

**CITY OF URBANDALE
BOARD OF ADJUSTMENT
MINUTES**

December 5, 2007

The Urbandale Board of Adjustment met in regular session on Wednesday, December 5, 2007, at the Urbandale Administrative Offices Building, 3600 86th Street, with Chairperson Dave Russell calling the meeting to order at 6:00 p.m.

Board members present were Carey Evans, John Pittman, Dave Russell, and Tom Muselman. Patrick Kirchner arrived after roll call had been taken. Staff members present were Paul Dekker, Director of Community Development, and Cheryl Vander Linden, Department Secretary.

There were no objections to the official publications as they appeared in the Polk County Press Citizen/Urbandale Press Citizen.

Ms. Evans moved, and it was seconded by Muselman, to defer action on the September 5, October 3, and November 7, 2007, meeting minutes. On roll call; Ayes: Evans, Muselman, Evans, and Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Westport Limited Partnership Sign Area and Directory Sign Variances", 10411-10431 Hickman Road, case number 011-2007-01.22.

Mr. Chuck Bishop, Bishop Engineering, 3501 104th Street, Urbandale, said I'm here tonight represented Westport Limited Partnership. The Westport Center is located on the northwest corner of the Hickman and 104th Street intersection. The center has been there since the late 1980's, or 1990, so it's been around for awhile.

We're requesting this variance to be allowed to have a multi-tenant sign. It's a tough location because Hickman Road has a 45 mph speed limit and we have pretty limited visibility for the tenants. They do have their allowed building signage on the front. Here's a picture of the center looking north from the frontage road along Hickman. You can see that because of the trees and everything else, these tenants aren't very visible, and the tenants are real concerned about being seen by customers and having them be able to locate their stores. So, we would like to be allowed to install a multi-tenant sign.

If this variance is approved we would like your permission to work out the location with the City Staff. We're looking at two possible locations, one that would be west of the drive and another that would be on the corner in the detention basin. The sign would be real similar in appearance to the directory sign that is along Hickman to the east, for the Tile Shop and Armstrong Cabinet and the storage plex near 100th and Hickman. We want something similar to allow the tenants in this center some additional visibility. Again, it's a tough location to get any type of visibility from the road. We've got some

landscaping that was installed back in the early 1990's, and it's grown up such that it's really kind of hiding the signs in the front of the buildings now. So we're trying to get some additional signage out front.

The only comment that I have after reviewing the staff recommendation is that staff is recommending that the sign be limited to not more than six tenant names and the owner is not agreeable to that. The center has room for 11 tenants and we'd like to put all 11 tenants on the sign. There is a sign over on 86th Street for the Taki restaurant and Hobby Haven that has 10 tenants on their sign, and we'd like to do that same thing. We understand that the lettering would need to be smaller and whatever else, but at least the tenants would feel like they're getting some visibility with their names out on a sign closer to Hickman Road. So that is our request, to not be restricted to only 6 tenants but leave it up to the owner to add more tenants within that same square footage if he wants to. He understands that he's going to have to reduce the letter size and still meet the same square footage for the number of tenants he wants to put in there, but we also are requesting a variance from the maximum area to be allowed to go to 125 square feet copy area. The sign will be two-sided and it will be perpendicular to Hickman Road. I'd be happy to answer any questions that you might have.

Mr. Russell asked what size are you proposing the sign to be.

Mr. Bishop said it will be 125 square feet, so it's probably going to be 10 feet tall and 12 feet wide. Or maybe 12-1/2 feet wide to get to 125 square feet. And it's going to be approximately about 20 feet tall. That's about what the existing sign is down the street and we want to do the same thing. We plan to match the brick of the building, and to put a metal cap on it to match the metal roof on the building as well as put a limestone base on the lower part of the sign.

Mr. Russell asked so it will be as high as 20 feet?

Mr. Bishop said yes.

Mr. Russell asked how wide?

Mr. Bishop said probably about 12-1/2 feet wide.

Mr. Russell said so it will be 20 feet high by 12.5 feet wide. Will it be lit?

Mr. Bishop said I think it probably will be internally-lit.

Mr. Russell asked do you have a specific location where you want to place the sign?

Mr. Bishop said we're showing it west of the driveway, but we're looking at trying to move closer to the corner, except that there's a detention basin so it sits down pretty low. In talking with the City, they said they would allow us to build a pad to put the sign on so the base of the sign would be even with the top of the detention basin instead of

sitting down in the bottom so we're looking at that option. We also want to be careful not to get too close to the corner, because we're afraid that if we're too close its visibility might be blocked at least to some extent by the car dealership that's proposed on the northeast corner. We will stay out of the vision clearance triangle at the intersection.

There was no one else present who wished to speak either in favor or in opposition.

Mr. Dekker said the appellant, Westport Limited Partnership, is requesting variances from the Sign Ordinance to erect a directory sign, directory signs not being permitted, with 125 square feet of copy area in lieu of the 75-square foot copy area that is allowed for a free-standing sign comprised of individually mounted letters. The existing retail strip center was constructed in 1989, and contains 68,333 square feet of floor area.

The existing building currently is occupied by "Easy Living Store", "Kitchen Classics", "Hot Spring Spas", "Gathering Place" (gifts), "UBuild It", "Z-Coil Footwear", "United Brick", "Priority Fitness" (day spa and Pilates), "Starbucks Coffee", and "Wellspring Christian Resources" (books, music, & gifts) with one vacant tenant space.

The property has about 656 feet of frontage on Hickman Road and 104th Street and about 654 square feet of frontage on 104th Street. It has a total area of 6.40 acres, for a Floor Area Ratio of 0.245. The property is zoned "P.U.D." Planned Unit Development District and is regulated by the "Westport Ridge" Planned Unit Development Master Plan, as are the surrounding properties to the north, south, and west. There are retail uses to the north along 104th Street, and office uses to the north and west along 106th Street. The property east of 104th Street is zoned "P.U.D." Planned Unit Development District, and is regulated by the "Ziegler Property" Planned Unit Development Master Plan. It currently is vacant, but a site plan has been submitted for construction of an auto dealership on the portion of that property that is directly to the east of this property. The property south of Hickman Road is located in the City of Clive and includes a variety of retail and industrial uses.

The P.U.D. Master Plan and the Sign Ordinance do not allow retail properties to have a directory sign. The Sign Ordinance restricts free-standing signs to 75 feet of copy area if the sign has individually mounted letters, or to 50 square feet in the case of a cabinet sign. This retail center has an existing monument sign along Hickman Road that identifies the strip center as the "Westport Home Center". The appellant states the directory sign would comply with all requirements for a monument sign other than the copy area.

Mr. Dekker said a variance was previously granted allowing construction of 32 parking spaces to be deferred unless/until a parking shortage was found to exist. To date no parking problems have been noted since the strip center historically has been occupied by home improvement stores that by nature tend to have less practical parking need. The nature of the strip center may be evolving, and existing/future tenants may have greater parking needs that are consistent with the Ordinance minimum requirement. A total of 330 parking spaces are required to satisfy the Ordinance requirements for the

existing building, and 298 parking spaces currently exist with space being provided to add 32 parking spaces in the future if needed.

Mr. Dekker said the staff analysis is as follows:

1. This property does not appear to be unique compared to other similarly zoned properties where there is a frontage road. The appellant indicates that the building is set back 300 feet from Hickman Road, which is a measurement to the traveled roadway, but it sits 70 to 140 feet from the street right-of-way for the most part and 190 feet from the street in the worst-case and those are at worst typical setbacks and less setback than would be provided for many nonresidential properties by choice. For example, the HyVee at 86th and Douglas sits 350 feet from the north right-of-way line of Douglas Avenue, and at least 400 feet from the west-bound lanes. The Parkwood Plaza shopping center at 86th and Douglas sits 335 feet back from the 86th Street right-of-way at the closest point, and the portion of the center with the smaller shops is 450 feet or more from the right-of-way. The minimum setback required for this property by Ordinance is 30 feet from the front property line just as from all other property lines, with the actual setbacks being typical because most retail uses want to have a significant amount of parking in front of the building for customer convenience and marketing purposes.
2. The Ordinance may create a hardship if it does not provide a practical way to identify individual business tenants, via either wall signs or a freestanding sign. The building has wall signs to identify individual tenants in the same manner that all other businesses are allowed signs.
3. There currently are 11 tenant in the building including one vacant space, and some of the tenant spaces may be divided and result in an increased number of tenants in the future, given that the strip center was designed to have smaller tenant spaces and some of the existing tenants display/sell bulky merchandise and therefore need larger tenant spaces.

