



**MINUTES
BOARD OF ADJUSTMENT
ONE ST. PETERS CENTRE BLVD., ST PETERS, MO 63376
MEETING OF MARCH 21, 2012
6:00 P.M.**

CALL TO ORDER

Chairman Dan Meyer called the meeting to order at 6:00 p.m.

ATTENDANCE

Those in attendance were Mr. Bill Kendall; Mr. Dan Meyer; Mr. James Selinger; Mr. Nick Trupiano; Mr. William Jaggi; Mr. Ken Braunfeld, Planning Coordinator and Ms. Melissa Vollmer, Recording Secretary.

MINUTES

Mr. Meyer asked the Board for any comments or questions regarding the minutes of February 15, 2012. Mr. Selinger made a motion and Mr. Jaggi seconded to approve the minutes as presented. All in favor, the motion carried and the minutes were approved.

COMMUNICATIONS AND REPORTS OF OFFICERS

Mr. Meyer asked for any reports or communications from the Officers.

NEW BUSINESS:

Mr. Jaggi made a motion and Mr. Meyer seconded to postpone Petition 12-D until the end of the agenda. All in favor, the motion carried.

PETITION 12-E:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-E. Stephen and Angela Williams request a variance to permit a front yard setback of less than twenty-five (25) feet to allow the installation of a pool and to allow the existing fence to remain. The property is located on lot 258 of Sunny Hills Estates Plat 3 (Amended), as recorded in Book 21 Page 159 at the St. Charles County Recorder of Deeds Office, more commonly known as 75 Sunny View Drive.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-E. The petitioner or their agent was requested to step forward to present their position.

Mr. Stephen Williams, homeowner, was sworn in as the petitioner. Mr. Williams explained that they are requesting the variance to allow the construction of a swimming pool in their backyard. Due to the irregular shape of their lot and that their lot backs to the neighbors front yard they need the variance to permit a front yard setback of less than twenty-five feet. Mr. Williams also noted that as part of the variance request, they would like the fence to be able to remain in its current location.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-E.

Mr. Braunfeld stated that the Williams are owners of a home located on lot 258 of Sunny Hills Estates Plat 3, more commonly known as 75 Sunny View Drive. The owners desire to install a pool in their back yard and allow the existing fence to remain in its current location. When the Williams laid out the proposed pool location they found that the curvature of the adjacent cul-de-sac created a very unusual front building setback which extends into their side and rear yard area.

It is noted that in 2005 the Williams received approval for a variance to permit an addition to their house, an enclosed porch, and an existing open air porch beyond the front yard setback which is, in reality, the back yard.

Based on this, Stephen and Angela Williams request a variance to permit a front yard setback of less than twenty-five (25) feet to allow the installation of a pool and to allow the existing fence to remain. The property is located on lot 258 of Sunny Hills Estates Plat 3 (Amended), as recorded in Book 21 Page 159 at the St. Charles County Recorder of Deeds Office, more commonly known as 75 Sunny View Drive.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.130 (R-1 Single-Family Residential)

H. *Yard Requirements*

1. The minimum yard requirement shall apply to each lot.
2. The minimum front yard depth shall be twenty (20) feet...

Mr. Braunfeld noted that the subject corner lot is very unique due to an unusual bend in the cul-de-sac resulting in three irregular shaped front yards. As shown on the exhibit, the irregular front building lines limit the standard placement of the pool in the back yard or placement of a fence. It is noted that the building code requires a fence to protect a pool.

As previously noted the existing fence has been in place with no known concerns from the adjacent properties. It is also noted that the construction of a residential fence does not require a permit. A review of the site finds that the existing fence and proposed pool will not have an adverse effect on the neighboring properties.

Setback requirements have been established to provide for adequate separation of buildings and uses, and create reasonable amount of open space between structures to enhance the general health, safety, and welfare of the community.

It is staff's opinion that the proposed variances will not impair an adequate supply of light or air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The subject corner lot is very unique due to an unusual bend in the cul-de-sac resulting in three irregular shaped front yards. The irregular front building lines limit the standard placement of the pool in the back yard or placement of a fence. The proposed variance allows for the standard placement of the pool in the back yard and allows the existing fence to remain thus providing for the reasonable use of the property.

- Does the hardship result from the strict application of these regulations?

The subject corner lot is very unique due to an unusual bend in the cul-de-sac resulting in three irregular shaped front yards. The irregular front building lines limit the standard placement of the pool in the back yard or placement of a fence. The strict application of setback regulations would make the side and rear yards difficult to use, resulting in a hardship.

- Is the hardship suffered by the property in question?

The subject corner lot is very unique due to an unusual bend in the cul-de-sac resulting in three irregular shaped front yards limiting the normal use of the property's side and rear yard area.

- Is the hardship the result of the applicant's own actions?

The subdivision and placement of the house occurred with the original development thereby creating the hardship.

- Is the requested variance in harmony with general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved it would be in harmony with the general purpose and intent of the zoning regulations, since it will allow the standard placement of the pool in the back yard and allow the existing fence to remain thus providing for the reasonable use of the property.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent; there will be no ill effects on surrounding properties or the City as a whole.

Based on this analysis, it is staff's recommendation to permit a front yard setback of less than twenty-five (25) feet to allow the installation of a pool and to allow the existing fence to remain with the following contingency:

1. The pool shall be located within the fenced area as shown on the applicant's exhibit.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-E. Seeing none, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Trupiano seconded to approve Petition 12-E.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 12-E was approved.

Mr. Kendall presented the findings of fact as follows:

1. The property is located on lot 258 of Sunny Hills Estates Plat 3 (Amended), as recorded in Book 21 Page 159 at the St. Charles County Recorder of Deeds Office, more commonly known as 75 Sunny View Drive.
2. The lot is presently zoned R-1 Residential District.
3. The adjacent zoning is R-1 Residential District.

Mr. Jaggi made a motion and Mr. Selinger seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 12-E as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 12-F:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-F. Ocea Jill McMillian requests a variance to allow the continued residential use of a property in the C-3 General Commercial District. The property is located at 3947 S. Old Highway 94.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-F. The petitioner or their agent was requested to step forward to present their position.

Ms. Ocea McMillian, homeowner, was sworn in as the petitioner. Ms. McMillian explained that her home was annexed into the City in 1988 and was zoned C-3 General Commercial. Over the years, the home has only been used as a single-family residence and has not been used for a commercial use. Due to the zoning, Ms. McMillian noted that she is unable to re-finance her home and therefore needs clarification for the mortgage company regarding the property's commercial zoning.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-F.

Mr. Braunfeld stated that the applicant, Ms. McMillian, is the owner of a property at 3947 S. Old Highway 94. The property was annexed into the City in 1988 and was zoned C-3 General Commercial District given its frontage to the S. Old Highway 94 and the commercial growth in the area. To the best of the City's knowledge the property has continued to be used as a residence since it was annexed. In 2007, Ms. McMillian purchased the home for residential purposes and continues to use it accordingly. Currently, Ms. McMillian is trying to re-finance her home and, therefore, needs clarification for the mortgage company regarding the property's commercial zoning.

