

Oakwood, Dayton, Ohio

July 13, 2005

The planning commission of the City of Oakwood, State of Ohio, met this date in the council chambers of the City of Oakwood, city building, 30 Park Ave., Dayton, Ohio, 45419, at 4:30 p.m.

The Chair, Mr. William Kendell, presided and the Clerk, Ms. Cathy Blum, recorded.

Upon call of the roll, the following members responded to their names:

MR. WILLIAM KENDELL.....PRESENT  
MR. JEFFREY B. SHULMAN.....PRESENT  
MR. STEVEN BYINGTON.....PRESENT  
MR. ANDREW AIDT.....PRESENT  
MR. CARLO C. MCGINNIS.....PRESENT

Officers of the city present were the following:

Mr. Norbert S. Klopsch, City Manager  
Ms. Dalma Grandjean, City Attorney  
Mr. Jay A. Weiskircher, Assistant City Manager  
Mr. Dave Bunting, City Inspector

The following visitors were present:

Robert Jahn regarding 1800 Ridgeway  
Sandra Shampton, 2320 Hathaway  
Margaret Ruel, 302 Peach Orchard  
Len Waske, 2600 Far Hills  
Don Phlipot, 2600 Far Hills  
Dominique Fortin, 2600 Far Hills  
Mark Bolmida, 251 Triangle  
Jayne Whitaker, 248 Triangle

It was moved by Mr. Kendell and seconded by Mr. Shulman that the minutes of the commission meeting held June 1, 2005 be approved as submitted and the reading thereof be dispensed with at this session. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Kendell recognized new members due to the resignations of Dr. Fogel and Mr. House who moved out of Oakwood. He welcomed Mr. Aidt and Mr. Byington and looks forward to working with them.

Mr. Kendell suggested the agenda be altered so that both applications at 2600 Far Hills could be reviewed back to back.

Application #05-5, the request by LCC International Inc./Sprint for affixing three (3) wireless telecommunication antennas to the existing rooftop structure at 2600 Far Hills Avenue was reviewed. Mr. Weiskircher referenced a site map, aerial photo, building photo, and pointed out the existing rooftop structure where Sprint is requesting to affix three antennas and plans to paint the antennas a color to match the brick. Mr. Weiskircher indicated like Cingular, all the associated equipment will be housed in the basement. He referenced the consultant's written report, received earlier in the week that concluded standards have been met. Mr. Weiskircher noted no representative from Sprint is at the meeting and he reminded the commission that their recommendation is forwarded to city council.

Mr. Shulman wondered if Sprint looked at other sites. Mr. Weiskircher indicated sites in neighboring jurisdictions are at or near capacity, thus the need in Oakwood. Mr. Kendell asked about the status of the Cingular panels. Mr. Weiskircher pointed out the approved location of the panels at the four corners of the building; which have not yet been installed. Mr. Aidt asked about the existing antenna on the building. Mr. Weiskircher explained this is the third co-locator. Mr. Waske, 2600 Far Hills, explained Verizon has been there about ten years. Mr. Kendell suggested staff make certain that both Cingular and

Sprint's intent to match the color of the brick be reviewed. Mr. Waske indicated the building brick is different than the brick on the roof structure. Mr. McGinnis recalled when the code was amended to allow these structures and wondered if the intent has been met since there is more than one on the site. Ms. Grandjean indicated the objective of the ordinance has been met. Mr. Klopsch recalled concerns relating to not using the water tower due to the required ground structure necessary to house equipment. Mr. McGinnis questioned the number of users. Ms. Grandjean indicated there was a provision encouraging co-locators. Mr. Byington noted there aren't a lot of site options since they require three floors. Mr. Klopsch referenced several comments he has received from citizens about the dead zones. There being no other comments, the commission reviewed the following standards and referenced the consultant's report.

Standards Applicable to all Wireless Telecommunication Facilities are listed under Section 405.4. Of the 19 total standards listed, specific areas of interest in this application are the following:

D. Telecommunication Support Facilities: No telecommunication support facility shall be more than one-story in height and must be constructed to look like a building or facility typically found in the area.

