

**BOARD OF ADJUSTMENT
MINUTES**

December 1, 2010

The Urbandale Board of Adjustment met in regular session on Wednesday, December 1, 2010, at the Urbandale Administrative Offices Building, 3600 86th Street, with Chairperson Patrick Kirchner calling the meeting to order at 6:00 p.m.

Board members present were John Pittman, Mark Wandro, and Patrick Kirchner. Staff members present were Heather Mac Bean, Planner II, and Cheryl Vander Linden, Department Secretary.

There were no objections to the official publications as they appeared in the Urbandale/Johnston Register.

Mr. Kirchner said this is a 5-member board and the Code of Iowa requires 3 affirmative votes to grant any variance or conditional use, regardless of how many members are present or may have a conflict of interest and be unable to participate and vote on a particular appeal. A minimum of 3 members must be present to constitute a quorum and allow the meeting to be held. In such case a unanimous vote is necessary. A vote of 2 to 1 in favor, or 2 to 1 with one abstention, if 4 were present, as examples, would constitute a denial. Knowing that, anyone who wishes to have his or her item deferred until a future meeting may do so by requesting a deferral now or at any time prior to a motion being made. Once a motion has been made, it will no longer be possible to request deferral. If denied, a variance or conditional use cannot be resubmitted for the Board's consideration for a minimum of one year. We ask that each person addressing the Board this evening please speak from the podium at the front of the room so your voice will be picked up by the sound system, state your name and address for the record prior to making your presentation. Also please turn off your cell phones or, at a minimum, set them to silent or vibrate.

The first item on the agenda was approval of the November 3, 2010, meeting minutes.

Mr. Pittman moved, and it was seconded by Wandro, to approve the November 3, 2010 meeting minutes. On roll call: Ayes: Pittman, Wandro, Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Thin Air Communications Communication Tower Conditional Use Permit and Setback Variance", 16200 Waterford Road, Case number 011-2010-02.10.

Mr. Joe Pietrusznski, Hubbell Realty, 6900 Westown Parkway, West Des Moines, said I am not an expert on these services by any means, so with me tonight is also Thin Air Communications and our civil engineering firm. The request before you is to bring

internet, television and phone services to Waterford Landing development. In these economic times, Qwest Communications and Mediacom Communications, those two franchise companies, are not providing services in new developments like they have in the past for developers. So that leaves us in a situation, even though the P.U.E.s are in place, where we have inadequate services for our customers. They can, of course, use cellular technology but then it limits their abilities to have the same quality of television services and phone reliability that most people who live in Urbandale believe comes with the purchase of the land. So, to remedy that situation, we've contracted with Thin Air Communications who across the country provide different types of technology solutions to provide the communication package. Essentially, they act just like a franchise utility, just like Qwest or Mediacom would, but one thing they definitely do need is a line of sight to their distribution source, which is from 801 Grand over to the property. He said once they have that, they install fiber optic communications to this receiving point and then to the development. It is a technology that exceeds Mediacom and Qwest. It provides for much higher speed internet service, it provides for a full range services the same as cable t.v. channels, and actually at a much reduced price. They have served us well on other properties, apartment properties, residential properties across the metro. We believe they would add significant value to the community but it requires strategic placement of a tower. Working with our engineering staff, working with Thin Air, we tried to locate the tower in an area where it cannot only serve our subdivision but perhaps adjacent neighbors who would like to receive the same services. Mr. Pietrusznski said they are a company in themselves. We just want the services from them. They can distribute it to anybody in the area, as they see fit. They are requesting to locate on our property because we have the means to do that, and in a location, as we see it, that would provide the least interference with the existing land uses that are there up against the road and away from existing single family. That is our intent here tonight, to provide full communication services to the development, because right now it does not have access to those Mediacom and Qwest services that most typical subdivisions have.

Mr. Kirchner asked you've seen the Staff recommendations and the conditions that they suggest?

Mr. Pietrusznski said yes.

Mr. Kirchner asked and you're comfortable with those?

Mr. Pietrusznski said yes.

Mt. Wandro said my only question deals with # 5, regarding the constraint as to why the water tower didn't work.

Mr. Pietrusznski said it requires fiber optic communication lines from the communications tower to the development. Fiber optic installation is extremely expensive. And to go that distance and to obtain the necessary easements and boring

all the way to the tower, for the Thin Air or for Qwest or Mediacom, for that matter, is not something that is economically feasible to undertake.

Mr. Wandro said so, it's financial.

Mr. Pietrusznski said it's definitely financial.

Mr. Kirchner asked is anyone else present who would care to speak in favor of this conditional use and variance request.

Mr. John Paulson, 5314 160th Street, said I live just down Waterford Road from the proposed tower. I'm probably the nearest dwelling in the Hubbell development of Waterford Landing development. I'm speaking in favor of this location based on the information that I've been provided, it's in the farthest northwest corner of the property and is up and over the hill from us. We have been in the house for about four months without communication services. We've been using cellular. It is really quite inadequate and I think this service is needed for personal and business internet and phone service. The area that's the proposed tower location is unplatted property and therefore does not have any dwellings nearby, and ours being the nearest one, is a couple of blocks away. So, we don't have any issues, being that far away from this tower. The people that will be buying property in that area near the tower will have a known situation where they will be buying around the tower. So I think this is an ideal area, and also it is the highest area of land in the region. And so we believe that it will provide us good, reliable service. What we've heard from Thin Air is it appears to be very economical service, for what we would get, and good quality, so I am speaking in favor.

Ms. Jill Thompson, 16036 Northpark Drive, said I'm also in the Hubbell development. I just want to echo the need for it. We have service now that is not acceptable. We've lived there since June and struggle with what we have. It would be great to be able to work from home at times, and just have the normal internet service that everyone would expect, as a homeowner.

Mr. Jeremy Morris, 10141 Sutton Drive, Urbandale, said I'm with Thin Air Communications. I just wanted to give everybody else an opportunity to speak before I approached the Board. One thing that I did want to add is that it's not only the Waterford Landing development that we're proposing servicing, but also Walnut Meadows, which is a 10-house development just on the north side of Waterford Road. And they're also, to quote a letter that someone wrote in support, "woefully underserved." Of the 10 homes, I've got letters from 9 people, 9 of the homes, supporting the tower. If you'd like to review the letters, I can pass them to you.

Mr. Kirchner said we don't necessarily need to see the letters. I'll just take it at your word that those people are in favor. I appreciate you sharing that with us.

There was no one else who wished to speak either for or against this item.

Ms. Mac Bean said the action required on this item is to approve or deny the requested Conditional Use Permit to allow a communication tower and future relay point, and for a variance from Section 5.430 paragraph B., that requires a 200-foot minimum setback from any property which is zoned for residential development, including Planned Unit Developments, or designated for such use by the Comprehensive Plan.

