

**BOARD OF ZONING APPEALS OF
EVANSVILLE AND VANDERBURGH COUNTY**

**Regular Meeting - City Council Chambers - Room 301
Administration Building - Civic Center Complex
Evansville, Indiana**

June 16, 2005

ROLL CALL

Mr. McCarthy: I would like to call the June 16, 2005 meeting of the Board of Zoning Appeals to order. Will the secretary please call the roll?

MEMBERS PRESENT

Derek Dunigan, Alan Groves, Roger Herrin, Erika Taylor, Wayne Washington, Burkley McCarthy, Jr.

MEMBERS ABSENT

Bill Harrison

AREA PLAN STAFF PRESENT

Bradley G. Mills, Executive Director; Beverly Behme, Zoning Administrator; Donna Holderfield, Zoning Enforcement Officer; Joe Harrison, Jr., Counsel.

APPROVAL OF MINUTES

Mr. McCarthy: May I have a motion to approve the minutes of the May meeting? (Upon unanimous voice vote, the minutes of the May meeting are approved.)

Mr. McCarthy: I would like to welcome you on behalf of the Board of Zoning Appeals and the staff of the Area Plan Commission. The Board of Zoning Appeals is an appointed seven member Board established by State Legislature. It is given the responsibility to hear and act on all appeals, requests for variances from the zoning code and establishment of special uses. Since there are seven members of the Board of Zoning Appeals, to establish a quorum, we must have four members present in order for a petition to be approved or denied. If you do not have four votes to either approve or deny the request, you have the opportunity to go before the Board the next month and be heard again. The denial of a petition for a variance, special use, or an appeal by the Board of Zoning Appeals or the withdrawal of such a petition by the petitioner shall prohibit the Board of Zoning Appeals from hearing the petition for a variance, special use, or an appeal for the subject property or a part thereof for 12 months from the date

of the denial or withdrawal. An exception may be made upon unanimous vote of the Board of Zoning Appeals. In granting a variance or special use, the Board may set any conditions, requirements or limitations that it deems necessary and which are appropriate to implement the principles and purposes of the zoning ordinance. The Board keeps minutes of official action of its proceedings. These minutes and files are public records and are kept in the Area Plan Commission office in Room 312 of the Civic Center Complex. When you come before us, we ask that you state your name and address into the microphone, since everything is recorded and kept as record. The next meeting of the Board of Zoning Appeals is Thursday, July 21, 2005 at 4:00 p.m. in Rom 301 of the Civic Center Complex.

This Board, which by State law, is a quasi judicial body that cannot be contacted by the public prior to the Board of Zoning Appeals hearings, has jurisdiction over two types of petitions. One is special use and the other is variance. Neither of these categories is a rezoning. They are special waivers or special conditions that this Board has authorization to grant to the petitioner. A variance is an application to waive or modify certain requirements of the Zoning Ordinance. It is not a rezoning of the property. In order to receive approval, the following criteria must be satisfied.

The conditions necessary to grant a variance are summarized as follows:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

In our review of variance requests, the Zoning Code [Section 15.153.164(B)] establishes the criteria that must be applied to each petition. The Code specifically requires that these criteria must all be met for a variance to be granted.

The second category that we have before this Board would be special uses. Certain uses are necessary to the life and economic health of the community. But they have characteristics of the operation that do not readily permit classification in the usual residential, commercial or industrial districts. Special uses are secondary classifications. They are not rezonings. In order for a special use to be approved, the following criteria are used:

1. whether the specific site is the appropriate location for the use;
2. whether the use, as developed, will adversely affect the surrounding area;

3. whether there will be a nuisance or a serious hazard to vehicles, pedestrians or residences;
4. whether adequate and appropriate facilities will be provided for proper operation of the use;
5. whether the use is in harmony with the Evansville and Vanderburgh County Comprehensive Plan; and
6. whether the use is essential or desirable to the public convenience and welfare.

