

MINUTES OF THE
AUSTIN CITY PLANNING COMMISSION REGULAR MEETING
TUESDAY, FEBRUARY 4, 2003

MEMBERS PRESENT: Jack Rosenberg, Gordy Kuehne, Brian Johnson, Sue Howard, Janet Anderson, and Glenn Mair

MEMBERS ABSENT: Sue Grove, Roger Stratton, & Rich Bergstrom

OTHERS PRESENT: Community Development Director Craig Hoium, City Attorney Craig Byram, and Council Members Tracy Chamberlain, Pete Christopherson, Wayne Goodnature, Gloria Nordin, Mickey Jorgenson, Lynn Koch, and Mayor Bonnie Rietz

Commission Chair Johnson called the meeting to order at 5:37 p.m., February 4, 2003, in the Austin City Council Chambers located at 500 4th Ave. N.E., Austin, Minnesota.

Motion to sing "Happy Birthday" to Community Development Director Craig Hoium was made by Mayor Bonnie Rietz. Motion was seconded by Commission Members. Unanimous Ayes. Motion carried out.

Motion to approve the January 14, 2003 minutes was made by Commission Member Rosenberg. Motion was seconded by Commission Member Mair. Unanimous Ayes. Motion carried.

- 1.) **OPEN PUBLIC HEARING: To consider a request from Schammel Properties, 1210 14th St. N.E., Austin, MN, for a change of non-conforming land-use of the Burr Oak Manor property located at 400 10th Ave. N.W. This request would change the previous non-conforming land-use from a nursing home care facility to a 24-unit multi-family rental apartment complex. Said action is pursuant to City Code Section 11.80, Subd. 2(E)**

Commission Chair Johnson asked Assistant City Attorney Craig Byram to address the issues regarding this discontinuance of non-conforming land-use matter. Mr. Byram reminded the audience that this request would ultimately be decided by the City Council. The testimony and evidence presented today is being gathered to pass onto the City Council with a recommendation from the Planning Commission. The decision should be based on the standards from City Ordinance sections. Mr. Byram gave the office of the City Attorney's position on what the law and standards are. The City Ordinance that governs this request contains the word "voluntary"- the discontinuation or abandonment must be voluntary. The Isanti County case indicates that when an ordinance contains the word voluntary, the question of intent needs to be examined. The Isanti Court indicated that the developer is safe to begin from a position that the passage of one year with no activity means that there was an abandonment that was intentional. The landowner or petitioner for the change at that point is required to explain to the Planning Commission the circumstances and present evidence of circumstances that indicate that there was no such intent to abandon the use of the property. The Planning Commission should make a recommendation to the City Council whether or not they believe, based upon this hearing, that there was an intentional abandonment, so that a change in non-conforming use cannot be done. In addition, and without regard to what the answer is to that question, the Planning Commission should make a recommendation to the City Council on what they think should be done if the City Council gets to the merits of this case- without regard to the one-year rule about resurrecting a non-conforming use. Since the Planning Commission is not the final decision maker on the issue of abandonment, the City Council may disagree and look at the case at their meeting. If the Council does disagree with the Planning Commission that there has not been discontinuance and they need to get to the merits- the Council will need the Commission's input on the merits. Mr. Byram suggested that motions be made on both issues- whether or not there has been an abandonment or discontinuance under the ordinance and without regard to that, on the second issue- whether a change would be appropriate if the first issue is not present in this case.

Commission Member Anderson questioned the potential change of the 1975 ordinance of 1.25 car stalls per apartment. Mr. Byram said there is no petition before the Planning Commission now to change the parking ordinance. Restrictions can be placed on the property for the proposed use in order to minimize its impact on the surrounding area or to make its impact similar or meet the same level of impact that the prior use had.

