

CITY OF BRANSON
BOARD OF ADJUSTMENT
MINUTES
November 20, 2008

CALL TO ORDER: Chairperson Farris called the regular meeting of the City of Branson Board of Adjustment meeting to order at 7:00 p.m. at the City Council Chambers, 110 W. Maddux St., Branson, Missouri.

ATTENDANCE

1. Roll Call

Boardmembers Present: Edie, Fish, Vice-Chairperson Keller and Chairperson Farris.

Boardmembers Absent: Robinson and Parnell.

Also Present: Ruth Denham, Assistant Director of Planning and Development;
William Duston, Assistant City Attorney;
Tim Bonner, Building Plans Reviewer and Inspector;
Sonja Paden, Office Assistant II.

2. Approve Agenda

MOTION:

Motion by Boardmember Edie and seconded by Boardmember Keller to approve the format of the November 20, 2008 agenda.

AYES: Boardmembers Edie, Fish, Vice-Chairperson Keller and Chairperson Farris.

NOES: None.

ABSTAIN: None.

ABSENT: Boardmembers Robinson and Parnell.

Motion to approve the November 20, 2008 agenda carried with a 4-0 vote.

3. Approve Minutes.

A. August 27, 2008.

MOTION:

Motion by Boardmember Fish and seconded by Boardmember Keller to approve the minutes of the August 27, 2008 meeting.

AYES: Boardmembers Edie, Fish, Vice-Chairperson Keller and Chairperson Farris.
NOES: None.
ABSTAIN: None.
ABSENT: Boardmembers Robinson and Parnell.

Motion to approve the minutes of the August 27, 2008 meeting carried with a 4-0 vote.

OLD BUSINESS

None.

PUBLIC HEARING

4. Request For Approval Of An Administrative Appeal For Zoning Code Interpretation Pertaining To Townhouse Subdivisions For Properties Located At 204, 206, 208, 210 And 212 W. Price St. Branson, Missouri. Project No. 08-18.1 (08-01800001).

Applicant: GWCM, LLC

FARRIS: All right. Ruth, will you introduce this first item for us tonight?

DENHAM: Yes. Mr. Chairman, members of the board. For this request, the applicant has requested the Board to hear and decide an appeal where it is alleged there is error in determination made by the director of planning and development in the enforcement of this title in appendix Branson Municipal Code 425.040. On September 8th, 2008, a letter from the offices of Styron and Shilling was hand-delivered to the offices of planning and development. The question that was posed was, "whether the building may be platted as five units, with the party walls as the dividing line between the units, either as a condominium or non-condominium townhome." The subject property is located in R-3 zoning and is located right here. Here's an aerial view of the property. Right at the bottom of the property is where our "Z" sign was posted and we took a-- we did a video clip. It's going counterclockwise starting at the front of the property and this middle section here is city park area.

EDIE: Is that that Tom Epps park?

DENHAM: Yes. In response to the applicant's letter, per telephone conversation, it was relayed to Mr. Harry Styron that the Director of Planning and Development, Mr. Don Stephens, would consider reviewing a subdivision of the subject property in the form of a condominium split, but found no allowance in the code for townhome subdivisions. For a condominium split, the condominium split would consist of condominium units, which is shown in the pink with the single-car garage located in the rear of the building, and the blue area would show the common elements for a condominium split; however, the applicant has requested that there be a

townhome subdivision split, which would have a dividing line from the north to the south of the properties. The three types of subdivisions that are in our Branson municipal code are standard subdivision and that consists of lots at least 75 feet in depth and the minimum width set out in appendix A of the code. Minor subdivision. If a proposed subdivision or reconfiguration of land does not contain more than three lots, each of which has frontage on an existing street, the owner may proceed with the lot split procedure thus circumventing the normal requirements of subdivision as outlined in this article. And the last one would be condominium split. Section 410.020, R-2 two-family dwelling district regulations includes patio homes. A patio home is an attached one-family dwelling joined by common wall to another one-family dwelling each being located on a separate lot of record. And for the patio homes, one of the provisions is side yard setback. There shall be a side yard on each side of the structures of no less than five feet in width. Section 410.030, R-3 multiple-family dwelling district regulations. It allows for any use permitted in the R-2 family dwelling district, also multi-family dwellings. Section 410.030, R-3 multiple-family dwelling district regulations. Under side yards, it states in all other locations in the R-3 multi-family dwelling district, there shall be a side yard on each side of the structures of no less than five feet in width; however, there is no mention of zero lot line allowances in the R-3 multi-family dwelling district regulations. We don't address in our code this type of a split. We did some research. Jefferson City had some that are similar, but all of their fell under a planned development type zoning, so they were all unique. Any of them that we found were more of a planned development type of zoning, so it doesn't address this in their code either. This concludes our staff report, so the applicant can come up and speak, if he's ready.

FARRIS: Mr. Styron, are you here for the applicant?

STYRON: I appreciate Ms. Denham's presentation. It's a good overview of the facts. Her pictorial depictions are accurate and everything that she's pointed out in the code is correct; however, she is eliminating some references to townhomes that are made in the ordinances of the city of Branson that were addressed in my letter to Mr. Stephens. And in that letter, I cite the city of Branson's code Section 66-32 of the subdivision regulations. And in that is the following passage: 'Subdivision includes the division or development of residential and nonresidential zoned land, whether by deeds, metes and bounds description, map, plat or other recorded instrument and further includes the creation of a condominium or townhouse or any other division of property into units.' So what I'm saying is the Board of Aldermen has adopted this provision and defined a subdivision. In its definition of subdivision, it includes a townhouse subdivision. Unfortunately, it's not mentioned specifically in the subdivision regulations elsewhere. Townhomes are mentioned, or townhouses, in the International Residential Code and are defined and they have specifications. And the building permits for this project were issued that way. And a townhouse is simply an attached structure, two or more families side by side, and the codes require fire walls between them, et cetera. The definition of the patio home would be applicable, if it wasn't limited to two units only, so it's not. But my allegation of error is a legal one and perhaps a technical one and that is the Board of Aldermen has said townhouse subdivisions are permitted very explicitly in Section 66-32. And the director of development

has said no, they're not. And I don't think the director of development can take away something that the Board of Aldermen has provided for; they're the legislative body. So an administrative officer in my opinion is out of bounds doing that. The law in the State of Missouri generally, as I'm sure you've all heard many times, is that property owners are allowed to do anything that is not prohibited, any lawful thing that's not prohibited, and they're required to comply with zoning regulations. Here the regulation says subdivisions in the city of Branson includes plats of townhomes. It is unfortunate and the reason why we're here is that the Board of Aldermen has not made specific plat regulations for townhouses, but they haven't prohibited it either. This issue first came to light for me about-- in 2003 or '04, I was working with the late Ben Brooks on a project at the-- on lot 25 in Thousand Hills, so we had a situation much like this. It was when Chris Coulter was the planning director and talked it over with him, and he said fine, but Mr. Brooks' intentions changed and he later was killed in an accident, never followed through with the project. But, so what I'm asking here is for the Board of Adjustment to determine that-- to buy my reasoning essentially, or any other reasoning you want to use, that the director of development can't take away the right to file a townhome plat when the Board of Aldermen has specifically provided for it.