Response: The telecommunication support facility for the proposed antenna panels will be located in the basement of the 2600 Building.

G. Color and Appearance Standards:

1. This standard requires that all appurtenances must be aesthetically pleasing and architecturally compatible with the surrounding environment by the means of camouflage deemed acceptable by the City.

Response: The applicant is proposing to paint the proposed antennas a color to match the existing brick.

2. No antenna may be placed on the exterior of the building that is less than two stories in height.

Response: The 2600 Building is three (3) stories in height.

3. All support structures must be located either on the roof of the building or in an appropriate location within the existing structure.

Response: As just mentioned, the applicant is proposing to place the support facilities in the basement of the 2600 Building.

4. Any roof mounted tower antenna or telecommunication appurtenances, together with all accessory facilities and structures, must be effectively screened as determined by the city.

Response: Not applicable to this application.

5. Any building mounted appurtenance must be painted the same color as the building.

Response: Again, the applicant is proposing to paint the antenna panels the same color as the building brick.

6. No portion of a building mounted antenna may be lower than 15 feet above ground level.

Response: The antennas will be more than 30 feet above ground level.

H. Advertising Prohibited: No advertising is permitted anywhere upon or attached to the wireless telecommunications facility.

Response: There is no advertising proposed on either the antenna panels on the building.

I. Artificial Lighting Restricted: No wireless telecommunications facility should be artificially lit.

Response: There are no proposed lights on either the antenna panels or the building.

J. Abandonment: All wireless telecommunication facilities must be subject to the abandonment requirements set forth in 405.5 of the ordinance.

Response: The applicant has indicated in writing that Sprint will comply with the abandonment requirements set forth in Section 405.

P. Co-Location Requirements: All telecommunication facilities must be designed to promote facility and site sharing.

Response: Sprint has indicated in writing that it will work with any potential co-locators regarding placing additional antennas at this site.

Q. Technically Suitable Space: Authorization for a tower must be issued only if there is not technically suitable space on an existing tower or structure.

Response: Pending.

Therefore, it was moved by Mr. Shulman and seconded by Mr. Byington that application #05-5, the application by LCC International Inc./Sprint for affixing three (3) wireless telecommunication antennas to the existing rooftop structure at 2600 Far Hills Avenue, and known as lot 3463-67 pts, be recommended to city council for its review and approval based on plans and information previously submitted and in compliance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Application #05-8, the application by C'est Tout to amend the special use approval and to vary the corner side yard setback for the placement of a condenser unit at 2600 Far Hills was reviewed. Mr. Weiskircher referenced the approved application for the front enclosure and noted that the original plans did not include the condenser proposed at the northwest corner of the building and which was installed earlier in the day. He reviewed photos of the just installed unit and the existing units at the other corner of the building and noted staff's recommendation that, if approved, the unit be appropriately screened and painted to match the brick. Mr. Weiskircher explained the heat pump requires a variance since the unit doesn't meet the required corner side yard setback of 12'. In regard to noise, the provided literature indicates its 72 dbs. He noted just prior to the meeting, Mr. Fortin presented a landscape plan, however, Mr. Weiskircher suggested if the variance is approved the applicant be required to work with city staff on screening and adjacent landscaping.

Mr. Klopsch asked about the outside pipe for the electric connection. Mr. Aidt noted the unit is more than a condenser, it also is for heat. Mr. Kendell wondered why the electric wasn't run from the inside out. Mr. Waske indicated they ran it through the ceiling as opposed to going through the brick. Mr. Philpot indicated they plan to paint the pipe to match the brick. Mr. Shulman understands the intent to screen the unit and extend the screening toward the addition but wondered if the other condensers will be screened. Mr. Weiskircher indicated they could include that as part of the motion but felt the other units are adequately screened. He noted if the commission has concerns about the landscaping plan, they could have the applicant return in August with the details. Mr. Shulman had no problem with staff working directly with the applicant. Mr. Aidt indicated the landscaping will need to be taller than the existing taxus. Mr. Weiskircher concurred since the unit is 48-54" tall. Mr. Byington indicated they also need to maintain the required distance from the unit for air flow needs.

