

BOARD OF ZONING APPEALS
MINUTES
January 29, 2008

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on January 29, 2008 in the Planning Department Director's Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

BICKLEY FOSTER, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JOSHUA BLICK arrives at 1:37pm, JERRY HOGGATT AND CHARLES YOUNG.

Board members absent:

BENJAMIN STIFF

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE– Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

DALE MILLER, Current Plans Supervisors

YOLANDA ARBERTHA, Recording Secretary

FOSTER We will start the BZA hearing at 1:40PM on January 29, 2008. The first thing on our agenda is to approve the minutes of 11/27/07.

HOGGATT I move that the minutes be approved.

GREENLEE Seconded

Motion carries 6-0 unanimously

FOSTER We will now hear case number BZA2007-69. Jess will you now present your case?

McNEELY Good Afternoon, I am Jess McNeely here to present BZA2007-69 which is a variance to reduce parking spaces from 10 spaces to 8 spaces for a swimming pool in the front setback along with the request is a variance to allow parking in the front setback in SF-5 zoning. **BACKGROUND:** The MAPC recently approved a Conditional Use on this site to permit a neighborhood swimming pool. The Unified Zoning Code (UZC) would require 10 parking spaces for the proposed 1,000 square foot pool, and the UZC prohibits parking within the front building setback. The platted lot has space for only 8 parking spaces, partially within the 25-foot building setback. Therefore, the applicant has requested a variance to reduce the parking requirement from 10 to 8 spaces on this site, and to permit parking within the 25-foot building setback, but no closer than 8 feet from the property line (see the attached site plan).

It should be noted that a 10% parking reduction, or one space in this case, could be approved through an administrative adjustment. Likewise, parking within the 25-foot building setback, but not within 8 feet of the property line, could also be approved through an administrative adjustment. The need to reduce parking by two spaces required this variance request.

North and west of the site is a platted reserve; east, west and south of the site are platted, vacant, residential lots. The code requires a landscape street yard and buffer landscaping; outdoor light that employs cut-off luminaries and light mounting standards that are not higher than one-half the distance to SF-5 zoned property. The 27-foot wide platted reserve west of the site, and 50-foot pipeline easement east of the site should ensure adequate separation from future residences.

ADJACENT ZONING AND LAND USE:

NORTH: SF-5 Platted reserve
SOUTH: SF-5 Vacant residential lots
EAST: SF-5 Vacant residential lots
WEST: SF-5 Vacant residential lots

The five conditions necessary for approval apply to all variances requested.

UNIQUENESS: It staff's opinion that this property is unique as it is a platted residential lot, not originally intended for a neighborhood swimming pool, and therefore not sized to accommodate the code required parking for a swimming pool. It is also unique among the other lots within this subdivision, with platted reserves or a pipeline easement on three sides, making it the optimal lot within the subdivision for a neighborhood pool. The property is unique as a lot within a residential subdivision where most homeowners will be within walking distance of the proposed pool, minimizing the need for parking.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance will not adversely affect the rights of adjacent property owners. No residences exist on the platted lots adjacent to this site. The reduction of two parking spaces, from 10 to 8, should have no negative affect on future adjacent homeowners. This site has 85 feet of street frontage that will allow for on street parking, should the 8 parking spaces be occupied. Permitting parking within the front setback should not have a negative effect on adjacent property owners, as a landscape buffering plan will be required, buffering the parking from the street and adjacent properties.

HARDSHIP: It is staff's opinion that the strict application of the zoning regulations could constitute an unnecessary hardship upon the applicant. Compliance with the parking requirements would prevent the applicant from developing the desired 1,000 square foot pool on this site, with no corresponding public benefit.

PUBLIC INTEREST: It is staff's opinion that the requested variance would not adversely affect the public interest. A reduction of two parking spaces, and permitting parking within the front setback but no closer than 8 feet from the property line, are minimal variances from

the code standards. And, the public has an interest in the development of neighborhoods with quality of life amenities such as swimming pools.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variances would not be opposed to the general spirit and intent of the zoning regulations. The intent of the zoning code parking standards is to ensure that adequate off-street parking is provided. The intent of prohibiting parking within building setbacks is to ensure adequate separation of parking from property lines, and ensuring space for landscaping. Both of these objectives can still be met with the requested variance.