FARRIS: Any questions for Mr. Styron from the board? I got a couple questions, if you don't mind. What is the practical effect of this decision?

STYRON: We're in a-- this development, which is just a block south of here, really doesn't need to have common elements, which would require formation of a board, annual meetings, compliance with the Missouri Uniform Condominium Act. That's a very good piece of legislation and provides a great balance between a declarant and unit purchasers. But when you're talking about a 5-unit condominium, it's a little bit burdensome. This is not a huge issue. It's important to the developer. It'll save him two or three thousand dollars in preparation of documents and it will not get the unit owners particularly anything. But by the time they have a-- try to put together a board with five people-- five unit owners and they'll be trying to-- carry is a more complex structure contemplated by statutes and procedures for the life of the condominium, which is pretty much infinite. Without this, they'll simply be like patio homeowners. They'll own to the front lot line and the back lot line and to the center of the party wall, and they can take care of their little lawns or whatever. They can do it-- they can work it out among themselves or not. And each unit here is pretty similar. As far as the side setbacks in the patio home ordinance, as you see, and then R-3 it says five feet side yard from each side of the structures. In this instance, the big structure does have a 5-foot side yard. There's one residential structure and then some individual garages, but there is a 5-yard-- a 5-foot setback from the structure, as in the patio home regulations. So it's not a violation of this for a townhouse, a 5-unit building. I mean, it doesn't make any sense in a townhouse to say there has to be a side setback on the party wall. So there's a side setback on the structure. This had to comply that way to have been issued a building permit without a variance.

FARRIS: So the difference between the two plats, one contemplates the condominium contemplates the common areas, and then having home with the--

STYRON: Yea. And setting up-- and having condominium association, the statutory warranties, the statutory transition from declarant control to owner control coming after seventy-five percent of the units are sold. Here two out of the five are already under contract. This is a very nice use of land here in this mixed neighborhood that I live in also. So we've got five nice units with garages close to stores and everything using existing utilities. So it's a very fine medium density project appropriate here. It really-- there's not a lot to be gained for the unit owners by creating it as a condominium and in fact it might even limit some of the mortgage opportunities for financing.

FARRIS: Any other questions for Mr. Styron? Let's hear from the public then, if we've got members here from the public in attendance. And sir, if you would come up to the microphone and just so we've got a clear transcript, state your name and your address.

HIGGINS: Sure. My name is John Higgins and my sister Sarah, and as it happens, we own the two properties on the opposite side of the street from this particular property, and I certainly would concur. We've been there during the time that they've built it and it's a very fine and nice addition to the property and to the general area. The one thing that I don't understand, which I think goes to your question, is what's the substantive reason for changing it from one to the other. And one of the issues that I guess that we're concerned about is that we were aware of the fact that, when it was structured as a condominium, that there would be a condominium association and that there would be a condominium common area that the maintenance of which would fall to the responsibility of the condominium association with all of the participants in that association having the right to, in come means or other, compel all of the people who were-- who owned a fractional interest in that property to maintain it. But if it shifts to a townhome – and I'm not sure. I maybe don't even understand--

STYRON: (responded from audience – inaudible)

HIGGINS: Okay. Well, the issue seems to me to be one of as to whether or not, if it is a condominium association, it's one thing, but, if you split it up into five pieces, then if three of the people take care of their property and two of the people just trash it, then it not only is an imposition on the other people who have lived there, who protected their property, but it's an imposition on the people in the neighborhood, as well. And whenever we knew that it was to be constructed and it was being done on that basis, there was some value added by the virtue of the fact that it was a condominium. And other than that, I just, you know, if it does change it so that now there is no overall organization and each of the five purchasers, whoever they may be, are free to just do whatever it is that they choose, I think that's a lesser attractive mechanism in a small limited neighborhood like that. So anyway, that's an observation.

FARRIS: Mr. Styron, would you like to respond?

STYRON: Mr. Diggins comments make a lot of sense. I'll tell you how that will be dealt with. There will be restrictive covenants. There may be an association; that will be up to the unit

owners. But there will be covenants requiring that the little lawns be kept free of trash, debris, junk, accumulations, that kind of stuff. So the situation will be no different than it is from in the single-family homes in the neighborhood. It's up to each property owner to do that and, in this neighborhood, we have quite a variation and the-- but these areas are newly sodded and grassed and landscaped and will be fairly easy to maintain. And my guess is that the unit owners will work together to hire a maintenance company to do all of it rather than each person buy a lawnmower to take care of a postage stamp lawn.

FARRIS: At what stage in the building process did this issue arise?

STYRON: As far as the developer knew, it was always going to be a townhouse, a non-condominium townhouse. It was only when he-- as the buildings were approaching completion that he contacted the city planning and development staff and learned that the city wanted to see a condominium split plat rather than a townhome plat. The developer lives in Seattle and does most of his development work there. He has a brother who lives here who's been the construction superintendent. He's come here frequently. He has some family connections here, but he's accustomed to operating in places where townhomes, row houses, are common and he was somewhat blindsided.

EDIE: Mr. Chairman?

STYRON: So there-- it was not-- what Mr. Diggins-- what I understood him to say about it changing from a condominium townhouse structure to a non-condominium townhouse structure, I don't know that there was a change. The building permit was issued for townhomes, which is what the building codes refer to the style of architecture as.

EDIE: Mr. Chairman?

FARRIS: Yes.

EDIE: Mr. Styron, would you mind repeating why the developer does not want condominiums?

STYRON: There are-- now, I want to say two things. First of all, I don't think that that issue is relevant to whether the director of development has the power to make a decision as though that word townhome didn't appear in the subdivision definition, okay. So I want to separate that. Here's my answer from what I understand. There is more expense associated with preparation of the declaration of covenants for a condominium. The preparation of the plat is more detailed and more expensive. You saw the difference in the depiction that the staff showed and that's a fair one. So it requires quite a lot of surveying and it requires some more cost of preparation. It also creates a particular statutory relationship between the developer and the purchasers that some of it has to do with warranties, which there are other warranties by law that are-- will be in place, and then some of it has to do with the transition to owner con--

unit owner control of the board of directors of the association. Because of this-- the nature of the small size of this, all that will happen in a few months, but it still creates some regulations that the developer would rather not mess with and some additional expense. While those regulations offer some advantages to the unit purchases, in this situation they're small, very small. And the developer's made a decision he would like to simply file a townhome plat with those straight lines through the party walls rather than to go to the surveying expense and other expenses to do what he sees as nothing in particular for his purchasers.

EDIE: Thank you, Mr. Styron. Mr. Chairman?