Thin Air Communications is requesting a Conditional Use Permit to allow a communication tower and a variance from the setback requirement that a communication tower must be a minimum of 200 feet from property zoned for residential development, including Planned Unit Developments, or designated for such use by the Comprehensive Plan. The tower is proposed to be located on the south side of Waterford Road, in the northwest corner of the "Waterford Landing" (P.U.D.) Planned Unit Development area. The location is approximately 87 feet south of the existing Waterford Road right-of-way line, 60 feet south of the proposed right-of-way line, and 60 feet from the west property line.

The communication tower would provide internet service and possibly other telecommunication services to the surrounding area. This service would be available to the residences in the Waterford Landing development and the Walnut Meadows subdivision located on the north side of Waterford Road at 157th Street.

The application indicates that the proposed communication tower would receive a microwave signal sent from antennas located at 801 Grand, Des Moines, Iowa, and will transmit back to said point. Telecommunication services would thereafter be distributed from the proposed tower to subscribers in the surrounding area through a fiber optic cabling system. The permit would also allow the tower to become a relay point, to transmit telecommunication signals to future towers at undetermined locations that would provide the same internet and other telecommunication services to other neighborhoods. The design of the proposed network would allow for speeds in excess of 100 Mbps (megabits per second) to each home, which enables the delivery of internet service, home phone service and more than 300 channels of television.

Communication towers are a Conditional Use in a Planned Unit Development District designated for residential purposes. Communication towers in all zoning districts are subject to minimum setbacks and separation from other communication towers, said setbacks and separation requirements depending on circumstances, and all towers are subject to the performance standards of Section 5.430. The appellants are requesting a variance from Section 5.430 paragraph B., which requires a 200-foot minimum setback from any property which is zoned for residential development, including Planned Unit Developments, or designated for such use by the Comprehensive Plan.

The tower is proposed to be a 59-foot high monopole with a 24" parabolic dish located in the upper portion of the tower. The application indicates that the tower will allow for

two microwave links: one to 801 Grand “The Principal Building” and a second for redundancy to “West Lakes Medical Center”. Once the signal is received at “Waterford Landing” it will then be distributed through the use of fiber optic cables run to each home in a private easement.

The application also states that the proposed tower is small by industry standards in an effort to minimize its footprint and impact on adjoining properties. The 59 foot height of the tower is intentional as the appellant would prefer not to have other carriers, mainly cell phone carriers co-locate on the proposed tower as the average cellular tower emits electromagnetic radiation in levels that are 100 times greater than the equipment that is proposed for this use.

Ms. Mac Bean said the Zoning Ordinance does not require towers that are less than 60 feet in height to have co-location capability.

Standards for enclosures surrounding tower bases require a six (6) foot high wood fence. Landscaping requirements for communication tower enclosures includes a continuous landscaped area measuring a minimum of 25 feet in width which is to include a row of coniferous trees spaced not more than 13 feet between plants. The Zoning Ordinance requires a minimum separation of 650 feet for towers that are less than 60 feet in height. The tallest structure in the area is the Urbandale Water Tower located less than ½ mile south of the intersection of 170th Street and Waterford Road and about ¾ of mile from the proposed tower. There are currently no cellular communication antennas on the water tower.

The properties directly to the north and west of the proposed communication tower site are zoned “A-1” Agricultural Reserve” District and designated for single-family detached residential by the Comprehensive Plan. The property to the northwest is zoned P.U.D. Planned Unit Development District and is also a part of the “Waterford Landing” P.U.D. and zoned for residential development. To the south is “Waterford Landing” Plat 1, zoned “R-1S” Suburban Density Single Family District. Further south and west is the “Wright Property” P.U.D., also designated for residential development.

Ms. Mac Bean said Staff analysis is as follows:

1. Standards, all of which must be met prior to approval of a Conditional Use Permit, are as follows:
 - (a) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
 - (b) That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish and impair property values within the neighborhood;

- (c) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
 - (d) That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided;
 - (e) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
 - (f) That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified as provided in Section 6.
 - (g) That the proposed use shall be consistent with the Comprehensive Plan. Conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational controls, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, may be required by the Board upon finding that these are necessary to fulfill the purpose and intent of this Ordinance.
2. Communication towers are subject to site plan approval, and shall conform with performance standards as follows:
- A. Height. Communication towers shall not exceed the maximum height allowed for such towers by the zoning district in which it is located, and in no case a height of 150 feet except in an industrial zoning district upon approval of a Conditional Use permit by the Board of Adjustment or as otherwise provided herein. Towers exceeding a height of 60 feet shall accommodate co-location of one additional provider, at roughly equal or better capacity and position as the applicant's antennas. Additional height to accommodate additional co-location may be approved if the applicant submits information certifying the tower has capacity for at least two (2) additional providers, at least one of which shall provide roughly equal or better capacity and position as the applicant's antennas for a like user. The applicant shall provide a letter indicating their good faith intent to accommodate and encourage co-location on the tower. A lightning rod, not to exceed 10 feet in height, shall not be included within the height limitations.
 - B. Setbacks. Towers and accessory buildings shall meet the setbacks of the zoning district in which they are located or those required by Section 6.7, unless greater setbacks are required by the Board of Adjustment.

All communication towers, except those designed as an architecturally compatible element in terms of material, design, and height to the existing or proposed use of the property, shall be setback 200 feet from any property which is zoned for residential development, including Planned Unit Developments, or designated for such use by the Comprehensive Plan. Provided, however, that the distance may be reduced or waived by the Board of Adjustment if the residentially zoned land is used for a nonresidential use or for residential buildings having four or more stories.

- C. Separation Requirements. Communication towers, except those designed as an architecturally compatible element of the existing or proposed use of the property in terms of material, design, and height, shall comply with the following separation requirements, with the separation between towers of differing heights to conform to the requirement for the taller tower:

Tower Height	<u>100 ft. or More</u>	<u>60 ft. to 99 ft.</u>	<u>More than District, less than 60 ft.</u>	<u>Conform to District</u>
Spacing	One mile	1,300 ft.	650 ft.	None

- D. Lighting. No lights shall be mounted on a communication tower or antenna, and the tower and antennas shall not be illuminated, unless required by the Federal Communications Commission or the Federal Aviation Administration or expressly permitted by the Board of Adjustment, as may be the case for a multiple-use installation such as a communication tower that is also used as a light standard for an athletic complex. Security lighting may be provided around the base of a tower if zero cut-off luminaries with a maximum mounting height of twelve feet are used to limit such lighting to the tower site.
- E. Color. All towers shall maintain a galvanized finish or light gray color, unless otherwise required by the Federal Aviation Administration, Federal Communications Commission, Board of Adjustment, or City Council, and shall not be painted in a manner which conveys a company identity. No signage shall be permitted except for directional or warning signs, as regulated by the Sign Ordinance.
- F. Landscaping. A landscaping plan shall be provided, and all plant materials shall conform to Section 4. If located in any residential zoning district or area designated for residential use by the Comprehensive Plan or a Planned Unit Development, a continuous landscaped area with a width of not less than 25 feet shall be provided around the perimeter of the

communication tower and any accessory buildings or security fencing or walls and planted with a row of coniferous overstory trees at not more than 13 foot spacing between individual trees with a minimum eight-foot height at the time of planting, together with other plant materials as may be required to effectively screen the installation. Where the visual impact of the tower and any accessory structures would be minimal because of existing vegetation or structures, the landscaping requirement may be reduced or waived by the Board of Adjustment or City Council.