RECOMMENDATION: Should the Board determine that all five conditions necessary to grant the variances exist, the Secretary recommends that a variance to reduce the parking requirement from 10 to 8 spaces for a neighborhood swimming pool, and a variance to permit within the front building setback but no closer than 8 feet from the property line, be **GRANTED**, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. All parking on the site shall be marked and paved in conformance with City standards.
3. Prior to the issuance of building permits, the applicant shall have a landscape plan approved by planning staff. The landscape plan shall be consistent with Landscape Ordinance requirements.
4. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year from the date the variance is granted unless such time is extended by the Board.
5. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

McNEELY The agent Terry Smythe is present for questions. Are there any questions of staff?

FOSTER I have several questions. Let's go back to the drawing. It is the first one that on the board as well.

McNEELY The zoning maps?

FOSTER Yeah. If you feel any of the questions could be better answered by the applicant let me know. There are no houses around the entire site of the swimming pool, right? Correct?

McNEELY Correct.

FOSTER What is that? I am looking on the report if you will notice there is something drawn in is that part of the creek or is that a pond or what is that? Where the word Wichita appears on what we have as a report. There nothing that

shows up between the north and the south area. But on that there are several lines and so forth, what does that mean?

McNEELY Is the arrow on the staff report drawing adding to the confusion there, the big black arrow?

FOSTER Well I can not tell whether there are any lines underneath it or not but if you look at that one and move up you see those lines there? What are those is it a pond or what?

McNEELY These lines demonstrate they are platted, not lot lines but they outline a reserve.
Where they make some of the jogging motions, as I am indicating with this arrow, which is the separation between a platted reserve immediately north of this site and a platted reserve that apart of the subdivision that is further north. If we look at this aerial photograph, this is a very irregular shaped platted reserve. As a matter of fact, there is a big notch in it immediately north of the application area. That line that you see there that follows a regular line is a platted line between two different platted reserves. As I understand it, it is between two different subdivisions.

FOSTER Back up to where you just had the marker, now go north, now south a little bit, what is that lot moved to the right? Is that a lot?

MCNEELY That is a platted reserve. I may be difficult to see on this screen but this platted reserve is all one platted reserve. It just becomes very thin right here about 20 feet maybe immediately north of the application area.

FOSTER What is that?

MCNEELY That is a part of the platted reserve. It may look like it is its own separate lot but it is actually connected by this space right here along with this area here.

FOSTER So, the houses would not be in back of it.

McNEELY No, that is platted reserve.

FOSTER Now go north, where is the nearest house to the North.

McNEELY It will be this house here on the other side of the pond.

FOSTER What about over there on the cul-de-sac?

MCNEELY There will be a house here eventually. That will probably be the nearest lot to the north.

FOSTER What is between that and the swimming pool?

MCNEELY Between this lot here and the swimming pool is two separate platted reserves. It has a lot of vegetation and a lot of trees.

FOSTER What will be the screening from the back of the pool?

McNEELY The pool will be screened by all the trees seen here.

FOSTER How much to the north of the pool area? Immediately north?

MCNEELY Immediately north of the pool area, within 50 feet north of the pool, are these trees right here which will serve to screen.

FOSTER Going down to the top of the pool area?

McNEELY Right here?

FOSTER There.

McNEELY Nothing.

FOSTER Nothing?

McNEELY As we look at the site plan from the applicant, the applicant will be required to have a landscape plan. The fact that they have a platted reserve to the north of there that have landscaping within it, it is probably going to minimize their landscaping requirements along their north boundaries.

FOSTER Where you have the cursor right now, move it again, now move that north. What is there?

MCNEELY A platted reserve.

FOSTER Are there any trees? Is there any buffering or anything?

MCNEELY There is existing trees in that area now.

FOSTER Okay, now we can go to where it says thirteen that is a lot which I presume any house they put on there will have a very clear view of this swimming pool.

MCNEELY Yes.

FOSTER Then there is another one that is directly to west of it.

MCNEELY Yes, over here.

FOSTER Then there is one that faces directly into it to the south. I wish you would have shown on that pool area. Now this is not the site plan that has not been submitted right?