FARRIS: Yes.

EDIE: I would like for our attorney to tell us if we have any-- be able to do any ruling on whether Mr. Stephens has the authority. I don't think we have the authority to decide whether he does or he doesn't.

DENHAM: Can I make a clarification first? I didn't include it in the presentation just from the code, or did you want to speak on this first?

DUSTON: Well, boardmember Edie, I-- part of the powers of duties of this body is to review those decisions that have been made by the former chair of the planning and zoning department. So, I mean, you're looking and deciding on his decision and saying here's our read on the code and here the four of us agree that his read of the code is wrong. So, I mean, he has the authority to interpret this code and that's what he's been hired to do, and you have the authority to say we don't agree with your interpretation.

EDIE: Okay.

DUSTON: Am I answering your question?

EDIE: Yeah, yeah. Perfectly.

DUSTON: Okay.

EDIE: Yeah. Thank you.

FARRIS: And I think I would add to that also that, if you look at the yellow page, the staff report that we have, the powers and duties on 425.040, that first section, administrative review, that's where we're sitting tonight is conducting an administrative review. Going back a long time, I know that in the history of the Board of Adjustments, at least since I've been on the board, we've only heard variances. This is the first time in several years that we've had an administrative review. Let me ask, though, if I can, maybe Mr. Duston can enlighten us on this. We're sitting in a kind of a quasi-judicial capacity. I mean, we've got to make this decision

between really two different advocates. One would be the city that would ask that the decision of its planning developer-- director be upheld and the other would be the applicant, which would ask that the decision be reversed. Is there a burden or is there a presumption that one of those two adversarial parties has to overcome? Is that inherent within us sitting in an administrative review?

DUSTON: There's no burden that I've seen in anything. I mean, it's a decision you're making. I mean, everything that I've read about this type of decision-making process, it's not, you know, we're not carrying a burden; he's not carrying a burden. You're guys are looking at this as almost a de novo-type thing. There's not a plaintiff and a defendant here, not like a criminal-type case.

FARRIS: Okay.

DUSTON: Now I-- Mr. Styron might disagree with me there, but, I mean, from what I've read about this type of review, that's my understanding.

FARRIS: Okay.

STYRON: I agree. You're simply, for whatever reasons you want to do, making a decision whether the interpretation of the code by the administrator was correct or incorrect. It's simply that.

FARRIS: Does-- let's start back up where we were before and that is, is there anyone here--

DUSTON: Chairperson Farris?

FARRIS: Yes.

DUSTON: I mean, I would add, though, in section three down there when you guys make a decision, it's going to take a concurring vote of all four of you.

FARRIS: Do we have any other input, questions or comments from anyone else in the audience here tonight? We do? Right here.

BOHINC: Cris Bohinc. 114 West Long Street. Couple of questions. I actually was just coming because I'd never been to a Board of Adjustment and then I realized I live two houses from this, so, and it is beautiful. But I just have a couple of questions. I know when the question was asked at what stage did it-- the decision change to townhouses, I was just curious. I know they've had it listed with a realtor for a really long time. How was it listed with the realtor?

STYRON: (responded from audience) I don't know.

BOHINC: Do you know? Okay. And the other thing was does it make any kind of difference-- I mean, they can't use it as a nightly rental either way, townhouse or condo, am I correct in a multi-family?

STYRON: (responded from audience) As far as I know, it's zoned R-3, which is-- doesn't allow nightly rentals--

BOHINC: Okay. I didn't think so. And just for the sake of being a neighbor, I'm really happy with it either way. It really is nice. They did a fabulous job and it just upgraded our neighborhood.

FARRIS: Anyone else in the audience tonight who would like to make a comment or would have a question or concern they'd like to express tonight? Ruth, have we heard feedback from any of the neighbors that notices were sent to or just generally any kind of feedback from anyone before tonight?

DENHAM: No. We've not received any comments.

SARA SMITH: (responded from audience) We didn't get it sent to us.

FARRIS: And that's a question I have, which is-- I know on variances we send notices of the affected neighbors within a so many foot area, does that also occur on an administrative review?

DENHAM: Yes. For Board of Adjus-- for all our public hearings, notices are sent out. I don't have the file with the certified information back in my file. Troy Anderson, our planning technician, sends those out.

FARRIS: And the "Z" sign has been up on the property?

DENHAM: Yes. Mr. Chairman?

FARRIS: Yes.

DENHAM: May I make a couple of comments here just to--

FARRIS: Certainly. I'd like to hear from the--

DENHAM: --address some of the concerns? First of all, for Mr. Higgins, thank you for your concern for wanting to keep the neighborhood nice, and if it gets to that point to where there is a problem with someone keeping up their yard, please call the planning and development department. Our code enforcement officer would be happy to go out and make sure that, if anything's in violation, that they work with the property owner on that. As far as Mr. Styron stating the word townhouse is included with the subdivision, he's correct; it is there. However,

I think where the problem exists is we don't have a definition for townhouse and it's not included in R-3 zoning. The use is fine, but the regulations for height, setback, side yard setback is no zero lot line exists there, so that's where the problem comes in. And we have known it's a townhouse since they started construction. We met with the applicants at the onset of the project; however, we were not informed that they were interested in subdividing and selling them. We weren't notified of that or we would've been able to look into it earlier, only when we received that request to subdivide the property. So a possible solution is that, and it doesn't help for right now, but a possible solution is for the city, the aldermen, planning and zoning, to create a definition for townhouse and then under our R-3 zoning to be able to set limitations for townhouses and include zero lot line and the setbacks and heights and address those; that way we could review it. It just doesn't exist and that's why Mr. Stephens was not able to say that it met the requirements of the code. And then Aldermen Bohinc' question about the business operation for any type of home occupation to be operated in the city limits. Nightly rentals requires a business license and when you're applying for a business license, if it's in single family residential, it needs to meet the definition of a home occupation and a rental would not meet the definition of a home occupation, so it wouldn't be issued.

FARRIS: Let me ask you. From the perspective of the city-- we've heard from the perspective of the applicant what the practical effect would be between a subdivision plat versus a townhome plat. From the perspective of the city, what would be the practical difference between those two? Would that affect any of the setback requirements or anything else?

DENHAM: Because it's an R-3 zoning, it would be affected. If we were just dealing with the patio homes, which we do have the definition for with the zero lot line in between and five feet on each side, that would address it; however, with five properties with a zero lot line, there wouldn't be five feet on each side of the structure. And if it was subdivided, it would be considered its own structure and it doesn't have that; it'd be zero lot line.

FARRIS: Does anyone from the board have any questions for city staff at this time?

FISH: Well, Mr. Chairman, I do have a question. It seems like we have something in progress here that's had a precedence set by granting a building permit and all that. Are we running into conflicts if we change something that might alter the building permit that's been issued for this project?

DENHAM: This wouldn't have anything to do with the building permit. It would be with the subdivision, the plat.