- G. Fencing or screening. The base of the tower shall be screened from view with a solid screening fence a minimum of 6 feet in height, unless waived by the City Council. The City Council shall have the ability to waive the required screening where the design of the accessory building is architecturally compatible with the primary use of the property; the installation is adequately screened by landscaping; or the building and tower base are not visible from other properties or public streets.
- H. Accessory Uses. Accessory uses shall be limited to such structures and equipment that are necessary for transmission functions, and shall not include broadcast studios, offices, vehicle or equipment storage, or other uses not essential to the transmission function.

All accessory buildings shall be constructed of building materials equal to or better than those of the primary building on the site and shall be subject to site plan approval. Where there is no primary use other than the tower, the building materials for the accessory building shall be subject to the review and approval of the City Council.

No equipment shall be stored or parked on the site of the communication tower, unless used in direct support of the antennas or the tower or antennas are being repaired.

- I. Tower design. All communication towers shall be of a monopole design unless another design is required by the Board of Adjustment or City Council to be architecturally compatible to the surrounding development.
- J. Parking areas. All parking areas and drives shall comply with Section 5.13.
- K. Initial approval and renewal. The initial approval of a permit for a tower shall be limited to 5 years unless the tower will be at full capacity at the time of erection due to co-location at such time, or if co-location is not required. The permit may be renewed upon application from the owner at the discretion of the Board of Adjustment, or City Council if Board of Adjustment approval is not required for the tower, for any period of time that is deemed appropriate thereafter, including permanent approval if co-location has

occurred to the extent possible or for similar reasons which deem future review unnecessary. A Conditional Use permit shall expire three years after the date of approval if a tower is not erected within said time period.

At the time of renewal, a public hearing shall not be required unless the applicant fails to demonstrate to the satisfaction of the City that a good-faith effort has been made to cooperate with other providers to establish co-location at the tower site. Good-faith effort shall include, but is not limited to, timely response to co-location inquiries from other providers and sharing of technical information to evaluate the feasibility of establishing co-location. Cause for denial of the request for a renewal shall be limited to: failure to demonstrate that a good-faith effort has been made to accommodate co-location; violations of the performance standards and regulations of this ordinance, or a Conditional Use permit; or existence of unsafe conditions to the detriment of the public.

- L. Exceptions. The Board of Adjustment may grant a variance from the height, setback and separation standards set forth in the zoning district or in this Section, if the applicant submits a technical study acceptable to the City which confirms that the variance is essential to the provision of service and that no alternative is available which conforms to the requirements.
 - M. Removal of Abandoned Communication Towers and Antennas. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days after abandonment. If such antenna or tower is not removed, the City shall send a notice to the owner notifying the owner that such abandoned antenna or tower must be removed within ninety (90) days, and the City may thereafter remove such antenna or tower at the expense of the tower or property owner. If there are two or more users on a tower, then the tower shall not be removed unless all users cease using the tower.
3. A communication tower may have a negative impact upon the character of the surrounding neighborhood, since the tower is significantly taller than residential structures.
 4. The tower conforms to the height requirements of the Zoning Ordinance, and is not required to provide for co-location for any telecommunications carrier. The proposal conforms to the monopole design requirement. No buildings or equipment shelters are proposed. The tower conforms to the requirements of the Zoning Ordinance that the color be galvanized or light gray in color. The tower conforms to the parking and drive areas required by Section 5.13.

The communication tower does NOT conform to the 200-foot minimum setback

required from any property which is zoned or planned for residential development, since it is located on residentially-zoned property and all of the surrounding property is also zoned or planned for residential use. The purpose of the tower is to provide telecommunication services to the surrounding neighborhood, and no nonresidential property is available within one-half mile to provide a nonresidential location. The proposed site was selected as it is the highest point on the subject property, achieving the intended purpose of providing a clear signal with the base tower at the Principal Building located at 801 Grand. The proposed location, being adjacent to Waterford Road which is an arterial street, appears to create the least impact compared to any alternative in the immediate vicinity.

The proposal does not conform to the landscaping requirements as outlined in Section F above.

5. The appellant considered an alternative tower site on top of the Urbandale Water Tower on 170th Street, but that location is not feasible for installing fiber optic cables from the tower to the building lots in Waterford Landing Plat 2 and the Walnut Meadows subdivision, because of the distance.

Therefore, the Board could find that the proposed Conditional Use does not satisfy the standards required for approval of a Conditional Use, and that the request therefore must be denied. Or, the Board could find that with certain modifications and stipulations, that the proposed Conditional Use would not create a negative impact upon the character of the neighborhood, would satisfy the required standards and the intent of the Ordinance, and that the requested Conditional Use be approved subject to such modifications and stipulations.

Ms. Mac Bean said Staff recommends approval of the requested conditional use to allow a communication tower and future relay point, and for a variance from Section 5.430 paragraph B., that requires a 200-foot minimum setback from any property which is zoned for residential development, including Planned Unit Developments, or designated for such use by the Comprehensive Plan, subject to meeting the landscaping, fencing and screening requirements of Section 5.430, paragraphs F and G of the Zoning Ordinance.

Mr. Wandro asked it doesn't preclude competition at some point in time, right?

Ms. Mac Bean said competition from another service like Thin Air? They would have to go through the same process.

Mr. Wandro said assuming they satisfy it though, I mean, it's not like the water district where it would be exclusive?

Ms. Mac Bean said no, if somebody else would want to do this, they would have to go through this process too, but I think the purpose is not necessarily to have that many

towers but to provide more of those dishes on the tower, to provide service.

Mr. Wandro said or from a different method.

Ms. Mac Bean said right.

Mr. Kirchner said Staff's recommendation for the variance is based upon its belief that the appellant has displayed the necessary showing of hardship?

Ms. Mac Bean said yes.

Mr. Kirchner asked if Mr. Pietrusznski or others in favor had any thing further to add, at this point?

They indicated they did not.

Mr. Wandro moved, and it was seconded by Pittman, to approve the Thin Air Communications Communication Tower Conditional Use Permit and Setback Variance based on the Staff analysis and the fact that the Board could find with certain modifications and stipulations that the proposed conditional use would not create a negative impact on the character of the neighborhood and as per the conditions recommended in the Staff recommendations. On roll call: Ayes: Wandro, Pittman, Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "New Hope Assembly of God Conditional Use Permit and Height, Setback and Parking Variances, 6825 Townsend Avenue, Case no. 011-2010-02.11.