A directory sign displaying 11 or more tenant names, even approval of a variance to allow 50 additional square feet of copy area, does not appear likely to provide meaningful identification for the traffic on Hickman Road. It may provide some benefit for traffic on the frontage road. Motorists have a limited amount of time available to read commercial sign copy while also remaining cognizant of traffic conditions and official road signs. That is especially the case with a street like Hickman Road which has a 45 miles per hour speed limit and significant traffic volumes. Official road signs use standard symbols and have limited copy, uniformity in font size, a type of font specifically chosen for its legibility, and are carefully controlled in spacing and number for these reasons. An excessive amount of copy and mixed fonts may cause the directory sign to become ineffective for all of the tenants, and in some cases may become a safety hazard, which would not be consistent with the spirit and intent of the Ordinance.

Also, a request to amend the Sign Ordinance to allow directory signs in retail zoning districts has recently been submitted by the Urbandale Chamber of Commerce. If the request is approved, directory signs may be allowed in some form without need for a variance.

4. Limiting the number of tenants displayed on a directory sign may provide sufficient clarity and limitation on the amount of copy to provide viable directory signage.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variances could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that the requested variances should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variances do not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variances exists; and that the requested variances be approved.

Mr. Dekker said staff recommends approval of a variance from Section 4.1 of the Sign Ordinance allow a monument-type directory sign that conforms to all requirements for a monument sign and requiring that all copy be comprised of individually mounted letters, and approval of a variance of 50 square feet from the 75-square foot maximum sign area allowed by said Section 4.1 for such directory sign, subject to limiting the number of tenant names being displayed to not more than 6 tenants. If the City Council amends the Sign Ordinance to allow directory signs, said variances shall also to be subject to modifying the directory sign to comply with such adopted regulations to the maximum extent that is possible without reconstructing the sign monument, either in total or by individual tenant whenever a sign panel for a tenant is modified or replaced for any reason, including but not limited to new tenants, change in business name, obsolescence, or damage.

Mr. Russell asked how important is the limitation on 6 tenants versus 11? In your report, you seemed to indicate that since it's going to be along Hickman Road there is going to be just a limited amount of time available to read the sign, especially since the speed limit is 45 mph. So whether there are 6 tenants or 11 tenants, in your estimation, does it make much of a difference?

Mr. Dekker said yes, it does make a considerable amount of difference. If the Board grants the variance allowing 125 square feet of copy area instead of the 75 square feet otherwise allowed, with a maximum of 6 tenants each tenant would have 20 square feet, if the area is divided equally between the tenants. That in itself is fairly small and will have limited legibility, but if you have 11 tenants then they're down to 10 square feet each and you've also doubled the amount of copy. You're cutting the size in half, so the legibility is cut in half and a driver has half as much time available to read the sign, assuming it's still large enough to be read at all. And then you're doubling the amount of copy to be read in half of the time. Even at 20 square feet of copy, the legibility from

Hickman is going to be limited. If you get it down to 10 square feet and twice as many tenants, no driver is going to be able to read anything on the sign. At that point nobody is being helped in terms of sign visibility. There's just another big structure out by the street and the owner can say, well now all of you tenants have your names out there so I've done what I can to help you, but the reality is it isn't doing anyone any good. You might say it's a "feel good sign". You can feel good about having your name on it, but it's not going to do anything from the standpoint of improving the business' visibility.

Mr. Russell said unless you're on the frontage road, perhaps?

Mr. Dekker said a driver on the frontage road will be closer and moving more slowly, but anyone who has exited Hickman to enter the frontage road probably already knows where they're going, and are probably going to be able to read the building signs more easily than the directory sign. It may be easier to read the tenant's individual building signs as you move down the street than it is to read 11 tenant names on one sign that you can only read for so long before you've driven past it. There's only so much information you can read and process in a given amount of time. The best example is traffic signs. Traffic signs are very carefully designed and regulated as to how many, how big, and how much information is on the sign, all geared to the traffic speed and how much time that gives the driver to comprehend the sign. The faster the traffic speed the less time you have to read the sign, so the fewer the number of signs and the less information there is on each sign.

But the number of tenants to be allowed on a directory sign, assuming directory signs will be allowed, is a policy matter and the Board is not supposed to set Board set policy, it's to rule on unique situations and hardships. The Planning and Zoning Commission currently is working on an amendment to the Sign Ordinance that may allow directory signs, and that will address the number of tenants and amount of copy that will be allowed, and so on. So, given those circumstances it may be best to simply defer any action on this appeal and wait until the Commission and Council have completed their work. If they decide directory signs shouldn't be allowed, they've affirmed a policy not to allow directory signs and the Board should be very certain they're not contradicting that policy.

If directory signs are allowed, the Commission and Council will also have decided everything else, about how big, how many tenants, and so forth. Staff was proposing a conservative solution that we feel probably will be in line with what the Commission and Council will decide to allow, so the appellant wouldn't have to wait for the process to be completed. If the appellant wants to go beyond that, then it would be better to wait so the Board isn't creating a new nonconformity so close to a decision point on the proposed amendment.

Ms. Evans asked so when do they meet?

Mr. Dekker said the Commission will be discussing the topic next Monday. What action they might take at that point, I don't know. If it does move forward, it will probably be at

least a couple of months before it would get to the Council as an ordinance to amend the Sign Ordinance.

Mr. Russell asked as it's proposed, would this be allowable under the proposed change?

Mr. Dekker said I don't know what they'll decide. When I wrote the staff recommendation I gave it my best guess at this point, and tried to err on the conservative side. I think they'll allow directory signs, or we would have recommended denial. I'm also inclined to think there will be some additional copy area allowed, but subject to limitations. But, that's mostly personal opinion. The Commission and Council may have entirely different thoughts and at this point I have no basis to suggest what they might be.

Mr. Kirchner said so we could permit a variance that might be further restricted by an additional ordinance.

Mr. Dekker said the way the staff recommendation is written, it says that if the Council adopts something that is more restrictive, then the appellant has to change the sign out over time and come into compliance with whatever the Council adopts, for the most part. If the Board finds that all of the conditions are present for granting a variance, the Board can grant it with whatever conditions it feels are appropriate and the variance will run on in perpetuity regardless of what the Council adopts. If the Council adopted something less restrictive the appellant could forget about the variance and do whatever the ordinance allowed instead. However, if the Board grants something less restrictive than whatever the Council adopts without the recommended conditions, the appellant can use that variance forever and forever have a sign that nobody else can have. The Board doesn't have to limit the number of tenants to 6 if you think all of the conditions are present that are necessary to grant the variance, and a restriction on the number of tenants isn't necessary or appropriate given the findings needed for approval. But again, the Board isn't supposed to create policy and shouldn't create nonconformities. It's only supposed to provide relief in unique situations. So, perhaps if the appellant doesn't want to limit the number of tenants in line with a conservative approach that was intended to avoid potentially setting policy, perhaps the best thing for the Board to do is to just not take any action and have the appellant wait until the Commission and Council have decided the number of tenants matter and everything else.

Mr. Russell said do you see the proposed size of the monument sign to create a problem, 20 feet by 12-1/2 feet, in the setback, as far as any vision impairment, traffic, etc.?

Mr. Dekker said the maximum copy area that is normally allowed is 75 square feet, using individually mounted letters. That's ample for a single business. If the City is going to allow directory signs however, you almost have to allow more area if you want to make the directory sign useful. If you keep the limit at 75 square feet sign, with 6 tenants you're only allowing each one 10 square feet and that's not going to be very

legible. So my thinking is that if the Ordinance is going to be changed to allow directory signs, larger signs will be to be allowed to make the sign workable. At the same time however, you have to limit the number of tenants if you want to make it workable or you've just created a bigger sign and more clutter that isn't going to help at all and if anything will make things worse. So, the policy question is, are you going to allow more area and also require some limits in order to make the sign workable, or are you going to allow the owner to put however many tenants he wants to even if it doesn't work. If it's not going to work, it's probably better to have a smaller thing that doesn't work than a big thing that doesn't work. A sign with 125 square feet of copy on a 20-foot tall, 250 or 300-square foot monument located 10 feet away from the street isn't a small thing—it's essentially a small building. One might question the wisdom of allowing such an imposing structure so close to the street if you aren't maximizing its value. It very well might do more harm than good.