FISH: With the platting. Okay.

DENHAM: Yes.

FISH: I guess to make that a correct question then I guess that's the nature I would ask, is it

going to negatively affect that process that's already been gone through by the city?

DENHAM: We've not started the subdivision because the applicant needed to come to Board of Adjustment, so--

FISH: Okay.

DENHAM --we're kind of stuck and it is-- we've not had one before and there are probably going to be a lot more projects like this. It's a nice project. It fits well into the residential area, but we just don't have the definition or the requirements for this type of a building, if it's going to be subdivided.

FISH: Thank you.

FARRIS: Any other comments or questions from the board? Mr. Styron, anything else you'd like to add tonight?

STYRON: I would just like to reiterate that the definition of subdivision in the code as adopted by the Board of Aldermen includes townhouse subdivision as an alternative, it says, condominium or townhouse subdivision. So, it's there and the applicant is-- it's not the applicant's fault that there are no specific subdivision regulations for that, but it is clearly permitted by the ordinances and I don't see a legal basis for denying it.

FARRIS: Thank you. Any further discussion? If not, if someone has a motion that they'd like to bring as to this agenda item. And I assume, Mr. Duston, that that motion could be brought to either to move to reverse the previous decision or to uphold the previous decision, would be the correct wording? Something along that line?

DUSTON: (responded from staff area; inaudible)

FARRIS: Okay. All right. This time I'll make a motion so we can at least have on the floor a motion to reverse the interpretation that's the subject of the agenda item tonight. I'll make that motion so at least we have that on the floor.

EDIE: I'll second that motion.

FARRIS: Any discussion concerning that motion that's now been seconded?

FISH: Well, Mr. Chairman, I think it seems fairly obvious that we have a void somewhere in our regulations and ordinances that probably needs to be addressed because this type of development has been pointed out by our public and by our representatives here as a very positive thing, I think, for a city much like ours and the inner part of it, and I'd like to see this kind of development continue in the future. And if we need to make changes to let that happen

without minor problems like this coming up, I would be for it.

EDIE: Mr. Chairman?

FARRIS: Yes.

EDIE: I don't believe-- I agree with Tom, but I don't believe it would be fair to penalize this particular applicant here because we are behind the times, shall we say, on our ordinances. I will vote to allow the townhouses.

FARRIS: And I might just echo the comments that have been made. I know that we have a member of the Board of Aldermen here tonight. Of course, it is their duty to create the laws and we're placed in the strange position of interpreting a decision made under one of those laws. But where there appears to be some vagueness, at times when things are vague, they may need to be cleared and maybe specified a little more particularly so there's not a dispute or a problem that would arise, like there may be in this case. Any other comments tonight before we take a vote? That said, let's call for the vote.

PADEN: Boardmember Edie?

EDIE: Excuse me. Would you tell me what I'm voting on exactly?

PADEN: To reverse the interpretation.

EDIE: Thank you. Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Vice-Chairperson Keller?

KELLER: Yes.

PADEN: Chairperson Farris?

FARRIS: Yea.

PADEN: The motion to reverse passes with a four-zero vote.

STYRON: (responded from audience) Thank you very much.

MOTION:

Motion by Boardmember Farris and seconded by Boardmember Edie to approve this administrative appeal request.

AYES: Boardmembers Edie, Fish, Vice-Chairperson Keller and Chairperson Farris.

NOES: None.

ABSTAIN: None.

ABSENT: Boardmembers Robinson and Parnell.

The motion to approve Project No. 08-18.1 carried with a 4-0 vote.

5. Request For Approval Of A Variance From Section 425.040 Of The Branson Municipal Code Pertaining To Number And Size Of Spaces For Properties Located At 673 Spring Creek Rd. Branson, Missouri. Project No. 08-19.4 (08-01900004).

Applicant: John Higgins

FARRIS: Now, we have agenda item number five. This goes back into our regular stuff we do, which is variances.

KELLER: It's not new territory?

FARRIS: And so, can you present agenda item number five tonight?

DENHAM: Yes. Mr. Chairman, members of the board. Our next request is for the approval of a variance from section 425.040 of the Branson municipal code pertaining to number and size of spaces for property located at 673 Spring Creek Road, Branson, Missouri. This property is approximately 1.44 acres. It's zoned "C" commercial, vacant and under development. The proposed use of this property is senior housing; that was what was requested on the building permit application. The adjoining properties are zoned "C" commercial. Our generalized land use plan suggests commercial uses and the Board of Adjustment has the powers for administrative review and variances. And with variances, it's to authorize upon appeal in specific cases such variance from the bulk or area regulations of the title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship. Here is the property. It's in purple surrounded by "C" commercial zoning, right here. Again our "Z" sign was posted at this location. The request is a variance for a reduction in parking spaces. On October 13th, we received a building permit application. It was for a 24-unit senior living residence facility, non-assisted. It was an R-2 use group. The request shows eleven parking spaces were required and twenty-two were going to be provided with two of those being accessible spaces. October 19th, the applicant was informed that the required number of parking spaces for a 24-unit R-2 use group project would be for one space per unit plus one space for each employee. Originally it was looked at as R-3 type of use with apartments, but there are no kitchen facilities and so we

reviewed it more as a hotel/motel, which would only require one space per unit plus employees. So the required parking would be twenty-seven spaces. Twenty-two were provided. Here's a layout of the subject application with these being the breakdown of each room. On October 20th, the applicant requested parking to be reviewed as a nursing home and that would've taken it to an I-1 use group. In this case, it would be one space for each three beds plus employee parking. We informed the applicant that, if the parking is reviewed as a nursing home, the project as a whole would be required to be reviewed under that type of use. On November 10th, upon further review, the applicant decided to resubmit the project for review as an assisted living facility under IBC I-1 use group. If it reviewed under "I" use group, no variance for parking would be required. However, we've not received an updated building permit change to the "I" use group. We still have residential on file. We've just received email that the applicant wants to go to the "I" use group. So, at this point, we have the application for "R," which would require the variance. But Tim Bonner, our plan reviewer here as well, if you have any specific questions, he's been doing the plan review and working with the applicant. This concludes the staff report.

FARRIS: All right. Thank you. And do we have the applicant present tonight?

HIGGINS: (responded from audience) You do.

FARRIS: All right. And again, if you'd state your name and your address.

HIGGINS: We're the whole act tonight. Again, my name is John Higgins and this is my sister Sara. First of all now with regard to the preceding project, I certainly think that you all made the appropriate decision. The people who are building it have done a great job over there and it is a nice addition to the neighborhood. I wasn't clear why there were doing it, but whatever the case might be, if it accommodates their needs, I think that's fine. And kind of towards accommodating needs, we moved here about a year ago and over a lot of years, I've built and owned a lot of nursing homes, assisted living facilities, senior housing projects and a variety of other things. Let me shut off my phone; excuse me. You may or may not recognize, but our kind of brief acquaintanceship with the community certainly suggests that, not only in the future, but at present with kind of-- we baby boomers, if you will, kind of coming to that period where the support is clearly going to be needed. This community is going to need a substantial amount and a respected variety of options for seniors. In this particular instance, we acquired a small, approximately 1½ -acre parcel that's right off of Green--

DENHAM: Green Mountain Drive.