Mr. Kent Zarley, SVPA Architects, 1466 28th Street, West Des Moines, said I wanted to thank you for letting me come and visit with you about the changes happening at New Hope Assembly of God Church. It is a church that has grown to the point where they're having difficulty servicing their congregation in their current facility. There are a number of things that we're requesting and I guess I'd like to touch on those one at a time. First I'd like to start with the setback variance. He said, on our original submittal, we had shown a 30.88 foot setback of the required 50 feet. And we had a neighborhood meeting where we listened to the neighbors and their concern. One main concern was controlling our storm water, since our site is about 6 or 7 feet above the neighbors to the east. And so we need to have a buffer area there so we can not only screen our facility, but also contain the storm water.

Mr. Wandro asked do you have a picture that you can show us?

Mr. Zarley said yes. What we're needing to do is provide a buffer area here so we can control our stormwater. And with buffering materials as required by the Ordinance, and a fence, this needs to be a certain distance. And so, at that point, we have minimum

size parking stalls to this point, and we changed this afternoon, after listening to the neighbors and understanding the City's perspective, we got rid of some parking along here and we shoved the building to the east, so our now-proposed setback is 50.38 feet. So that then translates into a height variance change to 2 feet 8 inches, instead of the 11 feet. So we would like to propose that, as a way to move forward with this project. He said I have some renderings here that show how the building steps back, from this point to this point back here, which is on this lower roof, is at 38 feet.

Mr. Wandro said that's 70th that we're looking at?

Mr. Zarley said this is 70th here, yes.

Mr. Wandro asked are we looking southbound or northbound?

Mr. Zarley said it's southbound. So at this point it's at 38 feet, and so being at 50-1/3 feet, roughly, we're 2-2/3 feet above the allowed height. But as we step back, as we go farther away, then the building steps up for the sanctuary space, which is necessarily larger for acoustics and that kind of ecclesiastical architecture. He said let me move on, then, to the parking variance. Currently, the existing facility is over in here, and they've got about 125 parking stalls that would be underutilized when this is built. Currently there is a parking lot in this location that they use for their existing facility, and so the parking variance request is to utilize existing parking across the street that they would continue to have control over, to supplement the parking that they would build on the site, keeping in mind that the more parking we build here, the more storm water detention that we have to have to take care of sensitive areas, particularly up here in the northeast corner. And we don't want to have ugly detention basins. We want it to blend in with the neighborhood more.

Mr. Wandro asked what's the red line between 70th and the church? You mentioned it orally but you're sliding it how far west?

Mr. Zarley said we slid the church 19-12/ feet to the east. And that's 50.38 feet instead of the 30.88 feet.

Mr. Wandro said for a setback?

Mr. Zarley said we have read through the conditional use analysis and we take no exceptions to that. We've looked at the Staff recommendation and we have no exceptions to that, with the reservation of item 5. We realize that this connection to the north is important to the church at this time, and we would ask for that, at Planning and Zoning and City Council, understanding that City Council would be the one to say yes or no, and we would agree to whatever they tell us.

Mr. Kirchner said he's mentioned a number of changes that took place this afternoon. Is staff aware of this? Does it impact Staff's analysis? I'm wondering if this is something

that needs to be discussed further between Staff and the appellants before a 3-vote decision is rendered here tonight.

Ms. Mac Bean said no, I wasn't aware of the changes. I do know, however, by moving it back, it would probably alleviate the need for the height variance request and the setback request. However, by doing that, they've eliminated parking spaces on site. And the parking variances are moving to the other lot. They already were shifting 75 parking spaces to the south of Townsend, and I don't know how many more they are moving. So that brings up a question as to how much that is.

Mr. Wandro said why don't we table it? And just bring it back at a point in time when it's ready?

Ms. Mac Bean said that would be fine. I think that would help alleviate some of my concerns. The height and the setback appear to have been resolved. But now there's the question of how much parking has been moved in addition to what was already requested, because we can't increase the variance at this meeting.

Mr. Kirchner said so the question that would be before the Board would be different. The Staff's analysis may be different.

Ms. Mac Bean said yes, on some things. The concerns regarding the drainage and the access probably are not going to change.

Mr. Pittman said I would feel more comfortable if Staff had another chance to revise their remarks based upon the changes that the appellant has made.

Mr. Zarley asked could I comment on the parking quantity?

Mr. Kirchner said sure.

Mr. Zarley said if you'll look at the diagram that's in your packet, these islands were larger so we added four parking stalls here. We added five parking stalls here, and we added the rest of the ones that we lost here, so our parking count is the same. We haven't shifted any more parking to the 6800 Townsend property. We lost 15 when we did this, and we've replaced those 15. So our parking count has not changed.

Pastor James Weaver, 9012 Hammontree Drive, said on behalf of the meeting that we had with the City and I've worked with the City for years that our intent was to cooperate with the recommendation of the staff, which was to approve it if there was a 50-foot setback. So we came prepared to say let's not ask for that variance. So we came prepared to say we have the same parking, the same everything, in fact if you look at the back page of what they requested, we've met every one of their requirements. Then the Staff says that they recommend the approval of that, and that was our intent. One thing is that, since we've moved in and when I started the church 20 years ago, it's been

our intent to be good neighbors. We've tried to do that. We did inherit some problems with the property when we bought it from Al Carey Tree Nursery, and that is the land is higher and water by nature flows off. In developing that, we believe that will fix it. Obviously there will be no water from our property going off, it's going to fix that problem because there's no curb there. We're going to add retention, we're going to take care of berms, and it's going to help the 68th Street properties that, by nature, the water just flows there. And so I believe personally that I think it will improve that whole neighborhood, and the whole area. He said we've had some issues with people dumping junk. We've had the police out there, because of people dumping dead deer, with the head chopped off and just dumped the carcasses there. This past winter that happened. We've had a number of other issues of behavior back there, of groups of kids back there goofing off and doing stuff late at night, and spinning through the lot and doing all kinds of things, on a property that's basically unoccupied. One of the neighbors that lives on 70th, across the street, before that was used as a tree nursery, and he asked me "I'm trying to get a business started, could I just park some stuff there?" and I said sure. We've had two or three other neighbors who said they had a trailer and asked if they could park it there, and I've said sure. So without charging anybody a penny, we've tried to be really good neighbors. If you look at our properties that we currently have, they're always kept immaculate, and the buildings are kept up, and so when we realized that this was an issue that might affect things, being too close to 70th. In the picture you saw, the building you see there is 30 feet from 70th because that's the picture that we originally had. We just don't have a new picture that's 50-some feet back. So what I guess my heart is, is to be a good neighbor and to be able to provide a facility that I think the community is proud of and we're able to serve the community as we have in the past, trying to help even families that may not be churched, and to support people. The reason we made the change, and I would say instead of going back to the Staff, so that we can stay on our schedule, I would sure like to see us move forward here because what we've actually done, we thought, was to redo this, leave the parking the same, and just take care of removing that one request of the 50-foot and just move it back and show you that we're good with that.

