

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

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

May 19, 2005

ROLL CALL

Mr. McCarthy: I would like to call the May 19, 2005 meeting of the Board of Zoning Appeals to order. Will the secretary please call the roll?

MEMBERS PRESENT

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

MEMBERS ABSENT

None

AREA PLAN STAFF PRESENT

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

APPROVAL OF MINUTES

Mr. McCarthy: May I have a motion to approve the minutes of the April meeting? (Upon unanimous voice vote, the minutes of the April 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, June 16, 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 six 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;
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property;
4. The variance is not a variance of the use of the property;
5. The property is not located in a Planned Unit Development; and
6. The need for the variance is not created by the applicant.

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 petitions will not be heard this evening.

Docket Nos: 2005-31-BZA & 10-2005-APC Petitioner: Richard Jobe 3911 Broadway
Docket No: 12-2005-APC Petitioner: Central United Methodist Church 307-317 Mary St.
CONTINUED TO THE JUNE MEETING BECAUSE OF IMPROPER NOTICE

If you are here on any of these petitions, 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
VARIANCES

Docket No: 2005-23-BZA Applicant: James K. Grigsby
Common address: (Complete legal on file.) 25, 31, 33 Washington Avenue
Nature of Case: Applicant requests relaxation of front yard green space from 25 feet to 0 feet, relaxation of maximum width of access drive from 20 feet to 31 feet, and relaxation to allow 2 curb cuts within 112 foot of frontage for gravel front yard parking areas.

Mr. Mills: James Grigsby is requesting variance approval for the properties located at 25, 31, & 33 Washington Avenue. Currently, Mr. Grigsby has a 1,388 sq ft (2-story) residence and a 220 sq ft shed on a 0.365 acre site. He is proposing to maintain a gravel parking area and access drives installed without permits in the front yards of the three residential lots. This petition was continued one month by the Board of Zoning Appeals. This site is located on Washington Avenue between SE Sixth Street and Parrett Street. Mr. Grigsby was contacted by Area Plan Commission staff after complaints were filed regarding the gravel parking and access installed in the front yards at this site. With the exception of permitted driveways, the zoning code requires 100% green space in all required front yard setbacks. Parking is not permitted in required front yard setbacks.

Comments from City Engineer Pat Keepes: "Access to properties along this section of Washington Avenue is provided through alleys behind the properties. There are few, if any, curb cuts on Washington Avenue. It would be the recommendation of this office that no new curb cuts be permitted. If any, there should be no more than one (1), and the width should be limited to the maximum for a residential lot. Any concessions beyond that would set an undesirable precedent." Comments from Evansville Urban Transportation Study: "EUTS supports the use of alley access to required off-street residential parking as this does not produce additional points of conflict for the street traffic. If access to Washington is granted, it should be limited to one access point of standard residential width." Mr. Grigsby has met in person with City Engineer Pat Keepes and myself, and the City Engineer has indicated that only one curb cut will be granted by the Board of Public Works for this site, and that this curb cut must be installed to minimum City right-of-way access standard and at a width of no more than the 20-foot maximum allowed for residential use. This is a request for relaxation of the front yard green space from 25 feet to 0 feet, relaxation of the maximum width of access drive from 20 feet to 31 feet, and relaxation to allow 2 curb cuts within 112' of frontage for gravel front yard parking areas.

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. Grigsby: My name is James Grigsby, 31 Washington Avenue. INAUDIBLE PORTIONS. The only reason I did all of this was to make it easier for us. I almost got hit twice. So I went ahead and put the gravel on the front lawn to make it easier and safer for me. INAUDIBLE...I didn't even know I had to have a permit but I went ahead and go along with the process and try to make everybody happy. The other thing is, I requested two driveways because INAUDIBLE...Hopefully the City will fix the part of that curb that has been damaged. It was damaged before I ever bought it. INAUDIBLE PORTIONS...

Mr. Mills: Do you want to address the drawing you submitted to us and ask for a revised request. I believe you wanted a request of the one driveway curb cut.

Mr. Grigsby: I went down to the Area Plan and did some changing on the diagram. I eliminated it down to one. There is a little path in front of the sidewalk which would be gravel about four feet instead of a concrete sidewalk. INAUDIBLE...

Mr. Mills: May I summarize it for you? As I understand it, in discussing it with Mr. Grigsby today, he is modifying his request to be a request for one 20 foot curb cut on the right side of the drawing. He is going to have a gravel sidewalk from that along the front of his property. That is what he is wanting to modify it to. With that, you are willing to remove the request to reduce the green space from 25 feet to 0. The green space will still be 25 feet, correct?

Mr. Grigsby: Yes.

Mr. Mills: So the request would be to have a four foot gravel sidewalk in the front yard. He can get a permit from the City Engineer for the driveway. So the variance would be just to allow the gravel sidewalk along the front of his house.

Mr. Grigsby: Not a concrete sidewalk, a gravel sidewalk.

Mr. Mills: Yes, we understand that.

Mr. Grigsby: INAUDIBLE...I don't think that is a proper role model for anybody to ...leadership in the neighborhood. I don't feel comfortable with that kind of leadership.

Ms. Andrews: Linda Andrews, 31 Washington Avenue. We took your recommendation to go to the neighborhood association to work out a compromise. Mr. Grigsby was unable to attend because he couldn't get off work. So I attended on his behalf. We tried to reach a compromise but the impression I got from the neighborhood association, most of the neighbors that were there were not aware of what we were talking about. I tried to explain to them that we are willing to compromise just like the drawing. I explained to them that we will

make it all green in front of the house and the City Engineer will approve one 20 foot curb cut and we will remove the gravel from the front in green. But my problem was that Mr. Cook wasn't helpful or very respectful to me. So we didn't come up with a solution. Mr. Cook said to let the Area Plan Commission take care of it. I am supposed to attend the next association meeting next Tuesday. If the neighbors have any questions, I will be happy to explain. But we did go by your recommendation. It just wasn't very successful. Thank you.

Mr. McCarthy: I appreciate you making the effort. Are there any remonstrators?

Mr. Groves: On the gravel sidewalk, it is already gravel now?

Mr. Mills: Yes.

Mr. Groves: So it is just in lieu of grass and/or concrete?

Mr. Mills: Yes. He wants to have a gravel area that runs along the front of the house parallel to the front of the house for him to walk on from his driveway around the house. So that would be 20 feet of grass from the lot line and then a five foot gravel area and then he might have some landscaping and then his house.

Mr. Cook: My name is Fred Cook. I am here on behalf of the Goosetown Neighborhood Association. On April 26, Mrs. Grigsby and the zoning issue was placed on the agenda of the association's meeting. It was brought up that this zoning is out of character with the rest of the area and what affect it would have on the front door pride program. Mrs. Grigsby tried to take control of the meeting, which got out of control. Marcia Cook, President, had to adjourn the meeting and Officer Paul Kirby of the Police Dept. witnessed this. Several days later, by ways of phone calls and some members meeting, we agreed that, because of these individuals are handicapped, we agreed to one curb cut with the driveway along the side of their home. A Mrs. Nutt, who was there on behalf of the Grigsbys, stated that they planned to place Florida swamp grass across the front of the lot to shield the view of the parking. At which time, I reminded them this would constitute a code violation since anything over nine inches tall that does not bloom is considered a weed. Since pictures say a thousand words, I took pictures of this area. What amazed me is that Mr. Grigsby stated at the last meeting that he almost got hit by a car because he couldn't hear or see and needed the zoning because of this problem. But yet he seen me down the street taking pictures and shouted obscenities at me. **INAUDIBLE...**and made it very clear Doug ? at DMD that if they started attending our meetings, and since they were handicapped, that we would have to provide a translator and pay for it out of our funds. We ask that when you make decision on this zoning, that you keep in mind the impact on the front door pride program and what it will do to the character of Washington Avenue.

Mr. Jarboe: My name is Keith Jarboe, 815 S.E. Third Street. I spoke last month. The one thing I mentioned was the people felt like as long as the front was a green space, they could live with the drive. However, this came about, it appears this is what has happened here. They have relented and they will do some green space which I think will work. The people I talked to have expressed concerns to me over this in the past, they have indicated they thought that was a good solution and it work very well. So, as long as it is a green space, it is grass, and blends with the neighborhood, and I would encourage one curb cut, and green space in the front. Thank you.

Mr. McCarthy: Mr. Grigsby, do you have any additional comments?

Mr. Grigsby: I wish the neighborhood association would have confronted me the first time instead of going over me. INAUDIBLE....I would like to get this over and get on with my project. They have held me back too long.

Mr. McCarthy: So the variance request has been reduced to one curb cut and the green space reduced from 25 feet to 20 feet and the addition of a five foot gravel sidewalk.