The Board of Zoning Appeals approval or modification of a special use classification may include whatever reasonable conditions, limitations, or temporary uses necessary for the protection of the public interest.

To protect public interest and to ensure compliance with requirements to be included in the site plan, the Board of Zoning Appeals may require whatever evidence and guarantees are necessary to assure compliance with conditions, limitations, and temporary uses.

The following petition will not be heard this evening.

Docket No: 2005-35-BZA Robert & Connie Steckler 1910 N. Denby Avenue
CONTINUED TO JULY BECAUSE OF IMPROPER NOTICE

If you are here on this petition, you may wish to leave at this time. Now, let's move on to the first petition on the agenda.

Mr. Joe Harrison: Mr. Mills, on all petitions tonight, do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Mills has been sworn in.)

OLD BUSINESS

Docket No: 10-2005-APC Applicant: The Korner/Richard Jobe
Common address: (Complete legal on file.) 3911 Broadway Avenue
Nature of Case: Applicant requests a special use for a parking lot.

AND

Docket No: 2005-31-BZA Applicant: Richard Jobe
Common address: 3911 Broadway Avenue
Nature of Case: Applicant requests relaxation of hard surface parking lot requirement to allow gravel access drive and parking area for a period of one year.

Mr. Mills: Richard Jobe is requesting special use # 10 approval and variance approval for his property located at 3911 Broadway Avenue. Currently, Mr. Jobe has a 3003 sq ft retail building on a 1.9 acre site located on the north side of Broadway Avenue, between Tekoppel and Cole Avenues. He has changed the use of the market/convenience mart on this site to a party house/meeting house: "The Korner". This petition was continued from last month's meeting to allow satisfaction of notice requirements. Mr. Jobe has opened his business at this location with an agreement for shared parking with the adjoining barbeque business. This request for special use and variance approval will allow Mr. Jobe's business to provide its own parking. The change in occupancy of the building required an increased number of parking spaces to comply with minimum parking requirements. A party house/meeting house requires 0.5 parking spaces per person of the building capacity. The 175-person capacity building requires 88 parking spaces. The previous retail use of the site required only 17 spaces. Mr. Jobe submitted plans for the expanded parking area for the Korner for review by Site Review Committee on April 11, 2005. The expanded parking area extends into adjacent R-1 zoned property owned by Mr. Jobe, requiring SU-10 approval for a parking lot in a residential district. The variance is a request to allow the SU-10 parking area to remain gravel for a period of one year. The parking lot on the commercial site is paved. Approval of special use and variance is required to facilitate the proposed new parking area for the party house. The special use and variance require separate votes. The special use is the first vote.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. McCarthy: Are there any remonstrators? (None.) We will vote on the special use first. Is there a motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Dunigan, Mr. Groves, Mr. Herrin, Ms. Taylor, Mr. Washington, Mr. McCarthy
Nays: None

There being 6 affirmative votes, Docket No: 10-2005-APC is approved.

Mr. McCarthy: Now, for the variance. Are there any questions? (No remonstrators present.)
Motion for approval, subject to a one year time limit? (Motion was made and seconded.) Roll call.

Ayes: Mr. Groves, Mr. Herrin, Ms. Taylor, Mr. Washington, Mr. Dunigan, Mr. McCarthy
Nays: None

There being 6 affirmative votes, Docket No: 2005-31-BZA is approved.

SPECIAL USE

Docket No: 12-2005-APC Applicant: Central United Methodist Church
Common address: (Complete legal on file.) 307-317 Mary Street
Nature of Case: Applicant requests a special use for a parking lot.

Mr. Mills: Central United Methodist Church is requesting special use # 10 approval for their property located at 307-317 Mary Street. These vacant residential lots are located on the east side of Mary Street, mid block between Franklin & Michigan Streets. The church is located adjacent west across Mary Street from this site. This petition was continued from last month's meeting to allow satisfaction of notice requirements. The church's submitted site plan indicates a proposed new 40-space parking lot is planned for this vacant site, with two access drives on Mary Street. Compliance with access and parking will be addressed by Site Review Committee upon submission of plans for the site. This is a request for SU-10 approval to allow installation of a new auxiliary paved parking lot for Central United Methodist Church.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Romain has been sworn in.)