Mr. Kirchner said my concern is, as a municipal board, we're going to be particularly reliant upon our staff's recommendation. And with these changes, I don't know how that affects things. He asked Ms. Mac Bean if they would go through their same analysis as set out here? It sounds like two questions are resolved.

Ms. Mac Bean said we would probably still look at the overall site plan the same way, but the analysis would change because the setback would be met and so then that would somewhat alleviate the height requirement.

Mr. Kirchner asked do you need more information?

Ms. Mac Bean said yes, I would like to see the revised plan and review it. It would be better if we have a revised site plan, and look at it on January 5.

Mr. Kirchner asked is there a concern from the church's perspective to wait a month, recognizing that you'd like to go forward?

Pastor Weaver said well, I'm not real good with all of this, just to be honest with you, in reference to understanding processes. But when I read the City's recommendation, and when it says providing a setback of not less than 50 feet along 70th Street, # 1, we thought that if they want us to provide that, the approval would be there. We're just saying we're willing to do that.

Mr. Wandro asked what hardship does it place on you if you wait a month? That's what I'm wondering.

Pastor Weaver said well, we'd like to be able to finish it, have it go to public bid by March 1, and just the process of moving forward, knowing for sure that we can do this. Had we not shown you that we could move the building and shown you what we were going to do, and we had just left the variance as it was, would you have ruled that you could build the building if we moved it back to the 50 foot setback? Or is that not how that works?

Mr. Kirchner said typically it would be more of a yes or no question. Would we grant the variance or would we deny the variance. We are under established case law from the State of Iowa to grant variances sparingly and only when the appellant has shown the necessary hardship that they need to show. And we rely heavily upon our Staff's analysis and recommendation. It's typically not a matter "if you do this then we'll grant it." It's a matter of you said you were going to do this, and in that situation, we would deny it.

Pastor Weaver said I just didn't understand that process. I totally understand where you're coming from. So basically though on that last page, the Staff recommendation, we're willing to meet all of those. I guess that would be the point. Page 9 of 10 is the page I refer to. There are 7 items there. We're not really asking you, because we don't really want to do that to our neighbors. So I don't even want you to vote. Say you did vote and said yes, we could do the 30 feet, if we just left it like it is, I don't really want to build it at 30 feet off the street. Because in looking at it and rethinking it, I think it would be better to have it 50 feet off the street. I think our neighbors would be happier, I think we'd be happier, I think it would look better setback at the 50 feet. I guess there are two places in the Code and you have to look at it to notice this. There is one code where there's 30 feet and there's one where there's 50 feet. So when we originally designed the plan, our architects thought that the 30 feet was the appropriate setback. Then when the City explained that it was 50, we already had it built this way so we decided to put in a variance request. But then after we got the recommendation from the City and after we had our meeting with our neighbors, we thought let's back this up. So I guess what I would be in favor of, as the pastor, of just tabling this under January because I can tell you're in a situation where it really wouldn't be right for you to move forward. And I don't think it would be right for me to press that.

Mr. Kirchner said I think that would be our preferences, is to have you defer.

Mr. Pittman said for further explanation.

Ms. Mac Bean said what will happen is, we will republish because conditions have changed. This project also has to go through site plan process, which means Commission and Council will review it. It is possible for some of these actions to be simultaneous, because I think the recommendation will probably change. But I just would feel more comfortable deferring and processing the case properly.

Pastor Weaver asked what's the time frame on us in reapplying for whatever type of variances we need? Or what other variances would we need in doing this? When is our deadline?

Ms. Mac Bean said if the Board votes to defer, it's automatically put on the January 5th agenda. And we would make the appropriate changes to the notice and republish and send out notices at some point in December. So there isn't any other deadline. I just need the revised drawings as soon as I can get those.

Pastor Weaver said I think that would be the best and the most fair thing for the Staff and the Board of Adjustment, and even our neighbors, so they have a clearer picture.

Mr. Kirchner said we don't need to vote on this tonight then?

Ms. Mac Bean said I would say just make a motion to defer action until the January 5th meeting, so that is a record.

Mr. Kirchner asked if anyone in the audience would like to voice their concerns or views tonight?

Mr. Herbert Gawehn, 4416 70th Street, said I live across the street from this site. I'm looking at page 9 of 10, and the pastor said he was going to comply with all of these things. Is that complying with the one that says "eliminating the connection to 69th Street"? Are you going to eliminate that one?

Pastor Weaver said we're willing to comply if that's what the City requires that we do.

Mr. Gawehn said because I know, if I lived in that cul-de-sac, I'd really be upset.

Pastor Weaver said if there was one neighbor on 69th Street that doesn't want us to do that, then we won't do that. But I will tell you that a couple of them come to our church and a fellow lives right there, and he wants it there. And the person that came to our meeting would like to have a drive there because there are some benefits for them in doing so. But if one person doesn't want it, we're not going to push it because we don't

want to create an issue.

Mr. Gawehn said I don't live there, so I really am not involved in that. The only other one is # 6 there, with providing the on-site parking in full compliance with the Ordinance. And you're saying you wanted a variance of 75 parking spaces. It says "if on-street parking occurs on 70th Street beyond the boundaries of the church property on a regular basis", that you would have to supply the 75 spaces. I would like to know who would police that, and say you've got too many cars parked on the street?

Ms. Mac Bean said I'm sure the City would be made aware of it. There would come a time that the church would have to provide more parking, if the parking on 70th Street was consistent, every Sunday and other times that they had events. We're not always here, but we are notified by others.

Mr. Gawehn said if it's already built, then where are they going to get the other 75 parking spaces?

Ms. Mac Bean said there is property to the north where they could put parking.

Pastor Weaver said I was actually going to petition to have a "no parking" on Sunday on our side of the street and if the neighbors were okay with that on their side. So that we can't park there, because I don't really want our people to do that, and we're going to announce not to park there, because I believe it's a safety hazard for us to pull out, with parking on 70th, to have to pull out in the center aisle. Because we actually have 125 parking spaces across the street which is very adjacent, not just 75, and we believe we have ample parking there. Also, the next house to the north, the lady is an older woman who has already talked to me and said when she gets ready to move to a home, she wants the church to have her property. And that's one more property, the very next property that we'll be purchasing, for yet another parking lot there. So, in the future, we will have ample parking so that we don't have to park on the street. So I just want to tell you, we don't want people parking on 70th Street.

Mr. Gawehn said my only concern is that the police, the fire department, everybody uses that for the north-south traffic, so they stay off of Merle Hay.