Mr. Hoium clarified the issue of non-conforming land use change versus re-zoning of property. City Code Section 11.80 addresses the existence of non-conforming land uses relating to buildings, land, to the discontinuance, and changing. When reviewing a change in non-conforming land use it's important to realize that this proposed change is also going to be a non-conforming land-use. It's important to look at that type of development standard listed in the City Ordinance and in this case it would be in an "R-2" Multi-Family Residence District- will all of those standards be able to be met. Specific conditions can be placed in the event of approval. An example of re-zoning would be the previous petition filed by both Mr. Vern Neitzell and the previous landowner on November 2001. That petition was to re-classify this property as an "R-2" Multi-Family Residence District. If that issue would have been approved any permitted land use within an "R-2" District could be used for that property. Those permitted land uses would include multi-family dwellings for any number of families, lodging or boarding house, bed & breakfasts, group homes, daycare facilities, and foster homes. That was the main concern of the surrounding property owners at the time of the Neitzell application- that the property owner and petitioner did not have a definite plan in place for the property. Change of non-conforming land use and re-zoning are two separate actions and are listed separately in the City Ordinances and the MN State Statutes.

Mr. Hoium reviewed the request by Schammel Properties. This property is located in an "R-1" Single-Family Residence District surrounded on the west, east, and north by "R-1" Single-Family Residence Districts. To the south is the Austin Medical Center in an "R-2" District, and the A&W Restaurant in a "B-1" Business District. The land uses other than the Burr Oak Manor property and the other multi-family land use to the west of it, it is made up mostly of single family development. The property in question consists of three different sections- the center portion what was once the Wagner Mansion, a south wing was added in 1966, and the north wing was added in 1969. Past land use of this property was a licensed 116-bed nursing home facility (when it closed there were 70 tenants and 90 employees). The proposal being requested this evening would create a 24-unit market rate rental apartment complex. There would be nine 1-bedroom units, ten 2-bedroom units, and five 3-bedroom units. The one-bedroom apartments would range from 486 sq.ft. to 570 sq.ft. with an estimated rent of \$400/month. The two-bedroom apartments would range from 780 to 820 sq.ft. with an estimated rent of \$600/month. The three-bedroom apartments would range from 1050 to 1224 sq.ft. with an estimated rent of \$850/month. At the last Planning Commission meeting there was quite a bit of discussion relating to development of the facility. At that time the petitioner proposed to provide 30 off-street parking stalls, which is in compliance to off-street parking requirements, and has been reviewed again by the petitioner and adjusted to provide 1.5 stalls per apartment unit (36 stalls). The proposed project would consist of three phases. Phase I would be the necessary renovations of the 1966 wing, Phase II would include the demolition of the Wagner Mansion, and Phase III would include the development of the 1969 wing of the facility. Fifteen parking stalls will be provided directly adjacent to 4th St. N.W., and 21 stalls further into the property. The garbage container has been relocated to a hidden area of the development site. The 1.25 parking stall factor was questioned at the last meeting- is it adequate for 2003. Mr. Hoium called surrounding communities to research their parking factors for multi-family development: Albert Lea is 1.5 stalls, Faribault is 1 stall per unit for one-bedroom units and for two or more bedroom units it is 2 stalls per unit, Red Wing is 2 stalls per unit, and Winona it is 1.5 stalls per unit. Mr. Hoium talked to a representative from Yaggy Colby Associates in Rochester regarding traffic volumes. The results conducted by specific engineer standards would be: a 116-bed licensed nursing home facility with employees would generate 249 trips per day. A 70-bed nursing home facility with 90 employees would generate 151 trips per day. A 24-unit apartment complex would generate 159 trips per day. The petitioner has hired a local architect to design the layout of the proposed development. Currently there are six parking stalls provided on the southbound lane of 3rd St. N.W. In the northbound lane there are eight parking stalls provided. Reconfiguring the median area with a 17-foot grassy median would add twenty diagonal parking stalls, although some trees would have to be removed. There is also a conceptual plan with a majority of the median removed to provide forty off-street parking stalls in the area. Mr. Hoium reviewed these off-street parking plans which could be located within the median area, but was not necessarily in favor of them. Mr. Hoium said Section 11.80 states that whenever you're looking at a change of non-conforming land use

that the proposed land uses should be equal or less offensive to the surrounding land uses. If a recommendation is made to the City Council to approve this that the off-street parking stalls provided should be identified or designated for specific apartment units. There should also be parking stalls provided and labeled for visitor parking. Commission Member Rosenberg asked if the location of the twenty parking stalls is City property. Mr. Hoium said yes.