Mr. Romain: Bob Romain.

Mr. McCarthy: Are there any questions? Are there any remonstrators? (None.)
Is there a motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Herrin, Ms. Taylor, Mr. Washington, Mr. Dunigan, Mr. Groves, Mr. McCarthy
Nays: None
There being 6 affirmative votes, Docket No: 12-2005-APC is approved.

NEW BUSINESS
VARIANCES

Docket No: 2005-36-BZA Applicant: Gerd Gregory Ellis
Common address: (Complete legal on file.) 5713 N. New York Avenue
Nature of Case: Applicant requests relaxation of zoning code to allow accessory structures to be larger than the residence for construction of a porch addition to the garage and a storage shed.

Mr. Mills: Gerd Gregory Ellis is requesting variance approval for his property located at 5713 N. New York Avenue. Currently, Mr. Ellis has a 912 sq ft residence and a 864 sq ft detached garage a 0.25 acre lot. He is proposing construction of a new 288 sq ft porch addition to the garage and a new 192 sq ft storage shed. Mr. Ellis obtained permit approval (#050586) on April 6, 2005 for a new detached 864 sq ft garage. This is a request for variance approval to allow a porch addition and a storage building addition to this new garage. With the addition to the accessory building on the site, Mr. Ellis will have a 912 sq. ft. residence and a 1,344 sq. ft. accessory structure on the site. Accessory buildings in residential districts may not be used as dwellings and may be used only for personal use; any retail, service, and storage uses not for the residents of the site require commercial or industrial zoning classification. This is a request for relaxation of the zoning code to allow accessory structures to be larger than the residence for construction of a porch addition to the garage and a storage shed.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Ellis has been sworn in.)

Mr. Ellis: Gerd Gregory Ellis, 5713 N. New York Avenue.

Mr. McCarthy: Do you have anything to add?

Mr. Ellis: This is for personal use. My wife and I got married a couple years ago and we need some more space.

Mr. McCarthy: Are there any questions? Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Ms. Taylor, Mr. Washington, Mr. Dunigan, Mr. Groves, Mr. Herrin, Mr. McCarthy

Nays: None

There being 6 affirmative votes, Docket No: 2005-36-BZA is approved.

Docket No: 2005-37-BZA Applicant: Chris and Gail Wolking

Common address: (Complete legal on file.) 812 S. Alvord Blvd.

Nature of Case: Applicant requests relaxation of rear yard setback from 25 feet to 7 feet 7 inches and relaxation of side yard setback from 5 feet to 4 feet 6 inches for a new attached garage addition to the residence.

Mr. Mills: Chris and Gail Wolking are requesting variance approval for their residence located at 812 S. Alvord Blvd. Currently the Wolkings have a 2,138 sq ft residence with a 576 sq ft attached garage on a 0.285 acre lot. They Wolkings are proposing to replace an existing 24' x 24' (576 sq ft) attached two-car garage with a new 35' x 24' (840 sq ft) attached three-car garage. Access to the garage is from a public alley at the rear of the lot. This is a request for relaxation of the rear yard setback from 25 feet to 7'7" and relaxation of the side yard setback from 5 feet to 4'6" for a new attached garage addition to the residence.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Ms. Wolking has been sworn in.)

Ms. Wolking: My name is Gail Wolking, 812 S. Alvord.

Mr. McCarthy: Do you have anything to add to Mr. Mills' comments?

Ms. Wolking: Non.

Mr. McCarthy: Are there any questions? Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Washington, Mr. Dunigan, Mr. Groves, Mr. Herrin, Ms. Taylor, Mr. McCarthy

Nays: None

There being 6 affirmative votes, Docket No: 2005-37-BZA is approved.