HIGGINS: Green Valley?

DENHAM: Mountain.

HIGGINS: Green Mountain Parkway, and it's clearly in a commercial area. There isn't anything residential anywhere within that area, but it's a nice location. It overlooks a part of the golf course and it certainly occurred to us that it would be a nice place to construct a small, almost kind of boutique senior care facility. Now it's not intended, nor was it anticipated, that it would be a help facility in the sense of a skilled nursing home or an assisted living facility, although certainly it has been our intention to construct the building to include a substantial complement of the same kind of life safety codes and other issues, which you would find in a nursing and/or in an assisted living facility. But whenever the architect submitted the plans, he did so within the-- kind of the context of I understand to be kind of the R-3 dwelling regulations and advised me at the time that the parking ratios were such that, given the nature of the site and the proposed building, we-- it's a small project. We needed twenty-four units in order to get even to a reasonable level of efficiency and, in doing so, without just an extraordinary amount of added expense, the cost of providing twenty-seven parking spaces would be almost prohibitive. We constructed a building substantially similar to this a couple of years ago in Overland Park and another similar building in a suburb of Fort Worth a couple of years prior to that and the reality of it is that the twenty-four units are all identical. They are all very small efficiency apartments approximately four hundred square feet and substantially the only unique amenity, there are no cooking facilities other than microwaves and sinks in the facility. The baths are specially designed for people who have limited capabilities. The reality of it is that all of the anticipated residents at this facility will be kind of frail elderly people who would participate in a project such as this for the benefit of the services that are available, the transportation services being certainly one of them, as well as food services, cleaning services and even the coordinating of home health services provided by outside agencies or whatever might be the case. But given that, the reality is that there-- other than the three to four complement of employees who would be the permanent staff of this facility, you would not expect that there would be any on-site parking with the exception of pick-ups and drop-offs and relatives making short-term visits. So what we would hope would be the case would be that, given the nature of the story as was indicated, a possible solution to what seems to be our problem is to resubmit for a building request under the institutional-- is that right? Institution-- is that what it's called?

DENHAM: Yes; that's correct.

HIGGINS: It's I-1 zoning or something like that--

DEHAM: I-1 use group.

HIGGINS: --which would be that, I guess, regulatory section that would be applicable to a nursing home. We would do that, if it was necessary to do that. I understand from the architect, and we've deferred until we've finished here this evening, of amending the building request to do that would be substantially more expensive in order to do that and the only real significant consequence would be that the number of parking spaces on site under that I-1 zoning would go down to a number which is consistent with the number that is provided for in our site plan. We currently have eighteen spaces. Actually, the site plan that was submitted for

the building permit actually provides for twenty-one parking spaces, which means that, according to the interpretation, we were six short. Optimally, we would like to have eighteen parking spaces and it just seems to me that that was a reasonable request and, given the nature of what we were doing here, that the board would understand and approve such a variance. I don't have any history or precedent, don't even know the context in which you all are making these kinds of decisions, but I thought that I would come and just present what's the practical side of it and see if you all agree. If you do, then it'll make it easier for us. If you don't, I guess we'll go the other way because we're going to build a real nice senior care facility called The Rose House out there one way or the other. So, that's my story.

FARRIS: Mr. Higgins, let me address some of the tests that we have to go through in order to determine whether to grant a variance with you.

HIGGINS: Uh-huh.

FARRIS: The first thing I will say is that, even though there's four very fair-minded people on this board, that's unfortunately not the task that we have, is to do what's necessarily fair. I just want to point that out. Most applicants that come before us on variances--

HIGGINS: In some way I expected this probably was the case.

FARRIS: --so we're--

HIGGINS: You're adhering to the body of law and I wasn't able to wade through exactly what your decision criteria had to be, but--

FARRIS: Certainly.

HIGGINS: --I understand.

FARRIS: Really because we're in a unique situation. We're not the elected Board of Aldermen. We don't create the laws. A request for a variance is a really unique and extraordinary relief that can be granted because essentially it's a relief that you would be given, or someone would be given, to essentially not be in strict compliance with an ordinance and be able to proceed, even though you're not in compliance. The state and the city ordinances that we have to work under require us to have an applicant show us that they have met each one of four different tests, okay, and you have addressed those tests in your application. But, if you don't mind, I'd like to take you through each of those, if you don't mind, with you tonight, okay. The first part-- and I'll just read this to you and I'd like you to give me your response to that test. The first test is that special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other land or structures in the same district.

HIGGINS: And the last word was district?

FARRIS: District.

HIGGINS: Well, I guess my capacity to read into the intention of that would lead me only to make the observation that the particular dwelling that we propose is a dwelling that has a highly specialized use and that while I can certainly understand that--

DUSTON: (handed Mr. Higgins a copy of his responses to the criteria)

HIGGINS: Okay, great.

FARRIS: That'd be helpful.

HIGGINS: Okay.

FARRIS: Thank you.

HIGGINS: And while I can certainly understand that, as a generalization within a residential zone, the presumption is that those who reside there would have the general breadth of citizenship activities, including coming and going and one or more autos. In this particular instance, it's a highly unique application because we're, clearly by the nature of the proposed units, anticipating and only able to provide residence to persons who have extraordinary special needs, in which case I guess that I would conclude that that is a unique element. That'd be the best that I could do.

FARRIS: All right. If you want to take a look there--

HIGGINS: Okay.

FARRIS: --before you at the second test, and as you read it, I'll read it out, and that states that literal interpretation of the provisions of this title appendix would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title appendix.

HIGGINS: Well, certainly in reading that, it's written in the negative context and so, I guess that any other owner/developer of a multi-family apartment unit who would request such a variance-- rights commonly enjoyed-- that I don't guess I understand how it would-- this title would deprive the applicant of rights commonly enjoyed by other properties-- I guess I believe this, that it would not deprive me, as the proposed developer/owner, of any rights that were enjoyed by others who were in that particular group. Okay. Okay. We're getting back to what I wrote. I don't believe that the granting of a variance would deprive other owners in the same district. It would simply recognize that districts have a spectrum of use that are not identical; that's what I said in my application. Now-- but in the most literal sense of what it says of number two, I do not believe that I would be being deprived if you said, no, I would have

substantially the same rights as everyone else. I believe, however, this is a special situation and no set of rules and regulations can be constructed so that they're precisely appropriate for all the possible uses within that area, and that's all I can say for that. Would you like for me to go to the third one?

FARRIS: The third one. And I'm not going to read it, but if you want to read--

HIGGINS: Okay.