Mr. Russell asked is there a limit to the height that a sign can be?

Mr. Dekker said there is a limit now of 15 or 20 feet depending on the type of monument sign, and there would have to be some sort of limit on the maximum height for a directory sign. I sort of doubt that staff would recommend a height of more than 20 feet because that actually is pretty high if you're standing next to it.

Mr. Bishop said if the Board approves something tonight and then the Planning and Zoning Commission and City Council approve something that is less restrictive, could we follow what they approve instead of what Board approves? If the Board approved the variance with a limit of 6 tenants and the P & Z and Council ended up approving something that allowed more, could we follow what they approve and put more tenants on it?

Mr. Dekker said yes.

Mr. Bishop said we would be agreeable to the limit of 6 tenants if that's the case, I guess, if allowing more than 6 tenants is a problem for the Board, I think we'd be willing to live with the 6. I really feel that dealing with the Chamber of Commerce, they're pushing for more than the 6 tenants, I believe. So we'll agree to the 6 tenants with a little bit more area, to get the multi-tenant sign for this shopping center. This shopping center has been there for a while and has done well, but they're just trying to provide a better situation for their tenants and keep it competitive with everybody else in the area. I think this will be a great help to them, to at least get some signage up, and give some added visibility for their tenants.

Mr. Russell said maybe I missed this, but in the Staff recommendation, I believe it says that if the City Council amends the Sign Ordinance to allow the directory signs, then the variance, if it's granted tonight, would be subject to modifying the directory sign. Would the appellant not even erect it until he knows?

Mr. Dekker said no, they could erect it now but it would be with a degree of risk on their

part. The intent is that if the Council adopts something that is significantly different than what the Board approves, then over time as they change out tenants names and so on, that over time they would bring this sign into predominately into conformance with whatever the Council might adopt. Staff feels it's not appropriate to create a nonconformity with the variance that would live on just about forever, just two months before the City Council adopts a new ordinance.

Mr. Russell said so if he were to go out there and put 10 tenants on the sign now, and the ordinance is modified to a limit of 6, would he have to pull 4 names off the sign?

Mr. Dekker said they'd have to drop 4, at some point in time, yes. The Board doesn't have to adopt that recommendation. A good argument could be made that you should just defer any action on this appeal, and wait until the Council acts.

Mr. Russell said he could go out there and put it up, but he's running a risk if it's beyond 6.

Mr. Dekker said yes, there is some risk. I tried not to put them in a situation where it seemed highly probable that if the Board approved the staff recommendation they would have a sign that wouldn't be reasonably close to what the Commission and Council would approve. I'm trying, as best I can, to anticipate what might logically be approved. The Council might decide that people can put up signs with as many tenants as they want, that they don't care. But historically there's been a desire to make sure that what's done actually does provide some benefits, rather than just allow whatever in hopes of quieting them, and it's clearly beneficial to limit the number of tenants somehow. I don't know whether six is the best number at this point, the best size, or any of those specifics at this point from a technical standpoint, much less what the sentiments of the Commission and Council might be. From a technical standpoint, staff will likely recommend allowing more area with some limits on how many tenants. The Commission and Council might allow directory signs but not want to allow them to be larger signs, and to let the landlord decide to put up however many tenants they want. I don't know at this point, and if the Board or appellant want to know, this should be deferred.

Mr. Russell said as I understand it, we're looking at two requests here. One is to whether to allow the sign, and secondly whether to allow more sign area. So we should probably treat each one individually when we make motions.

Mr. Muselman asked are we looking at the 6 tenants, or are we looking at the 10 or 11?

Mr. Russell said the Staff's recommendation, of course, is 6, but the appellant has requested 10.

Mr. Kirchner said 10 or 11. They have 10 tenants now, with one vacancy. My thought is if we make this subject to any ordinance adopted in the future pertaining to this type of sign, then it doesn't really matter what we allow for in the variance, it's going to

ultimately be in compliance with the ordinance that pertains to all of these signs in the future. So I'm not so much concerned about whether it's 6 or 11, whether we impose a condition on any variance that we might grant limited the spots to 6 or 11, as long as we impose the condition that in the future it will always comply with whatever current sign ordinance is in effect.

Ms. Evans asked what does "in the future" mean? For just this establishment?

Mr. Russell said if we grant 11, and he goes out and puts up 11, and then the ordinance is changed to 6, then as the tenants vacate, then he'll have to subtract from that. So in theory, it could be up there for 5 years. Most commercial leases are for 5 years, so it could have 11 names for 5 years. And then somebody moves out, and a new guy comes in, he doesn't get his business name on the directory sign. He asked Mr. Dekker if that was his understanding?

Mr. Dekker said yes.

Mr. Russell asked Mr. Bishop if he understood the same thing, with respect to the risk, that there's the possibility that if the Board grants them 11 tenant names on the sign, then if the ordinance dictates something less, it may have to be reduced to comply with that in the future?

Mr. Bishop said it seems a little bit backwards to me, in that I'm here before the Board, trying to get a variance, and yet all of a sudden, if they pass another ordinance, I might have to come back for another variance. If the Council limits it to 6 tenants, then I'll have to come back and ask for 11. So I would think, if you're granted the variance, you're granted the variance.

Mr. Russell said we could grant up to a certain number, notwithstanding what the City Council would do.

Mr. Dekker said or you could take no action, and just let them wait until Council decides.

Mr. Muselman said because if they change the ordinance, they could override our decision, no matter what, right?

Mr. Dekker said no. If your variance is more lenient than what the Council decides, the Council cannot override your variance. Your variance stands, regardless. We have variances that are 50 or 60 years old that are still in effect.

Mr. Bishop said we just don't feel like we're asking for anything that's really out of the ordinary, compared to what's up and down the street here. So we don't feel like this is really going to create an adverse condition, it's not going to be something like an eyesore or stand out as something unusual. We think it's going to fit in with the character along Hickman Road, it's going to match the signs up and down that street that are already existing today. We are unable, with the current ordinance, to put in a

directory sign that has multi tenants on it, and we just want the ability to do that. And, in order to do it, we've worked with Staff in allowing maybe that extra 50 square feet to get up to 125 square feet for a center that has quite a few tenants. I would think it would be up to the owner as to how many tenants he wants to put on it. Maybe he can only get 6 tenants on it, but he might not want to limit it. He won't know until he discusses it with the sign company and sees what he can sell to his tenants. If he can only get 6 tenants on it, maybe he'll want to give it to the 6 largest tenants. He might want the ability to say everybody can be on there and if the tenants only get 10 square feet each, so be it. They're not going to get much of a sign, they're going to get 12 inch high letters across the sign that has their name, "Wellspring" or "ZCoil", the "Easy Living Store", or something. But most people know that you're not really going to drive by this and think suddenly, "Oh, I want to go there!". You're usually only going to go here for a purpose. This is just to get people to know where they're at here. You're not going to be a consumer driving by and say "okay, I'm going to go to Z Coil". They're going to go there because they want to go there, but this just helps them find the place a little bit easier.

Mr. Dekker said if we're going to get into a "what if" discussion or "I don't know what I want to do until I talk to my sign guy", then from staff's standpoint I'd like to withdraw the recommendation for conditional approval and recommend that this matter be set aside until the City Council issues its decision. If this is going to be an open-ended decision where he'll decide later how many tenants he's going to have and how to do it, just what is the Board approving at this point, and on what basis? What are the Board's findings? If he does put up 11 tenants on the sign after you approve a variance for an additional 50 square feet, what are you going to do if they come back for another variance? What if they come back to the Board saying you can't read my business name because I've only got 10 square feet, I need 20 square feet to make it legible? Are they going to be back for a variance asking for 240 square feet, claiming they have a hardship because the Board only allowed enough area for the 11 tenants to only have 10 square feet? What if they divide some of the tenant spaces and add more tenants? Is that grounds for another variance? What are the criteria going to be? What makes this property different, that others aren't going to request variances instead of following what the City Council adopts. It seems like the appellant has too many questions and too many loose ends to make a finding to know just what is or isn't unique or a hardship. So, at this point the staff recommendation is to just set it aside and wait for the City Council to act.