Commission Chair Johnson asked for date clarification of the Neitzell request. Mr. Hoium said the date of the application was November 2001 and the initial hearing was December 2001. Chair Johnson said Marc Anderson's letter (in the back-up material) stated that in January 23, 2002, the matter was before the City of Austin. Mr. Hoium said he could not be sure without checking his files.

Petitioner Kevin Schammel, of 2201 6th Ave. N.W., thanked Mr. Hoium for all of his time. He said that when he and Paul Johnson first looked at this project they looked at what is the best thing for this neighborhood and the City of Austin. The plan should increase the value of the neighborhood by improving the property. They are willing to work with the neighbors and answer their concerns. This property was tax exempt and would now provide tax revenue. The parking was originally based on the City Code, but they have revised their design to increase the parking to 1.5 stalls per unit. Mr. Schammel researched parking with the Austin Housing & Redevelopment Authority and was told that Chauncey and Courtyard apartments provide 1.5 stalls per unit, but residents typically use only one stall per unit. When Mr. Schammel filled out the application he took Mr. Hoium's advice to apply for a non-conforming use continuance instead of re-zoning. Mr. Schammel applied for the non-conforming land-use change to provide a comfort level for the neighbors- so they would know this was to be used for apartments only. He feels that a few of the neighbors have a "not in my backyard syndrome", which he doesn't feel is valid, because most of the neighbors moved in next to the building when it was already a nursing home. He feels his plan is a more appropriate use of the property than a nursing home.

Marc Anderson, Mr. Schammel's attorney said the Isanti case in Minnesota talked about the question of intent. In that case the North Dakota Supreme Court in Minot said, "the requirement of intent to abandon is the most imposing obstruction to municipal attempts to terminate non-conforming uses which have been dormant for a period of time." Mr. Anderson said there has been a long-standing continuous effort by Kevin Schammel and his predecessors (a Benedictine organization from Duluth) and Mr. Neitzell. The Isanti case involved a situation where a landowner started storing houses on land. A zoning ordinance was enacted to determine that this man was not conforming- he hadn't been using this property. In this case they found that the man had been growing corn on the land from 1968 to 1974. He'd been farming it- a totally different use. Later in the 80's he wanted to start storing houses there again. He was denied- he had broken off that use- a clearly shown intent. Mr. Anderson compared that to this present proposal- in this case in late 2001 the property ceased to be used as a nursing home by the management. In the year or so that followed, Mr. Neitzell and Mr. Schammel made attempts to continue to use the property as a multi-family use but to also adapt to the requirements of the City- the non-conforming use issue. The issue was never dropped for an extended period of time- there were continuous efforts to continue to use this building as a multi-family unit. Mr. Anderson said Mr. Schammel has made every effort to address the concerns of the neighbors. The nursing home had three shifts of employees coming and going causing traffic problems- this won't exist with Mr. Schammel's plan. The proposed apartments will be market rate rents- attractive to senior citizens who would like to live close the Austin Medical Center and attractive to employees of Austin Medical Center or other downtown businesses. This will be a high quality development. Mr. Anderson asked the Planning Commission to compare the Isanti case to this case. Commission Chair Johnson asked about the January 23, 2002 date in the letter. This was the date of the City Council's last vote on the property.