MCNEELY This is the site plan for variance purposes in that it demonstrates the number of parking spaces, the size of the pool, and setback of the parking spaces from the property line.

FOSTER Which says conceptually Jess; I do not see anything about lighting on here. I do not see the landscaping on here for buffering. I presume that would be on the site plan which we are not seeing here.

McNEELY This conceptual site plan will suffice as a site plan for the variance requirement. One of the conditions that we recommended along with the variance, that will be required by code anyway, is a landscape plan. And the landscape plan has to be approved by staff consistence with the landscape ordinance. There is required landscape buffering on the south side of the parking lot between the parking lot and the property line.

FOSTER How much area would be left for landscaping?

MCNEELY It is eight feet. That is the eight feet we discussed.

FOSTER Eight feet in the front yard, what else?

MCNEELY Well the other landscaping that is going to be required will be on the east and the west side of this pool. Some of the landscaping can be achieved within the pipeline easement. I will allow the agent for the applicant to discuss that. The pipeline company is particular about what goes in that easement. But you can put some landscaping within that pipeline easement.

FOSTER How much on the west side?

McNEELY On the west side within their lot, they only have 3 feet from the edge of paving of both the parking lot and the pool paving area to their property line. But the platted reserve, which also serves as an easement west of this lot, is also under the ownership of the HOA of the Homeowners Association and that can be used as landscaping as well.

FOSTER And that would be shown on the site plan then?

MCNEELY That would be shown on the landscape plan that has to be approved.

FOSTER On the landscape plan that we will not see.

MCNEELY Correct. They are required to have a landscape plan approved. Regarding the light poles, they have not indicated on this site plan where the pool lights will go. However, the zoning code has a compatibility setback requirement

that light pole cannot be any taller than its distance from the property line. So, where we have pretty good buffers with both the platted reserves and the pipeline east and west of this site, we felt in this case particular this site has more buffering than your typical platted lot within a subdivision.

FOSTER The reason I am asking you these questions, this is the third swimming pool situation within the last year and a half. This has the most compromising situation to it which means that these people can put nothing else on it. In neighborhoods, sometimes they want picnic tables, swings, and this has no room. This is a real compromise. I am interested to ask the agent how this decision was made with the neighborhood and whether they are satisfied and why it isn't put into the reserve. Isn't there enough room in the reserves to put this in but you may not be able to answer these questions. What other questions do we have, gentlemen?

BLICK I have a question for the applicant.

FOSTER Thank you Jess.

Good Afternoon my name is Terry Smythe, with Ruggles and Bohm, here on behalf of the owners of the property. I will address the issues that Mr. Foster has raised. When we are doing subdivision like this and trying to project out into the future of what size lots people will want two and three years in advance, it is very difficult to get a consensus from people who have not bought out there what they want in terms of recreational facilities. Blickley, you are right on the number of pools BZA cases has come before this body. I think throughout the regular planning commission, we probably discussed pools at least on 2 or 3 cases. If we knew then what we know now that there is a demand for pool in this area in that the homeowner association is willing to maintain it in the future, we would had platted it a reserve that would allowed for more space than what you see on this platted lot. At the time that they were doing the plat that demand was not known. To put a pool in, without the neighborhood support to maintain it in the long run, would have been a waste of time and money. It is my impression based on what the land developers have told me, the neighborhood to the east will primarily serve this until this western portion get developed. This property has monitor this very closely in terms size and the location and they are content with the location. Considering that half the people are to the east and the remaining portion of the people will be to the west and to the south of this location. The field with the reserve of the pipeline on the east and the utilities on the West, this area provides the best buffer from the existing lots remaining out there. Now again, I am going to tell you, that if we knew if knew then what we know now what they desired before they moved out there. We would have platted a reserve that would have accomplished this without asking for any request from this board. It is hard to predict what the homeowner's want and whether they are willing to maintain it. I personally live in a subdivision called Tallgrass East, it has a major pool in it and we have a major parking lot. At the time, we built the parking lot to the standards with

the parking ration. The parking lot is seldom full. Maybe once or twice a year when we have neighborhood carnival, when the horses and buggies and other stuff it get full. For the most part, people want to walk to these pools. That is the intent of it. If you are going to drive one block to the pool, then you are lazier than I am is the best way to put it. We are trying to abide by the code. Blickley you are right, this is a self imposed hardship. If we knew what they desired a couple of years ago, I would have convinced them to plat a reserve larger than this one and it would had not been a problem. We feel that with the pipeline to the east and the reserve to the west that we have plenty of space to provide the buffering that is required by code. We will provide the landscape plan as well as pulling the building permit. In which all those issues with utilities, now we get water and sewer to the building, will be shown on those detailed site plans that the OCI will have. Have I addressed enough?