#### STANDARDS FOR VARIANCES

- A. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.  
PRELIMINARY STAFF FINDINGS: While the unit could conceivably be placed on the south side of the building where it would not encroach into the required side yard setback, the more practical and preferred location for operating efficiency is the north side of the building.  
PLANNING COMMISSION FINDINGS: Sustained.
- B. The conditions upon which a petition for a Variance is based are unique to the property for which the Variance is sought and are not applicable, generally, to other property within the same zoning classification.  
PRELIMINARY STAFF FINDINGS: Given the location of the enclosure, the proposed location of the condenser unit in this application seems appropriate and unique to this property.  
PLANNING COMMISSION FINDINGS: Sustained.
- C. The purpose of the Variance is not based primarily upon a desire to make more money out of the property.  
PRELIMINARY STAFF FINDINGS: The purpose of the variance is to locate the condenser unit close enough to the enclosure so as to provide for efficient operation of the unit, and is not based upon a desire to make more money out of the property.  
PLANNING COMMISSION FINDINGS: Sustained.
- D. The alleged difficulty or hardship is caused by this Ordinance and has not been created by any

person presently having an interest in the property.

PRELIMINARY STAFF FINDINGS: The alleged difficulty in this application is created by the fact that locating the condenser unit in the north side yard encroaches into the setback and requires a variance.

PLANNING COMMISSION FINDINGS: Sustained.

- E The property in question cannot yield a reasonable return if permitted to be used only under the regulations of district in which it is located.

PRELIMINARY STAFF FINDINGS: While the property in question can yield a reasonable return if the variance is not granted, for all practical purposes, if the condenser unit is not approved at this location, it greatly reduces the usability of the enclosure during warm weather.

PLANNING COMMISSION FINDINGS: Sustained.

- F The granting of the Variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

PRELIMINARY STAFF FINDINGS: So long as the condenser unit can be appropriately screened with year-round vegetation, it should not have a negative impact on the public welfare or be injurious to other property in the area.

PLANNING COMMISSION FINDINGS: Sustained.

- G. The proposed Variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, the danger of fire, or danger to persons or property, nor will it create unreasonable noise, create a substantially adverse aesthetic appearance or substantially diminish or impair property values within the neighborhood.

PRELIMINARY STAFF FINDINGS: Again, so long as the condenser unit can be efficiently screened, it should not create an adverse aesthetic appearance. There are already several condenser units on this side of the building, so the added noise generated by the proposed unit should not be a problem.

PLANNING COMMISSION FINDINGS: Sustained.

- H. The shape, topography, or other conditions of the land is such that it is extremely difficult to comply with the regulations generally applicable to the property.

PRELIMINARY STAFF FINDINGS: As already mentioned, due to the location of the enclosure, it is impractical to place the condenser on the south side of the building.

PLANNING COMMISSION FINDINGS: Sustained.

- I. The applicant must show that the Variance requested will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvements permitted in the vicinity; will not materially impair an adequate supply of light and air to properties and improvements in the vicinity; will not substantially increase congestion in the public streets due to traffic or parking or increase the danger of flood or fire; will not unduly tax public utilities and facilities in the area; or will not endanger the public health, safety or welfare.

No yard, setback, or lot area or width Variance may be granted unless any structure subsequently placed on the lot, and the result of any changes in existing structures, must be of such appearance, size and location that it will not have an adverse impact upon the value of other residences in the immediate vicinity and on approximately the same size lots and, while recognizing the diversity of Oakwood housing, is reasonably compatible with the appearance, size and location of such other residences on such lots.