Commission Member Kuehne asked Mr. Hoium if a nursing home is considered a multi-family residence. Mr. Hoium said it is listed as a permitted use for a multi-family residence district- either multi-family use or institutional use. Mr. Mair said as a previous administrator for a nursing home he never considered it a multi-family residence. As a commission member he considers multi- as one person or ten in a family unit. The only thing close to that in a nursing home would be the few instances of married couples. Mr. Mair said he doesn't feel this has been a "continuing issue." Mr. Hoium said that the City Council's vote was January 23, 2002, and Mr. Schammel made application on December 23, 2002- these are the only public hearing or legal actions regarding this property. Mr. Hoium has had people calling to ask questions regarding what could be done with this property.

Scott Richardson, practices law in Austin at 132 3rd Ave. N.W. He submitted a letter to the Planning Commission with attachments. He also read a portion of the notice of re-zoning hearing signed November 30, 2001: "City of Austin has been presented with an application for re-zoning of a portion of property owned by Vern Neitzell." Mr. Neitzell made an application for re-zoning, but people tonight at this meeting have been inferring that Mr. Neitzell made this application in conjunction with the former owner of the Burr Oak property. Mr. Richardson said he is not aware of that partnership- he is under the impression that Mr. Neitzell alone made application. City Ordinance says that if you discontinue the use of the non-conforming use, and that discontinuance goes on for a period of a year, then you lose the non-conforming status. That is a valuable status because Mr. Schammel's company is presuming we still have the non-conforming use and we want to change it to a different kind of non-conforming use. Mr. Richardson said that there is no non-conforming use to change anymore. The use of the property must now be in compliance with the "R-1" zoning district. Mr. Richardson said that Burr Oak Manor was de-licensed on September 30, 2001, so effective October 1, 2001, this facility was no longer a nursing home. Mr. Richardson feels October 1, 2001 is the beginning of the one-year period. Mr. Richardson read from the Isanti case, "the landowner is free to present evidence that he intended to continue the use or that cessation is beyond his control." Mr. Richardson argues that during this one-year period at the Burr Oak Manor there is evidence to show that they did not intend to abandon the non-conforming use. Mr. Richardson said that they don't have proof. "The landowner is free to present evidence"- when the application was made to the City Council in November 2001 to re-zone, Mr. Richardson asks who was it made by. Mr. Richardson feels it was Mr. Neitzell. Mr. Richardson went to the County Recorder's office and the owner of the property all during this significant period of time has been Burr Oak Nursing Home, not Mr. Neitzell, so this argument is not relevant. No one else during this period made application during the one year. Mr. Schammel's application came after the one-year period. Mr. Schammel was not the owner of the property until November 25, 2002.

Commission Member Rosenberg asked Mr. Richardson if Mr. Neitzell made a purchase agreement with Burr Oak or put any money down on the complex before his application for re-zoning was signed. Mr. Richardson did not know. Mr. Hoium said the petition filed to re-zone was signed jointly by the previous landowner, the Benedictine Co., & Mr. Neitzell.

Mr. Richardson said the news release by Burr Oak Care Center that they were shutting down the property was dated August 8, 2001. There was no reference in the news release of a future use for the building. Burr Oak Center sold the building to Mr. Schammel for an initial \$10,000- was this an indication of intent. Mr. Richardson reviewed City Ordinance 11.80 to show there is no wording of "intent to abandon." Section 11.80, Subd. 1 expresses the intent of the City Ordinances with respect to non-conforming land uses- they are not favored, they are not to be protected, and as soon as possible they are to be gotten rid of. He feels that if the Commission votes to recommend Mr. Schammel's request that they are going against the intent.

Commission Member Mair asked Mr. Richardson to make a correction to Mr. Richardson's letter in the backup material- that it should read that Ms. Sutherland is with the MN Department of Health and not the Department of Human Services.

Commission Chair Johnson asked that if Burr Oak Center was involved when Mr. Neitzell made his application in December 2001 and considered by Council in January 2002- would that show that they had not abandoned the use. Mr. Richardson pointed out that the property was not being used- the non-conforming use was not being used in that period. Mr. Richardson said that Mr. Neitzell was not approaching the City to use the property as a nursing home either.