FOSTER I have a few questions because I take it very seriously about the idea that there are lots around here that are not occupied. As far as I am concerned, there are people that are going to live there and we have to provide some protection to them by our decisions and so forth.

SMYTHE I agree.

FOSTER We are their stand in for the moment. That is why I am speaking in terms of this relationship. Now when this was decided, was this the site? If you look at this, the builder, the owner of this development, could actually own enough lots for example the owner could have had 90% vacant lots and the developer just makes the decision of what they want; I want to know if an actual meeting with the homeowners who live there now that made this decision. From what the developer told me, they have had meetings with the homeowners and the homeowners are tracking the progress of this request. I think the developer has been slower than what the current homeowners wanted. I think they wanted the pool built in September or October of last year. I personally have not had any meetings with the homeowners. I have relied on the owners of the property to tell me that information.

FOSTER There are instances where the developers put off forming homeowner's association; so, is a homeowner association actually formed at this point?

Hoggatt Did he say is it?

Foster I just want the homeowner's association to be disappointed when they start using this and find that they can not add a swing to the area, or no room for a picnic table. I just want to make certain the homeowner's realize that it is limited.

Smythe From what the land developers told me, they realized that and are tracking the progress of this case.

FOSTER The homeowner's association has been formed?

SMYTHE No, from what I see the owners of the property are still listed under Whispering Lakes LLC. The homeowners' association to the north to which you have discuss with Jess that has been formed because that neighborhood has been there for a number of years. According to this ownership list, I do not see that the association itself has been form. Now with the existing reserves on the east side of the development, and the reserves that are going to be on this plat that we are discussing about it location, the requirement for those reserves is that a homeowner's association shall be establish to maintain a control and those association in the future.

FOSTER Are any houses in the south area at all?

SMYTHE To the south of the pool, no; Jess showed you the street today and the phase that they are building in stops right to the west of the pool location. The people have decided that this is a good location.

FOSTER Who will maintain the reserve areas?

SMYTHE The homeowner's association required by the plat will maintain all open space common area and facilities of the association.

FOSTER Mr. Hoggatt?

HOGGATT I think we have to realize at this point that the developer has made the rules and the regulations. As most developers are not really interested in putting in pools, they would just assume to bypass that item. It is obvious to me that it was done that way because he did not change that lot. In other words he did not make a swimming pool lot, he made a regular lot and the homeowners have press to have the pool and that is were they would like to have it. Up until the time that the people come down here and since there are no owners at this place, I do not think we have to worry about it because if the builder does not sell those lots that are beneficially to those customers they will pass. It goes for the lots around the pool and some people hate it and some people think it is just great. That is the developer's problem and it is not our problem at this point. Our problem is not to make the developer's decision but to go ahead and see if staff justification meets our approval.

FOSTER Are there any other questions?

BLICK Can you go back to the site plan? The structure that looks like a building structure is that going to the maintenance facility or what they call the pool club house? And is there a way that you can possibly extend your property on to the west of where the parking lot is and extend it all the way to the edge where the clubhouse is? And then go straight south and apply parking all through the north and then have two separate parking to the south? What

I mean by that is instead of a square box make it more rectangular shaped. Could you get more parking stalls in like that or not?

SMYTHE Try to make it an L Shape parking lot basically?

BLICK I know it is more difficult but have you considered that?

SMYTHE We tried that base on sketches a number of months ago. It will not work any better. If we come up with an alternative parking lot layoff, we will have more concrete on the parking lot. If we take the parking lot straight across lot, we will have less area in the front to landscape. I know that is a concern for Mr. Foster. If I did a tandem parking, if you pull in first and I pull behind you, we will have a problem. I am a big pro-opponent of neighborhood pools and I am also a big pro-opponent of walking to the neighborhood pool to get your exercise.