Docket No: 14-2005-APC Applicant: Evansville-Vanderburgh School Corporation
Common address: (Complete legal on file.) 1001-1009 Chestnut Street
Nature of Case: Applicant requests a special use for a parking lot.

AND

Docket No: 2005-38-BZA Applicant: Evansville-Vanderburgh School Corporation
Common Address: (Complete legal on file.) 1001-1009 Chestnut Street
Nature of Case: Applicant requests relaxation of 10 foot side yard setback to 1 foot, relaxation of maximum fence height from 3 feet and 6 feet to 8 feet for a new parking lot with security fencing.

Mr. Mills: Evansville-Vanderburgh School Corporation is requesting special use # 10 and variance approval for their property located at 1001-1009 Chestnut Street. They are proposing to construct a new an employee parking lot for Evansville-Vanderburgh School Corporation bus drivers at the southeast corner of Chestnut and Tenth Streets. The proposed new 37-space parking lot has a single, two-way access is planned onto Chestnut. Site Review approved the parking lot at their meeting on April 11, 2005, subject to special use and variance approval by the Board of Zoning Appeals. The variance is a request to relax the side yard setback along Tenth Street from 10 feet to 1 foot and a request to relax maximum fence height to allow an 8-foot security fence around the perimeter of the site. Site plans indicate that green space along both streets will be maintained equal to the setback of the adjacent residences: 8'6" inside the sidewalk along Tenth Street, and 16' inside the sidewalk along Chestnut Street. Screening will be provided adjacent to the residences. The special use and variance require separate votes. The special use is the first vote.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. DeLucio has been sworn in.)

Mr. DeLucio: I don't have much to add to Mr. Mills' statements. I would say that the purpose of this additional parking lot is to provide parking for School Corporation employees and bus drivers. Currently, they are parking on the street or in the back 40. This allows them to provide some security in an area for these cars to park and for employee safety. Marco DeLucio, the attorney for Evansville-Vanderburgh School Corporation.

Mr. McCarthy: Are there any questions? Are there any remonstrators? (None.) Is there a motion for approval of the special use? (Motion was made and seconded.) Roll call.

Ayes: Mr. Groves, Ms. Taylor, Mr. Washington, Mr. Dunigan, Mr. McCarthy

Abstention: Mr. Herrin

Nays: None

There being 5 affirmative votes and 1 abstention, Docket No: 14-2005-APC is approved.

Mr. McCarthy: Now for the variance. Is there a motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Ms. Taylor, Mr. Washington, Mr. Dunigan, Mr. Groves, Mr. McCarthy

Abstention: Mr. Herrin

Nays: None

There being 5 affirmative votes and 1 abstention, Docket No: 2005-38-BZA is approved.

Docket No: 2005-39-BZA Applicant: Ryan Gamblin

Common address: (Complete legal on file.) 232 S. Tunis Avenue

Nature of Case: Applicant requests relaxation of front yard setback from 25 feet to 7 feet, rear yard setback from 25 feet to 18 feet, and side yard setback from 5 feet to 4 feet for a residential addition.

Mr. Mills: Ryan Gamblin is requesting variance approval for his property located at 232 S. Tunis Avenue. Currently, there is a 576 sq ft residence with a 72 sq ft open porch on the 0.08 acre lot. Mr. Gamblin is proposing addition of 688 sq ft to the residence. This is a small, 64' x 53' residential site. The existing 576 sq ft, 4-room residence on this one-half lot site was constructed around 1912, and does not meet the minimum size requirement for a single residence in current zoning ordinances. Mr. Gamblin is proposing an addition to the north side of the residence which will encroach one foot into the 5-foot side yard setback and 18 feet into the 25-foot front yard setback. The proposed new addition is planned to be in line with the established 18-foot rear yard setback. The site plan indicates that parking will be available at the rear of the residence, with access from the public alley along the south side of the lot. This is a request for relaxation of the front yard setback from 25 feet to 7 feet, rear yard setback from 25 feet to 18 feet, and side yard setback from 5 feet to 4 feet for a residential addition.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Gamblin has been sworn in.)