FARRIS: --through it I think we'd all--

HIGGINS: Sure. It says that the special conditions and circumstances do not result from the application of the applicant. And I responded by saying the special condition is the function of the force necessary to achieve an economical use of the property and that's really the case. Certainly, I could make the building smaller and, if I were to make the building smaller, the consequence would be that there would be a proportionately increased monthly service fee to the residents who might choose to live there. And they would have the consequences of that added cost with substantially no benefit other than the fact there would be a lot of vacant parking lots out there. So that's again all I can say. The fourth is the granting of the variance requested will not confer on the applicant any special privileges denied by the title to other lands or structures in the same district. And again, actually, what I wrote was typical owners within the similar district would support to recommended parking ratio for the use of their properties committed would not object to the variance, and I think that's so. I mean, clearly, any other developer who was constructing a multi-family project within this particular zone would, not only as a matter of compliance, but as a matter of practicality, would want to build the number of units that were commensurate with the parking that commonly we would expect in a facility like this. Clearly, there would be no owners of multi-family properties in this area who would say, gee, we know you're building a senior care facility over there for kind of advanced elderly people, but you're really getting an enormous advantage by only having to provide eighteen parking spaces when you really should have provided twenty-seven. No one would care about that because they would be looking for their respective interests, and I think, as you all could certainly see the justification for it. So that's my answer to the four questions.

FARRIS: Great. Any comments or questions from any other member of the board?

EDIE: Yes, Mr. Chairman.

FARRIS: Yes.

EDIE: I have two questions, Mr. Higgins. What kind of dining facilities in this building are you planning for these people, inasmuch as there's no cooking facilities?

HIGGINS: Actually, as I said, each of the units is proposed to have a very modest kind of a kitchenette facility, but in a facility designed to support these kinds of services, there would be no electric or gas, no range capability. Included within the common area of the building is a kitchen that is a hybrid residential/commercial kitchen. Clearly, it will require that it meet all of the requirements, the bells and whistles of the commercial kitchen requirement, but we will anticipate that food services will be provided on a 24/7 basis from that kitchen. The reality of it is that a substantial number of the residents who would choose to live in this kind of a facility will eat some meals in their own individual units. The units will be designed as one bedroom, living room units with kind of an offset eating area and will periodically, as wellness allows, come to a central dining room area that will provide ample sit-down dining for the number of residents who live there.

EDIE: Thank you.

FARRIS: Any other questions or comments from any other member of the board?

FISH: Mr. Chairman, I got a question that relates to the first criteria, which refers to peculiarities in the land that might affect how this is laid out, but we haven't seen a site plan and knowing who your architect is, I'm--

HIGGINS: I have a copy of the site plan with me, if you'd like to see--

FISH: I'm sure that he's very competent, but I'm just wondering if there are any parts of that land or property that are restrictive to keep you from developing it as a parking lot or actually putting in retaining walls to create more area, to create more parking spaces. I'm sure that's been looked into, but we haven't seen any evidence of that and if the building department--

HIGGINS: Well, I'd be happy to show you this, and actually the civil engineering group who addressed this on an initial basis did so against kind of constraining criteria on two sides. Number one that it would be very difficult economically to support a project with less than twenty-four units, and number two that we needed to get the maximum number of parking spaces available. And there are some open space requirements. I'm not sure that I know exactly the ratios and so on and so forth, but given the topography of the site, and we are building a rather substantial retaining wall--

FISH: You are? Okay.

HIGGINS: --in order to maximize not only the parking, but actually we're doing it mostly to accommodate the drop-off of residents coming to the facility, so that we could have kind of a thru-drive with a kind of a porte-cochère so that residents would have a capacity to be dropped off. If we had not done that, we could've squeezed in some more parking by just being totally blindly attentive to the parking ratio, but not sensitive to what we're actually trying to do. What these people need is to have a place that has easy access, easy drop-off, easy retrieval. As it

was submitted, we have six parking spaces in the front of the building that are handicap spaces and the remaining fifteen are to the rear of the property. Happiness would be to even reduce that in order to accommodate better through-flow along the front, but that's the reason why we're requesting a variance to eighteen units, but we just can't get any more, is what it really amounts to.

FISH: You've worked it hard already, it sounds like. Does the building department have any comments in light of that perspective? Is there opportunity to increase the number of parking spaces given the land and the layout and the topography?

DENHAM: I'll just say something first and then Tim can explain that. As far as parking goes, parking is based on use and occupancy. So whatever the applicant provides, whether it's "I" use group or R-2 use group, that's what we will base our parking requirements on per the municipal code.

FISH: Right. I understand that.

DENHAM: So then Tim Bonner can go over what's been provided.

BONNER: Tim Bonner, for those of you who don't know. In looking at to do a plan review on it, and again I have to look at the use group also, and in looking at the building, the way the buildings are built, it depends a lot on the use group. And when we look at an I-1 assisted living facility, in the code it actually states that these are people who are capability self-preservation. To look at an I-2 nursing home, it says these are people who need help. They are not capable of self-preservation. If we move to an "R" residence, which has been presented, the R-1, which is more a transient nature and it does go in the code and it states it's a hotel/motel type situation, transient population that does not stay. R-2, which was applied for, it listed as non-transient, so they stay longer than thirty days. But then when you get into the residential, it does say in the code that these apartments or care facilities or such do have to include living and dining areas, closets and sanitation, or cooking facility areas. So these are the things that, as a plan review to comply with the code, we need to know a definitive use group so that planning then can look at the parking and see what parking is required per the zoning. The efficiency apartment, and this is kind of the first I've heard that, but I did look into efficiency apartment and the definition in the IBC codes that we use does-- and the only requirements it says at that is it requires a sink, a cooking facility and thirty inches of counter space. So in sticking with what our adopted codes are, there's where our dilemma is and then the parking issue again goes back into what the zoning and what the adopted city ordinances are. So until the use group is defined one way or the other, it's kind of an up-in-the air situation to define how many spaces are needed and what variance.

FISH: Okay. Thank you.

FARRIS: Can you give us, Tim, in a nutshell, what a use group is?

BONNER: Every building that is done, or even partial parts of a building, is defined by what is called in the IBC a use group. It runs the gamut of what they term as assembly groups. There are several different divisions of assembly groups from your theaters and for your churches, and that's where more than fifty people can occupy it at a time. Then we run through business groups, such as malls and strips malls. We have use groups that include mercantile for the sale of things, and we have residential. There are four levels of residential use groups from your single-family residence through your townhomes through your apartments and condominium projects. There is a use group called institutional. It runs from the "I" use group. I-1, which is this type of what appears to be a use group, which is a non-transient all the way even through an I-4, and an I-3 is actually like jail facilities, so your institutional use groups are hospitals, nursing homes, those types of things. We have a "U" use group for sheds. We also have a storage use group and storage use groups for even the storage inside of an occupancy, be it a business or a mercantile. Use groups are how the code defines what type of fire protection; what types of means of egress; how big the occupancy load, how many people can be in that building at a time; and then from there the whole code builds on that as to what has to be done to protect the building. Some of our discussions on the-- stop me if I'm going too far, but on the sprinkler protection system. An "I" use group is required to have sprinkler protection. You can't have an NFPA13R which is listed, if you use an R-2 use group, but to use an I-1 use group, you do have to take it to a full NFPA13 system, which is a more expensive, but much better protected system, so those are all the things. You start at the use group and you build from there. Area modifications build from there. We have gone above what the "R" use group would allow and even the "I" use group by using different modifications, such as the sprinkler, so it all builds off of the use group.