Staff notes this area of S. Old Highway 94 has not made the transition to commercial use as the demand for commercial property has not yet extended to this area. It is noted that commercial growth has been focused along Highway 94 and over time has extended along Jungermann Road and Harvester Road towards and along other portion of S. Old Highway 94.

It is staff opinion that commercial opportunities will eventually reach this area, but given the economy it is unlikely to be in the near future. Therefore, this and other similar properties continue to be used as residential homes but are considered legal non-conforming, which means that the use of the residential property is legal, but non-conforming to the actual commercial zoning.

The mortgage company considering Ms. McMillian's mortgage is concerned that under the City Code, if the home is destroyed it would lose its legal non-conforming status and could not be re-built and used as a home and would be required to be only used commercially. Typically, commercial property is more valuable than residential and these non-conforming arrangements have not been an issue. However, the lender is being very conservative and would like assurance that the home could be re-built and used residentially before issuing the loan.

Based on this, Ocea Jill McMillian requests a variance to allow the continued residential use of 3947 S. Old Highway 94, which is zoned C-3 General Commercial District.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.1420 Non- Conforming Use.

B. *Continuance Of A Non-Conforming Use.*

1. Any lawful building, structure, or use existing at the time of the enactment of this Chapter may be continued even though such building, structure, or use does not conform to the provisions of this Chapter for the district in which it is located and whenever a district shall be changed hereafter then the existing lawful use may be continued, subject to the provisions of this Chapter.
2. Any legal non-conforming building or structure may be continued in use provided there is no structural change other than normal maintenance and repairs.
3. Not Applicable
4. A building or lot containing a non-conforming use may not be enlarged, extended, reconstructed, or altered unless such use is made to conform to the regulations of the District in which it is located. However, in the case of evident hardship, a building containing a non-conforming use may be enlarged an amount not greater than twenty-five percent (25%) of its present ground floor by approval of the Administrative Officer.

Mr. Braunfeld noted that the property is zoned commercial due to its location along the S. Old Highway 94. The original development pattern along this part of S. Old Highway 94 was predominately large lot residential with older, modest size homes. When annexed into the City and over time, these properties were zoned or rezoned commercial consistent with the City's Comprehensive Plan. This zoning will allow these properties to eventually re-develop to their highest and best use utilizing the visibility to S. Old Highway 94. In the meantime, this and other such properties are considered legal non-conforming and may continue as non-commercial uses indefinitely.

The proposed variance will not change the zoning nor will it change the long-term development pattern of this corridor. In the short term, the granting of this variance will allow the owner to re-finance her home by providing additional assurance to the mortgage company that the site can be rebuilt as residential, thereby minimizing the perceived risk. The variance in no way prevents the conversion and use of the property for commercial now or in the future. In addition, commercial property is typically more valuable than residential; therefore, staff believes future demand will ultimately lead to a transition to commercial use for this property as well as the remainder of this highway corridor.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

Without the variance the applicant is unable to re-finance their home because the mortgage company is concerned that under the City Code, if the home was fully or partially destroyed, it would lose its legal non-conforming status and could not be re-built. Therefore the proposed variance will provide

assurance to the mortgage company that the home could be re-built and used residentially allowing for the issuance of a loan.

- Does the hardship result from the strict application of these regulations?

The granting of this variance will allow the owner to re-finance their home by providing additional assurance to the mortgage company and themselves that the site can be rebuilt as residential which minimizes their perceived risk. The strict application of the regulations would prevent this, thus causing a hardship.

- Is the hardship suffered by the property in question?

Without the variance the applicant is unable to re-finance their home which will have a significant negative impact on the property owner. In addition, the re-financing of the home will not have any negative short or long term impact to the city or the development pattern of the area.

- Is the hardship the result of the applicant's own actions?

The property was annexed into the City in 1988 and was zoned commercial given its frontage to the S. Old Highway 94 and the commercial growth in the area. It was expected that commercial development would have reached this area many years ago. In addition, it is the very conservative nature of lenders today that has created the need for additional assurance that the home could be re-built and used residentially before issuing the loan.

- Is the requested variance in harmony with general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved it would be in harmony with the general purpose and intent of the zoning regulations, since the proposed variance will not change the zoning nor will it change the long-term development pattern of this corridor. In the short term, the granting of this variance will allow the owner to re-finance their home by providing additional assurance to the mortgage company and themselves that the site can be rebuilt as residential which minimizes their perceived risk. The variance in no way prevents the conversion and use of the property for commercial now or in the future.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole

Based on this analysis staff recommends approval of a variance to allow the continued residential use of property in the C-3 General Commercial District for property located at 3947 S. Old Highway 94.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-F. Seeing none, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Trupiano seconded to approve Petition 12-F.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 12-F was approved.

Mr. Jaggi presented the findings of fact as follows:

1. The subject site is located at 3947 S. Old Highway 94.
2. The lot is zoned C-3 General Commercial District.
3. Adjacent zoning is C-3 General Commercial District.

Mr. Jaggi made a motion and Mr. Trupiano seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Trupiano presented the Conclusions of Law for Petition 12-F as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Jaggi made a motion and Mr. Kendall seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 12-G:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-G. Novak's Collision Center C/O Warren Sign Company requests a variance to allow a ground sign five (5) feet from the property line in lieu of ten (10) feet from the property line the in the C-3 General Commercial District. The property is located at 4640 North St. Peters Parkway.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-G. The petitioner or their agent was requested to step forward to present their position.

Ms. Christine Mudd, Warren Sign Company, was sworn in as the petitioner. Ms. Mudd explained that Novak Collision Center would like to construct a ground sign near the curb cut of the business at 4641 North St. Peters Parkway. Ms. Mudd noted that recently the Missouri Department of Transportation has been constructing the new Route 364 in this area. Novak Collision Centers property is located between the highway and North St. Peters Parkway. When North St Peters Parkway was constructed a portion of the road was increased in elevation placing Novak Collision Center lower than the grade of the street. Due to this, Novak Collision Center would like to construct a nine foot tall, thirty-five square foot sign which will be placed five feet from the property line instead of the required ten feet.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-G.

Mr. Braunfeld stated that the applicant, Novak Collision Center, is located at 4641 North St. Peters Parkway. The applicant would like to construct a ground sign near the curb cut of the business. The business is located in the C-3 General Commercial District where ground signage is allowed to be thirty feet tall and one-hundred square feet in area and must be ten feet back from the property line.

Recently the Missouri Department of Transportation (MODoT) has been constructing the new Route 364 in the subject area. The applicant's property is located between the highway and North St. Peters Parkway, the outer road for Route 364. When the North St. Peters Parkway was constructed a portion of the road was increased in elevation placing the applicant's property lower than the grade of the street. The applicant would like to construct a nine foot tall, thirty-five square foot sign which will be placed five feet from the property line instead of the required ten feet.