Plans for any structure to be placed upon, or improved or expanded upon, a lot granted such a Variance must be submitted in advance for approval by the BZA, and no structure may be erected except in accordance with plans approved by the BZA on the basis of meeting these conditions and the other standards required for Variances. In considering the plans, the BZA must give notice and hold a public hearing in the same manner as described above in this Section.

PRELIMINARY STAFF FINDINGS: Although this is not the most desirable location to place another condenser unit, for efficiency purposes, this location makes the most sense.

The applicant has developed a fairly extensive landscape screening plan which should

soften the appearance of the unit.

PLANNING COMMISSION FINDINGS: Sustained.

Therefore, it was moved by Mr. Shulman and seconded by Mr. Aidt that application #05-8, the application by C'est Tout to amend the special use approval and to vary the corner side yard setback for the placement of a heat pump unit at 2600 Far Hills Avenue, and known as lot 3463-67 pts., be approved based on plans and information previously submitted, subject to a landscaping plan being submitted to and approved by city staff, that the inspector meet with the applicant in regard to the electric connection, and in compliance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Application #05-6, the special use application by Ken Hemmelgarn for the installation of a secondary garage at 1800 Ridgeway was reviewed. Mr. Weiskircher referenced a site plan and the proposed location of a secondary garage to the north side of the property. He also reviewed photos of the three-acre lot and extensive rear yard landscaping already installed by the Hemmelgarns. He indicated that abutting Ridgeway neighbor Dr. Samkari was in earlier to review the plans and had no problem. Mr. Weiskircher reviewed a picture of the existing storage building and explained the new garage will match the architectural look and materials of that and the home. He projected the side elevation of the 24' x 38' garage, pointing out the 18' height, dormers, porch area, and the stairs leading to the second level of the garage that is to be used exclusively for storage.

Mr. Kendell asked if the garage will be heated. Mr. Jahn indicated that is not the intent. Mr. Byington reviewed the roof of the structure. Mr. Jahn noted that he plans to match the stucco and wood doors for this carriage like structure. Mr. McGinnis asked about the distance from the structure to the abutting rear neighbor's home. Mr. Weiskircher indicated it abuts a property on Southwood and although there is quite some distance between the structures, there is adequate screening already in place. Mr. Aidt wondered how they plan to connect the paving from the garage to the drive. Mr. Jahn indicated he plans to match the existing paver walk. Mr. Byington asked if there will be exterior lights. Mr. Jahn responded there will be a spot light on the corner to illuminate the drive. There were no comments from the audience.

Ms. Grandjean suggested to the commission that rather than read the standards and staff findings that a motion be made which references the staff findings and special use criteria. Mr. Klopsch indicated staff will prepare this in writing for their next meeting. Mr. Kendell indicated they will need to note if the commission doesn't agree or recommend a particular standard.

#### SPECIAL USE STANDARDS

- A. The proposed use at the specified location is consistent with the Comprehensive Plan.  
PRELIMINARY STAFF FINDINGS: Within the Comprehensive Plan, it is recommended that new development in residential areas be characterized by high quality construction and be compatible with the scale and character of the surrounding neighborhood. In this application, the architectural features and building materials for the secondary garage will mirror the existing storage building on the south side of the lot.  
PLANNING COMMISSION FINDINGS: Sustained.
- B. The proposed building or use will not adversely affect or change the character of the area in which it is located.  
PRELIMINARY STAFF FINDINGS: Construction of a secondary garage in the rear yard of this large lot should not change the character of the area.  
PLANNING COMMISSION FINDINGS: Sustained.
- C. That the establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare.  
PRELIMINARY STAFF FINDINGS: There is no reason to conclude that consideration of a secondary garage on this large lot will have a detrimental impact on the general welfare of the surrounding property owners.  
PLANNING COMMISSION FINDINGS: Sustained.
- D. That the proposed use will not be injurious to the reasonable use and enjoyment of other property

in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.

PRELIMINARY STAFF FINDINGS: In consideration of its proposed location and appearance, staff does not believe that the proposed secondary garage will be injurious to the use and enjoyment of other properties in the immediate vicinity nor impair property values within the neighborhood.