Paul Johnson, architect of this project, whose office is at 1511 West Oakland Avenue, said that he, Mr. Schammel, and Craig Hoium looked at the options for this property. One option was to change the non-conforming use for the property. Another option was to try to re-zone the property as "R-2", and Johnson and Schammel were advised that as an "R-2", not only were they able to do a multi-family family project, but it is also less restrictive from the client's standpoint- that there are a number of uses allowed in an "R-2", although Mr. Schammel's desire is the multi-family business. Mr. Johnson said that another option would have been to request a non-conforming use assuming the twelve months have expired and it had reverted back to an "R-1" District. They were advised against that because they felt the twelve-month condition didn't exist. Mr. Johnson said the buildings are well constructed with masonry and pre-cast concrete floors and roofs. They are very safe and completely fire sprinkled. There are elevators and they meet handicap

accessibility codes. The center portion of the buildings would be demolished and cleared away and will provide parking and other common spaces. Mr. Johnson said that anyone who wishes to purchase the property could not afford to demolish this complex and set it out for "R-1" Single Family Residential- possibly four building sites. The cost of the property, demolition, & landscaping to create four lots from this property would probably not be financially feasible. Mr. Johnson asked that if an apartment building is not appropriate for this land, then what facility would be.

Craig Byram said that it is the belief of the City Attorney's office that the City Ordinances include an intent provision with the word voluntary. He said that Mr. Anderson raised the Isanti case. There are also cases that include flooded properties- after the flood the property was damaged and the business could not operate in the year period. Those cases were beyond the control of the landowner and it would be unfair to take advantage of things that were beyond their control and the business should not be shut down just for the purpose of zoning. There are cases involving economic downturns where it becomes unprofitable for the business to operate and the owner had to continue to explore intent- they intended to come back to start the business up again and ultimately they did start the business up again. The ultimate decision is, was there an intent to walk away or stop seeking the continuation of the non-conforming use for a period of over a year. Commission Chair Johnson asked if it is correct that the non-conforming use runs with the land, so that if an applicant in January 2002 was trying to take action to use it, does that fall with the land to the next owner who buys it in November 2002. Mr. Byram said that if the courts looked at this issue they would decide that individual owner's intentions are not being looked at. If there are a number of transitions during that year trying to move forward the use of the property in some regard, that those people and their actions and intentions are relevant in the Commission's decision on whether there was an intentional discarding of the non-conforming use. When Mr. Neitzell made his application with Burr Oak as a co-applicant, that can be seen by the Planning Commission as Burr Oak's action toward use of the property. Mr. Byram said that the Commission should look at what has happened to this property over a year- what have the people associated with this property been trying to do with regard to the non-conforming use- have they been acting in such a way as to keep it, or are they acting in a way as to indicate they have an intent to abandon their non-conforming use.

Mickey Jorgenson, City Council member, asked if the non-conforming use is different from an "R-2". Mr. Hoium said a non-conforming use could be used in any zoning classification. In any zoning district there are permitted land uses and in some cases prohibitive land uses and conditional uses. If this particular land use is not listed within the district as being permitted, but it does exist within that type of district, it's then classified as a non-conforming land use. Mr. Hoium said that in this area there is the A&W restaurant and previous to that it was a bus station of some sort. There is also Burr Oak Manor and an apartment building west of Burr Oak Manor. At one point that area had a different zoning classification than it currently has. At some point the City Council looked at that area or a zoning map and adopted it and that then re-classified that area, and those properties at that time became non-conforming land uses. Ms. Jorgenson asked if because the owner of Burr Oak was on Mr. Neitzell's application, were they trying to continue the non-conforming use, or because the purpose of the application was not to continue what was there, but to change the zoning, does that create abandonment. Mr. Byram said the facts and circumstances could be seen as supporting either argument depending on how the Commission interpret them.