The applicant believes the new sign and location will help provide advertising to vehicles driving along the one-way outer road. It will also provide physical identification of the curb cut that belongs to the applicant's business since there are several curb cuts clustered together on this stretch of road. Finally, if the sign were located ten feet back from the property line it would either be on top of a storm sewer or projecting onto the business located on the adjacent property.

Based on this, Novak Collision Center requests a variance to allow a sign to extend closer than ten (10) feet to the public right-of-way. The property is located on lot 4 of Twillman Center Plat One as recorded in Book 27 Page 146 at the St. Charles Records Office, more commonly known as 4641 North St. Peters Parkway.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.745.D Signs Permitted in all "C" Commercial and "I" Industrial Districts...

- 1.b.(4) Ground signs shall not extend nearer than ten (10) feet to the public right-way (as measured from the sign edge).

Mr. Braunfeld noted that the proposed sign location would be approximately thirteen feet from the edge of curb. A typical commercial street layout typically includes a property line next to or within a

few feet of a curb or sidewalk. Therefore, the visual encroachment of the sign is not noticeable due to the layout of the street with the additional green space between the property line and curb. Staff has also reviewed the sight visibility and found no obstruction to vehicular traffic, due North St. Peters Parkway being a one-way street heading westbound and the sign location west of the curb cut.

Although the sign is required to be ten feet back from the property line/right-of-way, the site has some unique issues that make the placement of the sign ten feet back a hardship for the applicant. First, the property sits several feet below North St. Peters Parkway. With the height of the sign most of the signage would be hidden from the grade of the road.

Second, if the sign were placed ten feet back the signage would be located on top of a storm sewer pipe or in the middle of the parking lot. If it was placed near the storm sewer, the pipe would need to be relocated. If the sign was located in the parking lot only a small portion of the sign would be visible from the roadway.

Third, if the sign were placed along the east property line, ten feet from the right-of-way, due to the close location of the applicant's curb cut and the adjacent owner to the east's curb cut, the sign location would make it appear that the proposed sign is advertising the adjacent owner's property and not the business at this location.

Finally, with the sign at the proposed location it will have adequate visibility from vehicular traffic heading westbound on North St. Peters Parkway. Although the sign is located in an easement it does affect any City utilities. If the applicant were to receive a variance staff would recommend that the applicant obtains approval from all utility companies that have access to the easement.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The applicant would have to place a ground sign in a location on the property that would make the sign less visible to on-coming traffic, and therefore, it would be a negative impact on the return.

- Does the hardship result from the strict application of these regulations?

If the sign was required to be ten feet back from the property line, the applicant would have a hardship. A variance will allow them to place their proposed ground sign in a location that would have maximum visibility from North St. Peters Parkway.

- Is the hardship suffered by the property in question?

The applicant's property sits lower than the other properties in the area along North St. Peters Parkway, approximately six to eight below the road grade. The adjacent property is only one to two feet below the grade of the street.

- Is the hardship the result of the applicant's own actions?

When the property was developed it had to be graded in a way that would allow storm water to comply with City Code. This resulted in the development grade below the road. Also, the design of the roadway and the direction of traffic have been altered since the business opened.

- Is the requested variance in harmony with general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the development will be in harmony with the general purpose and intent of the zoning regulations, since the sign being placed five feet closer to the property line will not increase hazards to pedestrian and vehicular traffic or cause blighting within the community.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of the requested variance to permit the reduction of the ten (10) foot sign setback requirement to five (5) feet with the following contingencies:

1. The applicant must obtain approval from all utilities companies that have rights to the easement prior to installing the sign.
2. If any utility must do work within the easement where the sign is located, it is the responsibility of the applicant to remove and reinstall the sign.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-G. Seeing none, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Trupiano seconded to approve Petition 12-G.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 12-G was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on lot 4 of Twillman Center Plat One as recorded in Book 27 Page 146 at the St. Charles County Recorder of Deeds Office, more commonly known at 4641 North St. Peters Parkway.

2. The lot is presently zoned C-3 General Commercial District
3. Adjacent zoning is C-3 General Commercial District.
4. The Zoning and Subdivision Regulations require a sign to be setback 10 feet from the property line.

Mr. Kendall made a motion and Mr. Trupiano seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 12-G as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

Mr. Jaggi made a motion and Mr. Trupiano seconded to suspend the order of business and go to Petition 12-D. All in favor, the motion carried.

PETITION 12-D:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-D. Frederick Spies requests a variance to allow an encroachment into a utility easement. The property is located on lot 432 of Englewood Plat 4 as recorded in plat book 22 page 10 at the St. Charles Recorder of Deeds Office, more commonly known as 22 Gateswood Drive.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-D. The petitioner or their agent was requested to step forward to present their position.

Mr. Frederick Spies, homeowner, was sworn in as the petitioner. Mr. Spies explained that he requested and received a building permit for a swimming pool. Included in his application was a survey showing the dimensions of the lot, easements, and house. Mr. Spies noted that he marked the location of the pool on the survey showing it outside of the rear easement. During an inspection of the pool it was determined that the pool was located five feet ten inches from the property line. Mr. Spies noted that a further review of the survey found that the easement was seven and one-half feet side rather than the standard five foot wide easement. Due to this, Mr. Spies is requesting this variance.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-D.

Mr. Braunfeld stated that the applicant applied for and received a building permit to install a pool at 22 Gateswood Drive. The permit application included a survey showing the dimensions of the lot, easements, and house. The applicant marked the location of the pool on the survey showing it outside of the rear easement. During an inspection of the pool it was determined that the pool was located five foot ten inches from the property line. A further review of the survey found that the easement was seven and one-half (7.5) feet wide rather than the standard five (5) foot wide.

Based on this the applicant requests a variance to allow an encroachment into a utility easement for property located on lot 432 of Englewood Plat 4 as recorded in plat book 22 page 10 at the St. Charles Recorder of Deeds Office, more commonly known as 22 Gateswood Drive.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.270 Accessory Buildings or Structures, Alterations and Additions:

4. No principal building or structure or accessory building or structure shall be located within or partially within a designated utility easement.

Mr. Braunfeld noted that the applicant's rear yard easement is encumbered by a larger than unusual easement which places the pool one foot eight inches into the rear easement. A review of the City's utility map does not show any water, sanitary or sewer lines in this easement; therefore, it is unknown why the larger easement was created.

The pool is in keeping with the neighborhood, with the encroachment not visibly noticeable. There have been no known complaints from the adjacent property owners or utility companies. In addition, five foot ten inches of space is still available for the utility companies to use, this is ten inches larger than the typical pool or accessory structure setback.

In general it is important to protect easements and prohibit structures from being built in an easement. If the property contained a standard five (5) foot wide easement there would not be an easement encroachment. Even with the oversized easement the encroachment is only approximately one foot eight inches.