Mr. Kirchner asked do we have that option, to just take no action and wait and see what the Council does?

Mr. Dekker said yes, certainly. You can say that we're not here to set policy, that's the Council's decision, and we're being placed in the position of having to decide what should or shouldn't be allowed, not whether there's a hardship or uniqueness under the ordinance as it exists, and that's not our role so we're not going to take action. Or we're going to wait and let the Council decide what they're going to do with the Ordinance, and then we'll see if this appeal has any merits under the new ordinance.

Mr. Russell said or we can just grant the variance, like we're empowered to do, not

knowing if or when the Council even would want to take any action. I guess that would be one of my personal concerns, is that maybe in 2 months, but maybe longer, because sometimes things move slow. And it could be a year!

Mr. Dekker said it's not likely to be a year, but it could be more than 2 months.

Mr. Russell said of course, there again, the center's been there all this time and has managed to function without it for this long. I guess you could look at it that way, too. But I don't know if I would hold off, thinking that the City is going to do something in a couple of months. It may not.

Mr. Kirchner said then we're back to looking at what kind of conditions we would want to impose, if we were to grant a variance? Number of tenants, whether it will be subject to any future adopted ordinance, etc.? My thought is to go with the conservative approach and utilize the first condition of limiting it to no more than 6 and not relying upon the second condition of making it subject to any future regulation, because as was pointed out, we're granting an exemption from existing law. Why would future law come in and impact what we're granting here?

Mr. Russell said so you would grant the variance to allow the sign, and then also include an additional 50 square feet, but no more than 6 tenants can be listed.

Mr. Kirchner said yes, that's my initial thought.

Mr. Muselman said I am leaning that way.

Mr. Kirchner said it's the staff recommendation, conservative staff recommendation.

Mr. Pittman asked that's what was granted last month on the Tile Works location.

Mr. Kirchner moved, and it was seconded by Muselman, to approve the Westport Limited Partnership Sign Area and Directory Sign Variance, as set out in the Staff's recommendation, with 125 square feet of copy area, and subject to limiting the number of tenant names being displayed to not more than 6 tenants but not being subject to modifying the directory sign to comply with any future adopted regulations, based on the existing ordinance might create a hardship, it doesn't provide a practical way to identify individual business tenants. On roll call; Ayes: Kirchner, Muselman, Pittman, Evans, Russell; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Westport LP Building Setback and Parking Variances"(10411-10431 Hickman Road) Case No. 011-2007-01.22.

Mr. Chuck Bishop, Bishop Engineering, 3501 104th Street, said this is a request for a variance to build a warehouse building in the northwest corner of the property. The Easy Living Store is located in these bays here at the north end of the center and they need more storage space for their materials. We're asking for a variance to add 7,500

square feet in a separate building along the west property line, where they could store the shelving units and everything else that they sell. There would not be any sales or anything from that building. It would just be purely warehouse space for his existing store. They were one of the first tenants in the center and have been a good tenant, so we're trying to accommodate his needs.

The proposed building would be buried into this hillside along the west property line. There's a large retaining wall along the property line currently, so the building wall would become the retaining wall. There's a 30-foot setback requirement, so we're asking for a 28-foot variance from that setback requirement in order to shove the building all the way back to within 2 feet of the property line, and not lose the existing parking spaces behind the building.

We would lose 4 parking spaces, because we want to provide a truck dock for the new building to load and unload materials. We planned to replace those by adding 5 parking spaces on the west side of the center by the Wellspring store, so we'd end up with the same number of parking spaces that we now have. I think we were granted a variance of 30 spaces when this center was built. We have future spaces shown here and here, as well, and a couple up on the north end. So we're not losing any spaces but we're not proposing to add any additional parking for the 7,500 square feet of new building space. So, we had to request a parking variance in order not to be required to add more parking for the new building. The building would be totally warehouse space with no additional employees, just the employees that are currently working in the store and no public use, so we didn't feel any additional parking is needed.

I know from Staff's report that it's pretty hard to present a hardship for this case. We're looking at just trying to accommodate an Urbandale business without being a detriment to the center by having outdoor storage or something. We're just trying to provide some additional space to meet his needs, so won't felt that he perhaps needs to move out of the center. The property is somewhat unique in that this building is tucked down about 20 feet below the property to the west, so the property to the west will be seeing over the top of the building. They will just basically be looking over the roof of the building like they do the existing building, since the new building would have the same floor elevation as the existing. Both buildings will be about 20 feet below the property to the west, so they're really kind of tucked down in there and hidden to a certain extent. The south end of the building, with the overhead door for loading and unloading, would be visible but we'd make it the same color as the existing building to blend it in as well as possible. It's a lot like the situation with the Lamplighter to the north, we just asking for permission to expand a little bit to meet a tenant's needs. I know the hardship is hard to claim on this, but we're trying to do this from a purely business standpoint, trying to provide additional space for an existing business.

Mr. Russell asked what's just to the west of the proposed building site?

Mr. Bishop said that's an office site. There are two office buildings there that front on 106th Street.

Mr. Russell said 106th Street wraps around?

Mr. Bishop said yes.

Mr. Russell asked how close would you be to the property line?

Mr. Bishop said we're only 2 feet off. The proposed building is about a 45 feet wide building, and we only have about 47 feet from the property line to the west edge of the drive behind the existing building, taking out the parking spaces on the west side of the drive and using all but 2 feet of the 30-foot building setback.

Mr. Russell asked if anyone else wished to speak in favor or in opposition?

Ms. Jan Beal, Erickson Corporation, 2555 106th Street, said I own the property that adjoins to the west and am opposed to this variance. I own six office buildings in the Westport Ridge development. It's a very unique area, with a lot of grassy open space and trees because of the 30-foot setbacks. We have a lot of deer and wildlife, and it's a very unique business park. That's one of the reasons that I've invested my money there. I really believe this will be detrimental to my office buildings

On this particular property, I have two existing buildings and am developing a third at this time. This building that sits right here is 5,000 square feet and I have presently rented 1,600 square feet of it. I have taken this picture. This is standing in the parking lot where the new building would be, looking up at my new office building. Basically what they're proposing is taking out this hill, and taking out the trees that are a buffer right now to what's going on in this parking lot. There's also another building that I will be building to the south of the building that's already there.

This really probably has nothing to do with the warehouse that Easy Living Store wants, but I also took a picture of the parking lot. This is what the parking lot looks like right now, this looks west up to where I'm going to be building another office park. This is how the parking lot is being used right now by the brick company, and there are also 8 dumpsters in that parking lot that are not in enclosures. I'm concerned that if you put 7,500 square feet of warehouse, that's just going to cause more cardboard, more garbage, and there are going to be 10 or 12 dumpsters back there now. I don't normally come to the Board to oppose anything because I'm a developer myself and I want to work with people, but I really feel that this is a detriment to my property.

Mr. Russell said the buildings that you have just to the west, how close to the line are those buildings?

Ms. Beal said they meet the 30-foot setback.

Mr. Russell asked is there any kind of berming or screening that would kind of blunt the look?

Ms. Beal said no, because they don't have room to berm anything because they want to be 2 feet from the lot line.

Mr. Russell said unless the berming took place over on your 30 feet.

Ms. Beal said right. One of the things about designing these office buildings, we have found that people want a window in their office. So we have put windows all the way around the building, never anticipating that there might be a warehouse that they're going to have to look out on the roof of, and the air conditioning units, and all of that.

Mr. Dekker said the action required on this item is to approve or deny variances from the 30-foot setback requirement of Section 3.2 of the Zoning Ordinance and from all 38 parking spaces required by Section 5.12 of the Zoning Ordinance to erect a 7500-square foot building to the west (rear) of the existing building. The existing retail strip center was constructed in 1989, and contains 68,333 square feet of floor area.