FOSTER You heard Jess answer questions on how you will find space for landscaping on thee east and west, do you feel that is a feasible idea to obtain some use of the utility easement.

SMYTHE Yes especially to the west that is a drainage easement as well as a utility easement, but primarily drainage it will take water from the south side to north towards the creek area, once that storm sewer pipe is in and the inlets are established we will have roughly that whole 30 foot easement. I can landscape around given the bottom of the drainage area to protect the lot to the west. That is primarily why the parking is on the west of the property. It gives me more room and it allows me to maintain the landscape requirement that will be imposed on this piece of property.

FOSTER Can we assume that the gas line is a high pressured gas line?

SMYTHE I have not looked into that myself. I know over the years when I have built and developed myself that before you do anything you talk to the pipeline company and they are extremely particular about its pipelines.

FOSTER This may not be our responsibility. We have lot 13 there. It may be appropriately numbered. Number 13 is almost inevitable that the house will face into this into the swimming pool; so, the landscaping or buffering is very important because of the shape of it. They are able to get in the lot from the roadway but after that the entire front of the lot is pointing to this side of the swimming pool.

SMYTHE On that one Mr. Foster, I will disagree. The side yard setback will be along the pipeline. The house will be facing the same direction the pool is facing. I will go to the screen again. It will be facing like this. When I look out the side window, could I possibly see the pool? Yes, as well as the neighbor to the south, the west and a lot of other homes out there. I do not believe the

landscape ordinance was intended to totally screen out any view of the swimming area or the parking lot area. Landscaping is to buffer.

FOSTER I hope you understand that the people that you are here and they are not. I want to make certain they know what they are getting. One of the things that could be done is to replatt this property and make an appropriate lot for it. That is a lot of trouble, cost and so-forth. We do not have to approve these manners of things.

SMYTHE That is certainly an option. I will not discount that thought or we could go back and tell the homeowner's we are not going to build a pool.

FOSTER Well I notice in other subdivisions that I am familiar with where developers have laid out a lot or two lots that can be used for a swimming pools or houses. They design it in the original plat and you may not know it. They will say if they want a swimming pool, here is where we will put it. I think that the MAPC in reviewing these plats should be looking at them in the first place to see if they made provisions; so we do not get into this kind of compromise. Anything else Mr. Smythe? Do you agree with the conditions that have been laid out?

SMYTHE Yes I do.

FOSTER Okay, will you be submitting a site plan, and a landscape plan and will that include lighting on the site plan?

SMYTHE Right now, the parking lot lighting has not been planned.

HOGGAT That is a good thing.

SMYTHE I want to tell you in honesty. My swimming pool in tall grass east was never intended to have lights. But it is much, much bigger. Because of the homeowner's desire to have lights, as they did not want cars parking overnight or temporary, we put up a big light. Right now, there is no intent to put lighting in this parking lot. We are keeping this as residential as we can.

FOSTER Jess, do you have any other comment that you have in regards to what has been presented?

McNEELY I will point out Mr. Foster, as tight as this sight may seem, you may want to look at the conceptual lay out plan in your staff report. There is quite a bit of space between this parking lot and to the east of this parking lot. There is about 30 feet between the parking lot and the pipeline easement. Then all the way down here, we have 50 feet from this edge of the parking lot all the way to here. There is quite a bit of space that is not in the pipeline easement for landscaping and for playground equipment, picnic benches, and 50 feet of width is the width of what use to be traditional standard house lot.

Likewise, the pipeline easement that straddles the property line, 25 feet of the pipeline easement is on that this lot. That entire 25 foot wide space here is additional acting buffer space can have anything placed on it that does not have a foundation built into the ground. A swing-set, any playground equipment that is not on a foundation, picnic tables, or open space for children to play. Therefore, that is one of the amenities that this site has that we try to point out. The pipeline easement in a way serves for some of the space. I think the fear that this site does not allow for any additional amenities such as playground equipment or picnic tables is not a real problem on this site. I think it is space on this site for those amenities.