Mr. Mills: Yes.

Mr. McCarthy: Do I have a motion for approval? (Motion was made and seconded.) Roll call.

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

Nays: None

There being 7 affirmative votes, Docket No: 2005-23-BZA is approved.

Docket No: 2005-11-BZA Applicant: Estate of Ruth Mattingly

Common address: (Complete legal on file.) 3600 Detroy Road

Nature of Case: Applicant requests relaxation of zoning code to allow accessory structures larger than the residence for construction of an addition to an unattached garage.

Mr. Mills: Tim Ambridge is representing the Estate of Ruth Mattingly and this request for variance approval for the property located at 3600 Detroy Road. Currently, this property has a 1,152 sq ft residence with a 480 sq ft attached carport and a 576 sq ft detached garage on a 3.7 acre parcel. The Mattinglys are proposing a new 3,200 sq ft addition to the detached garage. This petition was continued from the March meeting because of a "NO ACTION" (3

yes - 2 no - 1 abstention) vote by the Board of Zoning Appeals. The petition was continued at the April meeting at the petitioner's request. Residential accessory buildings in Agricultural districts may not be used as dwellings and may not be used for any commercial use. Commercial vehicles may not be parked or stored in Agricultural districts. This site is located in German Township on Detroy Road. With the construction of the new accessory building on this site, the Mattinglys will have a 1,792 sq. ft. main structure (house and carport) and a 3,776 sq. ft. accessory structure. This is a request for relaxation of the zoning code to allow accessory structures larger than the residence for construction of an addition to an unattached garage.

Vanderburgh County Zoning Code: "17.08.030 Definitions: "Commercial vehicle" means any vehicle other than private passenger vehicles, designed, intended, or used for transportation of persons, goods, or things." "17.12.100 Commercial vehicle parking. (A) Commercial vehicles and equipment, other than those used in the principal use, may not be parked or stored on property in an A, R-1, R-2, R-3, R-4, R-5, CO-1, CO-2, C-1 or C-2 district. Vehicles designed and intended for agricultural use are permitted in agricultural zoning districts."

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. Ambridge: I am Tim Ambridge. We spoke last month in regard to Mr. Mattingly's desire to build this pole barn on his mother's property. Mr. Mattingly cannot be here tonight. His sister, Dianna Fisher, who is the petitioner, is here to address you.

Ms. Fisher: This property has been in my family for 68 years. It was started by my grandfather, who lived at 4100 Mesker Park Drive, which encompassed our address on Detroy Road and then on to the west past the Hilltop Grove. So we grew up with the majority of the neighbors in the area. The concerns of the neighbors, you will see in the booklet, the building we are proposing is similar to the color of the house. The next thing is we thought maybe if we planted some white pines along the driveway. This would maybe divert it when you look down there. Apparently, the white pines are a fast-growing tree, two to three feet per year. In the minutes, I read there are basically residents in one or two bedroom homes or three and two car garages. The next page is 3500 Detroy Road, the second house east of the property. They have a garage and a building out back. The next one is Mrs. Epley at 3510 which is next to the property. Then we have 3811, which they have an attached garage, another garage out back and a barn. There are six properties across the street. Then we have 3820. They have several buildings behind their home plus the attached garage. The Hardins also have a building out back. Then the Rexing family, they have several buildings behind their home. They we have the Landons at 4216. They also have a building. The next item in the packet is the petition and letters from the neighbors that have no objections to the structure being built.

The signature, they regret signing the original paper. You have a letter from them stating that. The next one is at 3900. They signed it originally also and have since changed their mind. The next one is at 3509. They also wrote a letter stating the same thing. Then 3420. The only questions they had was they did not want it zoned commercial. We were willing to put something on the deed, even though we are not required to. The next four letters are people that are in favor of us. Not that she would like to speak, but Mrs. Arlene Epley is in the audience. She is a neutral party. She does not want to go either way. Mr. and Mrs. Harry Brown, I spoke to him and asked what his concerns were. He said the building size. So I told him about the pine trees and he was very acceptable to that and said it would be fine with him. Charlie Stevens is in the audience. He will answer any questions you have.

Mr. Groves: You mentioned you told one of them about the pine trees. What is the pine tree story?

Ms. Fischer: That's what we are proposing to put down the driveway.

Mr. Groves: To serve as a buffer?

Ms. Fischer: In a sense. We thought it would be something that would be green a lot.

Mr. Bill Harrison: The idea of building a pole barn has never really been an issue here. What has been an issue is the size of the pole barn. Did everybody that signed this know that it was a 40 x 80 x 16?

Ms. Fischer: Yes. In fact, the four that were originally on it,

Mr. Bill Harrison: So you are saying that all eight of these people that signed this petition came over from the other side?

Ms. Fischer: No, the first four.

Mr. Bill Harrison: There were four out of the 27?

Ms. Fischer: There were 27 signatures. That doesn't mean it was 27 homes.

Mr. Bill Harrison: How did the meeting go after you left here last month?

Mr. Ambridge: We tried to compromise with the neighbors. It's my understanding their idea of a compromise was they would let us have 1,200 which is what you can have without the need for a variance. We offered to cut the building in half. They said no.

Mr. Bill Harrison: You offered to cut the building in half?

Mr. Ambridge: It was 40 x 80 and we agreed to build a 40 x 45. But we would still need a variance. INAUDIBLE PORTIONS...But we have some outbuildings that go against that 1,200.

Mr. Mills: The carport counts towards the house. You would take the 1,792 minus the 576. That will get you close to the 1,200 figure.

Mr. Ambridge: We offered 1,600. They said they wanted 1,100.

Mr. Groves: But you haven't amended your request.

Mr. Ambridge: We offered to compromise. But if nobody is willing to compromise,

Mr. Groves: The neighbors aren't voting tonight. So if you were willing to pare down this building, perhaps this Board would be more acceptable.

Mr. Ambridge: I understand that. My client's position at this point was not to amend. Now, she may have changed her mind since then. I don't know. If you will let her finish.

Ms. Fischer: Our backyard neighbor, they would like to address the Board. However, we would like to amend it at this time to be a 2,555 square foot building. It would be a 36.5 x 70, something like that. So then, in the end of this, we have asked that you put a restriction on it that it won't be commercial. We are planting trees to be a buffer. We are reducing it by 645 square feet. So we have done several things to keep the neighbors happy. I understand it is still a big building. But that was what we ended up with. That's all I have.

Mr. McCarthy: Are there any questions of the Board?

Ms. Benedict: My name is Gloria Benedict, future owner of 3636 Detroy Road. I don't have a problem. We will be right behind this. We have 15 acres back there. I don't see a problem with them building there. It doesn't matter what size the building is. I don't see a problem.

Mr. Benedict: I am Jerry Benedict. The south edge of their property is going to face our front door. We don't have a problem with the size of the building they are going to build. I don't want it be commercial. There shouldn't be any other problem. Our front door will look at this building.

Mr. Bill Harrison: Where is your house on the map?

Mr. Benedict: It would be south of where their home is. They have trees everywhere on their property. So if they plant more trees, technically you can't see any of their buildings unless you are from either end of the property or next to them. So we don't have a problem with it. We will be directly affected by it.

Mr. McCarthy: Are there any remonstrators?

Mr. Austin: My name is Jim Austin, 3601 Detroy Road. We are not opposed to an outbuilding. It is the size of the building, 1,300 square feet that we are opposed to. We did try to negotiate last month. We started at 1,790, which was the size of the existing house and the carport. They countered with 2,400. At that point, a neighbor asked a question about the size and we were told that it is either that or a pig farm. That issue was raised last month. Negotiations broke down at that point. Like we said in the past, we are not opposed to the outbuilding, just the size. I understand he is going to plant trees and hide it. I appreciate the Benedicts. But we feel the size of the building will devalue our property. If we had any question that wasn't the case, we would not be here. We are still willing to negotiate. We still have the petition. Mrs. Mattingly talked about four people that changed their minds. We weren't aware of that. There are 15 households on that petition, 27 names. The outbuilding overpowers the character of the neighborhood. At the start of the meeting, you talk about you are here to protect and not allow something that might harm the people involved. This would harm. If you come out and look, you would see. They talked about neighbors that lived west and around the corner. I live across the street. Other neighbors that have spoken live in the same area. They are talking about people that live west and down the road. They would not see it. Thank you for your time.

Mr. Bill Harrison: Was it discussed at your private meeting that they would go ahead and okay a 40 x 40 building?

Mr. Austin: 40 x 40 never came up. What they proposed was 2,400 square feet because I made the comment that it was 75% of what they were proposing. We were not happy with that. 1,600 square feet was never mentioned.

