main church building. Mr. Helso stated it was his understanding that someone from the Board suggested the bus barn be tucked up behind the building and Ms. Williams agreed with the proposal. He stated the other suggestion was to move the bus barn up onto the parking lot to the north.

Mr. Walker stated he did suggest that the bus barn be moved forward to the parking lot and further away from the back property line.

Mr. Gardner stated the Church was asked at the first meeting why they couldn't put their bus barn toward the front of the lot? He further stated they were also asked why they couldn't put the bus barn even with the existing building on the parking lot. He indicated that INCOG told Mr. Helso that it would be inappropriate to install an overhead door on the east side of the building and so now the door is on the west side. He further indicated INCOG discussed landscaping and a retaining wall with Mr. Helso and they were advised to submit the site plans to the Board in two phases, one the amended site plan brought up to date with the existing additions and second, the proposal for the location of the bus barn so the Board could act on these issues separately.

Mr. Tyndall asked Mr. Fields how close the barn can be built to the existing building? He stated he cannot answer that without looking at the size of the new building.

Mr. Tyndall stated they would have to have access to the cooling towers for repairs, etc. Mr. Helso stated they would like to keep a 10' to 15' dimension in between the buildings in order to drive a service vehicle to actually work on the cooling tower. He commented the neighbors agreed with the dimensions as long as the Church kept it within reason. He explained that on the north side of the upper part of the bus barn proposed site there is an underground electric line that is going to a transformer approximately 10' from the existing building and so there will have to be at least 10' easement. He asked that the bus barn also have a 10' to 15' easement on the south side of the bus barn for a service vehicle and water drainage.

Mr. Tyndall asked the applicant if the ground surrounding the proposed bus barn is going to be lawn? Mr. Helso indicated there is a lot of water drainage in this area and it would probably lawn.

Mr. Tyndall stated the neighbors seem to be happy and the Church is happy with it, but there will need to be a condition of approval of the building inspector as far as setbacks are concerned with the bus barn.

Mr. Walker stated he cannot vote in support of the bus barn proposal at this time.

Mr. Walker stated the existing plan under construction does not show the changes that were made from the initial plan. Mr. Helso stated he didn't understand the statement.

Mr. Walker stated the existing plan under construction does not show all of the changes or the deviation from the initial approved plan. Mr. Helso stated the existing plan he submitted shows how the church addition is today.

In response to Mr. Helso, Mr. Alberty stated the Church does not show how the parking access and building differ from the original approved plan and so the plan does not show the changes, but shows development as it is today plus the proposed bus barn.

Case No. 1449 (continued)

Mr. Alberty stated that when the Board approves a plan there is some significance as to the approved the plan. He expressed concerns that the plan was approved, building permits were issued and there was some construction done, none of which was in accordance with the plan. He explained he is not trying to criticize anyone, but is a fact that is what has happened. He stated he personally cannot approve the existing plan, because it does not comply with the original plan. Mr. Alberty explained that a major part of the problem is the recreational building was not built in accordance with the approved plan the Board will not make the Church tear it down. He stated he cannot support the new plan.

Mr. Helso stated the original site plan was filed in 1988 with a number of buildings, in this case two (2), and if you show basically a proposed location of something, is there not some (in his understanding in the past) leeway as to position of the building and the size? Mr. Alberty stated he is the wrong person to ask because he does not issue the building permit. He explained if it was a conceptual site plan, there is altogether difference, but when there is a specific site plan approved, then the building permit should be issued in accordance with the site plan. He stated apparently the individual issuing the permit did not hold the same value to that site plan and you cannot undo a mistake that has already been made. He affirmed that if the building continues, it will have to continue without his approval.

Mr. Walker stated he cannot support the plan submitted today either.

Mr. Gardner stated that if the applicant cannot obtain three (3) affirmative votes this application fails. He further stated the site plan that exist now is not approved and there will not be anything in the file to control the finished product.

Mr. Walker stated that one of the arguments of placing the bus barn even with the front of the church was that it would take up existing parking. He pointed out that this parking lot was not approved by the Board.

Mr. Gardner stated the board needs to deal with the site plan first and if there are not three (3) affirmative votes then it is denied. He commented he did not know what happens if the plan is denied, but they will also need to deal with the bus barn proposal.

**Board Action:**

On **MOTION** of **TYNDALL**, the Board voted 2-2-0 (Eller, Tyndall, "aye"; Alberty Walker "nays"; no "abstentions"; Looney "absent") to **APPROVE** a **Special Exception** to amend a previously approved site plan. **SECTION 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 5, Motion failed.

Case No. 1449 (continued)

**Additional Comments:**

Mr. Alberty stated in his opinion the building inspector is within his right to enforce the site plan that was approved. He further stated this issue may need to go to a higher authority.

Mr. Walker stated the second item is the bus barn that the Board needs to vote on.

Mr. Tyndall stated he does not see an action on this application for the bus barn. Mr. Beach stated the bus barn is really not before the Board, but specifically the approval of an amended site plan is before the Board today and the Board has already taken action on the amended site plan.

Mr. Walker stated there is no further action to take on the bus barn. Mr. Helso stated he thought the proposed bus barn plan was one and the same as the amended site plan. He indicated he thought the Church originally applied for a bus barn approval and when he went to Mr. Gardner's office he suggested the Church submit the plans in two phases. He explained Mr. Gardner stated the Church needed an amended site plan and then do a plan for the bus barn.

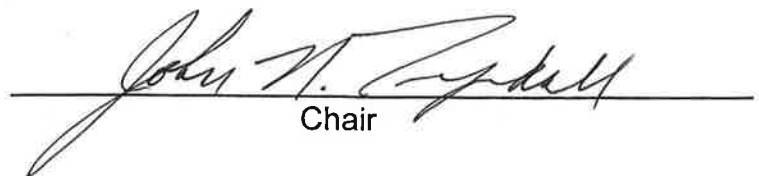
In response to Mr. Helso, Mr. Gardner asked if the Church filed a new application? He stated the Pastor filed an application just like the previous application because they were running out of time. He further stated that after the application was filed, he was advised by Mr. Gardner to submit the plans in two phases and they probably could do both plans in one meeting.

Mr. Tyndall stated the bus barn issue is a moot point since the amended site plan failed.

Mr. Alberty agreed with Mr. Tyndall that the bus barn issue is a moot point. He stated had the Board approved the amended site plan, then the Board could discuss the bus barn. He explained that since the amended site plan failed, the bus barn issue is moot.

There being no further business, the meeting was adjourned at 4:05 p.m.

Date approved: 9-17-96

  
Chair