PLANNING COMMISSION FINDINGS: Sustained.

- E. The proposed use at the specified location will not significantly adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district in which they are located. The location, size and height of proposed buildings and other structures, and the operation of the use will not significantly adversely affect the use and development or hinder the appropriate development of adjacent and nearby properties.

PRELIMINARY STAFF FINDINGS: The location, size and height of the proposed secondary garage should not impair or affect development of adjacent property.

PLANNING COMMISSION FINDINGS: Sustained.

- F. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.

PRELIMINARY STAFF FINDINGS: The owners have made a sincere effort to ensure that the appearance of the garage will be in keeping with the existing structures on the lot.

PLANNING COMMISSION FINDINGS: Sustained.

- G. That adequate utilities, access roads, off-street parking and loading facilities, drainage and/or other necessary facilities, have been or are being provided at the applicant's cost.

PRELIMINARY STAFF FINDINGS: The applicant will be responsible for all drainage associated expenses.

PLANNING COMMISSION FINDINGS: Sustained.

- H. That adequate measures have been or will be taken at applicant's cost to provide ingress and egress so designed as to minimize traffic congestion in the public streets and avoid hazards to pedestrian traffic.

PRELIMINARY STAFF FINDINGS: This standard does not apply in this application.

PLANNING COMMISSION FINDINGS: Sustained.

- I. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by Council pursuant to the recommendations of the Planning Commission.

PRELIMINARY STAFF FINDINGS: Except for the special use to construct the garage, this application conforms to all other applicable regulations.

PLANNING COMMISSION FINDINGS: Sustained.

Therefore, it was moved by Mr. Shulman and seconded by Mr. Byington that application #05-6, the special use application by Ken Hemmelgarn for the installation of a secondary garage at 1800 Ridgeway Road, and known as lot #2827, be approved based on section 901.18 of the zoning code, the commission has reviewed the standards and staff findings and are of the opinion that this request meets those standards, evidence has been produced, subject to evergreen screening maintained in perpetuity at a 6' height, based on plans and information previously submitted, and in compliance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Kendell pointed out that this is a unique request given the size of the lot, the commission has had similar requests on smaller lots. Mr. Shulman concurred since this is a three-acre parcel.

Application #05-7, the application by Mark Bolmida for a special use to install a play structure on a vacant lot; and to vary the corner side yard setback for said structure at 251 Triangle Avenue was reviewed. Mr. Weiskircher reviewed the property which includes a non-buildable vacant lot on the corner

and explained a special use is required as well as a variance since the structure would be set 10' rather than the required 15' corner yard setback. He pointed out the property doesn't have a useable rear yard area. Mr. Weiskircher added that in 1992, an application from a former owner for a similar request and location was approved. He noted while traveling down Hathaway and Delaine, there are several structures in corner side yards and the city prefers to have the units screened. Mr. Kendell asked if this is ice skating rink property. Mr. Bolmida indicated yes, but a different owner.

Ms. Shampton, 2320 Hathaway, resides across the street and expressed concern that the previous owner only installed three small bushes which never really screened the structure. She indicated since then times have changed and it is more dangerous to leave children out in the yard so due to safety reasons, as well as aesthetic, she believes the unit should be screened. She indicated another problem with the previous owner was that when they weren't home, the neighborhood kids used the structure. Mr. Kendell recalled the previous owner didn't maintain the yard very well. Ms. Shampton added they also didn't have the fence. Mr. Kendell noted the owner should have understood the concerns with a corner lot that has no rear yard and questioned the height of the structure. Mr. Weiskircher responded 12'. Mr. Kendell suggested the applicant work with Ms. Collins to screen as best as possible, but doesn't want someone to be able to hide in the screening either. He also suggested the current owner notify the police when they are gone for an extended period of time so others aren't using the structure. Mr. Kendell indicated he generally is not in favor of play structures in the side yard, but understands there is no useable rear yard. Mr. Byington wondered since the request was approved in 1992, does that permission end when the property is sold. Mr. Kendell indicated they generally include that in their motion. Mr. Weiskircher explained if a prospective buyer wants to maintain the structure, then they would need to come back to the commission for a special use. Ms. Shampton recalled the Greenes moved the structure with them.