Mr. Claybrook: My name is Bob Claybrook, 3601 Detroy Road, directly across the street from the Mattinglys. Jim Austin pretty much said it all. I think the meeting drug out last month. It is too bad the meeting we had with the neighbors did break down because we probably could reached something. I would really like to see if we could get a vote and get on with our personal lives. Thank you.

Mr. Ambridge: I was in that meeting. Unless my memory is gone, we offered 40 x 40, which is very easy to calculate, 1,600. At which point, we were told no thanks. 1,200 is what they said

we needed. Either I was in a different meeting or somebody heard something differently. But that is not the way it went. Ms. Fischer would like to address the Board in regard to a chart about the various petition signers, who is for and who is against.

Ms. Fischer: It was brought up that everybody was to the west. On the original petition against, one of the signatures was 4520, which is across the highway. But it is way west. It was Tony Bogen. Therefore, they opened it up by going that far. So I only have one copy of this. I would like it back.

Mr. Ambridge: Ms. Fischer has indicated that she would be agreeable to a 40 x 40 building and would hereby amend.

Mr. McCarthy: Do you wish to amend your petition to be 40 x 40?

Ms. Fischer: Yes. We will go with it.

Mr. McCarthy: You will go 1,600 square feet?

Ms. Fischer: Yes.

Mr. McCarthy: We are amending this variance request for the addition of a 1,600 square foot accessory structure, 40 x 40 detached garage.

Ms. Fischer: If, by chance, we decide to go some other dimension but the same square footage, is it allowed?

Mr. Mills: It is at the Board's discretion.

Mr. McCarthy: We have a motion and second for the amendment. Roll call.

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

Nays: None

There being 7 affirmative votes, the amendment is approved.

Mr. McCarthy: Do we have a motion for approval of the amended variance request? (Motion was made and seconded.) Roll call.

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

Nays: None

There being 7 affirmative votes, Docket No: 2005-11-BZA is approved.

Docket No: 2005-18-BZA Applicant: St. Charles Tower/Chris Puricelli

Common address: (Complete legal on file.) 5909 Felstead Road

Nature of Case: Applicant requests relaxation of minimum setback between a telecommunications tower and a residence from 370 feet to 200 feet.

AND

Docket No: 5-2005-APC Applicant: St. Charles Tower/Chris Puricelli

Common address: (Complete legal on file.) 1308 S. Vann Avenue

Nature of Case: Applicant requests a special use for a cellular antenna tower and installations.

Mr. Mills: Krista Lockyear is representing Chris Puricelli and St. Charles Tower and this request for special use and variance approval for the property located at 5909 Felstead Road. St Charles Tower is requesting special use # 15 approval to allow erection of a new 185' monopole telecommunications tower on a 25' x 50' lease area, a portion of the 4.1 acre site currently owned by James Hall and utilized as multiple rental residences. The site is located on the north side of Felstead Road, between Bridgeview & Sycamore Lake Drives. This petition was continued from last month's meeting to allow satisfaction of notice requirements. In April, 2000, new ordinances were passed addressing the placement of communications towers and facilities - Title 17.28.030(J) states: "In addition to all other limitations and provisions contained in the zoning code, any tower permitted with SU 15 approval shall be set back from any residential dwelling, property line of an undeveloped residential district or recorded residential subdivision a distance of two feet for each foot of height of the tower or 300 feet, whichever is greater." The proposed 185-foot monopole cell tower would require a minimum 370-foot setback. Information submitted April 4, 2005 indicated that the nearest residence to the proposed tower was 168 feet. An amended survey and site plan was submitted by the applicant on April 27, 2005. The new information indicates that the tower will be located 200 feet from the residence on the property adjacent to the east, 202 feet from the residence on the property adjacent to the west, and 270 feet from the residence at 5909 Felstead Road, south of the tower on the parent parcel. The residences to the north of the proposed new tower located on the parent parcel on 5909 Felstead Road are not shown on the submitted survey. St Charles Tower is requesting variance approval for erection of a new tower 200 ft from the nearest residence. This is a request for SU-15 approval for a telecommunications tower, and a request for variance approval to relax the

minimum setback requirement between the 185-foot telecommunications tower and a residence from 370 feet to 200 feet. The proposed new tower will require two 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.)

Ms. Lockyear: My name is Krista Lockyear. I am here on behalf of St. Charles Tower Company. I have with me my client from St. Charles Tower, as well as Bob Grant, the attorney from Cingular, and Jason Evans from Ubequitel-Sprint. Both Cingular and Sprint are seeking to co-locate on this tower. Cellular tower law is new to me. Luckily, there is one major act I need to familiarize myself with in order to present this. The Federal Communications Act of 1996, in an effort to support the proliferation of cellular use, gave the federal government and FCC and ability to control the construction of these towers. It doesn't pre-empt the local zoning authority. But it does set forth a method of balancing the concerns of potential neighbors to a tower and the need for the location of that tower. In the Felstead Road case, we certainly have a need. I have passed out packets. The first map shows you the location. The next map colored red, black and green shows the current cellular coverage without that tower that we are seeking to locate. The black is no coverage. Red shows coverage outside, and green is coverage inside the building. The third page is the map showing the coverage with the addition of this tower. Very clearly, this tower is necessary to improve and provide the cellular service for this area. The following page is a letter from the design engineer at Cingular that indicates the area of service and coverage we are intending to increase. This includes Highway 62, Red Bank Road, Middle Mt. Vernon, Boehne Camp, and Broadway, as well as the entire development at Red Bank at the Pearl Drive development. One of the other things this will support is a 9-1-1 antenna. It is my understanding that 9-1-1 antennas are now required on all towers and the majority of 9-1-1 calls are coming in from cellular service, and it is a great public service to allow this to support the 9-1-1 service. Also, a 9-1-1 call coming in on a cellular phone can now be fact to the location via GPS devices. Clearly, this tower is important, not only to Sprint and Cingular, but to the 9-1-1 service to the area. If you look to the back of the packet, there are pictures of the location. It is a heavily wooded site. Most locations around this property, you have a tree line in the close vicinity which forces your line of site straight up. This antenna will not be visible from many areas. Cellular towers will not add any noise to the area. We are not going to bring any additional traffic to the area. In addition to an attempt to address neighbors' concerns, my clients offered to build this tower with stealth technology. It would look like a flag pole. They would paint it to blend in with the skyline and the antennas would not be sticking out on the outside. They would be interior to the pole itself. My clients also offered to put an eight foot privacy fence around the structure at the base of the property to block the view of the equipment. That does not satisfy the neighbors and they still want to speak to you. This Board has approved seven variances with regard to the distance to

a residence from 2000 to 2004, which brought the distance from a required 300 feet down to 68 feet. That was on Covert Avenue. So there is a precedent to allow the variance from a residence. We have the need for the cellular service in the area. Although my clients have researched alternatives, due to topography, due to lay of the land, and availability of sites, this is the location they have determined the only location they can locate this tower to provide the needed service. Accordingly, we ask that you approve this variance.

Mr. Bill Harrison: I am a little confused about this map location. Where is the railroad track in conjunction with your location? It is right off Boehne Camp and Middle Mt. Vernon Road?

Ms. Lockyear: We are off Felstead. If you follow Boehne Camp down south below Middle Mt. Vernon...I am not sure where the railroad tracks are.

Mr. Bill Harrison: Isn't that a subdivision down in there?

Ms. Lockyear: To my knowledge, the closest subdivision is off Bridgeview Drive, which is further south. There are homes on either side of Bridgeview. As you can see from the map, we are not within a subdivision area.

Mr. Dunigan: Your engineers have done all their research and know for certain there is not a tower currently in existence that could be co-located on that would service this area adequately?

Ms. Lockyear: Absolutely. They have investigated for at least eight months other towers in the area, the ability to co-locate and the ability to put this tower in a different location to no avail.

Mr. Dunigan: How many carriers will this tower support at 185 feet?

Ms. Lockyear: Probably three carriers and we have two committed at this point.

Mr. McCarthy: Are there any remonstrators?

Mr. Groves: St. Charles Tower, is that the name of the company?

Ms. Lockyear: Yes. They are out of St. Charles Missouri and have been installing cellular towers in Missouri, Illinois and Indiana, and perhaps more states.

Mr. Groves: So you see the need to get the proper zoning to build the tower and then the customers...

Ms. Lockyear: And then the customers commit. In this case, Sprint and Cingular have worked in conjunction with St. Charles Tower by identifying the need for it in this area. Jason with Sprint has been in contact with my client and they have visited sites to try to find an appropriate location. I am not sure which step comes first. But the need has been coordinated between the three.