Mr. Richardson said that in looking at Section 11.80 Subd. 2 Paragraph B, which addresses "any non-conforming use which is voluntarily discontinued or becomes inactive for a period of one year or more." Mr. Byram feels that if you try to break down a sentence farther than it can be broken down you may get silly results. He feels the word "voluntarily" only modifies the word discontinue. Commission Member Anderson felt that intent should include separation between who intended what. Burr Oak Center discontinued the use of the property and the function as a nursing home. Any arrangement they had with Mr. Neitzell was most likely just because their intent was to change the ownership from Burr Oak to Mr. Neitzell, being that they no longer needed or wanted the property. Mr. Byram said he cannot decide the issue- the Commission must decide the finding of intent.

Mr. Anderson said he feels that zoning ordinances are not to put people in a situation of games. He feels the nursing home use was more like a multi-family residential unit, because residences with one person are still considered a residential unit. He feels that nursing homes are lived in for extended periods of time and these are their homes. He said there has been a continuing effort by Mr. Neitzell and Mr. Schammel to turn

this property into the use that Mr. Schammel has presented. The owners of the Burr Oak Property are aware of Mr. Schammel's interest in turning this into a multi-family residence and sold it to him. Mr. Anderson said there is a strong similarity between a nursing home and a multi-family use such as an apartment building- so there has been a continuing effort over the past year.

Commission Chair Johnson feels that if Burr Oak asked for a re-zoning jointly with Mr. Neitzell, then Burr Oak is not intending to abandon the use and if the re-zoning is not approved, then they have no use of the property. The ordinance allows a change in non-conforming use, and just because you ask for approval of a different use does not mean you are intending to abandon the current use, especially when the use runs with the land and not the particular landowner and what they're doing with the property.

Mr. Mair said that if you ask Linda Sutherland (who is the director at the MN Department of Health where she has worked with nursing homes for twenty years) if she considers nursing homes a multi-family residence she would disagree- they are two different things. He feels that when the Department of Health de-licenses a facility it means the end of the nursing home. In the last ten years any facilities like this that have closed with the licensed removed means the end of that facility.

Commission Member Rosenberg requested clarification of the date of closing.

Motion was made by Commission Member Mair to recommend that the non-conforming use has discontinued as of October 1, 2002. Motion was seconded by Commission Member Kuehne. Unanimous Ayes. Motion carried.

Scott Richardson said that as a citizen he disagrees with the idea of changing the median to a parking area. He also said it is a peculiar area for traffic control and people are now turning left to go south on 3rd St. N.W. Mr. Schammel replied that the on-street parking is not a part of his proposal- it was brought up by the Engineering Department.

Mark Owens, of 1104 3rd St. N.W., said that if it had been re-zoned as "R-2" a year ago the neighborhood would have no control over it. He said traffic is a concern and the re-configuration of 1st Dr. N.W. & 4th St. N.W. creates a lot of traffic to get to the stoplights.

Commission Member Anderson would like to know from the neighbors what a viable use for the property would be. Mr. Owens said the neighbors would like to have the property purchased and create residential lots.

Commission Member Kuehne questioned the third paragraph in Mark Anderson's letter that was included in the back up material. Mr. Kuehne said the City of Austin allowed this nursing home to be built in this residential area, which shouldn't have happened. Section 11.80 Subsection 1, Intent: "it is the intent of this Section to prevent these non-conformities to continue until they are removed, but not to encourage their survival." Now there is even more traffic than when it was first approved. Member Kuehne does not agree that this will increase the value of the neighboring property by putting this much traffic in this small of an area. The neighbors he has talked to do not want this.

Commission Member Rosenberg asked what the City of Austin would do with this property if it was theirs. (Comments were made regarding the traffic problems by a neighbor who refused to identify himself)

Mr. Byram read Section 11.80 Subd. 2(E): "the standard for your recommendation should be whether or not you find that the proposed use (24-unit multi-family dwelling) is equally appropriate or more appropriate to the district than the existing non-conforming use (100 bed nursing home). In permitting such a change the Board of Adjustments (City Council) may require appropriate conditions and safeguards in accord with the provisions of the zoning chapter." He suggested that the Commission's vote should not be taken on a comparison of the property empty versus the property used. Their vote should be based upon the proposed use and its impact and appropriateness in the neighborhood as compared to the prior use and its impact and its appropriateness. Commission Member Anderson said that the impact on the neighborhood is a huge consideration, and given the concerns about parking and traffic, if there were even 18 apartments in this unit it might be considered differently. Maybe there could be other considerations- less obtrusive use

with less apartments, or maybe even garage space. She just wants to limit the impact on the neighborhood in the use of this space.