Pastor Weaver said that's true. I think it would be a real good thing not to have parking on 70th, and definitely, even if the City doesn't put a "no parking" there on Sundays, which would be for Sundays only, I would definitely be telling our people, please don't park there. The problem, I have to tell you, that could happen is if we have a visitor pull up and there's no "no parking", they can park there and I'm inside, and I don't know about it. But as they begin to come, we would be pushing them because we understand that that's not a convenient thing. I don't want one of our people getting hurt, either, because when you pull out and you've got parking right here, they have to pull around that parking into this lane and if there's parking here and parking here, that's a serious problem.

Mr. Gawehn asked where are the exits onto 70th Street?

Pastor said right here, you go this way, and here you go this way. This lane is coming in and this lane is going out.

Mr. Gawehn said that looks that's going to be right across the street from my house, which is okay. That's all I have to say, I think you've covered everything.

Ms. Trudy Gurnsey, 4406 68th Street, said I do oppose the conditional use permit to the New Hope Assembly of God Church for the increasing height variance. This church building will be blocking our sunlight. God wants us to have sunshine too. Who wants to live in the shadow of a big, gigantic church? You already discussed the variance and they're changing that. We feel that all of the parking spaces should be provided on site of the new church building. We have to go out of our way on Sunday to go to our own church. There are so many cars parked at the corner of 68th and Townsend, it is unsafe for us to see around cars. And this is the honest truth. I think you are addressing the storm water drainage issue. When I went and spoke with Pastor Weaver, a long time ago, he told me that he would invite all the neighbors to a neighborhood meeting before they did anything. We were not invited. We have read over this appeal. This appears to us that the neighborhood would be in a constant state of construction. Why should we have to fight so hard to maintain our current residential status? Would you want mega-church in your back yard?

Pastor Weaver said I just want to say I'm sorry if you didn't get a letter. I thought that we had sent letters to all the people on 68th Street. I know right by the drain that the City put in when Al Carey had the nursery, the person that lives right by there got a letter and actually came, and said they were surprised that their neighbor didn't come. I don't know if that would have been you.

Ms. Gurnsey said you pat yourself on the back so much for doing everything right, but you have never attended to the drainage issue.

Pastor Weaver said one of the things that we asked the gentleman that is using the property to get his business started, is to help us by watching to try and keep the drain clear. Because the leaves come and it plugs it up. There is a small drain there. I know that's a problem but if we don't develop the land, let me say, that problem won't go away. And so in developing the land, that problem will go away.

Ms. Gurnsey said I would rather see it developed as residential.

Pastor Weaver said so, anyway, I apologize you didn't get the letter. I do have a board here with the houses that we sent the letters to, and the ones that came to the meeting. In the letter I put my cell phone and said if you can't make our meeting, that you could call me personally, and I would sit down with you and show you everything. So I'm

offering to come over and show you guys pictures of everything and explain what we're doing. I believe our building is set enough in the center of that land that it's not right backed up to your property where it shouldn't affect the sunlight to your property. I wouldn't want a building right on top of my house, either. So I apologize for the water that's come off of our land. We kind of inherited that from a long time ago.

Mr. Pittman moved, and it was seconded by Wandro, to defer action on the New Hope Assembly of God Conditional Use Permit and Height, Setback, and Parking Variances, until the January 5, 2011 meeting, subject to revised staff analysis. On roll call: Ayes: Pittman, Wandro, Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Kum and Go, L.C. Sign Variance", 4860 NW Urbandale Drive, Case number 011-2010-01.19.

Ms. Angie Pfannkuch, Kum and Go, 6400 Westown Parkway, West Des Moines, said first of all, I'll give you the location. Our Kum and Go is being built currently right here so it's off of NW Urbandale and right across the street is Plum Drive. This is right now being called an access easement only, not a street so that is why I'm here for the variance, because you have to have a private or public street to be able to have a sign on there. Our primary entrance is this west entrance. If you're a non-gas customer, this will be the entrance that most people will use because they'll pull in off NW Urbandale, pull into the entrance that is this access easement. And so the sign above the door is what will let customers know that they can use that entrance. This is a brand new Kum and Go building so we don't have any of these in Iowa yet and so the side entrance is something new.

Mr. Wandro said is the one on 86th Street in Clive soon to be one?

Ms. Pfannkuch said yes, that's a 2-story one, it's a little bit different than this one. But yes, that one will be our first what we call a "Titan Auto" in Iowa. So, basically, we've always had a rear door on our Kum and Go's, but we have not had a side entrance. And so, with the Titan, our food program, we want people to come through the side, see all the food, we'll have pizza, sandwiches, fresh food made in the store.

Mr. Wandro said like the Sam Goody store up on Douglas and 83rd.

Ms. Famkay said yes. So what we're asking for is a sign above that entrance so people will know that they can come in. And I was told like any decal sign, anything like that, is considered a sign under your new ordinance, so we would want one mounted on the wall on the outside, is what we were going for. But, at this point, we would take any sort of signage that lets people know that they can go in. Because this is a LEED certified store so as you guys know, those stores are darker. It's better for the environment, better for everybody, but they're darker, and so we just built a store in Mt. Vernon, Missouri, and our sales are down quite a bit because people don't know it's open all the time because of the lighting inside the store.

Mr. Wandro asked can you orient me a little bit? The door that you want a sign above that basically is on Plum, that would be facing west? The door would be facing west?

Ms. Pfannkuch said correct. It's the west entrance to the store, that's correct. So right now we're allowed signage on the north, so we're allowed signage on the canopy here, and on the store here. Those are the only two signs we're allowed because NW Urbandale is the considered our street frontage.

Mr. Wandro said so if I cross the street to come into your property and turn left to enter it, is that what I have to do?

Ms. Pfannkuch said yes, there's a diesel lane here you can enter, come in right here. There's a left turn lane in here, go across the median.

Mr. Wandro said you want a sign right where your pen's at, over that door that enters the food service side of your business.

Ms. Pfannkuch said correct.

Mr. Wandro said you can't get the sign now because it's not a public street.

Ms. Pfannkuch said or a private street.

Ms. Mac Bean said it doesn't matter if it's a private street or it's an easement, it has to be a public street to have signage.

Mr. Kirchner said the primary sign then is parallel with NW Urbandale Drive?

Mr. Wandro said you've got the frontage.

Ms. Pfannkuch said yes, correct, we have the frontage on NW Urbandale. We're allowed the two signs there, and we have a monument sign on NW Urbandale.

Mr. Pittman asked so you have 3 signs on NW Urbandale?

Ms. Pfannkuch said the monument, the canopy and the building, yes. The monument sign sits in this area here. I guess the hardship we were looking for is just that they know that they can use that entrance. It's not about being visible. We know we're visible. That's not it. I would just like some sort of sign above the door that says you can enter here, you can use this.

Mr. Wandro said you have the old Sam Goody store at 83rd and Douglas, that was converted into a Kum and Go. And you have the door that actually faces Douglas that has no sign above it. And that gets used a lot.