The property has about 656 feet of frontage on Hickman Road and 104th Street and about 654 square feet of frontage on 104th Street. It has a total area of 6.40 acres, for a Floor Area Ratio of 0.245. The property is zoned "P.U.D." Planned Unit Development District and is regulated by the "Westport Ridge" Planned Unit Development Master Plan, as are the surrounding properties to the north, south, and west. There are retail uses to the north along 104th Street, and office uses to the north and west along 106th Street. The property east of 104th Street is zoned "P.U.D." Planned Unit Development District, and is regulated by the "Ziegler Property" Planned Unit Development Master Plan. It currently is vacant, but a site plan has been submitted for construction of an auto dealership on the portion of that property that is directly to the east of this property. The property south of Hickman Road is located in the City of Clive and includes a variety of retail and industrial uses.

The existing building currently is occupied by "Easy Living Store", "Kitchen Classics", "Hot Spring Spas", "Gathering Place" (gifts), "UBuild It", "Z-Coil Footwear", "United Brick", "Priority Fitness" (day spa and Pilates), "Starbucks Coffee", and "Wellspring Christian Resources" (books, music, & gifts) with one vacant tenant space. The proposed building is to be utilized for storage and shop area by an existing tenant. The proposed building would eliminate 5 existing parking spaces and also require 38 additional parking spaces for the increased building area. The appellant is requesting the variance to construct the proposed building without providing any additional parking, i.e. a variance of 38 parking spaces from the 38 parking spaces that are required. The property is zoned "P.U.D." and the PUD Master Plan requires 30-foot setbacks from all property lines, and a 2-foot setback is proposed. Accordingly, 28-foot variance from the 30-foot setback is required.

Mr. Dekker said the Zoning Ordinance requires that storage areas be included when calculating the minimum parking requirement. Section 5.12 of the Zoning Ordinance requires that 5 parking spaces be provided for each 1,000 square feet of **gross floor**

area (emphasis added) for most office and retail uses (drinking places and restaurants require more parking). There is an expectation that a percentage of any commercial space will be utilized for storage, and the Ordinance specifically limits storage for retail uses to a maximum of 40% of each tenant's space. While the amount of storage may vary significantly from one type of a business to another, and even within a given "category" of business, an expectation that as much as 40% of any retail space will be used for storage is "built into" the parking requirement. Therefore, storage areas are included in parking calculations just as mechanical and circulation areas within tenant spaces are included in the gross area for calculation of parking requirements.

A variance was previously granted allowing construction of 32 parking spaces to be deferred unless/until a parking shortage was found to exist. To date no parking problems have been noted since the strip center historically has been occupied by home improvement stores that by nature tend to have less practical parking need. The nature of the strip center may be evolving, and existing/future tenants may have greater parking needs that are consistent with the Ordinance minimum requirement. A total of 330 parking spaces are required to satisfy the Ordinance requirements for the existing building, and 298 parking spaces currently exist with space being provided to add 32 parking spaces in the future if needed.

Mr. Dekker said the staff analysis is as follows:

1. The property does not appear to be unique. It was developed under the current Zoning requirements in all respects, including lot area and widths, parking and setback requirements, etc. The 5 spaces/1000 square foot parking ratio applies to virtually all retail and office uses, except for a few uses with larger requirements. The Zoning Ordinance stipulates that not more than 40% of the total space occupied by any each retail business can be used for storage/warehouse space, and this requirement has been in place for decades, well before this property was developed. The 0.245 Floor Area Ratio represented by the existing development exceeds that of the majority of commercial developments in Urbandale.
2. The Ordinance does not appear to create a hardship. The existing building produces a Floor Area Ratio (F.A.R.) of 0.245, which is at the high end of the typical range of Floor Area Ratios for retail development. The F.A.R. is a measure of reasonable economic yield and therefore an indicator of potential hardship or unique property conditions. Therefore, the development as it exists is providing an equal or greater amount of building area, and therefore presumably a rate of return that is equal to or greater than other properties within this P.U.D. and of commercial properties in general
3. Many businesses may desire to combine retail and warehouse uses in a single location. The Zoning Ordinance clearly intends to separate such uses, having distinctly different zoning districts separating commercial and industrial uses. Therefore, the variance to allow construction of a warehouse/shop building, and to not require parking to be provided on the basis that it is warehouse space with no

employees, does not appear to satisfy the spirit and intent of the Zoning Ordinance. There is not sufficient area on the site to add additional parking spaces.

Some nonresidential zoning districts have smaller setback requirements, but this Planned Unit Development Master Plan clearly requires a 30-foot building setback from all property lines to create a park-like development with substantial separation between buildings. Therefore, the setback variance does not appear to satisfy the spirit and intent of the Zoning Ordinance.

4. Compliance with the Ordinances appears to be a viable option, since the property does not appear to be unique, the Zoning Ordinance does not appear to create a hardship since has allowed the property to be developed in a way that is commensurate or greater than that of other commercial properties, and noncompliance with the setbacks and parking requirements do not appear to satisfy the spirit and intent of the Zoning Ordinance.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variances could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that the requested variances should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variances do not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variances exists; and that the requested variances be approved.

Mr. Dekker said staff recommends DENIAL of a variance of 28 feet from the 30-foot setback required by Section 3.2 of the Zoning Ordinance; and a variance of 38 parking spaces from the 38 parking spaces required by Section 5.12 of the Zoning Ordinance to erect a free-standing commercial building.

Mr. Bishop said I don't really have any good arguments against what Mr. Dekker is indicating, I guess. I can't really say anything one way or the other. The center was developed and something that is fairly unique is that the units are fairly deep units, like 120 foot deep, which is much different than most retail today, that are usually 75 feet deep, so they're a little bit tougher to sell. But we were asked by the tenant to see if we can come up with something, so this is the only avenue we could go through to get any additional space on this site. So I'm here to try to do that.

Mr. Pittman moved, and it was seconded by Evans, to deny the Westport Limited Partnership Building Setback and Parking Variances, based upon Staff's findings, the property is not unique, no hardship exists, and the proposed variance would be detrimental to the health, safety and welfare of the general public. On roll call; Ayes: Pittman, Evans, Kirchner, Muselman, Russell; Nays: none. Passes: none. Motion (to deny) passes.

The next item on the agenda was the “Rizzi Driveway Width Variance” (5019 160th Street) Case No. 011-2007-01.24.

Mr. John Rizzi, 3205 154th Street, Urbandale said this is our proposed residence, which is being built at 5019 160th Street. We’re asking for a variance to the driveway ordinance because we have a side entry garage. We would like to bring our driveway 42 feet west or to the side of our home, from the garage to the west property line, and run it out to the sidewalk instead of being restricted in width at the front property line and having to leave an unpaved strip between the drive and sidewalk.

We’d like to use our driveway for more than just parking cars, whether ours or our guests. We want to have the driveway so our kids can play basketball on it, use it as a skating rink, ice hockey arena, picnics, baseball, and whatever else. We plan to utilize the driveway for a lot of activities. The driveway ordinance would require us to leave a gap between the concrete and the sidewalk for part of its width, and we’d prefer not to do that.

Mrs. Joanne Rizzi said this picture best illustrates the situation. What we have now to comply with the ordinance is a strip and triangle that we’ve filled in with rock. It really can’t be planted as grass because you couldn’t put a sprinkler head in there. What we have found is that heels get stuck when you’re walking, we’ve had neighbors twist their ankles walking over it, so the ordinance has just created this gap that seems to cause problems.

Mr. Rizzi said we envision that if we have to leave that gap that it will create somewhat of a hazard for the kids, that it might cause them to fall if they’re on their skates or bicycles, or chasing a ball. That’s probably not a very big deal in the big picture of life, but as a physician I’ve seen my fair share of broken ankles, wrists, and arms and such, and it hurts to see somebody fall. I don’t know that it’s such a great idea to put somebody at risk, if we don’t really have to. I don’t think our proposal would harm anyone. The street is pretty much vacant at this time. There’s an unsold home to the west, the rest of the street and cul-de-sac are unsold, undeveloped lots. So it would not appear, at least superficially to my eye, that this variance would cause any harm or damage to the surrounding neighborhood. I don’t think it would be an eyesore, or cause great hardship to anyone.

Mrs. Rizzi said when I told my husband I was going to ask for this he kind of cringed, but please consider the fact that it’s just plain ugly. It’s really unattractive! And this is our new home, so I’d like it to look as nice as possible and that gap us really quite unattractive.