FOSTER On item number 3, I think the language should be more specific as to the landscape approved by planning staff. You and I know that it is but I think it ought to be more specific as to whom that responsibility belongs. I will close the hearing to the audience and confine the discussions to the board.

HOGGATT I suppose the developer would be totally against a two story parking garage?

ANTHIMIDES Mr. Chairman, I move that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in 2.12.590 B as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary report.

BLICK Seconded

GREENLEE I like to point out clarification that we are approving two variances.

ANTHIMIDES Yes, the 8 feet front yard and the reduction of the parking spaces.

FOSTER All in favor say aye?

Motion carries 6-0 unanimously

FOSTER I want to note the changes on the BZA calendar. I want you to pay special attention to number 3 for March 18 and May 20 is on the third Tuesday of the month. All the others are the fourth. There is one I believe on the 5 Tuesday. Therefore, they are not all on the fourth Tuesday of the month. Do any of the members have a problem with the 3rd Tuesday?

HOGGATT Can you repeat which two dates are on the third Tuesday of the month?

FOSTER I want you to realize that not every BZA hearing will be on the fourth, Tuesday of every month; so look at your calendar.

FOSTER We will hear from Herb Shaner.

Herb Shaner with the OCI office, back in June of 2007 you had a variance to allow 275ft wall signs 35 feet above grade on property zoned multi-family, east of K-42

and southeast of McCormick and Sheridan Avenues which was the Newman University. I look at the signs a while back and they look great. They are not obtrusive at all. They did a good job. So, everything is fine with us.

FOSTER I made a little test on Kellogg in the last two weeks. There is a sign there. I pass that location a lot and I began to count the signs. I happen to ask one of the applicants who often appears before this group. How many signs can you put up? The answer was something like nine. I think this board should be aware that when you approve a sign. When you are looking at it, it can have up to nine or more visual presentations.

BLICK What are you talking about LED?

FOSTER I am not talking about because this is more of a reader board showing messages related to the University. I am talking about one sign that displays up to nine different messages.

HOGGATT Are saying when we zone a sign we are zoning nine separate locations?

DICKGRAFE No, he is talking about an LED sign.

ANTHIMIDES One LED that will flash nine separate advertisements.

FOSTER Yes.

GREENLEE One sign that has separate messages is that what you are saying?

DICKGRAFE One sign that nine messages on the same sign that comes up in a rotation.

FOSTER I seen about 6 equivalent just passing by.

GREENLEE There is only one message on the sign, right.

FOSTER Yes, but it is changing as you are passing and it is one physical location.

FOSTER There is another thing that was mentioned last time, the regulations that as long as it stays still for one second that is all necessary. I am just pointing out that we are actually approving multiple signs at one location due to technology. I think we need to take into account how many signs we were approving on one sign. Particularly if we have homeowner's that have to live near the sign.

DICKGRAFE If the City Council has approved the frequency of the flashing, I am not sure that is a valid reason to deny a request for a variance of another part of the sign code.

FOSTER It depends upon its' location. If you have one that is near your house that is changing all the time it may be different than one where there is one sign.

ANTHIMIDES The main concern is the amount of light it emits.

FOSTER I think there is another dimension we are getting into here.

McNEELY I believe you are talking about the off-site signs as in bill board signage. And the fact that the newer LED signs, once it is up there it can change. The definition in the sign code of a moving sign is one that changes faster than once per second. So, the regulation has been that as long as the sign image does not change faster than once per second. It is not a moving sign. It sounds like you are concern is that for one second it is advertising one thing and the next second it is advertising another thing and so forth. I am not familiar with the portion of the sign code that would regulate how many sequential different offsite advertisements could take place on that site provided that it did not change faster than one second. The old technology, In which a billboard would have the rotating tri-fold images, those could only have three sequential advertising on them. The newer ones obviously can advertise a lot of different things. I do not if there has been concern other than what you voiced today about how many sequential different offsite advertisings could take place on one site. The biggest concern that we have heard is the brightness and the newest additions of the sign code do measurable standards of brightness of the sign.

FOSTER The brightness would apply to billboard as well as to the smaller signs and you are talking about there is no limitation on the number of scene shown then as long as they are over one second apart. You can have 100 of them theoretically. My concern is the distraction to traffic. These signs will have you sitting there wondering what is next. They are distracting.