Ms. Pfannkuch said right. In that location, yes, it does get used a lot. The other thing is, this isn't going to be repeat customers, we don't think. This will be more interstate traffic, people at Target in the morning, that sort of thing, where the store at 83rd and Douglas, you go there everyday. It's a different customer than what this is. If we can keep the food customers away from driving through that canopy and parking going in that main entrance, that's just a safety thing for us too. That's why we've done this side entrance, we feel our inside sales are going to be a lot higher now that we offer food such as what Casey's does, and Quik Trip. And I applied for a 4 by 8 sign, I believe. I'm fine with any sort of sign, even a window decal that just says "Kum and Go", just so we have some sort of signage there that direct people to come in. The other thing is that, eventually, and I know it's not in the City street plan, but there are other parcels for sale in here, and the developers are here as well, if you have any questions I would be happy to answer them.

Mr. Pittman asked wasn't there a site plan approved for a McDonald's too?

Ms. Mac Bean said yes, it's right to the west. But as you come around the curve on NW Urbandale Drive, you're still going to be able to see the Kum and Go, even when McDonald's is built.

Mr. Pittman asked I was wondering if the road is going to go between McDonald's and Kum and Go?

Ms. Pfannkuch said yes, the road will go between them and there's actually a road that will eventually go through here, too, and no one has said, but maybe someday connect to Meredith.

Ms. Mac Bean said that will be a private street as well, just like the development on the south side of Meredith, where the GoodWill store is.

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

Ms. Mac Bean said the action required on this item is to approve or deny a variance from Section 4.1 of the Sign Ordinance and from 3.10, paragraph E-2 of the Zoning Ordinance to erect a wall sign on a wall that does not have street frontage.

Kum and Go, L.C. represented by Ms. Angie Pfannkuch, is requesting a variance to allow a wall sign to be erected on the west wall of the convenience store that is currently under construction at 4860 NW Urbandale Drive. The proposed sign would be a second wall sign in addition to the wall sign allowed on the NW Urbandale Drive frontage (north) wall of the building. The west wall does not front on a public street as required by the Sign Ordinance, and accordingly a wall sign is not allowed on that wall.

Three separate sign permits have been issued for this location. One is for a 50 square

foot wall sign for the NW Urbandale Drive (north) frontage wall. The proposed wall sign for which the variance has been requested is the same size as the permitted wall sign. The second is for a monument sign that is 12 feet in height, has a monument area of 135.96 square feet, a copy area of 30 square feet and is located 10 feet from the NW Urbandale Drive right-of-way line. The third is for a 25 square foot sign located on the north side of the gas canopy. The gas canopy is located in front of the convenience store and is approximately 74 feet from the right-of-way of NW Urbandale Drive. The areas of the approved wall sign, monument sign and gas canopy sign total 105 square feet.

The subject property fronts on NW Urbandale Drive in the southeast corner of the "T"-intersection of Plum Drive and NW Urbandale Drive across from the Super Target facility. The intersection is signalized. A private drive extends south from the intersection along the west side of the convenience store property, and the proposed sign fronts on that private drive. The convenience store sign, gas canopy sign, and monument sign are visible from the Interstate interchange and are clearly visible to south-bound traffic on NW Urbandale Drive from that point. The convenience store is also visible to northbound traffic on NW Urbandale Drive and to traffic on Plum Drive.

The Sign Ordinance does not allow a wall sign to be displayed on any building frontage (wall) other than that wall for which the sign was earned by that frontage (wall). This property has frontage only on NW Urbandale Drive, and accordingly a wall sign is allowed only on the north wall of this building, facing NW Urbandale Drive, and sign area is earned only for the north (frontage) wall.

Mr. Wandro asked why is that? I ask out of ignorance. To the public, they're not going to know if it's public or private. It looks like a pretty massive private street that typically would be viewed as public.

Ms. Mac Bean said a lot of it has to do with structures that only have one frontage, they only get so much signage. And to allow somebody who has multiple wall frontages not located on a public street to have signage, it just causes an over-abundance of signage and extra competition, or an unfair advantage for that customer. We're trying to be equitable in our signage.

Mr. Pittman said they've already been approved for the three signs, the monument sign, the canopy sign and the building sign. Would it be possible to take one of those signs, let's say the canopy sign, and put it above this door where they want it?

Ms. Mac Bean said no, because it's a non-street frontage side.

Mr. Pittman asked how is the canopy viewed?

Ms. Mac Bean said it's on the north side, right here, on the north side of the canopy.

Mr. Wandro said so nothing can be on their west face, with any signage.

Ms. Mac Bean said correct. But I'm going to show you something that will you orient yourself a little bit better.

The property has a total area of 1.49 acres, 252.98 feet of frontage along NW Urbandale Drive, and 256.53 feet along the centerline of the ingress/egress easement at the west end of the site. The property is zoned "P.U.D." Planned Unit Development District and is regulated by the "Urbandale Marketplace III" P.U.D. Master Plan as are the properties to the east, west and south. The properties on the north side of NW Urbandale Drive are also zoned P.U.D., but are regulated by the "Urbandale Marketplace" P.U.D. Master Plan.

The appellant notes that the Ordinance creates a hardship as the entrance off of Plum Drive will be the first entrance available to customers as they turn into the property. This is a new store layout and without property signage on the Plum Drive side of the store our customers will not know they can enter there. The appellant states that the hardship is exceptional as the entrance on Plum Drive will function as the primary entrance for non-gas customers. It is also exceptional as the construction of Plum was treated like a street in many aspects including the construction of all public utilities. The appellant also states that the intent of the Ordinance will be preserved as Plum Drive has the look and feel of a public street. Public health, safety and welfare may be improved by allowing this variance as non-gas customers will not be driving through the canopy traffic to access the store. The intent of the Sign Ordinance will not be altered. Finally the appellant states that they looked at all of the alternatives but all of them required a variance.

Ms. Mac Bean said Staff analysis is as follows:

1. This property does not appear to be unique. This is a new development and was developed under the Sign Ordinance and regulations as they currently exist and that were incorporated into the "Urbandale Marketplace III" Master Plan. The approved signage appears to provide ample identification for the traveling public to locate the convenience store. The property appears to be readily visible to prospective customers on NW Urbandale Drive and on Plum Drive.
2. The Ordinance does not appear to create a hardship. The appellant is allowed the same amount of sign area and the same visibility as all of the other businesses in this area, and to all similarly-zoned properties, proportionate to the amount of building frontage along a public street.
3. The proposed variance does not appear to comply with the spirit and intent of the Ordinance. The proposed sign would provide an extra 50 square feet of signage in addition to the signage that is allowed by Ordinance and for which permits have already been issued. The intent of the Sign Ordinance is to allow everyone to have

signs commensurate to the amount of building frontage and to provide reasonably fair and equal treatment. The additional sign area, which would bring the total sign area of the site to 155 square feet, appears to create an unfair advantage and to increase sign competition, none of which is consistent with the spirit and intent of the Ordinance.