Given the larger easement and reasonable setback, the variance will not have a negative impact. The granting of the variance will not relinquish the property owner from any easement rights that have been granted to the City or other utility companies. In essence, the property owner will proceed at their own risk and are free to deal with the other utility companies on the encroachment.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The applicant would need to remove an existing pool that was inadvertently placed only one foot eight inches into a larger than usual easement that does not contain any public utilities. Therefore, the relocation of the pool would be a burden to the homeowner with no benefit to the public.

- Does the hardship result from the strict application of these regulations?

If a standard five foot easement was established, the pool would have been constructed outside of the easement rather than encroaching into the larger easement. Therefore, the larger than usual easement does create a hardship.

- Is the hardship suffered by the property in question?

The larger easement creates a hardship on the subject property.

- Is the hardship the result of the applicant's own actions?

The larger easement was platted on the lot and not created by the applicant. The applicant did inadvertently place the pool five feet ten inches from the property line creating a one foot eight inch encroachment into the larger than standard seven foot six inch easement.

- Is the requested variance in harmony with general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance were approved it would be in harmony with the general purpose and intent of the zoning regulations since the pool's location is standard for the neighborhood and the encroachment is not visibly noticeable. There have been no known complaints from the adjacent property owners or utility companies. In addition, five foot ten inches of space is still available for the utility companies to use, which is ten inches larger than the norm.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of the requested variance to a variance to allow an encroachment into a utility easement with the with the following contingencies:

1. The granting of this variance is for a pool and associated accessories only.
2. The encroachment shall not exceed two (2) feet
3. The granting of this variance does not relinquish the various utility companies' rights to use the easement as granted by Englewood Plat 4 as recorded in plat book 22 page 10 at the St. Charles Recorder of Deeds Office, more commonly known as 22 Gateswood Drive.
4. The use of the easement is at the property owners sole risk which may require partial or full removal of the pool at the property owners expense at the request of a utility company for use of the easement

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-D. Seeing none, Mr. Meyer closed the public hearing.

Mr. Kendall made a motion and Mr. Trupiano seconded to approve Petition 12-D.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 12-G was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on lot 432 of Englewood Plat 4 as recorded in plat book 22 page 10 at the St. Charles Recorder of Deeds Office, more commonly known as 22 Gateswood Drive.
2. The lot is presently zoned R-1 Residential District.
3. The adjacent zoning is R-1 Residential District.
4. The Zoning and Subdivision Regulations prohibit a structure to be located within an easement.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 12-D as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 12-H:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-H. Menard, Inc. requests a variance to allow two ground signs a maximum of forty (40) feet in height in lieu of twelve (12) feet in height and a maximum area of two hundred and fifty (250) square feet in lieu of fifty (50) square feet in the SD-RC Special District – Retail/Service Commercial. The property is located on the north side of Mexico Road, east of Spencer Road.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-H. The petitioner or their agent was requested to step forward to present their position.

Mr. Tyler Edwards, Menard, Inc., was sworn in as the petitioner. Mr. Edwards explained that the proposed project is located at the northeast quadrant of Mexico and Spencer Roads and will include a Menards Home Improvement store and four outlots for future development. The proposed project will be developed on a 27 acre site with frontage on two major roadways – Spencer Road and Executive Centre Parkway – and an entrance on a third roadway, Mexico Road. The site would be eligible for three freestanding signs in addition to wall signage on the three facades. Mr. Edwards explained that Menards would like to install two forty-foot tall signs at the entrances on Spencer and Mexico Roads with a maximum square footage of 250 square feet.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-H.

Mr. Braunfeld stated that the proposed project, located at the northeast quadrant of Mexico and Spencer roads, includes a Menards Home Improvement store and four outlots for future development. Menards is a home improvement superstore which includes a large lumber yard, home gardening supplies, plants, and outdoor furniture, home furnishing, hardware, pet care, a small convenience food area, and other services typical of a home improvement store.

The Menards store will be developed on Lot 1 of the new commercial subdivision, which will be 26.76 acres. The store will include 94,432 square feet of retail area, 14,482 square feet of receiving area, and 49,675 square feet of warehouse area. Outside the store is a 4.82 yard area which includes 40,608 square feet of overhang area for garden supplies/shipping and other storage and display. A 42,700 square foot warehouse area is also within the yard area and includes garden and other products. This smaller warehouse is designed to allow drive through so vehicles can deliver and pick up product.

The lumber yard is almost five acres in area and will be surrounded by a fourteen foot high wooden fence which supports a pallet rack system that is integrated into the fence construction. The fenced area which is oriented to Mexico Road or Executive Centre Parkway will be softened by tree plantings every 60 to 80 feet.

The proposed store will be oriented to Spencer Road. There will be an entrance from Spencer Road which will directly access the parking area situated in front of the store. A second entrance from Mexico Road will lead to the yard entrance gate and continue around the building to the front parking area. Both entrances will include a new traffic signal installed by the developer. Staff is also working with the developer to continue the lighting and tree enhancements and sidewalk along Spencer Road.

The development concept includes the four outlots in addition to the large lot (Lot 1) being developed by Menards. The outlots will range in size from 1.19 acres to 2.21 acres and can be accessed by the internal road system. The existing single family residences on adjacent lots are not included but can also be served by the internal road system. The adjacent McDonalds restaurant could access the internal road through a cross access agreement through Lot 3.

The architecture is attractive and includes an all masonry building with some green metal accent panels. The front of the building, facing Spencer Road, includes a large glass entrance feature with four wooden posts and flags and a secondary entrance with similar treatment. The front façade also includes a wrought iron fence treatment fronted by a landscape bed. Overall, the masonry materials and enhanced features complement the Special District.

During the review of the site plan, staff determined that several variances will be needed to complete the site plan. These include the size and height of the proposed signs, the parking requirements for the site, the fence height and material, and the landscaping requirements.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.260 St. Peters Centre Special District

K. Sign Regulations

1. All other developments shall be limited to one (1) freestanding, monument-style business sign per street frontage which shall be limited to a maximum height of six (6) feet and a maximum size of twenty-four (24) feet per facing and a total aggregate area of forty-eight (48) square feet.
2. A changeable copy sign of a maximum of twenty-four (24) square feet shall be permitted in conjunction with each business sign. The changeable copy sign shall comply with the general regulations of [Section 405.745\(D\)\(5\)](#) of this Chapter except digital changeable copy signs shall only be permitted at businesses fronting on Spencer Road, Veterans Memorial Parkway and Mexico Road.
 - a. In lieu of a business sign and changeable copy sign, one (1) freestanding, monument-type business sign limited to a maximum of six (6) feet in height and a maximum size of forty-eight (48) square feet per face shall be permitted. However, these combined signs shall not be digital.