FARRIS: Thank you, Tim.

BONNER: You're welcome.

KELLER: Mr. Chairman, I'd like to ask Tim, what use group are we reviewing this under right now?

BONNER: Well, in the last email that I received from one of the architects, Mr. Jared Younglove,-- I have been working today and doing-- I was told it would be an I-1 use group. Again, that's not in compliance as to what it does state on the plan and on the permit we have, but I knew there was this discussion tonight, so we need to go from there.

HIGGINS: I alluded to that earlier and I said that based upon this preliminary feedback that it was recommended to us that the parking issue would essentially disappear. I think it was earlier recited that the parking ratio would be one parking space to three units, if you will, plus the number of employees. However, as just indicated, in order to have that advantage, it necessitates moving to this I-1-- is it I-1?-- to this I-1 code, which requires a substantial amount of expense that may or may not be appropriate to this facility. Quite frankly, it has been and will continue to be our intent to meet many of those requirements within what we originally presumed to be this R-3 zoning, and it may be well be that that's the simplest answer to this

particular story, but I guess I would like-- and we've had instances, and just for the benefit of the group, we've had instances where that-- and you spoke to the issue of cooking facilities and, you know, and what constitutes a cooking facility. Does a microwave constitute a cooking facility? We have actually, I don't remember whether it was Overland Park or somewhere, we actually had to put in 30-inch ranges in all of the facilities in order to meet one of these criteria. Now none of them were ever connected, but they were simply there in order to accommodate the compliance with this definition. But as we go along, there's going to be an absolute, you know, ton of these kinds of facilities running from kind of the really overtly residential to the really comprehensive advanced skilled requirements. And if every one of those facilities has to either fit exactly this criteria or exactly that criteria then there's always going to be these kinds of issues. And I don't know if there's some mechanism where they could be looked at in a broader context or whatever the case is, but in this particular case, if you all are bound to those parking ratios then, you know, so be it; we'll have to go the other way. But it doesn't really make any sense because we don't need twenty-seven parking spaces out there and to have to build an extraordinary amount of extra stuff or to change to this more complicated code just in order to alleviate that problem seems like it's an issue that we all ought to be able to figure out a way to get around.

FARRIS: Tim, as we sit here tonight, I understand that the applicant has the ability without a variance to proceed under the I-1, I think, use group, but that's not what's been given plan-wise to the city. What use group is the applicant sitting on as to their application for a variance tonight?

BONNER: The application as we have it is currently for an R-2 use group with an NFPA13R system, commercial 5B type building.

FARRIS: Okay.

BONNER: What is on the screen is currently what is on the permit application at this time.

FARRIS: And under that use group, to proceed with those plans, a variance would have to be granted. But they could achieve their project by changing the use group, but they'd have to resubmit plans and go through that process, through the I-1; is that correct?

BONNER: Well, they won't have to resubmit a full set of-- I mean, I haven't made it all the way through on code comments, but they wouldn't have to necessarily submit a full set of plans until we know what comments are, but we need to define the use group because code comments are going to be based basically on the use group along with the zoning parking requirements are going to be based on the use group. So my biggest thing is I am doing it as the I-1 per an email, but I may have to go back in and review as an R-2, as what has been submitted. So kind of until we do that, we don't know which way the parking, number one, you know, what kind of variance may need for the parking or not need for the parking.

HIGGINS: We need to make the parking-- we need to ask this question: can we obtain an enabling variance to allow us to continue as originally submitted under the R-2 zone, let him do his code review within an R-2 context knowing that we've achieved the variance? And if we cannot achieve the variance then that's the end of it. He's already started the process to do it another way. So that's kind of the issue before us.

FARRIS: Any other comments or questions at this time from the board? And we've got some members in the audience. Any comments, questions or concerns from anyone in the audience tonight? And Ruth, did we receive any feedback from any neighbors, anyone who's received notice before tonight?

DENHAM: No; none. None were received.

FARRIS: City staff have any additional comments?

BONNER: I guess the one comment I'll make, and Ruth can help me with that is, again, I can review either way, but each one actually has certain requirements that does have to be met. So until there is the definitive on that, as far as your building project, which I have been through most of the plan, it looks like a nice plan, a nice facility, and most everything is being addressed in the plan, there are still always going to be or should, I'm not going to say always, but there is a chance that there's always going to be additional comments that do have to be addressed. I mean, it happens in every building we have and, so, I cannot give a definitive as to how much difference there's going to be between doing it as an R-2 or doing it as an I-1. I do know in the email conversations with the architect, we came to some very strong conclusions to be able to keep the size of the building you want with the twenty-four units and some other things. So with the R-2, I'll have to go back and look at things again.

HIGGINS: Okay.

FARRIS: Mr. Higgins, let me ask you, kind of coming back to the first leg of that 4-part test about whether there was anything peculiar to the land or structure involved. Earlier Boardmember Fish had asked you about your site plan and asked you particularly if there was anything that was pretty unique with regard to your property that caused, you know, inability to use certain parts of the land or stuff like that, and I think you mentioned that, you know, topography and some issues like that.

HIGGINS: Well, it is and I guess that-- and since I'm from Texas where that rock means entirely something different, I guess it wouldn't be unique to say that, gee, there's a massive, massive layer of rock halfway through the site and the cost of having excavated the rock in order to have produced a level substantially at street grade site would have been five times as much as the cost of the land. The consequence of that was that we're already incurring a substantial expense to build a major retaining wall in order to raise the building up, but so there are those topographic attributes of the site which are the cause. I don't know that that means that they're

unique. Obviously, there are lots of other sites in this place that have had to take down rock and/or put up retaining walls, but certainly in our case that's the cause.

FARRIS: The other land in the same area as this property, is the topography on the other land that's adjacent to it or in the same district, is it, I mean, pretty consistent? I'm not going to say it's exactly the same, but, I mean--

HIGGINS: No; it actually isn't, as it turns out. And I guess I could almost say that whenever I bought the site, it looked fine, having come from Texas. And how was I to know that whenever we did a geo-tech survey that on this one particular corner there's this massive kind of rock outcropping or something like that. They were out there today, even though we've raised the slab site of the property ten feet in order to accommodate it, they're still out there just, you know, pounding away trying to break the rock. So had I known, I perhaps would've chosen a different site, but it's a great site and so I might've done it anyway.