There was no one present who wished to speak in opposition.

Mr. Dekker said the appellants, Mr. John and Ms. Joanne Rizzi, owners, are requesting a variance to retain a portion of an existing driveway lying between the public sidewalk and property line, said portion of driveway being about one foot wide, for a house that is

currently under construction. The house is substantially complete on the exterior with open framing remaining on the interior at this time. The house has a four-car side-entry attached garage that is accessed from the west side of the house by a 42-foot wide driveway (full side yard from house to west property line) extending from the sidewalk to the far edge of the garage (about 75 feet deep). The driveway apron is 24 feet wide at the property line and is 28-feet wide at the curb line, the maximum widths allowed. Mr. and Ms. Rizzi recently acquired the property.

Section 11.2 of the Driveway Ordinance, as amended in 2005, limits residential properties to a single driveway having a maximum width of 28 feet at the curb and a maximum width of 24 feet at the property line. Beyond the property line the driveway width is not regulated, other than as a maximum amount of paved area in a front yard. The 24-foot width allowed at the property line is generally considered adequate for a 3-car garage, with a two-foot flair on each side to result in a 28-foot wide curb cut. Usually, if a greater width is desired the drive flairs outward within the property line rather than immediately expanding out to its full width at the property line, as has been done in this case. Sidewalks are customarily located 6 inches to one foot into the street right-of-way, so this narrow strip is not allowed to be paved under the Driveway Ordinance, and is the subject of this variance.

The Driveway Ordinance requirements are not proportional to lot width, i.e. the Ordinance does not allow additional drives or a wider curb cut/drive width for a wider lot but rather applies the maximum width restrictions uniformly to all lots regardless of width and area.

The property has 96.93 feet of frontage on 160th Street and has a total area of 27,096 square feet (0.622 acre). The property is zoned "R-1S" Suburban Density Single Family District, as are all of the surrounding residential properties. There are existing residences adjoining to the west and south, and vacant residential lots to the east and north.

Mr. Dekker said the staff analysis is as follows:

1. The property does not appear to be unique. Side-entry garages are somewhat unique overall, but relatively common in the case of larger garages such as this so the garage is not overwhelming in appearance.
2. A wide garage "apron" is necessary within the side yard for a side entry garage, with a minimum dimension of 30 feet recommended to allow easy maneuvering. The width of the drive between the garage apron and street does not need to be wider since it serves only as an aisle and could be as narrow as an 8-foot single lane although a double-drive width of 16 to 18 feet or more would be common. Extending the wide apron out towards the sidewalk, as has been done in this case, could provide paved play court space or vehicle parking in the front yard area. Paving the strip of right-of-way between the drive and sidewalk does not appear to have a detrimental affect on health, safety, or welfare, nor adversely affect the character of

the neighborhood as long as the driveway apron complies with the maximum widths allowed by the Driveway Ordinance (24 feet at property line and 28 feet at curb line). Wider driveway approaches may be detrimental to snow removal or other functions of the right-of-way, particularly on cul-de-sacs where a snow storage space is limited.

3. The Ordinance does not appear to create a hardship.
4. An alternative to the requested variance would be to leave some space between the garage “apron” and property line, rather than extending the full width drive to the front property line and leaving a narrow strip of right-of-way between the drive and sidewalk. A modest setback, combined with the strip between sidewalk and property line, could be suitably landscaped or maintained as turf.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variance could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that the requested variance should be denied. Or, the Board could find that subject property is unique; hardship has been created; the proposed variance does not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variance exists; and that the requested variance be approved.

Mr. Dekker said staff recommends approval of a variance to allow the strip of right-of-way between the sidewalk and property line to be paved, subject to complying with the maximum 24-foot width allowed at the property line and 28-foot width allowed at the curb line by Section 11.2 of the Driveway Ordinance.

Mr. Russell asked it will just end up being flush with the public sidewalk, is that right?

Mr. Dekker said yes.

Mr. Russell asked is there any concern about if they put expansion joints in, so that it's not going to, somehow over time, push against the public sidewalk?

Mr. Dekker said I think, actually, it's already paved and there is an expansion joint there.

Mr. Russell asked if the Rizzis had any other information that they would like the Board to consider or hear?

Mr. Rizzi said no.

Mr. Dekker said just a note for the Board, the recommendation does stipulate that they not widen the drive approach in the right-of-way. That the variance is limited to paving only out to the sidewalk.

Mr. Russell asked if the Rizzis had read the Staff's recommendations? And are you okay with the recommendation concerning the restriction to comply with the maximum 24 foot width allowed at the property line?

Mr. Rizzi said that was a little bit confusing for me. I apologize, but I didn't understand that.

Mr. Dekker said what that says is that the way that the driveway approach is poured right now, the piece that is between the sidewalk and curb, complies. It's 24 feet wide at the property and widens out to 28 at the curb. It needs to stay that way. Approving the variance would not allow that approach to be widened to 42 feet. It would only allow the gap beyond the sidewalk, on the house side of the sidewalk, to be filled in.

Mr. Rizzi said the builder mentioned that, so yes, I understand that.

Mr. Russell said you can't widen the apron, as it's sometimes called, between the street and the sidewalk. It still has to be 24 and no wider than 28 at the curb.

Mr. Rizzi said yes, I understand that.

Mr. Muselman moved, and it was seconded by Evans, to approve the Rizzi Driveway Variance, 5019 160th Street, subject to Staff recommendations, based on the fact that the proposed variance doesn't seem to create a negative impact on the character of the neighborhood and the spirit and intent of the ordinance has been satisfied. On roll call; Ayes: Muselman, Evans, Pittman, Kirchner, Russell; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Ryan Front Setback Variance" (8713 Horton Circle) Case No. 011-2007-1.25.

Mr. Jack Ryan, 924 30th Street, Des Moines, said I'm here on behalf of my parents, Debra and Austin Ryan. They would like to add a covered porch to the front of their house. They're having a little bit of problem with water in their basement because area around the front landing of their house has settled. The prior owners built an addition onto the front of the house, which sits about a foot from the 50-foot setback at the end of the cul-de-sac. They want to build a roof over the landing to help direct the water away from the house, but that isn't possible due to the prior addition and 50-foot setback requirement. The house directly to the east has a 35-foot setback requirement, and we're asking for a 7-foot variance from the 50-foot setback on our lot, which would sort of make our lot a transition between the 35-foot setback to the east and the 50-foot setbacks for the lots around the cul-de-sac.

Mr. Russell asked have you read the staff's recommendations?

Mr. Ryan said yes, I have.

Mr. Russell asked do you have any questions about those?

Mr. Ryan said no, I don't.

There was no one present who wished to speak in opposition.

Mr. Dekker said the appellants, Mr. J. Austin and Ms. Debra K. Ryan, are requesting a variance of 7.0 feet from the required 50-foot front yard setback to construct a covered entry addition having a depth of 8 feet and a width of 14 feet. The existing residence has a 51-foot front setback. Mr. and Ms. Ryan have owned the property since 1993. The residence was constructed in 1979, and an addition was constructed on the front of the house in by a prior owner.

The appellants state that the grade has settled at the front of the house over time, creating a low spot where water collects and enters the basement. The addition has been proposed to correct this drainage problem, which they have been unable to correct with alternative solutions that have included reconstruction of the front stoop and two raised, retaining wall flower beds, and new gutters. The proposed addition would include a raised stoop with roof, and new grades to direct runoff and precipitation away from the house.

Section 3.2 of the Zoning Ordinance requires structures to comply with the platted setbacks if those setbacks are greater than the "standard" minimum setback for a zoning district. The lots around the cul-de-sac and on the south side of Horton Circle were platted with 50-foot minimum front setbacks that are larger than the standard minimum required by the Zoning Ordinance, and lots on the north side of Horton platted with 35-foot minimum front setbacks, instead of the 20-foot minimum required at the time of platting and 30-foot minimum that is currently required. The platted setbacks on the north side of Horton are less because of a drainageway running through the lots.

The property has 57.64 feet of frontage on the cul-de-sac and has a total area of 0.90 acre. The property is zoned "R-1S" Suburban Density Single Family District as are all of the surrounding single-family residences. Public open space borders a small portion of the rear yard.