Mr. Braunfeld noted that the subject site is zoned SD-RC Special District – General Retail/Service Commercial which is a sub-district of the Special District where retail and service uses are allowed along with the traditional Special District office uses. The site is at the west end of the Special District at a commercial corner which includes two service stations and a bank. To the south of the site fronting Spencer Road is a combination of small shopping centers with a mix of commercial and office uses, a small drive-through restaurant currently used as an ice cream shop, and a mini warehouse development. To the northwest is a small shopping center and further to the northwest is a shopping center with Costco, Marshalls, and other larger, national users. The established land use pattern in the area is a mix of commercial uses such that the proposed large retailer, Menards, will be consistent and appropriate with the development pattern in the area.

As the Special District has developed, the commercial activity has oriented towards this western area. Given the commercial pattern, and the higher standard for commercial projects citywide, the site and nearby area could actually be in the C-3 District. While this is not proposed, it is reasonable to

consider the C-3 signage allowance when reviewing signs for the subject site. Coupled with this, staff notes that the Special District does allow larger signs – 100 square feet and 35 feet in height – for sites along Interstate 70. The proposed Menards store will not directly front onto the interstate, but the scope of the use is typical for a site fronting an interstate and the goal of the applicant is to create some visibility from the outer road of Interstate 70 (Veterans Memorial Parkway).

Furthermore, the proposed project will be developed on a 27 acre site with frontage on two major roadways – Spencer Road and Executive Centre Parkway - and an entrance on a third roadway, Mexico Road. Therefore, the site would be eligible for three freestanding signs in addition to wall signage on the three facades. Given the size of the building the wall signs could be quite extensive. Instead, the applicant is proposing wall signs on only the front (west) facades, leaving the wall facing Executive Centre Parkway without signs. It is also noted that the large site, if developed as smaller, more typical Special District lots of one – two acres, would be eligible for many more signs than the two proposed by the applicant.

Thus, given the dominant commercial nature of the site and area, the size of the site and number of signs which would have been permitted if developed with more typical Special District lots and uses, the modest use of wall signs, the Special District regulations for properties along the interstate, and the eventual screening of the activity from Mexico Road by the outlots, staff is of the opinion that some variation of the permitted signage is reasonable for the site.

Upon review of the sign proposed for the Spencer Road frontage, staff is of the opinion the pylon style sign would be appropriate near the entrance or at the corner to attract vehicles on Veterans Memorial Parkway, Executive Centre Parkway, or Spencer Road. As noted above, both the Special District interstate frontage sites and sites in the C-3 District are eligible for a 100 square foot sign. Noting this and the absence of wall signs on the north (Executive Centre Parkway) frontage, staff is of the opinion a 100 square foot sign with a 72 square foot reader board would be reasonable. The recommended reader board size would be the combined area of the three reader boards that could be on the signs allowed by the City Code. Staff also recommends a maximum height of 35 feet which is consistent with the sign height allowed along the interstate in the Special District.

On Mexico Road the applicant is proposing the same sign of 40 feet in height and 150 square feet in area with a 100 square foot reader board. Staff is of the opinion that the Mexico Road entrance, as the main artery through the Special District, should relate to the characteristics of the Special District. To that end, staff recommends a maximum height of 25 feet and the same area – 100 square feet for the sign and 72 square feet for the reader board – as the sign on Spencer Road. Adequate signage is necessary given the substantial setback of the store from Mexico Road and the eventual blockage of the store by the outlot development, internal road, tall fence, and landscaping.

Other signs of comparable size and intensity throughout the City include Wal-Mart on Highway 94 and Home Depot on Mid Rivers Mall Drive. These are both national retailers with a brand they are trying to convey, and both are located on major roadways. In these cases, signs of thirty feet in height and a sign area of approximately one hundred square feet were approved. In both developments the signs are effective and attractive, and of a height and size appropriate for the development scale.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The signs allowed in the Special District are limited in size and height; these criteria correspond largely to office and service commercial uses. To obtain the needed return from the proposed commercial development, larger and taller signs are needed to identify the type of use, attract patrons from a distance, and represent the size and scope of the site and project.

- Does the hardship result from the strict application of these regulations?

Use of a smaller, monument style sign of a maximum of six feet in height would create a hardship for the proposed commercial user.

- Is the hardship suffered by the property in question?

Due to the proposed single user, large commercial development, rather than smaller one – two acre users, a hardship is created.

- Is the hardship the result of the applicant's own actions?

The size of the project is substantially larger than the projects originally anticipated for the Special District. Therefore, the larger site, developed as a whole, is subject to the same criteria. These are the standards of the district, not the actions of the applicant.

- Is the requested variance in harmony with general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance were approved the development would be in harmony with the general purpose and intent of the zoning regulations since the use would be able to develop at the site and be compatible with the surrounding area.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this review, staff is supportive of the requested variances regarding sign size and height subject to the following contingencies:

- a. A maximum of two (2) freestanding signs shall be permitted.
- b. The freestanding sign along Spencer Road shall be limited to thirty-five (35) feet in height and one-hundred (100) square feet in area per face. In addition, one (1) changeable copy/reader board shall be permitted on the same sign supports not to exceed seventy-two (72) square feet in area per face.

- c. The freestanding sign along Mexico Road shall be limited to twenty-five (25) feet in height and one-hundred (100) square feet in area per face. In addition, one (1) changeable copy/reader board shall be permitted on the same sign supports not to exceed seventy-two (72) square feet in area per face.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-H. Mr. Ken Stochl, 58 Stoll Lane questioned where the entrance of Menards on Spencer Road would be in relation to his home. Seeing no one else present to comment, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve Petition 12-H with the contingencies as presented by staff.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	No
Mr. Jaggi	Yes

There being 4 yes and 1 no vote, Mr. Meyer declared that Petition 12-H was approved.

Mr. Jaggi presented the findings of fact as follows:

1. The subject site is located at the northeast corner of Mexico Road and Spencer Road.
2. The subject site is zoned SD-RC Special District General Retail/Service Commercial.
3. The Zoning and Subdivision Regulations allow a maximum sign height of six (6) feet and a maximum sign area of forty-eight (48) square feet.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Trupiano presented the Conclusions of Law for Petition 12-H as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Trupiano made a motion and Mr. Kendall seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 12-I:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-I. Menard, Inc. requests a variance to allow a reduction in the number of parking spaces in the SD-RC Special District – Retail/Service Commercial. The property is located on the north side of Mexico Road, east of Spencer Road.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-I. The petitioner or their agent was requested to step forward to present their position.

Mr. Tyler Edwards, Menard, Inc., was sworn in as the petitioner. Mr. Edwards explained that the proposed project is located at the northeast quadrant of Mexico and Spencer Roads and will include a Menards Home Improvement store and four outlots for future development. The proposed project will be developed on a 27 acre site with frontage on two major roadways – Spencer Road and Executive Centre Parkway – and an entrance on a third roadway, Mexico Road. Mr. Edwards explained that Menards is requesting a reduction in the required number of parking spaces. City Code requires 473 spaces for the 94,432 square feet of retail area.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-I.