Mr. Granham: Bob Granham, attorney with the Pike Legal Group from Louisville, Kentucky. We are regional counsel for Cingular Wireless. I believe many of you have probably seen my boss here before, David Pike, speaking on tower petitions. I will be very brief. Cingular has asked that we be here tonight and confirm that if this application is approved, they will co-locate on this tower, that there is a need for improved Cingular services in this area. We welcome the opportunity to speak. To answer your question, Cingular was independently looking for a site to build a tower. We were happy to learn this application was pending because it eliminates the need for us to build a tower and gives us the opportunity to comply with the mandate of the regulations to co-locate. Thank you.

Mr. Conner: My name is Pat Conner, 6012 Felstead. This is a neighborhood. I can't spell it out more plainly. It is a nice area. It is wooded. But it is our home. It is where we live and put a lot of effort into maintaining something of value. I speak for myself and for some of the residents. I would like to ask that you take into consideration that according to the code of ordinances, 17.28.030 wireless communication facilities that include towers are not permitted in residential districts. I can't state it any more plainly. At the beginning, it was mentioned that if there is no damage done to the surrounding area, then it is something you consider. But I think there is going to be a property value issue. You put a cell phone tower in that area and regardless of where the trees are, the tower is there. It is a 25 x 50 fenced in facility that has equipment in there that surely isn't as stealth as their tower is. That has to make noise. Mr. McCarthy, didn't you say something about a variance cannot be generated by the applicant.

Mr. McCarthy: The need for the variance is not created by the applicant.

Mr. Conner: Does this apply? Is this a situation that is generated by the application for the cell phone tower? It seems to me if they didn't apply for the tower, they wouldn't need the variance.

Mr. Joe Harrison: That is a legal question.

Mr. Conner: It seems to me that the variance itself is needed because of the residences. We like to keep our area the way it is. My wife has Cingular service. It doesn't work very well over there. But that is a small matter. I can change cell phone services whenever I want. I know

there are towers within the properly zoned areas that offer good coverage. I have a cell phone from the company I work for. I get excellent reception. I know that is not reflected in the maps. But according to the master plan, there are places that things go. One of the elements I think is important to the growth of Vanderburgh County is to maintain some integrity in the master plan and abide by the zoning codes. I would appreciate your consideration and vote down the approval of the tower.

Ms. Barnes: Nancy Barnes, 1015 Felstead Road. I wanted you to take a look at the overhead view because it is very exaggerated as to the distance between Felstead and where this tower will be placed. If you were to come into our neighborhood, Felstead Road is tucked away. Along the way, you would enjoy the best non-motorized treadmill in the area. There is no need for CNN or Oprah as a distraction when you have the trees, squirrels, rabbits, etc. It has been used to enjoy the area. This is the closest subdivision to the site, Sycamore Lake. Many of us have been here all our lives. When you come to the property that Mr. Hall has where the tower will be. The white structure on the right is where the tower is proposed to be. You can see how close that is to the next house. The driveway is not that extensive as the map shows. You will see this tower. The tree line is not a solid tree line. So other neighbors will have a view of it. The trees on the right side, that is where a sign was posted to let the neighbors know about this tower being planned. This is an example of a tower at Hogue and Red Bank, what we may be looking at. I'm sure Cingular will say theirs will look nicer. I can't imagine putting a tower like that in a residential area. We have mature trees in the area but we will see the tower. It will obstruct our view at night if we look at the stars. We enjoy this area. It is a way of life. We pray for a judgment that will use your...

Mr. Herrin: Is this all residential?

Ms. Barnes: Yes.

Mr. Herrin: There is no commercial activity at all in that area?

Ms. Barnes: Not that I am aware of. We understand there are changes in technology. Use of cell phones for 9-1-1 calls is based on that is the only option we have and it is not.

Mr. Groves: I sympathize with your plight, but you have to understand this is the wave of the future. I can imagine about 90 years ago, people were wondering why all these big giant poles were being placed in their front and back yards. It's a little thing called the telephone. At that time, that was the current technology. Now it is cellular technology.

Ms. Barnes: Some time ago, there was technology such as lead paint and asbestos, as well.

Mr. Groves: Are you concerned it is going to emit some sort of...

Ms. Barnes: You can find literature both ways.

Mr. Groves: Do you have evidence today of that?

Ms. Barnes: I have multiple articles on the subject.

Mr. Groves: Then someone higher than this Board needs to be tackling that situation. Our hands are almost tied with this thing. We can deny this permit. But there will be cell towers throughout the world.

Ms. Barnes: I think there are other members that will have additional comments.

Mr. Joe Harrison: There was a comment made regarding the property where the proposed cell tower is to be located. It is in an agricultural district, not residential. Cell towers are permitted in agriculturally zoned districts. I wanted to clarify that.

Ms. Barnes: I believe the ordinance from this Board is that they won't be placed in residential.

Mr. Joe Harrison: No. The property is not a residentially zoned district.

Ms. Barnes: Then the proposal would be to consider the possibility of rezoning then. It is clearly not farming country.

Mr. Joe Harrison: Darn near every property in that area is zoned agricultural, not residential.

Ms. Barnes: Thank you.

Mr. Hofmann: My name is Paul Hofmann. I live at 6011 Felstead Road. Mr. Harrison, when did they change that to agricultural?

Mr. Joe Harrison: The property that is the subject of the tower has probably always been agricultural.

Mr. Hofmann: In 1976, I bought a piece of land, and I came down here to this building to get a building permit and they said there was already a structure there and I couldn't build another structure on that ground because it was zoned R-1.

Mr. Joe Harrison: There are some properties out there that are zoned residential, but there are some that are to the north agricultural, east agricultural, west agricultural and residential to the south.

Mr. Hofmann: I had to get a special permit to agree to tear the house down.

Mr. Mills: With the agricultural zoning, you are allowed to have a residence there. The requirements for residential and agricultural are very similar. However, they are two separate zonings.

Mr. Hofmann: My point is, we have a lot of development on the Lloyd right now. In those areas, they have communications towers and ...INAUDIBLE...that's why I am against it. You made the statement they are going to have them all over the world. But why can't it be another mile north of us on the Lloyd?

Mr. Groves: I think they have addressed that the best they can. It all has to do with the lay of the land and topography.

Mr. Hoffman: INAUDIBLE

Mr. Groves: The very lay of the land keeps you from having a 1,000 foot tower.

Mr. Hofmann: INAUDIBLE PORTIONS

Mr. Groves: This Board has been stressing co-location for years. We have a perfect example now where two or three separate wireless services are going to be using one pole instead of two or three poles. I think that is a good thing.

Mr. Saubier: My name is Eric Saubier, 6001 Felstead Road. This is agreeably probably their best choice to put a cell phone tower. I think we all agree that cell phones are a wonderful thing. They know there are certain people on this Board that, no matter how close the house is, or how much danger it could inflict on the residents around them, they will vote to pass it. They will come up with another choice if you vote this down. There are other options. This is the best option. Let's keep that clear. There are cell phone towers out at USI overpass, about two miles away. Add another antenna to that. 9-1-1 calls guaranteed can reach two miles away to that. I am sure even south of the Lloyd, there will still be areas that they can find that don't mingle in with \$100,000 to \$250,000 houses. I live two houses down. If this goes up, I will move. There are a lot of people like me that do not want this enormous contraption towering above everything. Right now, we took great pictures with leaves on the trees. We have many months with no leaves on the trees. We are going to be forced to stare at this

thing. You have six requirements. First, the approval will not be injurious to the public health, safety, morals and general welfare of the community. This is too close to houses. I love cell phones. I love cell phone towers. But there is a reason there is a 300 foot fall radius for these. You cannot just ignore that. We have houses right next to the thing. Clearly dangerous. Then there are proving cases of health hazards. This is radiation we are emitting here. So even if you ignore the radiation and say these health issues are not legitimate, we still have the legitimate fall problem. There is a 300 foot limit for a reason. Second, the use and value of the adjacent to the property included in the variance will not be affected in a substantially adverse manner. It will certainly affect the property value in the immediate vicinity. It will change with the tower sticking out of the trees. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. The property is residential and the zoning ordinance does not inhibit the use for the current or potential residents of the development. This is a residential area. You might call it agricultural, but people are living there. This is purely residential. The variance is not a variance of the use of the property. This is clearly a variance. This was never intended to have a cell phone tower. Your job is to protect our property and safety. You will be hurting our property and our safety. Smoke stacks, 300 foot towers, they have a place. They don't belong in \$200,000 houses' back yards. Six, you notice I didn't even argue five, because I don't know if it applies. The need for the variance is not created by the applicant. This was brought up before. They need to find a place where they can have a 300 foot safe zone. Pick a different place. They are out there. This is not the best one or the easiest. They think they can come in here, hire a few lawyers, say cell phone towers are the wave of the future, ignore the plea of the residents, put them up regardless, and get whatever the best location, the cheapest location they want. You saw from the picture that is the cheapest, worst looking house on the block. They can pay them dirt to put up a tower there. But it doesn't mean it is their only choice. If you force them to find another place, then we will all be happy. Thank you.