#### SPECIAL USE STANDARDS

- A. The proposed use at the specified location is consistent with the Comprehensive Plan.  
PRELIMINARY STAFF FINDINGS: The land use component of the Comprehensive Plan mentions that residential development should be compatible with the scale and character of the neighborhood. The play structure being proposed is consistent with a residential use.  
PLANNING COMMISSION FINDINGS: Sustained.
- B. The proposed building or use will not adversely affect or change the character of the area in which it is located.  
PRELIMINARY STAFF FINDINGS: Since there was a play structure previously approved in approximately the same location, staff does not believe the proposed structure will change the character of the area.  
PLANNING COMMISSION FINDINGS: Sustained.
- C. That the establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare.  
PRELIMINARY STAFF FINDINGS: There is no indication that placing the play structure in the proposed location will be detrimental to the general welfare of the public.  
PLANNING COMMISSION FINDINGS: Sustained.
- D. That the proposed use will not be injurious to the reasonable use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.  
PRELIMINARY STAFF FINDINGS: Since a play structure previously existed in approximately the same location as is being proposed, staff does not believe the application before you will diminish or impair property values.  
PLANNING COMMISSION FINDINGS: Sustained.
- E. The proposed use at the specified location will not significantly adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district in which they are located. The location, size and height of proposed buildings and other structures, and the operation of the use will not significantly adversely affect the use and development or hinder the appropriate development of adjacent and nearby properties.  
PRELIMINARY STAFF FINDINGS: The proposed play structure should have no affect

on the use and development of nearby properties.

PLANNING COMMISSION FINDINGS: Sustained.

- F. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.

PRELIMINARY STAFF FINDINGS: The structure being proposed is constructed of quality materials, and is typical of play structures located throughout the community.

PLANNING COMMISSION FINDINGS: Sustained.

- G. That adequate utilities, access roads, off-street parking and loading facilities, drainage and/or other necessary facilities, have been or are being provided at the applicant's cost.

PRELIMINARY STAFF FINDINGS: Not applicable in this application.

PLANNING COMMISSION FINDINGS: Sustained.

- H. That adequate measures have been or will be taken at applicant's cost to provide ingress and egress so designed as to minimize traffic congestion in the public streets and avoid hazards to pedestrian traffic.

PRELIMINARY STAFF FINDINGS: Not applicable in this application.

PLANNING COMMISSION FINDINGS: Sustained.

- I. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by Council pursuant to the recommendations of the Planning Commission.

PRELIMINARY STAFF FINDINGS: In addition to the special use, the proposed location also requires a variance.

PLANNING COMMISSION FINDINGS: Sustained.

#### STANDARDS FOR VARIANCES

- A. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

PRELIMINARY STAFF FINDINGS: This is a corner lot so the majority of available space is located in the corner side yard. Since there is no available rear yard space, there is a hardship for the applicant if the strict letter of the regulations were to be carried out.

PLANNING COMMISSION FINDINGS: Sustained.

- B. The conditions upon which a petition for a Variance is based are unique to the property for which the Variance is sought and are not applicable, generally, to other property within the same zoning classification.

PRELIMINARY STAFF FINDINGS: This condition is fairly unique and is not typical of most properties in the R-5 zoning district.

PLANNING COMMISSION FINDINGS: Sustained.

- C. The purpose of the Variance is not based primarily upon a desire to make more money out of the property.

PRELIMINARY STAFF FINDINGS: The purpose of the variance is to install a play structure in the corner side yard and is not based upon a desire to make more money out of the property.

PLANNING COMMISSION FINDINGS: Sustained.

- D. The alleged difficulty or hardship is caused by this Ordinance and has not been created by any person presently having an interest in the property.