4. It appears that the placement of the permitted wall sign on the north wall of the building, the installation of the monument sign along NW Urbandale Drive and signage on the north side of the gas canopy in full compliance with the permits that have been issued, is a reasonable alternative to the variance.

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 by the Ordinance; 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.

Ms. Mac Bean said Staff recommends DENIAL of variances from Section 4.1 of the Sign Ordinance and from 3.10, paragraph E-2 of the Zoning Ordinance to erect a wall sign on a wall that does not have street frontage.

Mr. Pittman said I see what Kum and Go's position is. It's not going to be hard to figure out that it's a Kum and Go.

Ms. Mac Bean said but also, I think you're still going to be able to see that, once you get down here south of NW Urbandale Drive, you're going to be able to see the other door. Once you get to the signalized intersection, once you're here, you're going to be able to see the other door, whether you enter the property closer to it or not. Here's where the permitted sign is, this is where the proposed sign is. There's nothing unique about this situation, the Sign Ordinance has been in place for some time. The regulations for this P.U.D. were in place when they purchased it. The regulations have always been the same.

Mr. Pittman asked is this kind of a change in business motto, for a convenience store? If I looked at all the Kum and Gos, Quik Trips and Casey's that I've been in, they all have one center door. They don't typically have side entrances. So is that to drive inside sales? Is there going to be parking on that side?

Ms. Pfannkuch said yes, there's parking on the side, and that's why the non-gas customers will use that side because there is parking along there. And Quik Trip has multiple entrances now, too. Some of them have three. You can enter from the back,

side and front. Most convenience stores are getting larger, offering more, and so there are more entrances.

Mr. Wandro said my difficulty with this tonight is, if that were a public street, it could have something on it. The fact that it is a private street makes it less compelling to me, that it shouldn't be able to have it rather than more, because you mentioned the competition.

Mr. Pittman said so when that goes on through there, that's not going to be Plum?

Ms. Mac Bean said no.

Mr. Pittman said it's just going to be nothing.

Ms. Mac Bean said because the development that's on the south side of the street that accesses onto NW Urbandale Drive and to Meredith Drive, none of those lots are addressed off of that connection. They're all addressed off of Meredith or off of NW Urbandale Drive.

Mr. Wandro said can I ask one more time, because I'm slow on this, looking at this picture, if it had a Kum and Go on it. If it were a public street, I understand, it gets the sign. If it isn't, it won't. But where is the hardship and equity with other businesses? It's a private street. Typically that would have less traffic.

Ms. Mac Bean said the Ordinance did not create this hardship. The appellant is allowed the same amount of signage as anybody else with public street frontage. The property has the same visibility as everybody else in this area, and it's proportionate to the amount of street frontage that they have, to allow them to have additional signage because it's on a private street, thus creating more sign competition and an unfair advantage over what other businesses are allowed in this area.

Mr. Pittman said let me ask this, is there another option? Obviously the public is not going to have trouble discerning that, okay, here's a Kum and Go. If you're not allowed a sign, can you put a light or something else that's not a sign to draw attention to that entrance?

Ms. Pfannkuch said we would be willing to do that. Right now, we wanted the sign right here. Obviously we have that arch there for a sign. But there is a small window under here that we'd be willing to a Kum and Go decal sign/logo on, but that's considered a sign still. Correct?

Ms. Mac Bean said yes.

Mr. Kirchner asked what about a neon light inside?

Ms. Pfannkuch said yes, anything just to let people know they can come in. My question is, in the Ordinance, and I sent this to Mr. Franklin and I thought I had the right answer but maybe not, when you define street, it's as public or private.

Ms. Mac Bean said no, not for the signage. Signage is only allowed on a public street. That's what the variance is from. You have frontage on a public street, you can have signage. This is a private street and is used by an access easement.

Ms. Pfannkuch said yes, because he said it wasn't a private street, it was only an access easement. If it were a private street, we would have....

Ms. Mac Bean said no, it doesn't make any difference. The two are the same.

Ms. Pfannkuch said we would be willing to get anything so people know they can go in that door. It doesn't have to be a 4 by 8 sign or 50 square feet, or whatever. That's going to be like a metal brushed silver up there. It's normally where we put a logo, but there's a window there that we would do whatever, a window sticker that just says "Kum and Go", or anything like that. McDonald's is going to be across the street, so they won't have any signage there either in this whole development. No one on what's not Plum Drive will have signage.

Mr. Pittman said logo is considered signage, so they can't put their logo there?

Ms. Mac Bean said one thing is, if it's small enough that we can't see it until you're up on the property, we don't consider that to be signage. So if you're talking about a decal in the window, we probably can't see it from NW Urbandale Drive out here, or until you get on the property that may be possible.

Mr. Pittman said Kum and Go's approach is they want to draw attention to the access point, the entry, not necessarily let everybody know that it's Kum and Go.

Ms. Mac Bean said I think everybody is going to be able to find that entrance, once you get on the site, with the monument sign, the wall sign, and the canopy sign on the north side of the building.

Ms. Pfannkuch said our position is we need to draw attention to it so they know that they can go through that entrance and use it, since it's not our typical design.

Mr. Kirchner said I'm going to make a recommendation, and take this for what it's worth. You heard me mention earlier that, as a Board, we're subject to some pretty well laid out case law from the Iowa Supreme Court that tells us when we can and cannot grant a variance. And in order for us to grant a variance, you have to show that the land in question can't yield a reasonable rate of return if used only for the purpose allowed in the zone. That's one of the things. I'll cut to the chase by saying that I'm not necessarily seeing the hardship and the law says that we should be granting variances

sparingly. Given the point that I'm telling you these things, and we have only three Board members here tonight, you might want to defer until we have more Board members. So take that into consideration and govern yourself accordingly.

Ms. Pfankuch asked would that be January 5th?

Mr. Kirchner said yes.

Ms. Pfankuch said I thought about that at the beginning of the meeting.

Mr. Pittman said because typically we have at least four, if not five, of us here.

Mr. Kirchner said right. I can't promise how many we'll have in January, but we expected four tonight. Typically we have five.

Mr. Pittman said granted, I assume the store is going to be open before then?

Ms. Pfankuch said yes, we open the 31st. Yes, I'll go ahead and defer until the January 5th meeting. I don't have to do anything new, right?

Ms. Mac Bean said no, you don't.

Mr. Wandro moved, and it was seconded by Pittman, to defer action on the Kum and Go, LLC Sign Variance, until the January 5, 2011 Board meeting. On roll call: Ayes: Wandro, Pittman, Kirchner; Nays: none. Passes: none. Motion carried.

Regarding Staff reports, Ms. Mac Bean said we have the two items from tonight's agenda that were deferred on the January meeting agenda. And I know there is probably another sign variance request for the hotel on Plum Drive, near 86th Street, the new one that's being constructed.

Mr. Pittman asked who's building that?

Ms. Mac Bean said it's a Holiday Inn Express.

The meeting adjourned at 7:12 p.m.