Mr. Gamblin: My name is Ryan Gamblin, 232 S. Tunis.

Mr. McCarthy: Are there any questions? Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Washington, Mr. Dunigan, Mr. Groves, Mr. Herrin, Ms. Taylor, Mr. McCarthy

Nays: None

There being 6 affirmative votes, Docket No: 2005-39-BZA is approved.

Docket No: 2005-40-BZA Applicant: Jackie Crawford

Common address: (Complete legal on file.) 1819 N. Fulton Avenue

Nature of Case: Applicant requests relaxation of front yard setback from 10 feet to 0 feet and corner side yard setback from 5 feet to 0 feet for a new restaurant and bar, relaxation of the setback from a residential lot from 10 feet to 5 feet for parking, relaxation of the number of required parking spaces from 38 to 32 for construction of a new restaurant and bar.

Mr. Mills: Jackie Crawford is requesting variance approval for her property located at 1819 N. Fulton Avenue. Currently, the site has two residences and vacant lots. Ms. Crawford proposes construction of a new 4,560 sq ft restaurant/bar & 30-space parking lot on the vacant areas of the site. The location of Ms. Crawford's proposed new restaurant and bar is on the southeast corner of Fulton Avenue and Uhlhorn Street. The existing bar and apartment that had occupied this site since 1934, was razed in 2005 after fire destroyed the structure. Assessor's records indicate that the old 2,662 sq ft structure which has now been razed housed the Pollock Bar, which occupied 1,146 sq ft of the razed building, a 592 sq ft residential apartment, and 924 sq ft was utilized for storage. Ms. Crawford proposes to construct a new 4,560 sq ft restaurant/bar on the site. The zoning code requires one parking space for each two customer seats for a tavern or bar. One per 3 customer seats are required for a restaurant. Applicant has indicated that a new 30-space parking lot is planned for the new 4,560 sq ft, 100-seat restaurant/bar. This is a request for relaxation of the front yard setback from 10 feet to 0 feet and corner side yard setback from 5 feet to 0 feet for new restaurant & bar; relaxation of the setback from a residential lot from 10 feet to 5 feet for parking; and relaxation of the number of required parking spaces from 38 to 32 for construction of a new restaurant and bar.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Easley: My name is Andy Easley. This is the petitioner, Jackie Crawford. I think the staff

report covers what we would like to do. The former building burned down and they would like to replace it with a more modern structure. It will be a little larger. The previous building was practically on the sidewalk. The new building would be on the right-of-way line. They will have additional parking.

Mr. McCarthy: Are there any questions? How long ago did it burn?

Mr. Dunigan: The position of the new building will allow for good sight lines at the corner?

Mr. Easley: It will allow more than is across the street. Are you familiar with...I gave a blow-up of the drawing that is attached to the staff field report. That concrete block building is out into the right-of-way and that is a right turn. If traffic is westbound on Uhlhorn, they will have a much better line of sight than traffic looking to the north if they were southbound on Fulton.

Mr. Dunigan: There is nothing we can do about an existing building.

Mr. Easley: I understand. But, to utilize the property, they really need the setbacks relaxed. Uhlhorn is not a heavily traveled street. It is a stop sign.

Mr. McCarthy: Before we start the remonstrations phase, I sense there is a little opposition here. I just want to explain the process so nobody is confused. The petitioner speaks first. We give adequate time for remonstrations. Then the petitioner has an opportunity to rebut. Then we take it to a vote. I want to make sure everybody gets a chance to speak. But we would ask that you try to have new information and not go over old stuff.