Mr. Braunfeld stated that the proposed project, located at the northeast quadrant of Mexico and Spencer roads, includes a Menards Home Improvement store and four outlots for future development. Menards is a home improvement superstore which includes a large lumber yard, home gardening supplies, plants, and outdoor furniture, home furnishing, hardware, pet care, a small convenience food area, and other services typical of a home improvement store.

The Menards store will be developed on Lot 1 of the new commercial subdivision, which will be 26.76 acres. The store will include 94,432 square feet of retail area, 14,482 square feet of receiving area, and 49,675 square feet of warehouse area. Outside the store is a 4.82 yard area which includes 40,608 square feet of overhang area for garden supplies/shipping and other storage and display. A 42,700 square foot warehouse area is also within the yard area and includes garden and other products. This smaller warehouse is designed to allow drive through so vehicles can deliver and pick up product.

The lumber yard is almost five acres in area and will be surrounded by a fourteen foot high wooden fence which supports a pallet rack system that is integrated into the fence construction. The fenced area which is oriented to Mexico Road or Executive Centre Parkway will be softened by tree plantings every 60 to 80 feet.

The proposed store will be oriented to Spencer Road. There will be an entrance from Spencer Road which will directly access the parking area situated in front of the store. A second entrance from Mexico Road will lead to the yard entrance gate and continue around the building to the front parking area. Both entrances will include a new traffic signal installed by the developer. Staff is also working with the developer to continue the lighting and tree enhancements and sidewalk along Spencer Road.

The development concept includes the four outlots in addition to the large lot (Lot 1) being developed by Menards. The outlots will range in size from 1.19 acres to 2.21 acres and can be accessed by the

internal road system. The existing single family residences on adjacent lots are not included but can also be served by the internal road system. The adjacent McDonalds restaurant could access the internal road through a cross access agreement through Lot 3.

The architecture is attractive and includes an all masonry building with some green metal accent panels. The front of the building, facing Spencer Road, includes a large glass entrance feature with four wooden posts and flags and a secondary entrance with similar treatment. The front façade also includes a wrought iron fence treatment fronted by a landscape bed. Overall, the masonry materials and enhanced features complement the Special District.

During the review of the site plan, staff determined that several variances will be needed to complete the site plan. These include the size and height of the proposed signs, the parking requirements for the site, the fence height and material, and the landscaping requirements.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

SECTION 405.550: OFF-STREET PARKING

G. Construction Standards (Drive Aisles and Parking)

1. Concrete curbing shall be provided and shown on the site development plan along drive aisles and along the entire perimeter of every parking lot, island and other areas associated with parking except for actual driveways, walkways and approved storm drain openings. The City Administrator may authorize perma curb in lieu of concrete curbing if just cause is shown.

SECTION 405.555: SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

Except as otherwise provided in this Chapter, when any building or structure is hereafter erected or structurally altered, or any building or structure hereafter is converted, off-street parking spaces shall be provided. Employee parking shall be calculated according to the maximum number of employees available on any given work shift. Employee parking shall be inclusive of the number of spaces required unless otherwise specified.

Home Improvement and Hardware Stores	5 spaces per 1,000 square feet of gross floor area
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Mr. Braunfeld noted that the applicant is proposing a reduction in the required number of parking spaces. City Code requires five spaces per 1,000 square feet of gross floor area. The subject site requires 473 spaces for the 94,432 square feet of retail area. If any of the warehouse area includes sales displays or items for sale, the required amount of parking would increase. The applicant has noted that this will be store number 270; staff believes that this amount of store operation experience has allowed them to establish their minimum parking requirements.

Staff is supportive of the parking reduction noting the applicant's well established experience in opening and operating Menards stores. The parking reduction will also allow the implementation of

the City's new storm water management regulations as outlined in the Kansas City Mid America Regional Council Storm Water Management Best Practices Manual (MARC) for LID (low impact development). Achieving these storm water management goals is important as part of the City's efforts to comply with EPA and DNR requirements; modifying the amount of parking and, thereby, reducing impervious surfaces is one of the basic ways the City can reach these goals. As the City implements best practices on all future development, the City Engineer will have the authority to modify parking requirements to accomplish LID. In the interim, a variance must be obtained.

Other issues related to the reduced parking requirements include the size of some of the parking spaces and the amount of curbing. Similar to the amount of parking, reducing the amount of curbing to enhance storm water flow will allow the site to better comply with LID. As the site is engineered, the needed curb waivers will be identified. The City Code will also be amended to allow the City Engineer to waive the curb requirement to meet storm water management goals; in the interim a variance is needed.

Staff notes that the parking space size has been reduced for a small number of spaces on the plan. These spaces are adjacent to a thirty foot wide drive aisle which crosses the parking lot. Typically, the spaces are used for non-commercial customers to load their vehicle with plant and other materials or to make a quick visit into the store. Commercial customers will typically use the yard entry for their larger orders. Staff is supportive of this modification given the minor number of these spaces and the width of the adjacent aisle which will accommodate any longer vehicles which may hang over the space into the drive aisle. Staff also notes that given the applicant's extensive experience in operating their stores, this issue has been tested.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The parking requirements for the proposed commercial development would result in a larger paved area which would have a negative impact on the storm water management plan and could also prevent the development of outlots. The reduced parking will allow the efficient use of the site and, therefore, a reasonable return.

- Does the hardship result from the strict application of these regulations?

The requirement of more parking would negatively impact the storm water plan for the site and would impact the operation of the proposed Menards store and would, therefore, create a hardship for the proposed commercial user.

- Is the hardship suffered by the property in question?

A hardship would be suffered if additional paving is required which prevents the overall development plan and prevents the use of best management practices for the storm water plan.

- Is the hardship the result of the applicant's own actions?

The parking requirements have been in place for some time and are not reflective of an individual user's actual experience. Use of the standard requirements would result in a hardship; the applicant's own actions did not create the hardship.

- Is the requested variance in harmony with general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance were approved the development would be in harmony with the general purpose and intent of the zoning regulations since the use would be able to develop at the site and be compatible with the surrounding area. Also, the reduced parking would allow the use of best management practices related to the storm water plan which meets the intent of the code.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this review, staff is supportive of the requested variance to allow the reduced amount of parking and the related curb waivers and reduced parking space size as approved on the final Engineering Plan and Site Plan.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-I. Seeing no one present, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve Petition 12-I as presented by staff.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 12-I was approved.

Mr. Kendall presented the findings of fact as follows:

1. The subject site is located at the northeast corner of Mexico Road and Spencer Road.
2. The subject site is zoned SD-RC Special District General Retail/Service Commercial.
3. The Zoning and Subdivision Regulations require a set amount of parking per area of building, a minimum parking space size, and perimeter curbing of all parking and driveways.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 12-I as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Jaggi made a motion and Mr. Kendall seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 12-J:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-J. Menard, Inc. requests a variance to allow a fence in excess of six (6) feet in height and of wood material in the SD-RC Special District – Retail/Service Commercial. The property is located on the north side of Mexico Road, east of Spencer Road.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-J. The petitioner or their agent was requested to step forward to present their position.