PRELIMINARY STAFF FINDINGS: The alleged difficulty in this application is created by the lack of useable rear yard space and the desire of the resident to locate a play structure in his corner side yard.

PLANNING COMMISSION FINDINGS: Sustained.

- E. The property in question cannot yield a reasonable return if permitted to be used only under the regulations of district in which it is located.

PRELIMINARY STAFF FINDINGS: The property can generate a reasonable return if

the variance is not granted.

PLANNING COMMISSION FINDINGS: Sustained.

- F The granting of the Variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

PRELIMINARY STAFF FINDINGS: Since a play structure was previously located in approximately the same location, there is no reason to believe that the granting of a variance will be detrimental to the public welfare or injurious to other property in the neighborhood.

PLANNING COMMISSION FINDINGS: Sustained.

- G. The proposed Variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, the danger of fire, or danger to persons or property, nor will it create unreasonable noise, create a substantially adverse aesthetic appearance or substantially diminish or impair property values within the neighborhood.

PRELIMINARY STAFF FINDINGS: Assuming plant material can be placed between the play structure and the existing fence, staff does not believe the play structure will create a substantially adverse aesthetic appearance.

PLANNING COMMISSION FINDINGS: Sustained.

- H. The shape, topography, or other conditions of the land is such that it is extremely difficult to comply with the regulations generally applicable to the property.

PRELIMINARY STAFF FINDINGS: As already mentioned, the proposed location is the only practical location on the lot for a play structure.

PLANNING COMMISSION FINDINGS: Sustained.

- I. The applicant must show that the Variance requested will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvements permitted in the vicinity; will not materially impair an adequate supply of light and air to properties and improvements in the vicinity; will not substantially increase congestion in the public streets due to traffic or parking or increase the danger of flood or fire; will not unduly tax public utilities and facilities in the area; or will not endanger the public health, safety or welfare.

No yard, setback, or lot area or width Variance may be granted unless any structure subsequently placed on the lot, and the result of any changes in existing structures, must be of such appearance, size and location that it will not have an adverse impact upon the value of other residences in the immediate vicinity and on approximately the same size lots and, while recognizing the diversity of Oakwood housing, is reasonably compatible with the appearance, size and location of such other residences on such lots.

Plans for any structure to be placed upon, or improved or expanded upon, a lot granted such a Variance must be submitted in advance for approval by the BZA, and no structure may be erected except in accordance with plans approved by the BZA on the basis of meeting these conditions and the other standards required for Variances. In considering the plans, the BZA must give notice and hold a public hearing in the same manner as described above in this Section.

PRELIMINARY STAFF FINDINGS: As referred to earlier, the planning commission approved placement of a play structure in approximately the same location in 1992.

PLANNING COMMISSION FINDINGS: Sustained.

Therefore, it was moved by Mr. Shulman and seconded by Aidt that application #05-7, the combined request by Mark Bolmida for a special use to install a play structure on a vacant lot and to vary the corner side yard setback for said structure at 251 Triangle Avenue, and known as lot #1596-97 pt., be approved based on the commission's review of the special use and variance standards, along with staff findings, that evidence has been presented to approve said application based on plans and information previously submitted, subject to a vegetative screening plan being approved by the city horticulturist to screen the structure on the Hathaway side and to the north, when the property is sold the play structure shall be removed, and in compliance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

The commission was updated on the status of the Sugar Camp property and the current Miller Valentine option to purchase after a due diligence period. Discussion ensued in regard to potential uses, tax needs, inheritance tax, need for empty nester housing, the city's concepts, suggestion that Miller Valentine share their studies with the city, etc. They also discussed various large property sites and upcoming new homes.

There being no further business to come before this session of the planning commission, it was moved by Mr. Shulman and seconded by Mr. McGinnis that this session of the planning commission of the City of Oakwood, now adjourn. Upon a viva voce vote on the question of the motion, it passed unanimously. Thereupon, this session of the planning commission did adjourn at 6:19 p.m.

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CHAIR

ATTEST:

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CLERK