Ms. Hofmann: My name is Elizabeth Hofmann, 6011 Felstead Road. I did a lot of research on what they are proposing. Emissions, I am an RN. I have a great concern about emissions. We can't prove they are going to cause health problems. But there is nothing that says in a few years that they won't. We have a lot of people that live close by. This involves our health. We just built a beautiful screened in porch, 48 x 12, that overlooks all this wonderful stuff. Why do I want to look at a cell tower? Would you want to? These folks get to go home. I don't know who approved zoning Pearl Drive for a cell tower. I will have to look. But it has been approved. So I don't know why they didn't go to Pearl Drive and pursue a cell tower there. Those are the things I want you to consider. June 28, 2004, Red Bank Development, Lot 3, this was the Vanderburgh County Drainage Board. They approved building a tower there. Obviously, they can go there and build their tower. I don't want it there.

Mr. McCarthy: How far is that from the proposed site?

Ms. Hofmann: Maybe a mile. But there are other places they can go. Thank you.

Mr. Marx: I am Marion Marx. I live next door to this piece of property. I have to differ with their measurements. I measured them myself. They are 168 feet from my building. From the building to the left of me, they are 184 feet. This piece of property we are talking about, four acres, has seven houses on it. On his property, one house is 240 feet. Then there's a house behind it that will be 178 feet. So this is all quite a bit different than what they are saying. That property is not kept up very well. That's why the neighbors are so upset. If he did things in a proper way, he wouldn't have this problem trying to get this rezoned. I have lived there 18 years and try to get along with all my neighbors. They approached me on this property to put the cell tower. I'm like everybody else, I would like to have the money because that is what it is all about. But my neighbors talked to me about it and I have to go with them. That is why I am not for it. Thank you.

Ms. Straub: My name is Carol Straub. I live at 5915 Felstead, right next door to this. I love my cell phone. I also love the land I live on. I have been there 13 years, built my house on this land. I looked a long time for this land because it is in a good, private area. As Marion said, the man who owns the land next door that wants the tower, he doesn't live there, and he doesn't care about the property because, as you can see in the pictures, the yard where this tower wants to go is the yard that I maintain for the people who rent the house because none of them can afford a big enough tractor to mow all this grass. When trees go down, I go over there and cut the trees up because no one takes care of this land. I'm afraid if they put a tower there, that will be something else I will have to mow around or look at weeds. I would appreciate it if this tower not go there because I have a 10 year old and we love to go in the yard and play. I think if you put the tower there, we won't go and play outside anymore because of the aspect that the tower may fall on us. Our lives are more important than that. It would be a good possibility that I would move if this tower goes up. It is a residential area. Let's keep it residential. I think there are more areas out there to put this tower. If Jim would like to have it, he lives on Middle Mt. Vernon Road, maybe we could put it on his property and build it a little taller. Thank you.

TAPE CHANGE

Mr. Padget: My name is Fred Padget, 2345 Skyline Drive. I am here representing Westside Improvement Association. We talked about trees being a buffer. But if you look at Pearl Drive, there were a lot of trees back there. They are gone. If you go back and do research, there were promises made that those trees would be there for a long time. My point is, trees do make a buffer, but there is no guarantee they are going to be there for an extended length of time. This is a residential area. In the staff report, it refers to this area as a residential, multi-family area. We know that some of this area is zoned agricultural. But I think you have to look at the reality and practicality of the way things work. There are areas in Vanderburgh County that are zoned in one manner and the land use is completely different. A few months

ago, there were homes on Wabash Avenue. It came before the Area Plan Commission for a rezoning because they were residential, but zoned industrial. There a lot of areas on the Westside similar to that. In fact, DMD is trying to put a program together to reverse some of the blanket zonings that were done years ago to get them back in line with what the real land use is. In this case, this probably was agricultural forever. But it's important that we look at what the real use of the land is, not only what the technical classification is. In this case, it is residential. One of the criteria is to be in harmony with the Comprehensive Plan. If you look at the Comprehensive Plan that was just approved this past year, it indicates that most of this area will be residential sometime in the life of this Comprehensive Plan. So in all respects, this area is a residential area. It was pointed out that the County ordinance says you have to provide evidence demonstrating no existing tower INAUDIBLE....to accommodate the proposed antenna. We think there is something there. It also says that wireless communication facilities are not permitted in residential districts. We contend that, regardless of the zoning, this is a residential area. This does create adverse affects to the neighbors and land values. It is not in harmony with the current Comprehensive Plan. It is not appropriate for this area. Westside Improvement urges you to vote against this proposed variance. Thank you.

Mr. Barnes: My name is Michael Barnes, 1015 Felstead Road. A lot of the neighbors have said what I have to say. INAUDIBLE-TURNED AWAY FROM MIC. I understand America has to grow. But Mr. Groves, do you want this tower in your backyard? Do you want to sit on your porch and look at it day after day? Any of you? I don't. I work damn hard for my money and our house. So if you want to see it in your back yard, just move it over there. It is a quiet neighborhood. I would like to keep it that way. I would like to keep it clean. That's all I got to say.

Ms. Lockyear: I did speak with two neighbors, Mr. Marx and Mr. Conner. They are not the closest buildings to the south. The closest building to the south is an apartment complex. This isn't a rezoning. We aren't asking for a commercial use. I think you are all aware of that. We would like to express to the neighbors, we are not bringing traffic to this area. We are not bringing noise to the area. I am told that a service technician will come to the site monthly to check on it. It is not a use that will generate what we are typically concerned about with commercial uses. The health concern is kind of off limits. But the tower is structurally engineered to sustain all the guidelines they are required to have. They are required to go through FCC, FAA. They do archaeological tests, environmental and soil tests to make sure it is built to avoid any problems. The need we have shown you. My client and Sprint PCS and Cingular have actively tried to find a co-location elsewhere. They have tried to lease other land elsewhere. We do not represent the property owner. This will be leased land and I can't address concerns between the neighbors and the property owner. What I can do is reiterate that my client is willing to construct this as a stealth tower to mitigate any aesthetic problems, as well as install the privacy fence. There is a heavy tree barrier already existing. We offer to

plant more trees. For these reasons, and with all due respect to the neighbors, we ask that you approve this site and allow this service to be provided those in the area that do need it, both Sprint, Cingular and the 9-1-1 service. Thank you.

Mr. Washington: Are there other locations you can build the tower where a variance is not required?

Ms. Lockyear: For eight months, my client has sought sites. Jason Evans with Sprint can tell you what he has done.

Mr. Evans: Jason Evans. There was discussion of a tower by the campus. Currently, Sprint is on the tower there, and looked at relocating, taking one site and moving it to help off-load this site. Even in doing that, we met with some property owners that have industrial zoned property off Middle Mt. Vernon and Jobe's Lane, which allows towers as a permitted use. We were still going to have to get a variance. The height we are requesting is 180 feet. The tower at that location was 300+ feet. The topography is hilly. Where we want to locate is on top of a hill. Even in the industrial zones, we would require a variance. Everywhere we have gone, we have struck out. We even approached the land owner where the junkyard is. They said anything we do there, there is going to be problems with the land owner. That is an agricultural piece of land as well. But Sprint has actively looked for eight months.

Mr. Bill Harrison: If you were a resident of Felstead Road, would you want this to go in your back yard?

Mr. Evans: Actually, I live at a place where there is a tower near my front yard, and I chose that location.

Mr. Washington: If this variance is denied, what are your options?

Mr. Evans: To appeal.

Mr. Washington: So you would not build a tower is what you are saying?

Ms. Lockyear: If the variance is denied, we can't get a building permit to build a tower there. At this point, we have absolutely nowhere else to go than this location.

Mr. McCarthy: I want to make sure I understand this clearly. You are saying after eight months of investigation, this is the only site, the sole site. There is not a secondary site?

Mr. Evans: That's correct.

UNIDENTIFIED MEMBER: Will the tower be lit?

Ms. Lockyear: No. It will be colored to blend in with the background. It will not have wires. It is a monopole. The only other structure will be at the base.

Mr. Washington: So you are committed to going forward with the stealth technology and the privacy fence?

Ms. Lockyear: Yes. It won't have the arms and extensions. It will be a flagpole looking structure. Those antennas will be interior to the pole.