DICKGRAFE The sign people will say that the sign is effective. Because it is distracted you to looked at the signage.

FOSTER We are actually getting to many things. People on corners with have someone out there with an Uncle Sam uniform flagging holding up a sign saying honk. Dale, please help enlighten us.

Miller I sit on DAB and only District 5 and we just had an amendment dealing with billboards in CUP only District 5 turned down the proposal that will allow billboards to now be placed in CUPs were they were previously not allowed. So we lost that argument. The city council does not see the billboard as a distraction. That was one of the arguments that staff had.

FOSTER I hope we do come back after some history. I think we need to review it annually before we just leave it. Are we ready for the workshop? Sharon do you think we can cut down on the minutes in regards to questions?

DICKGRAFE I think from an open meeting standpoint that you need to have the minutes of the workshop unless you want to go into executive session on the legal

issues regarding the board's authority. I do believe we need to have minutes on the workshop.

FOSTER On the whole workshop?

DICKGRAFE I do not envision the workshop lasting very long. I do not have a lot outside the handouts you have been given. I may touch some hi-lights and respond to any question that you have.

FOSTER I hope the secretary will not be criticized if she leaves anything out.

DICKGRAFE I will image that she won't. The purpose of the workshop was to give an overview regarding three areas that staff felt were important to touch upon. The first is the authority of the board which is the blue memo, conflicts, or voting issues, ethics which is the second handout. It says "Governmental Ethics" and then the last is on open meetings. You all can read and are smart individuals. I am going to give a brief overview and be available to answer questions you may have. Generally the board has two functions one is to grant variances and the other is to deal with appeals and the appeals are going to be interpretations by the zoning administrator, provisions of the zoning code, or parts or languages and CUPs and PUDs. In granting a variance as you all know, the board has to make a factual finding that five factors were met. If any of those factors fail, then the variance should not be granted. We talked about this today. One the hardship one, which is sometimes the most difficult to deal with, is whether the hardship can be self-imposed or self-created. In most of the case law, it says it can not. All though this board will routinely see where the carport is already built or the property is already platted. So long as there are other hardship issues not necessarily cause by the applicant alone then those can be granted. We use to do a use variance which meant that we could change the use of property. However, the language of the statue and the board's authority has change and generally we will only do area variances. That is what you had today, the setback from 8 feet and a decrease in parking spaces. Most of the variances that we are going to have will be numbers, not whether or not the swimming was an appropriate use for this location, or whether or not a carnival was the appropriate use for a residential area; those are not the types of issues that your board will see. The board is a quasi-judicial board and I will jump in occasionally because we need to make certain the record is clear. If for some reason, the City, the applicant, or neighbors are not happy with this board decision then that decision can be appealed to the district court. Everything thing that the district court is going to look at is generally the record, the presentation that was made, any discussions that was made, so, it is important that if you have discussions especially if you are going to deny a variance that the information get put on the record at the time of the hearing. You will also see the secretary be cognize when any additional hand-outs are coming before you from the applicant and it is important to put that information in the record. One of the areas that potentially cause some problems is when applicants try to contact you

outside of the proceeding to give you information. If that should happen, it is important to disclose that contact when you vote and the substance of that contact so that everyone has the same information when they are voting on a particular application.

HOGGATT Do we have an obligation to tell that person who is attempting to contact us that this will be disclosed?

DICKGRAFE I think you can do that and probably would be prudent to do. You could say we can have this conversation but I will bring up that we had this conversation during the meeting so that everyone is on the same table and playing field with the same information.