Mr. Tyler Edwards, Menard, Inc., was sworn in as the petitioner. Mr. Edwards explained that the proposed project is located at the northeast quadrant of Mexico and Spencer Roads and will include a Menards Home Improvement store and four outlots for future development. The proposed project will be developed on a 27 acre site with frontage on two major roadways – Spencer Road and Executive Centre Parkway – and an entrance on a third roadway, Mexico Road. Mr. Edwards explained that Menards is requesting a variance to allow a taller fence than the allowed six feet. The fourteen foot high wooden fence will support a pallet rack system that is integrated into the fence construction. The fenced area will extend around the south and east sides of the project and is in addition to a wrought iron fence and planting bed along part of the front façade of the building. Mr. Edwards noted that the fence would be maintained on a regular basis.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-J.

Mr. Braunfeld stated that the proposed project, located at the northeast quadrant of Mexico and Spencer roads, includes a Menards Home Improvement store and four outlots for future development. Menards is a home improvement superstore which includes a large lumber yard, home gardening supplies, plants, and outdoor furniture, home furnishing, hardware, pet care, a small convenience food area, and other services typical of a home improvement store.

The Menards store will be developed on Lot 1 of the new commercial subdivision, which will be 26.76 acres. The store will include 94,432 square feet of retail area, 14,482 square feet of receiving area, and 49,675 square feet of warehouse area. Outside the store is a 4.82 yard area which includes 40,608 square feet of overhang area for garden supplies/shipping and other storage and display. A 42,700 square foot warehouse area is also within the yard area and includes garden and other

products. This smaller warehouse is designed to allow drive through so vehicles can deliver and pick up product.

The lumber yard is almost five acres in area and will be surrounded by a fourteen foot high wooden fence which supports a pallet rack system that is integrated into the fence construction. The fenced area which is oriented to Mexico Road or Executive Centre Parkway will be softened by tree plantings every 60 to 80 feet.

The proposed store will be oriented to Spencer Road. There will be an entrance from Spencer Road which will directly access the parking area situated in front of the store. A second entrance from Mexico Road will lead to the yard entrance gate and continue around the building to the front parking area. Both entrances will include a new traffic signal installed by the developer. Staff is also working with the developer to continue the lighting and tree enhancements and sidewalk along Spencer Road.

The development concept includes the four outlots in addition to the large lot (Lot 1) being developed by Menards. The outlots will range in size from 1.19 acres to 2.21 acres and can be accessed by the internal road system. The existing single family residences on adjacent lots are not included but can also be served by the internal road system. The adjacent McDonalds restaurant could access the internal road through a cross access agreement through Lot 3.

The architecture is attractive and includes an all masonry building with some green metal accent panels. The front of the building, facing Spencer Road, includes a large glass entrance feature with four wooden posts and flags and a secondary entrance with similar treatment. The front façade also includes a wrought iron fence treatment fronted by a landscape bed. Overall, the masonry materials and enhanced features complement the Special District.

During the review of the site plan, staff determined that several variances will be needed to complete the site plan. These include the size and height of the proposed signs, the parking requirements for the site, the fence height and material, and the landscaping requirements.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

SECTION 405.260: ST. PETERS CENTRE SPECIAL DISTRICT

I. *Site Design Requirements.*

g. A twenty (20) foot landscaped buffer (transition yard) and sight proof fence or landscaped berms shall be provided and maintained along all rear and side property lines which abut a residential district or development.

- (1) The buffer area shall contain evergreen plant material with a minimum height of six (6) feet, planted on ten (10) foot centers.
- (2) All fences, except those associated with institutional uses, shall be vinyl or masonry material limited to a maximum height of six (6) feet, and shall not extend beyond the front building line of the subject property. The fence may be located on the side and rear property lines,

but if the fence is located on an utility easement and maintenance of utility lines are required in that area, then the property owner is responsible for replacement of the fence if removed.

Mr. Braunfeld noted that the project includes a large lumber yard which is almost five acres in area and will be surrounded by a fourteen foot high wooden fence which supports a pallet rack system that is integrated into the fence construction. The fenced area extends around the south and east sides of the project and is in addition to a wrought iron fence and planting bed along part of the front façade of the building.

The Special District allows a maximum fence height of six feet and vinyl or masonry materials; these limitations were put in place when it was anticipated that the Special District would develop as a professional office area with support commercial uses and services. The proposed use – a large Menards store – is not the typical Special District use but is more typical of a commercial corridor. In a commercial district, the City Code allows staff to approve a higher fence for screening purposes. In this case, the application of a higher fence would be appropriate to ensure the lumber yard and loading area are adequately screened, creating a nicer, finished look from adjacent properties and adjacent roadways. Staff further notes that the fence serves a dual purpose by being an integral component to the pallet racking system. The fence is very heavy duty – 2” x 8” treated wood – and supports the racking system. This system allows Menards to organize their large quantity of materials and products in an orderly fashion for ease of customer service.

At the Planning and Zoning Commission meeting where the site plan was reviewed, the design of the fence was reviewed and the applicant noted that the fence would be regularly maintained and re-stained as need, approximately every two years. This attention to property maintenance will ensure a high quality fence and overall development appropriate for the area.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The increased fence height will allow the operation to function as planned, and will screen the outside activity and storage from others in the Special District. The fence will allow the efficient use of the site and, therefore, a reasonable return.

- Does the hardship result from the strict application of these regulations?

The typical fence requirements would negatively impact the operation of the proposed Menards store and would, therefore, create a hardship for the proposed commercial user.

- Is the hardship suffered by the property in question?

A hardship would be suffered if a shorter fence is required which prevents the standard operation and typical development plan.

- Is the hardship the result of the applicant's own actions?

The fence requirements have been in place for some time and are not reflective of a unique user's specific need. Use of the standard requirements would result in a hardship; the applicant's own actions did not create the hardship.

- Is the requested variance in harmony with general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance were approved the development would be in harmony with the general purpose and intent of the zoning regulations since the use would be able to develop at the site and be compatible with the surrounding area.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this review, staff is supportive of the requested variance to allow the increased fence height of fourteen (14) feet and construction of wood material.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-J. Seeing no one present, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve Petition 12-J.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 12-J was approved.

Mr. Kendall presented the findings of fact as follows:

1. The subject site is located at the northeast corner of Mexico Road and Spencer Road.
2. The subject site is zoned SD-RC Special District General Retail/Service Commercial.
3. The Zoning and Subdivision Regulations limits the height and materials of fences in the Special District.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 12-J as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Jaggi made a motion and Mr. Kendall seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 12-K:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 12-K. Menard, Inc. requests a variance to reduce landscaping requirements in the SD-RC Special District – Retail/Service Commercial. The property is located on the north side of Mexico Road, east of Spencer Road.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 12-K. The petitioner or their agent was requested to step forward to present their position.