INAUDIBLE CONVERSATION

Mr. McCarthy: We will vote on the special use first. I will entertain a motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Dunigan, Mr. Groves

Nays: Mr. Harrison, Mr. Herrin, Ms. Taylor, Mr. Washington, Mr. McCarthy

There being 2 affirmative votes and 5 negative votes, Docket No: 6-2005-APC is denied.

Docket No: 2005-18-BZA is withdrawn due to the accompanying special use Docket No: 6-2005-APC being denied.

Docket No: 6-2005-APC Applicant: St. Charles Tower/Chris Puricelli

Common address: (Complete legal on file.) 5909 Felstead Road

Nature of Case: Applicant requests a special use for a cellular antenna tower and installations.

Mr. Mills: Krista Lockyear is representing Chris Puricelli and St Charles Tower in this request for Special Use 15 approval for the property located at 1308 S. Vann Avenue. This petition was continued from last months meeting to allow satisfaction of notice requirements. St. Charles Tower proposes erection of a new 140' monopole telecommunications tower on a 25' x 50' lease area, a portion of the commercial lot currently occupied by Premier Video and an existing 120' monopole cell tower. The existing tower on the site was granted special use-15 approval in February, 2002. The proposed new tower lease area is approximately 70 feet south of the existing tower lease area. On April 20, 2000, new ordinances were passed specifically addressing the placement of communications towers and facilities. Under the new ordinances, any tower permitted with SU 15 approval shall be set back from any residential

dwelling, property line of an undeveloped residential district or recorded residential subdivision a distance of two feet for each foot of height of the tower or 300 feet, whichever is greater. The proposed new 140-foot tower would require the minimum 300-foot setback from any residence or residential subdivision. The certified survey submitted with this special use request verifies compliance with the spacing setback requirement of 300 feet from residences. Access and parking for this site were approved by Site Review for the retail use on the frontage of this commercial site and for the existing tower facilities on the rear of the site. No changes to existing access should be required for this proposed new tower compound. This is a request for SU-15 approval for a new 140-foot monopole cellular tower.

Mr. Joe Harrison: All those who 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.)

Ms. Lockyear: My name is Krista Lockyear, here on behalf of St. Charles Tower, the company that will be constructing this tower. We are talking about a monopole. As you heard, there is no need for a variance. It is properly zoned and not within any distances of residences that that would require a variance. There is the need for this. Sprint PCS has committed to locate at this site. Our clients have been in contact with AT&T who owns the existing tower to attempt to meet with your concerns and requests for co-location. Those attempts have been turned down. So at this point, without constructing another tower, we don't have any alternative.

Mr. Bill Harrison: Is there room on the existing tower?

Mr. Evans: There is room on the existing tower. That was our first location. Cingular purchased AT&T last year. It was a big merger. INAUDIBLE PORTIONS...to go on the existing tower was lost in the application for the ownership. That was started in September of last year. To this point, zero progress.

Ms. Lockyear: My client went so far as to send a check in for a co-location to get the process rolling. That was met with zero response. At this point, there is nothing that requires an entity or owner to allow co-location. I think it is clear this is a commercial area. An additional pole to the area isn't going to affect any residential neighbors in the area and we would request your approval.

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

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

Nays: None

There being 7 affirmative votes, Docket No: 5-2005-APC is approved.

NEW BUSINESS
VARIANCES

Docket No: 2005-25-BZA Applicant: Basel Gibson

Common Address: (Complete legal on file.) 1225 W. Maryland Street

Nature of Case: Applicant requests relaxation of side yard setback from 5 feet to 2 feet for a residential addition.

Mr. Mills: Basel Gibson is requesting variance approval for his property located at 1225 W. Maryland Street. Currently Mr. Gibson has a 2,056 sq ft residence and a 728 sq ft detached garage on a 0.23 acre lot. He is requesting variance approval to allow maintenance of a 1,305 sq ft residential addition and open porch constructed without permits. Mr. Gibson was contacted by staff after complaint was filed regarding construction without permits and construction too close to the property line. This is a request for variance approval to bring the property into compliance with zoning code setback requirements, allowing the addition to legally remain - as is currently situated and constructed on the site. This is a request for variance to relax the side yard setback from 5 feet to 2 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. Gibson has been sworn in.)

Mr. Gibson: Basel Gibson, 1225 W. Maryland. I would like to get the setback so I can keep the existing structure by the fence.

Mr. McCarthy: Are there any questions?

Mr. Bill Harrison: Did you do the work yourself?

Mr. Gibson: Yes.

Mr. Bill Harrison: Are you a licensed contractor?

Mr. Gibson: No. I just boxed it in so we could have access to the back yard.

Mr. McCarthy: 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. Harrison, Mr. Herrin, Mr. McCarthy

Nays: None

There being 7 affirmative votes, Docket No: 2005-25-BZA is approved.

Docket No: 2005-26-BZA Applicant: Harold Evans

Common address: (Complete legal on file.) 1050 E. Riverside Drive

Nature of Case: Applicant requests relaxation of front yard green space from 10 feet to 0 feet and relaxation of side yard setback from 5 feet to 0 feet for a paved automobile display area.

Mr. Mills: Harold Evans is requesting variance approval for his property located at 1050 E. Riverside Drive. Currently this is a vacant 31' x 125', C-4 zoned lot. Mr. Evans proposes to pave the vacant lot for use as an automobile display area for his used car lot. Mr. Evans was contacted by staff regarding installation of a new gravel display lot extending into the street right-of-way without permits at this location. On March 10, 2005 the Board of Public Works approved an encroachment permit to allow paving within the right-of-way of Riverside Drive and New York Avenue, conditioned upon variance approval. The approval of the encroachment is subject to two additional conditions: 1. Must keep 5' open space on the New York Avenue side, and 2. Vehicles must stay 25-feet away from the corner (intersection of Riverside and New York.) On March 28, 2005, Site Review approved the application to pave the new display lot, subject to Board of Zoning Appeals approval of variance to relax green setback requirements. The new site plan indicates that a "triangle" of new green space is to be installed at the intersection to allow visibility of on-coming traffic. Approval of permits for this site must include the "clearance triangle" at the intersection. All vehicles must be kept the minimum distance from the intersection as required for traffic safety. This is a request for relaxation of the front yard green space from 10 feet to 0 feet and relaxation of side yard setback from 5 feet to 0 feet for a paved automobile display area.

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. Evans has been sworn in.)

Mr. Evans: My name is Harold Evans. I live at 3033 Brookfield Drive in Newburgh. The main reason I am here, we have a very small lot here. I have been at this place for 25 years adjacent to this lot. I waited 25 years to get it bought. It is a nice extension to the neighborhood. It looks much better with the garage and house gone. As you can see, the cars are set with the blacktop. We have it set to where there is going to be a green space in the front. There is

about 180 square feet of green space that will be put there and along the New York side, all the cars will be at least five feet off so there will be like a sidewalk made of asphalt so people can walk up and down the street. The main thing is, when you go up the corner to take a left or right turn, we have cars set back for safety. The biggest problem for why I had to do this was the building is so close and the lot is so small to be able to maneuver the cars.

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: 2005-26-BZA is approved.

Docket No: 2005-27-BZA Applicant: Hiram and Clemma Jane Davidson

Common address: (Complete legal on file.) 4643 County Line Road

Nature of Case: Applicant requests relaxation of zoning code to allow accessory structures larger and taller than the residence for construction of an addition to a detached barn.

Mr. Mills: Hiram and Clemma Jane Davidson are requesting variance approval for their property located at 4643 County Line Road. Currently, the Davidsons have a 1,650 sq ft residence, 1,920 sq ft garage, and a 2,100 sq ft pole barn on a 3.28 acre site. They are proposing construction of a 1,200 sq ft addition to the existing pole barn. This 3.28 acre site is located in German Township off of County Line Road in a rural agricultural/residential area. With the construction of the new accessory building on this site, applicants will have a 1,650 sq. ft. main structure (house) and 5,220 sq. ft. accessory structures (garage and pole barn.) No information has been provided regarding the height of the residence or the proposed new storage barn addition. Accessory buildings in Agricultural districts may not be used as dwellings and may not be used for any commercial use. This is a request for relaxation of the zoning code to allow accessory structures larger and taller than the residence for construction of an addition to a detached barn.

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. Davidson has been sworn in.)

Ms. Davidson: My name is Clemma Jane Davidson, 4643 County Line Road. We are asking for a variance. We want to add on to the back side of this blue pole barn. You can't see from here, but the land drops off. We want to put our camper and 15 passenger van in the pole barn. Our van will fit in the existing pole barn because of the nine foot door. We need a 10 foot

opening. So that will allow the van and camper to be put there.

Mr. McCarthy: So just for personal use, no commercial sales.