Mr. Ferguson: My name is Mike Ferguson, 1115 Uhlhorn. You talked about the traffic on Uhlhorn, you have grain trucks constantly. A lot of traffic. It gets backed up. If you take and move that building closer to the sidewalk, you can't see out of it anyway. I go out that way every day. It is hard to see as it is. But when they had the bar before, they had a big sign out there and it was right in the view of the cars. Sure people from opposite ways can see the traffic. But when you are this corner, you can't see down this way. The other concern I have is about the parking. I live about the third house. We can't even go anywhere and get our parking spots back. I know it is public property. The noise, the karaoke starts at 10:00 at night. I have four kids that can't sleep. They say they can soundproof the building. Then you have the fighting, the drinking. They get out there in the parking lot and fight. One night, they had 15-20 of them fighting each other. The police were called. I raise four grandkids.

Ms. ?: I am the pastor at Asbury United Methodist Church, which is on the northwest corner of where they want to build. The green space is the thing that is disturbing me because I walk early in the morning every day and that is one of the hardest corners to get across. I know the Westside Nut Club is on the opposite corner and I know that building is right at the sidewalk.

There has been many times when I have come in the car going west to try to get across Fulton to my house, and I have to go to the right and past Cedar Hall School in order to come back because the traffic is so heavy. That is one of my concerns. I walk that too when the children come across the street. It is very difficult for the cars coming west to see what is around that corner. That is my major concern. Plus, the green space, the five feet of green space on Uhlhorn and the 10 feet of green space on Fulton where it faces. I think that should be adhered to because it is a really difficult situation at that corner.

Ms. Wilson: My name is Sue Wilson. I live at 1729 N. Seventh Avenue. I am President of the CHAIN neighborhood. My concern is what these other people have spoken, the green space, the traffic. Fulton Avenue is a raceway anymore since they widened it. It is a very dangerous corner. A green space is really needed.

Ms. Ferguson: My name is Ethel Ferguson. I live at 1115 Uhlhorn. I do have a problem with it. The traffic on Uhlhorn is really bad. There are school buses that come down Uhlhorn. Traffic is backed up constantly during the day. The noise is very bad. You get woke up at night. The kids are afraid to go back to sleep with all the yelling and fighting outside. We have had trouble with people intoxicated getting in our cars. I have it on tape. And you can't see to get out the way it was. You can't see the cars coming from the south to the north because of the building. I know for a fact of two wrecks. One was involved with my son. I never received a notice on this meeting at all. I live across the street from where it is at. The only way I found out about it is Linda ? called me yesterday. Thank you.

Mr. McCarthy: Anyone else who cares to speak? Are there any questions?

Mr. Easley: We are asking to make the building five feet wider and 10 feet longer because of the problems with the parking in the back. It is going to be further back from the curb than the other building was, considerably. The other building was over the right-of-way line almost to the curb. That will improve the sight distance. The property is properly zoned and it was used for many years. It was a grandfather.

Ms. Crawford: We are not asking to get closer to the sidewalks. Mr. Ferguson remarked that he didn't want it closer to the sidewalks. We are wanting to go back in the exact same spot as the prior building. He also commented about karaoke. We did karaoke weekends only so there wasn't any problem as far as keeping them awake. I have been involved with this since last year. I recently purchased it. I felt I cleaned it up tremendously. The prior owner had renters in the house on Fulton, which were unbelievable. Yes, the cops were called constantly. But that was before my time. We did a lot of barring of people who attempted to cause any problems. We tried to make it a friendly place to go without any trouble. Everybody we barred, we barred for life.

Mr. Dunigan: On the photograph, which buildings are no longer there?

Ms. Crawford: That building is completely gone. The house to the right is the one on Uhlhorn. The one on the left is the one on Fulton.

Mr. Mills: Mr. Easley, how far is the curb from the right-of-way line at that location on Fulton?

Mr. Easley: It is drawn to scale. It is scaling nearly 15 feet. It is a 100 foot right-of-way.

Mr. Mills: What would you say the old building was placed from the curb?

Mr. Easley: I didn't have a chance to survey the old building. But looking at this aerial photo, it was over the right-of-way on Uhlhorn and it may have been over a little on Fulton.