Mr. Tyler Edwards, Menard, Inc., was sworn in as the petitioner. Mr. Edwards explained that the proposed project is located at the northeast quadrant of Mexico and Spencer Roads and will include a Menards Home Improvement store and four outlots for future development. The proposed project will be developed on a 27 acre site with frontage on two major roadways – Spencer Road and Executive Centre Parkway – and an entrance on a third roadway, Mexico Road. Mr. Edwards explained that Menards is requesting a variance to a reduction in the landscaping requirements of the SD-RC. Mr. Edwards explained that the plan would include approximately 70 trees in addition to the natural area being retained on the site.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 12-K.

Mr. Braunfeld stated that the proposed project, located at the northeast quadrant of Mexico and Spencer roads, includes a Menards Home Improvement store and four outlots for future development. Menards is a home improvement superstore which includes a large lumber yard, home gardening supplies, plants, and outdoor furniture, home furnishing, hardware, pet care, a small convenience food area, and other services typical of a home improvement store.

The Menards store will be developed on Lot 1 of the new commercial subdivision, which will be 26.76 acres. The store will include 94,432 square feet of retail area, 14,482 square feet of receiving area, and 49,675 square feet of warehouse area. Outside the store is a 4.82 yard area which includes 40,608 square feet of overhang area for garden supplies/shipping and other storage and display. A

42,700 square foot warehouse area is also within the yard area and includes garden and other products. This smaller warehouse is designed to allow drive through so vehicles can deliver and pick up product.

The lumber yard is almost five acres in area and will be surrounded by a fourteen foot high wooden fence which supports a pallet rack system that is integrated into the fence construction. The fenced area which is oriented to Mexico Road or Executive Centre Parkway will be softened by tree plantings every 60 to 80 feet.

The proposed store will be oriented to Spencer Road. There will be an entrance from Spencer Road which will directly access the parking area situated in front of the store. A second entrance from Mexico Road will lead to the yard entrance gate and continue around the building to the front parking area. Both entrances will include a new traffic signal installed by the developer. Staff is also working with the developer to continue the lighting and tree enhancements and sidewalk along Spencer Road.

The development concept includes the four outlots in addition to the large lot (Lot 1) being developed by Menards. The outlots will range in size from 1.19 acres to 2.21 acres and can be accessed by the internal road system. The existing single family residences on adjacent lots are not included but can also be served by the internal road system. The adjacent McDonalds restaurant could access the internal road through a cross access agreement through Lot 3.

The architecture is attractive and includes an all masonry building with some green metal accent panels. The front of the building, facing Spencer Road, includes a large glass entrance feature with four wooden posts and flags and a secondary entrance with similar treatment. The front façade also includes a wrought iron fence treatment fronted by a landscape bed. Overall, the masonry materials and enhanced features complement the Special District.

During the review of the site plan, staff determined that several variances will be needed to complete the site plan. These include the size and height of the proposed signs, the parking requirements for the site, the fence height and material, and the landscaping requirements.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

SECTION 405.260: ST. PETERS CENTRE SPECIAL DISTRICT

I. *Site Design Requirements.*

1. *Landscaping and open space.* Prior to the approval of a final site plan, the developer shall submit a landscaping plan which shall conform to the following:

a. All yards and open spaces along exterior or interior streets shall be landscaped with trees and shrubs graded to provide typical topographic relief (mounds and berms) and sodded.

b. Any part of a lot not used for buildings or other structures or for parking, loading or access ways shall be landscaped with grass, ground cover, trees, shrubs and pedestrian walks.

c. For all lots, the size of all landscape materials shall comply with the Tree and Landscape Article. See [Chapter 535](#).

d. For all buildings, there shall be one (1) two and one-half (2½) inch caliper tree existing or planted for every four (4) parking spaces. Seventy-five percent (75%) shall be located within the paved area.

e. Trees shall be spaced no greater than fifty (50) feet on center across all front yards.

f. Foundation planting shall be planted and maintained along all exterior walls of all buildings at the ratio of one (1) plant material for every five (5) lineal feet of exterior wall. Said plant material may be clustered or otherwise arranged for optimum visual effect rather than being spaced evenly along the building perimeter.

Mr. Braunfeld noted that the landscape requirements in the Special District were put in place to ensure a high quality professional office area with support retail and service uses. The proposed development includes a landscape component typical of a commercial area. While the site plan is attractive, it is applicable to a retail user rather than professional office user. Therefore, a variance is needed from the Special District landscape requirements.

Staff notes the code requirements would include approximately 132 trees, foundation plantings, and sod; the tree requirement includes a minimum spacing along the frontage of the site. The plan includes approximately 70 trees in addition to the natural area being retained on the site. Staff notes the number of trees may be increased after the storm water management plan for the site is finalized; the final pond design may dictate an additional number of trees. By using LID (low impact design), including natural plantings, the amount of landscape materials on the site may be increased.

Similarly, by amending the soil and seeding, rather than the use of sod, the permeability of the soil may be increased. This process is also included in the storm water best management practices plan which the City is currently adopting and implementing. Therefore, the use of sod along with deeded areas is most appropriate for the site.

Overall, staff is of the opinion the proposed landscaping will result in an attractive site which is compatible with the Special District.

Mr. Braunfeld stated the code considerations as follows:

- If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The landscaping requirements in the Special District were designed largely for a professional office/service commercial environment. To obtain the needed return from the proposed commercial development, a more standard commercial landscape package is needed to accommodate the site and project.

- Does the hardship result from the strict application of these regulations?

The typical landscape requirements would be difficult to accommodate with the proposed Menards store and would, therefore, create a hardship for the proposed commercial user.

- Is the hardship suffered by the property in question?

A hardship would be suffered if the full landscape package is required which prevents the standard operation and plan. Also, modification of the landscape requirements will allow implementation of the storm water best management practices plan.

- Is the hardship the result of the applicant's own actions?

The landscape requirements have been in place for some time and are not reflective of a plan associated with a typical commercial use. Use of the standard requirements would result in a hardship; the applicant's own actions did not create the hardship.

- Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance were approved the development would be in harmony with the general purpose and intent of the zoning regulations since the use would be able to develop at the site and be compatible with the surrounding area.

- If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this review, staff is supportive of the requested variance to allow the reduced landscaping subject to the following:

- a. The final landscape plan shall be as approved after the final storm water best management practices plan is approved.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 12-K. Seeing no one present, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve Petition 12-K with the contingencies presented by staff.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Meyer	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Trupiano	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 12-K was approved.

Mr. Kendall presented the findings of fact as follows:

1. The subject site is located at the northeast corner of Mexico Road and Spencer Road.
2. The subject site is zoned SD-RC Special District General Retail/Service Commercial.
3. The Zoning and Subdivision Regulations require a set amount of landscaping per the regulations of the Special District.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Kendall presented the Conclusions of Law for Petition 12-K as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

Mr. Kendall made a motion and Mr. Selinger seconded to adjourn the meeting at 8:00 p.m. All in favor, the motion carried.

Respectfully submitted:

Melissa Vollmer
Recording Secretary

Dan Meyer
Chairman