Ms. Davidson: For personal use. This middle building is not exactly, this part is a garage. The long part is a party house and the pool is right here.

Mr. McCarthy: Are there any remonstrators? (None.) 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: 2005-27-BZA is approved.

Docket No: 2005-28-BZA Applicant: Deerhead Sidewalk Café

Common address: (Complete legal on file.) 215 E. Columbia Street

Nature of Case: Applicant requests relaxation of the off-premise sign setback from a residence from 200 feet to 73 feet and relaxation of the setback between two off-premise signs from 400 feet to 200 feet for an off-premise advertising sign.

Mr. Mills: Deerhead Sidewalk Café is requesting variance approval for their property located at 215 E. Columbia Street. Currently the property is utilized as an auxiliary parking lot for the Café. Deerhead is proposing maintenance of an off-premise advertising display on the site for their business located across Columbia Street north of the site. Deerhead Café has applied for permit approval to allow erection of a permanent off-premise sign on the site. The sign is planned to advertise information and events for the Café. The zoning code requires a minimum 400-foot spacing between off-premise signs. The survey submitted with the sign application indicates that there is an existing off-premise sign 200 feet from the proposed new sign. The zoning code requires a minimum 200-foot spacing between off-premise signs and residences. The survey submitted with the sign application indicates an existing residence 73 feet from the proposed new sign. This is a request for relaxation of the off-premise sign setback from a residence from 200 feet to 73 feet and relaxation of the setback between two off-premise signs from 400 feet to 200 feet for an off-premise advertising sign.

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. Johnson has been sworn in.)

Mr. Johnson: My name is Chuck Johnson, owner of Deerhead Sidewalk Café, 222 E. Columbia Street. We just want this for advertisement.

Mr. McCarthy: Are there any questions?

Mr. Joe Harrison: It is just going to be advertising for your business?

Mr. Johnson: Yes, for the Deerhead. The reason was putting it across the street is for the view. I could put it on premise, and they said there would be no problem with that. But I would be blocking between the business and the houses. So I own all the property across the street. Since I am advertising for the business across the street, it is off-premise.

Mr. McCarthy: It is probably less obstructive across the street.

Mr. Johnson: On the north side of Columbia, but to put it there, I couldn't put it next to the sidewalk because it would be blocking the view of the exit of the parking lot.

Mr. McCarthy: Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded, subject to the current owner.) Roll call.

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

Nays: None

There being 6 affirmative votes, Docket No; 2005-28-BZA is approved.

Docket No; 2005-29-BZA Applicant: Rex A. Claycomb

Common address: (Complete legal on file.) 1900 Elna Kay Drive

Nature of Case: Applicant requests relaxation of access drive limitations from one drive to two drives within less than 200 feet of frontage for installation of a second driveway.

Mr. Mills: Rex A Claycomb is requesting variance approval for his residence located at 1900 Elna Kay Drive. Currently Mr. Claycomb has a 1,728 sq ft residence, 576 sq ft garage (under construction), and pool on a 0.275 acre site. He is proposing construction of a second driveway for access to his new garage. Mr. Claycomb is requesting variance approval to allow maintenance of the existing driveway on this residential lot, and installation of a new access drive leading to the new detached garage currently under construction behind the residence on the rear of the lot. The zoning code allows one access drive for lots with 0 - 200 feet of frontage. This is a request to allow two separate access drives within Mr. Claycomb's 100 feet of frontage on Elna Kay Drive. This is a request for relaxation of access drive limitations from one drive to two drives within less than 200 feet of frontage for installation of a second

driveway.

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. Claycomb has been sworn in.)

Mr. Claycomb: My name is Rex Claycomb. When I bought this property about six months ago, the existing garage had been turned into living space, which I plan to use for my handicap child for his equipment and nursing care. The reason I need second driveway is for a garage I built behind the house which I took out a dilapidated pool house and old dog pin and took down a little storage barn. All the neighbors are really pleased with what I am doing to the property. I need the parking for nursing care that I have during the day for my son, his therapist. I am a single parent, so I would really help a lot to have the second driveway.

Mr. McCarthy: So it would be a driveway that leads to no garage. Are there any questions? Are there any remonstrators? (None.) 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: 2005-29-BZA is approved.

Docket No: 2005-30-BZA Applicant: Jonathan McGlothan Eye Institute/Ad-Craft

Common address: (Complete legal on file.) 6540 Logan Drive

Nature of Case: Applicant requests relaxation of number of permitted signs from 4 to 6 and relaxation of maximum signage from 300 sq. ft. to 339 sq. ft. for addition of two new signs.

Mr. Mills: Ad-Craft is requesting variance approval on behalf of the Jonathan McGlothan Eye Institute located at 6540 Logan Drive. This is a request for variance approval for additional signs. McGlothan Eye Institute is one of three businesses within the multi-tenant 8,000 sq ft office building on the 0.87 acre lot located at 6540 Logan Drive. Businesses located in the M-2 district in the County are allowed 2 signs per frontage totaling 300 sq ft. This property on Logan drive has two frontages. McGlothan Eye Institute was granted permit approval on February 28, 2005 for 4 fascia signs totaling 264 sq ft for the eye institute business:

North face: 84 sq ft channel letters

South face: 84 sq ft channel letters

West face: 84 sq ft channel letters

East face: 12 sq ft single-face cabinet

McGlothan Eye Institute is requesting two additional fascia signs: South face: 37.5 sq ft "Lasik" channel letters; and West face: 37.5 sq ft "Lasik" channel letters. Total signs

proposed for McGlothan Eye Institute: 6 signs totaling 339 sq ft. This is a request for relaxation of the number of permitted signs from 4 to 6 and relaxation of maximum signage from 300 sq ft to 339 sq ft for addition of two new signs.

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. Siebeking has been sworn in.)

Mr. Siebeking: I am Mike Siebeking with Ad Craft. The only thing I have to add is that the two signs we are proposing INAUDIBLE...say the word "Lasik".

UNIDENTIFIED MEMBER: I'm hard put to see where you could fit another sign on that building.

Mr. Siebeking: If you notice, there are two banners that should have been removed. That's where they would go.

Mr. McCarthy: 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: 2005-30-BZA is approved.

Docket No: 2005-32-BZA Applicant: Larry W. Hollerbach, Jr.

Common address: (Complete legal on file.) 6000 Heidt Lane

Nature of Case: Applicant requests relaxation of zoning code to allow accessory structures larger and taller than the residence for construction of an unattached barn.

Mr. Mills: Larry Hollerbach, Jr. is requesting variance approval for his property located at 6000 Heidt Lane. Currently Mr. Hollerbach has a 3,288 sq ft residence with attached garage and a 984 sq ft accessory storage building on an 11.2 acre site. He is proposing construction of a new 4,320 sq ft detached pole barn on the site. This 11.2 acre site is located in German Township on Heidt Lane in a rural agricultural/residential area. With the construction of the new accessory building on this site, Mr. Hollerbach will have a 3,288 sq. ft. main structure (house) and 5,304 sq. ft. accessory structures (storage building and pole barn.) Mr. Hollerbach indicates that the height of the residence is 22'6". The height of the proposed new pole barn is 24'6". Accessory buildings in Agricultural districts may not be used as dwellings and may not be used for any commercial use. This is a request for relaxation of the zoning

code to allow accessory structures larger and taller than the residence for construction of an unattached barn.

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. Hollerbach has been sworn in.)

Mr. Hollerbach: My name is Larry Hollerbach, 6100 Heidt Lane. I need a barn to get my stuff out of the weather.

Mr. McCarthy: So it is for personal use, no commercial sales taking place out of it?

Mr. Hollerbach: No.

Mr. McCarthy: Are there any questions of the Board?

Mr. Herrin: What size is this barn?

Mr. Hollerbach: 72 x 60.

Mr. McCarthy: 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: 2005-32-BZA is approved.

Docket No: 11-2005-APC Applicant: Stephen and Victoria Lowe

Common address: (Complete legal on file.) 4212 Stratford Road

Nature of Case: Applicant requests a special use for a one operator beauty shop in the residence.

AND

Docket No: 2005-33-BZA Applicant: Stephen and Victoria Lowe

Common Address: (Complete legal on file.) 4212 Stratford Road

Nature of Case: Applicant requests relaxation of front yard setback from 25 feet to 5 feet for an existing carport.