FARRIS: Any other questions or comments by the board before we are in a situation to have a motion made? At this time, if someone would like to place a motion on the floor as to the variance request?

FISH: Mr. Chairman, I move that we deny the request for a variance.

FARRIS: There's been a motion made. Is there a second?

EDIE: I'll second.

FARRIS: Any discussion or comment from the board as to the motion that's on the floor?

FISH: I guess just a comment that-- just to reflect my motion. It seems like that from the beginning, even though you're from flat land and welcome to the Ozarks, by the way, you knew there were some challenges to planning on this property that was probably brought up by the civil engineers and the architects as well as to the ratio of parking and that type of thing. And to get the size of project that you needed for revenue really challenged that, I think, so that's the basis of my motion.

HIGGINS: I understand.

FARRIS: And I would echo those concerns from my personal interpretation of the situation. And again, the peculiarity of the land itself, I don't think that from my interpretation that we've heard enough sufficient to be able to set this property apart. I know times that we've had properties come before us that are pretty unique and that have ravines or have stuff that drops way off somewhere or stuff like that, this does not seem to fit within what we've seen in the times that we've had variances that we have granted before. And that would just be my input as to the motion that's on the floor. Any comment from anyone in the audience as to the motion

that's been put on the floor before we take a vote tonight? And Mr. Higgins, do you have any comments before we take a vote?

HIGGINS: Well, my comments are-- and I think your point is well taken, and indeed there may be some adverse precedence set whenever you just grant variances because someone has a rock outcropping or whatever the case might be. I guess I would say, however, that almost in the same context as the preceding issue that, as these kinds of properties become increasingly prevalent, that there needs to be some sensitivity to the fact that senior care residences are appropriately placed as a general rule in this R-2 zoning, in some instances, maybe with special use permits or whatever that case might be. But that parking issue doesn't make any sense here. I understand exactly where you're going from. There is a way in which we can pursue it. The end consequence of it will be that it will cost me and the subsequent residents more money, but as the code gentleman can advise you, it'll certainly be a comparably safer environment over there, so I'm not displeased. I wanted to have the opportunity to address this issue to determine where we are, and now I know.

FARRIS: Thank you. Any other comments or questions before we take up a vote on the motion on the floor? Let's call for a vote.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Vice-Chairperson Keller?

KELLER: Yes.

PADEN: Chairperson Farris?

FARRIS: Yea.

PADEN: Motion-- it fails with a four-zero vote.

FARRIS: I think technically for the-- the motion would actually pass.

PADEN: Yes.

FARRIS: The motion was to deny the variance, correct?

PADEN: Correct.

FARRIS: Okay.

EDIE: Yes.

HIGGINS: Oh, I thought I was going to get away with it right there at the end.

EDIE: Yes, we have no bananas.

FARRIS: We'd have to have you come back next month again, so, which I'd invite you to do so, since you were here for both of those tonight.

HIGGINS: Oh, I'd be delighted to. This is my first opportunity to be here, but I thank you all for listening and being reflective and considerate.

FARRIS: We wish you the best with your project.

HIGGINS: Okay. Have a good night, guys.

FARRIS: Thank you, thank you.

HIGGINS: Would you like to have this application thing back?

DUSTON: (responded from staff area) No.

HIGGINS: Leave it here okay? Okay. Thanks and good night.

FARRIS: Thank you.

MOTION:

Motion by Boardmember Fish and seconded by Boardmember Edie to deny this variance request.

AYES: Boardmembers Edie, Fish, Vice-Chairperson Keller and Chairperson Farris.

NOES: None.

ABSTAIN: None.

ABSENT: Boardmembers Robinson and Parnell.

The motion to deny Project No. 08-19.4 carried with a 4-0 vote.

OTHER BUSINESS

FARRIS: All right. We've concluded our public hearings tonight. Do we have other business before the board?

DENHAM: No, Mr. Chairman. There's no other business.

FARRIS: Okay. And I don't believe we have an executive session then tonight?

DENHAM: No.

FARRIS: Can you provide us, Ruth, an update as to-- I think there's some publications coming our way as to training; is that correct?

DENHAM: Yes. We do have some training from the APA. I believe we have one application for next month that's been submitted and, if you'd like, I can go ahead and schedule the beginning of some of our training, if you would like me to do so, or if the board wishes to wait until the first of the year. Whatever the board desires.

FARRIS: We have one agenda-- I think that's when what? Is it December 19th, I think? Whenever the date is that's been set.

DENHAM: The 18th.

PADEN: Yes.

DENHAM: December 18th.

FARRIS: Eighteenth. Okay. What's the preference of the board? Would you-- a week before Christmas, do you want to have a little training that night or do you want to wait until after the first of the year?

KELLER: First of the year.

EDIE: I agree.

FARRIS: All right. We'll--

EDIE: Let's postpone it as long as we can.

FARRIS: All right. We'll learn a little bit more in '09, okay?

DENHAM: Okay.

FARRIS: So if you want to place it on our-- whenever our first public meeting would be during '09.

DENHAM: That would be the fourth Thursday of January.

FARRIS: Okay. All right.

EXECUTIVE SESSION

None.

ADJOURNMENT

FARRIS: At this time, we'll entertain a motion to adjourn.

EDIE: So moved.

FARRIS: Is there a second?

KELLER: I'll second.

FARRIS: All right.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Vice-Chairperson Keller?

KELLER: Yes.

PADEN: Chairperson Farris?

FARRIS: Yea. Thank you. We're adjourned.

MOTION:

Motion by Boardmember Edie and seconded by Vice-Chairperson Keller to adjourn the meeting at 8:26 p.m.

FARRIS: Do we need to complete something as to the denial of the variance request?

PADEN: Yes. I've got them right here. And if you gentlemen wouldn't mind doing that tonight and I could take them from you before you leave?

FARRIS: Okay. And we've already adjourned, but I'd like to recognize the gentleman here on the front row tonight. He's been very patient--

EDIE: He has.

FARRIS: --and listened a lot. Did you learn anything tonight Nicholas?

PADEN: He learned how long he can sit still.

KELLER: He's done real good.

FISH: Without any electronic device to entertain himself.

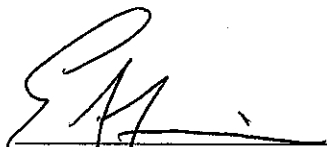
FARRIS: Exactly. My wife wanted to know if I wanted to bring our five-year-old daughter along to sit with him and I don't know if that would've gone quite as well tonight.

EDIE: How old are you, Nicholas? Seven? Is that what he said?

FARRIS: Seven. He's in second grade.

EDIE: Wow. That's great. You're a good boy.

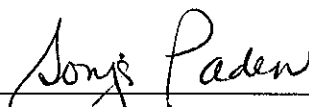
DENHAM: Yes, you are.



Eric Farris, Chairperson

12/22/8

Date



Sonja Paden, Office Assistant II

12-22-08

Date