The appellants also state that the property is unique compared to surrounding properties because the house sits lower than the street whereas all others sit above the street, and that the variance will not alter the character of the neighborhood but instead create additional continuity because other homes have covered entries.

Mr. Dekker said the staff analysis is as follows:

1. The property may be somewhat unique because of its larger front setback and topography, which caused the house to sit below the street elevation. It is customary to situate the house above the street, so water will drain away from the

house towards the street as well as side and rear yards.

2. The addition does not appear to have a detrimental affect on health, safety, or welfare, or to adversely affect the character of the neighborhood. The setback requirement on the lot to the east is 35 feet, and combined with the shape of the right-of-way the adjoining house sits closer to the street than the subject house will after construction of the addition. Accordingly, it does not appear that the addition will be obtrusive or out of character. Therefore the spirit and intent of the Ordinance appears to be satisfied.
3. The 50-foot setback requirement may have created some hardship by contributing to the drainage problem, by possibly forcing the house to be situated at a lower elevation than it otherwise might have been.
4. There may not be a reasonable alternative to the requested variance since other approaches to solve the drainage problem have not been successful.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variances could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that the requested variances should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variances do not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variances exists; and that the requested variances be approved.

Mr. Dekker said staff recommends approval of the variance of 7.0 feet from the 50-foot minimum front yard setback required by Section 3.2 of the Zoning Ordinance to allow construction of a covered entry addition on the front of the existing residence.

Mr. Dekker said there is definitely a drainage problem there. The house is pretty much flat with the street, it doesn't drain positively out towards the street. And at least in part that's probably due to the 50-foot setback because there is quite a bit of topography to the property, so that made them probably set a little bit lower. And it looks like something that you ought to be able to fix fairly easily but it's obvious that it hasn't been. And if you look at it, and if you ever try to do anything of the sort, you know that it's not as easy as it looks. So the recommendation is for approval.

Mr. Russell said so they will just build a porch over it and cover it, and that will take care of the problem?

Mr. Ryan said yes. We're going to pour a new stoop and cover it.

Ms. Evans moved, and it was seconded by Kirchner, to approve the Ryan Front Setback Variance, based on the problem they are experiencing with the drainage and it

doesn't seem to have any negative impact on the neighborhood. On roll call; Ayes: Evans, Kirchner, Pittman, Muselman, Russell; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Claiser Accessory Building Setback Variance" (3016-64th Street) Case No. 011-2007-01.26.

Mr. Roger Claiser, 3016 64th Street, was present to represent this request.

Mr. Russell said I understand that you're asking for a side yard setback variance?

Mr. Claiser said yes. I'm not real familiar with all the restrictions and everything. The existing garage was already there when I bought the property years ago, and it is 3.3 feet from the north property line. I want to build an addition on the back side, away from the property line. I'm not building closer to the property line, and in fact the addition won't be visible from the north property line. It's really not visible from hardly anywhere except from the back yard of my neighbors to the south. I obtained a permit once before and poured cement for this addition, but I didn't complete the work at that time because of family problems. I came in to get a new permit to complete what I had started back then, and that's when the City told me about the 10-foot setback requirement.

Mr. Russell asked have you read the staff's recommendation?

Mr. Claiser said yes.

Mr. Russell said do you have any questions or concerns about the recommendations?

Mr. Claiser said no.

There was no one present who wished to speak in opposition.

Mr. Dekker said Mr. Roger S. Claiser is requesting a side yard setback variance to erect an addition to a detached accessory building (garage) that has more than 720 square feet of floor area and a 3.3-foot side yard setback. The garage addition is proposed to measure 10 feet wide by 10 feet deep for an area of 100 square feet, and is located to the southwest of the existing garage. The existing detached garage has a total area of 856 square feet, which would increase to 956 square feet with the proposed addition and therefore is a legally nonconforming structure since it has a 3.3-foot side yard setback in lieu of the 10-foot minimum setback that is currently required for a garage of this size. The addition was partially constructed without a valid building permit before work was stopped by City staff responding to a citizen complaint.

According to Polk County Assessor information, the existing residence was constructed in 1958. The original garage also was constructed in 1958 and was a one-car garage measuring 14 feet wide and 20 feet deep. A two-car addition was built onto the front of

the existing garage in 1990, measuring 24 feet wide and 24 feet deep. Mr. Claiser acquired the property in 2001.

Section 4.1, paragraph B-1 restricts a detached accessory building to a maximum area of 720 square feet, unless such building is located in a rear yard and has minimum setbacks of 10 feet from the side and rear property lines. If 10-foot setbacks are provided, the maximum garage floor area is 1000 square feet. If 25-foot setbacks are provided, a 25-foot maximum height and maximum area equivalent to 30% of the rear yard area are allowed. Legally nonconforming structures cannot be expanded.

The property is zoned "R-1S" Suburban Density Single Family District. It has 75.5 feet of frontage on 64th Street and a total lot area of 11,703 square feet.

There are single-family residences to the north, south, and east that are also zoned "R-1S", and that have similar lot sizes. There are duplexes located to the west that are zoned "R-3" Low Density Multi-family District.

The appellant states that the addition is located to the south of the existing garage and therefore is not visible from the north, and is visible to only a limited extent from the street. The appellant states that the addition is necessary to provide more storage space, and that a building permit was obtained at one time and some of the addition constructed (primarily a concrete floor slab) but not completed before the permit expired.

Mr. Dekker said the staff analysis is as follows:

1. This property does not appear to be unique compared to other similarly zoned properties.
2. The Ordinance may create a hardship since the existing garage appears remain economically viable, and it would have been possible to construct the addition as proposed at the time the garage was expanded in 1990. However, the 10-foot setback requirement was in effect at the time the appellant acquired the property and the appellant could have known of the restrictions at the time of acquisition, and therefore there may not be a hardship.
3. The setback variance to allow the 100-square foot addition may not have an adverse impact on health, safety, or welfare or on the character of the neighborhood since it is not visible from the north and essentially not visible from 64th Street, at least not to the extent of appearing to be a nonconformity. Therefore, the spirit and intent of the Ordinance may or may not be satisfied by this variance.
4. One alternative to the addition would be to construct a free-standing storage building. Such alternative may or may not have greater impact on the neighborhood than the proposed addition, since it may add to an appearance of clutter or over-building.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variances could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that the requested variances should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variances do not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variances exists; and that the requested variances be approved.

Mr. Dekker said staff recommends approval of a variance of 6.7 feet from the 10-foot minimum side yard setback required by Section 4.1, paragraph B-1 of the Zoning Ordinance for an accessory building that is more than 720 square feet but less than 1000 square feet in area.

Mr. Russell asked was the neighbor to the south given notice, and are they aware of your plans to build this additional garage?

Mr. Dekker said they did receive notice.

Mr. Claiser said I gave the City the names and addresses of all of the surrounding property owners.

Mr. Russell said it looks to me that if anybody would be affected it would be the neighbor to the south. They would be the ones that would see it.

Mr. Claiser said they're basically the only people that could see it, other than through a small area over on Urbandale Avenue where you can kind of see across the open area. But there are a lot of trees and bushes around, so you can't really even see it unless you're in the neighbor's back yard.

Mr. Kirchner moved, and it was seconded by Evans, to approve the Claiser Garage Setback Variance, based upon the fact that the Ordinance may create a hardship and the variance would not have an adverse effect on the health, safety or welfare of the public, or a negative impact on the character of the neighborhood. On roll call; Ayes: Kirchner, Evans, Pittman, Muselman, Russell; Nays: none. Passes: none. Motion carried

The next item on the agenda was the "Weyers Accessory Building Setback Variance" (5426 157th Street) Case No. 011-2007-01.27

Mr. Bill Weyers, 5426 157th Street, said my property is somewhat unique in that my property and all of the properties around me are very large lots. I think when it was originally platted it was in Dallas County, and it was annexed later by Urbandale. Basically the neighborhood is single family residential with some large lots. Several of

the neighbors have put up some accessory buildings. You'll notice the one across the street from us is a fairly large building. That's about a 60 by 100 foot building, and with a 15-foot dormer on the front of it. It's a large Morton building. The gentleman who resides there uses it to put his semi tractor in. He has a tractor and a trailer, and he puts those inside of the building. And we have no problems with that. But the character and fit and finish of building that we're looking at is designed to match the house. It's a smaller building, of course. We do have consent from the neighbor to the north to place it a little closer to the lot line than the current ordinances allow. I've read Staff recommendations, and don't have any issues with that. I think that's a reasonable recommendation. I'll be glad to answer any questions you may have.