Mr. Mills: Stephen and Victoria Lowe are requesting special use # 18 approval and variance approval for their property located at 4212 Stratford Road. Currently the Lowes have a 1686 sq ft residence with an existing 260 sq ft attached carport (constructed without permits) and a 40 sq ft shed on a 0.17 acre lot. They are requesting variance approval to relax the front yard setback from 25 feet to 5 feet to allow the existing carport to remain "as built". The Lowes were contacted by staff after complaints of parking and traffic resulting from the operation of a beauty shop at this address. They have filed a petition for SU-18 approval to allow continuance of a one-operator, resident-occupied, resident-operated beauty salon within their residence. This site is located on the west side of Stratford, mid-block on a residential street in a completely residential neighborhood. The only parking available on this site is in the double-wide driveway which requires backing out into the street. The single-family residence requires two on-site parking spaces for the residence and one additional space for the beauty shop. Two parking spaces are available on this site within the carport on the front of the lot. Beauty shops which operate within a residential district permit no sales of merchandise; sales of beauty supplies and equipment requires commercial zoning. Approval of a special use in R-1 permits signs up to 100 sq. ft. This is a request for SU-18 approval to allow establishment of a one-operator, resident-occupied, resident-operated beauty salon within the residence. The variance is a request to relax the front yard setback from 25 feet to 5 feet for the existing carport erected without permits. The special use and variance require separate votes.

Mr. Joe Harrison: All those who will speak on these petitions, 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.)

Ms. Lowe: My name is Victoria Lowe, 4212 Stratford Road.

Mr. McCarthy: Anything to add to Mr. Mills' comments?

Mr. Lowe: No. That's basically what we are wanting to do. We built in our carport to accommodate a one room beauty shop and we have also a dining room and bathroom where the carport used to be. We had a carport constructed thinking it was in compliance. But we didn't realize it wasn't. It was Builder's Square when they were here that did it.

Mr. Bill Harrison: How long has it been this way?

Ms. Lowe: Eleven years.

Mr. Bill Harrison: How long have you had the beauty salon?

Mr. Lowe: It has been there about that same amount of time. She is a licensed beautician.

She used to do hair in our kitchen. So I built the addition and we have a large family.

Ms. Lowe: I still work at J.C. Penney's. I have been there 21 years.

Mr. Lowe: Basically, this is just one day and part of another day that she would be doing any work at home. And a large amount of that time is done on our family.

Mr. McCarthy: Are there any remonstrators?

Ms. Murray: My name is Carol Murray. I live at 406 North Park Drive. The one portion of my back yard abuts their back yard. I was not aware that there was a violation there until I received a notification. When I came to inquire about it, they told me there had been a complaint. I am not the person who complained. There are several of us in the neighborhood who feel that we would be affected. Many of us are the original owners in this area. We are older and this is a very quiet residential area. If I may read you from this petition, "We, the undersigned, request that this application be denied. But we are unable to attend the public hearing. INAUDIBLE...Our properties do not abut this address but we are in the immediate vicinity and feel that we would be adversely affected. It is a quiet residential section and should remain so in accordance with the current zoning. Establishment of a business, increased traffic and parking problems would have a negative impact on our neighborhood and property values." Many of the signatures are on North Park Drive across the street from me. But they were not notified because their property did not abut the property of the Lowes. You mentioned that granting a variance would not change the zoning. I think I heard you say the person who was applying for the variance would be responsible for abiding by the conditions under which it was granted. But we would have to police that. You would not be coming to see if this person was keeping it a one chair shop and abiding by what was agreed on. I checked with the Indianapolis professional licensing agency and they said Mrs. Lowe is not licensed to have a beauty shop in her home. She is a professional beautician so I'm sure she was aware that you would need a license to operate in your home and yet, she has continued to have one for this number of years. They could not find that she had a license for a beauty shop in her home. There is increased traffic, a problem with parking, and also we feel that if Mrs. Lowe would not abide by certain other regulations, we couldn't trust that she would keep it a one operator beauty shop. She also has an RV parked on her property that extends to the sidewalk and I was told that it should not interfere with the lawn in the front yard. But I do have seven signatures here of people that feel this should not be granted.

Mr. McCarthy: Are there any questions?

Ms. Lowe: The camper comes once a year to get cleaned up and taken to the river. It is not a permanent thing there. As far as the other part, there is only enough room for a one person

in this shop. It was designed for our family. We have eight kids. We now have grandkids. It was designed specifically for our family. It wasn't designed to be for everybody.

Mr. Lowe: The reason they didn't know it was a beauty shop was because there hasn't been a traffic problem or a parking problem in this area. But there have been neighbors that knew there was a beauty shop there. I don't really understand why on North Park Drive it would affect them anyway. We live on Stratford, not North Park Drive. There is not an increased traffic problem because of this. At any given time, there might be one or two vehicles parked out front, no more than anyone who would be visiting our property.

Ms. Lowe: The only time there are more cars there is when the kids show up for a family event.

Mr. McCarthy: Are you licensed?

Ms. Lowe: Yes, I am. I have to be to work at Penney's.

Mr. Joe Harrison: Not at that location.

Ms. Lowe: We just did this for our family. It wasn't for anyone else.

Mr. Dunigan: You don't have outside customers, someone that is not related to you in some way?

Ms. Lowe: I have a friend every once in a while. But mostly it is just for the family. I have enough work to do out at Penney's. I don't want to spend all my time at the house.

Mr. Joe Harrison: You say you want to open it up to others?

Ms. Lowe: Well, now that they have started it, I would like to.

Mr. McCarthy: We could provision this subject to her becoming licensed at this location, and place a one year time limit on it. We will see how it goes and revisit it in a year.

UNIDENTIFIED MEMBER: Are you wanting to put up a sign?

Ms. Lowe: If I have to, yes.

Mr. Lowe: She is by appointment only now. So it wouldn't be open to the public to walk in. We feel like that may be the case eventually. But right now we don't want that. We just want to continue on like we are now.

Ms. Lowe: Next year when we come back, I may have a different opinion. But as of right now, if I don't have to, I don't want to.

Mr. McCarthy: We will entertain a motion for approval, subject to a one year time limit and also subject to Mrs. Lowe becoming licensed at that location. (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: 11-2005-APC is approved.

Mr. McCarthy: Now for the variance. (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: 2005-33-BZA is approved.

Docket No: 13-2005-APC Applicant: Deaconess Hospital, Inc./Deaconess Health System.
Common address: (Complete legal on file.) 511, 513, 602, 609, 621 Oakley Street
Nature of Case: Applicant requests a special use for a hospital and parking lot.

AND

Docket No: 2005-34-BZA Applicant: Deaconess Hospital, Inc./Deaconess Health System
Common Address: (Complete legal on file.) 602, 606, 609, 621 Oakley Street
Nature of Case: Applicant requests relaxation of front yard green space from 20 feet to 0 feet for expansion of parking lots.

Mr. Mills: Deaconess Hospital is requesting special use and variance approval for their

properties located on both sides of Oakley Street. The special use is a request for SU-10 approval to expand the parking lot on the west side of Oakley by adding one additional R-4 zoned lot at 602 Oakley Street, and a request to redesign the parking area (SU-10) and establish a new billing and fitness center for the hospital (SU-3) on the east side of Oakley at 511 through 621 Oakley Street. A portion of the parking lot on the west side of Oakley Street already has special use designation. The Deaconess property on the east side of Oakley previously housed uses which pre-dated the special use requirements. Deaconess is requesting to relax the front yard green space from 20 feet to 0 feet along the 274 linear feet of frontage along the new parking on the east side of Oakley Street, and a request to relax the front yard green setback requirement from 20 feet to 0 feet along the 137 linear feet of frontage along the existing parking lot at 606 Oakley and the new lot at 602 Oakley street for redesign and expansion of that parking lot. The existing 32-space parking lot on the west side of Oakley at 606 Oakley Street was granted special use approval in March, 2002 with a variance to relax the front yard green setback from 20 feet to 16.8 feet. With the addition of this one new lot, and a redesign of the existing parking lot, Deaconess' new parking lot would accommodate 58 parking spaces. 158 parking spaces are proposed on the east side of Oakley Street. This is a request for SU-3 and SU-10 approval for the billing and fitness center and the new parking lots, and a request for variance approval to relax the front yard green setback requirement from 20 feet to 0 feet along the frontage of the parking lots. 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. Brasseale has been sworn in.)

Mr. Brasseale: My name is Kent Brasseale, attorney for Deaconess. I don't think you mentioned the pole barn we are putting up.

TAPE CHANGE

Mr. Brasseale: I think the staff report explains things well. The variance is for the setbacks. It relates largely to parking areas to allow for the increased parking and you can see in the purple area there is the house that will be razed and allow for the greater parking. The special use encompasses both to allow the parking for it and also the expansion of the building for the addition. I would be happy to answer any questions.

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

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

Nays: None

There being 6 affirmative votes, Docket No: 13-2005-APC is approved.

Mr. McCarthy: Now for the variance. (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: 2005-34-BZA is 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