Commission Chair Johnson discussed the staff recommendations made by Mr. Hoium.

Motion was made by Commission Member Mair to deny the change in the existing non-conforming use for the following reasons: 1) The Comprehensive Plan indicates that this property be a future low-density property and not a high-density property. 2) The intent of Section 11.80 that the present non-conformities not be encouraged to survive. 3) The request is not equal to or more appropriate to the district than the existing non-conforming use. 4) Such use will not be consistent with the impact that the old use had on the area. Motion was seconded by Commission Member Rosenberg. Unanimous Ayes. Motion carried.

Motion was made by Commission Member Kuehne to recommend that if a decision is made by the City Council other than the decision made by the Planning Commission, that they follow the staff recommendations of: 1) Provide modular playground equipment for the complex. 2) Provide screening on the rear and side yards to the adjacent properties. 3) Identify the parking spaces by apartment number and visitor parking. 4) Give consideration to what Phase II, III, & I are, and how long they will take. Motion was seconded by Commission Member Rosenberg. Unanimous Ayes. Motion carried.

Commission Member Anderson made a motion that they add another recommendation to the motion: 5) That any change in the median will alter the character of the neighborhood. Motion was seconded by Commission Member Rosenberg. Unanimous Ayes. Motion carried.

2.) **OPEN PUBLIC HEARING: To consider the appeal from MNH Foods, LLC, DBA Hardee's of Austin, 5701 Kentucky Avenue North, #101, Crystal, MN, for the denial of the issuance of a sign permit. This request involves the proposed placement of a 10-foot by 3-foot double-faced changeable copy sign directly below the existing free-standing sign at the Hardee's Restaurant located at 101 4th St. S.W. City Code Section 4.50, Schedule No. IV, 2(C) limits such signage to 100 sq.ft. in area for properties located within a "B-2" Community Business District. This aggregate proposed signage would exceed this limit by 58 sq.ft.**

Mr. Hoium reviewed the request. The property is located south of Austin High School. Surrounding land uses to the south, east, and west are mostly "B-2" Commercial Business District and to the north is "R-O" District (Austin High School). The existing sign consists of 128 sq.ft. in area and the proposed two-faced changeable copy sign consists of 30 sq.ft. Limitations for sign face area is 100 sq.ft., so this appeal is for another 58 sq.ft. to the maximum amount. Other development standards for this type of signage are:

- 1) If this type of sign is located in vehicle traffic areas there should be at least a minimum of 14-foot of clearance underneath the sign.
- 2) For traffic obstruction there must be a clear zone ranging from 30" to 10' in height.
- 3) For pedestrian traffic there should be a minimum of 9' of clearance from grade level to the bottom of the sign.

Commission Chair Johnson asked if the existing sign has already been enlarged once before since it is currently larger than 100 sq.ft. Mr. Hoium said he is not sure of the history of the current sign.

Motion was made by Commission Member Kuehne to recommend to the City Council approval of this sign appeal. Motion was seconded by Commission Member Grove. Unanimous Ayes. Motion carried.

OTHER BUSINESS

Commission Chair Johnson asked if the Planning Commission should review the parking ordinances. Mr. Hoium said he will contact the City Council, as they have to approve it to be entered into the matters at hand.

ADJOURN

Motion was made to adjourn by Commission Member Anderson. Motion was seconded by Commission Member Kuehne. Unanimous Ayes. Motion passed. Meeting adjourned at 7:22 p.m.