Mr. Mills: And that was because the right-of-way was acquired after the building was there and pushed out?

Mr. Easley: It could very well be, or poor building layout. I think that is an old right-of-way. It looks like it is awfully close to the sidewalk, closer than we are going to have it.

Mr. Herrin: Mr. Easley, you made the comment that if you didn't seek the variance, how much smaller would the building be?

Mr. Easley: We would lose 10 feet east and west and five feet north and south. That is a lot of square footage. It is not feasible to scoot the building further south. Up and down Fulton and other streets on the west side, I see a lot of houses just like that. That Nut Club building across the street, that is not a very old building. They surely got a zoning permit to build that, and they are over the right-of-way line. We are not asking to go over the right-of-way line. We are asking to go to the right-of-way line on a commercially zoned property to utilize it. It is going to be a hardship if we can't do it. You just have to approach such intersections, and they are used by local people primarily who get used to them and know that the sight distance isn't the greatest. I go down to where Mill Road T's into N. Kentucky Avenue. There is a high bank there that you can't see 20 feet hardly till you get your nose out there, not that I am advocating such construction. But there is a lot of places around town. This has been here for years. I would venture to say it is probably not classified as a highly dangerous intersection.

Mr. Washington: What would be the impact on the project if you went back to the same footprint?

Mr. Easley: Well, it will cost them a lot of square footage.

Ms. Crawford: If we had to reduce it back, I am trying to make an improvement to the neighborhood. I would like to not target so much bar/tavern. I would like to get a family room, restaurant and improve the neighborhood. I would have to start over on it.

Mr. Easley: The building plans are drawn. We were anticipating approval. It is a fire rebuild, which is considered somewhat of an economic hardship. I would rather they not have to make any more of a hardship.

Ms. Crawford: I would have to go back to square one and move everything around and reddecide. But I am trying to change what it was and make it better for the neighborhood.

Mr. Groves: There is currently a sidewalk on Fulton and Uhlhorn from the building?

Ms. Crawford: Yes, it is a newer sidewalk. In between the original building, before it burned, there was the green space. So we had that. We just won't put it back in the same spot. So there will be the green space in the front.

Mr. McCarthy: Any other questions? Is there a motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Groves, Mr. Herrin, Ms. Taylor, Mr. Washington

Nays: Mr. Dunigan, Mr. McCarthy

There being 4 affirmative votes and 2 negative votes, Docket No: 2005-40-BZA is approved.

BUSINESS MEETING

Mr. Joe Harrison: You have on your desks proposed Findings of Fact and Determination regarding the St. Charles Tower special use permit application that was denied at the last meeting on May 19, 2005. We didn't take a vote on the variance since the special use failed. It is necessary under State law to prepare findings of fact and a determination based on what took place. We have done this in the past on denials of a special use or variance. A lawsuit has been filed by St. Charles Tower. I would ask you to have a motion to approve the findings as submitted.

Mr. Groves: I hate to nitpick, on #22, bottom line. Am I reading it wrong or should that not say "could not accommodate the proposed cell tower request"?

Mr. Joe Harrison: It should say "could".

Mr. Mills: I think you could read that either way. They didn't prove to us that it could and they didn't prove to us that it couldn't. They just said this was a better location for them.

Mr. Joe Harrison: I could have done it either way. There are some comments made by the remonstrators who testified in the hearing.

Mr. McCarthy: Do we have a motion for approval of the findings of fact? (Motion was made and seconded.) Unanimous voice vote. Upon unanimous voice vote, the findings are approved.

Meeting adjourned.

Burkley McCarthy, Jr., Chairman

Attest:

The undersigned secretary certifies that the foregoing are minutes and not intended to be a verbatim transcript. Audio tapes of the proceedings are on file in the Area Plan Commission office.

Bradley G. Mills, Executive
Director/Executive Secretary

Karen Yokel, Transcriber