Mr. Russell said so the garage would be 864 square feet?

Mr. Weyers said one of the questions I'd have is that it's possible that we may put a slightly wider garage in, to accommodate a wider door, so it might be 26 by 36, but it still falls under 1,000 square feet under the Code. So one of the questions I would have is if it would matter if it's 24 by 36 or 26 by 36? I don't think it materially changes the issue at all, but I wondered about that.

Here's where the location would be, behind this existing concrete pad that's here. We would build behind it. The other question I have is, as Mr. Dekker notes, this is in a flood plain. This is the original plat map and we are right here. You can see this line is here and here. I believe this is in the floodway, this area here. This area may be in the floodplain which means the structure would have to be built one foot above the flood plain level, which means we might have to raise the floor a bit to make that happen. So my question would be, as we place the garage along here, if we could move it this way, basically east and west, to alleviate some of the need for raising the floor of it? Because it looks like it does need to come up, as Mr. Dekker has pointed out.

So my two questions, again, would be if it's a slightly wider garage but under 1,000 square feet, and if it moved from here, this way or this way along the line, as long as it stayed, under Staff recommendations, 13 feet away from this particular lot line, but met everything else, if it could move this way or this way?

Mr. Russell said I don't see any problem with that, do you?

Mr. Dekker said variances are normally approved according to a specific set of circumstances, so as long as the Board approves it with the acknowledgement that your motion would still be valid with a slightly larger garage and adjusting the location slightly, then that's possible. If you approve it as submitted, then, as Staff, we have to adhere exactly to how you approved it.

Mr. Russell said on the size, he can go up to 1,000 square feet, right?

Mr. Dekker said yes, he can go up to 1,000 feet, and personally, from Staff's standpoint, I don't have any problem with either of the matters he raised, to slightly increase the

garage size, as long as he keeps it under 1,000 square feet, and moving it a little bit one way or the other to make it easier to meet the flood elevation. And also it doesn't materially change the conditions. But the Board needs to agree with that.

Mr. Russell asked Mr. Weyers if he was okay with that, and if that answered his questions?

Mr. Weyers said yes.

There was no one who wished to speak in opposition.

Mr. Dekker said Mr. William and Ms. Kathleen Weyers are requesting a side yard setback variance to erect a detached accessory building (garage) that exceeds the maximum allowable 12-foot height by 5.75 feet. The detached garage is proposed to have a height of 17.75 feet as measured at the midpoint of its gable roof, and is proposed to be located 10 feet from the northerly (side) lot line. The garage is proposed to measure 24 feet wide by 36 feet deep, for an area of 864 square feet. The two-story house has an existing three-car attached garage. According to Dallas County Assessor information, the residence was constructed in 2000 and Mr. and Ms. Weyers acquired the property in 2005.

Section 4.1, paragraph B-1 restricts a detached accessory building to a maximum height of 12 feet measured at the midpoint of a gable roof and a maximum floor area of 1000 square feet, unless such building is located in a rear yard and has minimum setbacks of 25 feet from the side and rear property lines. If 25-foot setbacks are provided, a 25-foot maximum height and maximum area equivalent to 30% of the rear yard area are allowed. Garages and other accessory buildings that exceed 720 square feet in area but not more than 1000 square feet in area are required to have 10-foot setbacks from all property lines. This garage is located in the rear yard and would comply with the setback requirement for its area, if it was not more than 12 feet in height. Its rear setback is substantially in excess of 25 feet.

The property is zoned "A-1" Agricultural Reserve District and is legally nonconforming due to lot area and lot width. The property was platted under Dallas County regulations prior to annexation but the plat was not developed nor any homes constructed until after annexation. The "A-1" District requires a 300-foot minimum lot width and 20-acre minimum lot area, and automatically takes affect upon annexation. This property has 166.74 feet of frontage on 157th Street and a total lot area of 2.93 acres including the Walnut Creek channel and portions of the Walnut Creek floodplain and floodway. The floodway cannot be filled or otherwise altered and therefore is not developable or allowed to be used for anything other than open space uses. 157th Street is a private street. The requirements for accessory buildings are uniform regardless of zoning district, the only exception being agricultural uses which are exempted from most Zoning and Building Code requirements by the Code of Iowa.

There are single-family residences to the north, south, and east that are also zoned

“A-1” and are part of the same development, and that have similar lot sizes. The property to the west is totally within the Walnut Creek floodway and therefore is not developable.

The appellant states that the property is unique because of its size and topography. Because of lot size, the closest neighbor’s house will be more than 150 feet from the garage. Because of the topography (slope to the rear), garage will sit lower than other buildings and its height will not be apparent or detrimental to the character of the neighborhood. The appellant states that the proposed garage design will enhance the character of the neighborhood since it matches the exterior design of their home, whereas other accessory buildings in the area comply with setbacks but are metal pole barns, some of which are very large. Also, that the setback variance is needed to allow an existing concrete slab to be utilized as an entry and so it would not be necessary to relocate an existing water service, neither of which could be utilized if the variance is not granted.

The closest property owner (located to the north) has submitted a written consent to the proposed variance.

Mr. Dekker said the staff analysis is as follows:

1. This property may be somewhat unique compared to other similarly zoned properties, since the lot is smaller than most “A-1” properties and larger than most residential lots. It also is somewhat unique since it includes a portion of the Walnut Creek floodway and the buildable area of the lot is therefore reduced because floodway cannot be filled or otherwise developed, or used for anything other than open space uses.
2. The Ordinance does not appear to create a hardship since it was possible to construct the residence and a three-car attached garage (accessory building) on the property, and it is possible to construct a conforming detached garage/shed having the proposed 864 square-foot floor area by reducing its height to 12 feet. Therefore, there appears to be a reasonable and customary ability to provide for accessory uses on the property.
3. The 15-foot setback variance to allow the 17.75-foot height may not have an adverse impact on health, safety, or welfare or on the character of the neighborhood as viewed from 157th Street since the proposed garage has a large setback from the street. The increased height may be apparent from the property adjoining to the north, whose owners have consented to the variance. Therefore, the spirit and intent of the Ordinance may or may not be satisfied by this variance.
4. There appear to be reasonable alternatives to the setback variance, that being to reduce the height of the garage or increasing the side yard setback to 25 feet. Another alternative would be a lesser variance of 13 feet, thereby providing a 12-foot side yard setback that is the minimum side yard requirement for a principal structure

in the "R-1L" Low Density Single Family District, which appears to be a logical zoning district for this property.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variances could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that the requested variances should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variances do not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variances exists; and that the requested variances be approved.

Mr. Dekker said staff recommends approval of a variance of **13.0 feet** from the 25-foot minimum side yard setback required by Section 4.1, paragraph B-1 for an accessory building that is more than 12 feet in height, thereby requiring a 12-foot side yard setback rather than the 10-foot setback requested, and subject to complying with all floodplain regulations including but not limited to confirming the garage location is not within the floodway and elevating the structure as necessary to place the lowest floor 1 foot above the 100-year flood elevation.

Mr. Kirchner moved, and it was seconded by Evans, to approve the Weyers Garage Setback Variance, a variance of 13 feet from the 25 foot minimum side yard setback for an accessory building that is more than 12 feet in height with a maximum floor area of no more than 1,000 square feet, subject to complying with all floodplain regulations and staff recommendations, based upon the fact that the property may be somewhat unique, the variance will not have an adverse impact on the health, safety or welfare of the public, or on the character of the neighborhood. On roll call; Ayes: Kirchner, Evans, Pittman, Muselman, Russell; Nays: none. Passes: none. Motion carried.

Mr. Russell said good luck with the construction of your building.

Regarding Staff recommendations, Mr. Dekker said at this point we have one item for the next meeting, which is on January 9, 2008. Contrary to what it says on the agenda, the meeting will be on the 9th rather than on the 2nd.

The meeting adjourned at 7:23 p.m.