DICKGRAFE Voting concerns, in the second part of the blue memo that spins into the conflict of interest, as board members, it is your duty to vote in cases where it is appropriate for you to vote. There may be situation where you have a conflict of interest; if you are a developer of an adjacent corner, you have an ownership interest in the property, for example in the past we have had architects who were on the board, if their firm were here appearing on variance then they would need to recues themselves. The process to do that is you indicate to the board that you have a conflict then separate yourself from the board so you do not actually involve yourself in the discussions. Then you do not vote. If you do not declare the conflict and chose not to vote the bylaws and the city ordinance will count your silence as an affirmative vote. I know we have had questions about that. Now I will talk about the Open Meeting Act. You need to be cognize about how many people from the board are with you when you are discussing something. Three or more members of this board constitute a quorum. It takes four votes for the board to pass something. If you have a situation where either after the meeting or before the meeting, someone says have you looked at this? Emails are another big problem. Staff can send an email out to the board saying, I need to provide you some information. Then a flurry of e-mails will go back and forth, about if it is a good thing or is it a bad thing? You need to be aware that before and after the meeting or corresponding by email about something, remember that you are subject to the open meeting act that you disclose what was shared in the open. You need to remember that you are subject to the open meeting act and you can be fine. The board can go into executive session, if you have a legal question. That is on page two of the open meeting and it tells you how to do that and under what circumstances you can do it. But generally for this board, the only time I can foresee you going into executive session is for attorney client privilege information you need to ask. It has to be a legal question or how this is going to proceed. You recess the meeting. You do not adjourn it. You make a motion that has to say the purpose you are going for and the amount of time you will be out and when you plan to return. It is important that if you go into executive for legal advice that you an attorney there. There has been instance where they try to do this and an attorney was not present. The other issues are really not pertinent. This board employee and employer

situation, confidential information those issues are not going to be implacable. I know that is a nutshell version. I am here to answer question now as we go along.

FOSTER Looking back to what the member had discussed before. Looking on page 2 of the zoning appeals in the paragraph in the middle, it says that a variance can not be granted and so forth, it refers to when complying with a particular subject that is inconvenient or more expensive. I am glad to see that it is in there. If you recall we had a discussion about 4 or 5 years ago, this was in regards to a member feeling that what we had do equity. In other words, his point was we had to be fair. We are all under due process here to be fair and impartial but we do not owe anyone anything. That was the line of discussion several years ago. That was his feeling.

HOGGATT What we have here is fine. However, we have staff over there that make recommendations. We do have someone who will let us know there may be a problem or that we have to be careful. Do you do that?

DICKGRAFE That is probably me.

MCNEELY Or are you referring to our staff recommendation as a part of our staff report?

HOGGATT The staff recommendation and reports do you take those into consideration and if you do and you think there could be a problem, Do you contact our attorney Sharon and say what do you think? So when you recommend them to us, we do not walk in getting blindsided.

MCNEELY If staff has any legal question on an item, we will absolutely go to legal staff. The biggest issues we see with variances is does the variance request truly meet the 5 criteria and the hardship of the 5 criteria to address is whether or not there is a hardship upon the applicant that the standards of the zoning code or sign code would impose upon the applicant and is it the kind of hardship that the applicant did not bring upon himself. Is it a truly unique hardship that would warrant the variance? We give our best analysis on the matter. Granted some of these can be slightly subjective issues and different people are going to have different prospective. If we have questions, we certainly go for legal advice. The applicant has his opportunity to state why he thinks he request meet those 5 criteria. Should any adjacent property owner feel that it is a negative affect upon them, they are notified and free to come and give their prospective on it. We do analyze each variance on the 5 criteria.

HOGGATT Do you feel you covered Mr. Foster view on equity?

McNEELY Yes.

DICKGRAFE The board doesn't and shouldn't rubber stamp staff's criteria or even their conditions. I will pop up most of time if you do not want to go with staff recommendations. Meaning that we need to make certain supports what you all are deciding as oppose to we are going to deny it and we are done. But the City can appeal that decision as well as the applicant. We go back to the record and make sure that you deal with all five of the factors, or the one or two factors, you do not believe are met in any particular case. I may disagree with you but I cannot tell you what to do but I can tell you how to do it.

FOSTER If we see things that do not work well in the regulations, I think we need to be able to feed it back to staff because they may not know. A good example was the case with the traffic site triangle. That would have been a good one for legal.

FOSTER Mr. Greenlee had to leave at 3:00 PM. Sharon have you been to the MAPC or had any occasion to go?

BLICK Departs hearing.

FOSTER Are we losing our quorum? Do we have a motion to adjourn?

DICKGRAFE Yes.

ANTHIMIDES I move to adjourn meeting

HOGGATT Seconded. 2:58pm