

STAFF FINDINGS
SEPTEMBER 21, 2010

AGENDA ITEM #1
PROJECT #10-00000301

A request by Chris McRae for a Special Use Permit to operate a Child Day Care Home – Small at 602 Valley Dale St, W in a RA-12S zone.

APPROVED BY LAND DEVELOPMENT COORDINATOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following “findings of fact” and suggests that the Board, likewise, include these among any specific “findings of fact” that they make regarding this case. Any such “findings of fact” should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

- FACT 1: The property in question is located at 602 Valley Dale St, W in Wilson County, North Carolina.
- FACT 2: The property is also known as 3712-52-6386.000 (PIN).
- FACT 3: The property is zoned RA-12S, a “single-family residential” district. The surrounding properties are also zoned as RA-12S.
- FACT 4: Section 8.2.A of the City of Wilson Zoning Ordinance includes a “Table of Permitted Uses” for residential districts. That table lists a “child day care home - small, subject to a special use permit, and subject to the requirements of Section 19.10(C) as a use permitted in the RA-12S zone.
- FACT 5: Section 3.1 of the City of Wilson Zoning Ordinance is entitled “Definitions.” It includes the following definitions for “child day care” and “child day care home - small”:

“Child day care. Any child care arrangement wherein three (3) or more children less than thirteen (13) years of age receive care away from their primary residence by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child’s primary residence where other unrelated children are in care. Care is provided on a regular basis of at least once per week for more than four (4) hours per day.”

“Child day care home - small. A child day care in which day care is provided for three (3) to five (5) pre-school children, plus up to three additional school age children. Child day care operations permitted as a “child day care home” prior to January 4, 1996, shall be considered a “child day care home – small” and may continue to operate as a conforming use under the terms of their existing permit.”

FACT 6: Section 19.10(C) of the City of Wilson Zoning Ordinance lists the conditions for a “child day care home – small” as follows:

1. *As an accessory use.* Permitted as an accessory use operated by a church or religious institution on the same zoning lot and within buildings also used for religious activities.
2. *As a principal use.* Permitted only in a private residence occupied by the authorized operator.
3. *Indoor space.* At least twenty-five (25) square feet of inside space shall be provided for each child enrolled.
4. *Outdoor space.* Outdoor play area of one hundred (100) square feet for each child enrolled, with an eight hundred (800) square-foot minimum, shall be provided. Such outdoor play area shall be enclosed by a minimum four-foot tall security fence. Outdoor activities shall be limited to the fenced area, and may occur only between 8:00 a.m. and 8:00 p.m.
5. *Registration.* Registration with the state is required.
6. *In single-wide manufactured homes:* A single-wide manufactured may be used to provide care for not more than three (3) preschool-aged children, no more than two (2) of which can be of age two (2) years or less; plus an additional two (2) school-aged children (for a total of five (5) children, maximum).
7. *Location:* Except for any child day care home - small existing on January 4, 1996, no child day care home - small in the RA-6S, RA-8S, RA-10S, RA-12S and RA-15S districts shall be located closer than five hundred (500) feet to another child day care home - small.

FACT 7: Paragraph “1” of Section 19.10(C) does not apply to this request.

- FACT 8: Paragraph “2” of Section 19.10(C) applies to this request. This premise was observed by the City Staff to be a private residence. The applicant resides on the premises.
- FACT 9: Paragraph “3” of Section 19.10(C) applies to this request. To meet the minimum requirement of paragraph “3”, this use at the maximum capacity (8 children) would require the residence to have a minimum of 200 square feet. According to the sketch plan the applicant submitted, with just the three rooms they plan to occupy for their daycare, they have 291 square feet, which is more than enough for the maximum number of children allowed.
- FACT 10: Paragraph “4” of Section 19.10(C) applies to this request. The applicant plans to use their rear yard that is in excess of the 800 square feet, for the outdoor play area. Prior to the preparation of these findings, City staff visited the site and observed that there is at least a four foot tall security fence.
- FACT 11: Paragraph “5” of Section 19.10(C) applies to this request. Approval will have to be subject to state registration.
- FACT 12: Paragraph “6” of Section 19.10(C) is not applicable to this request.
- FACT 13: Paragraph “7” of Section 19.10(C) applies to this request. According to city staff research and information we have available, it appears that the proposed location is greater than the 500-foot minimum separation from other day care homes.
- FACT 14: According to the Section 5.5.B one (1) space is required per 10 licensed attendees plus one (1) space per employee for a child day care home. If the applicant maximizes the number of children she can have as a child day care home – small a total of eight children will be allowed. In addition the applicant could have one nonresident employee in the future. Based on this information, two parking spaces will be required for the daycare, in addition to the two spaces required for the residence. As a result of a recent inspection, city staff noted that there is enough parking for two parking spaces for the daycare in addition to the two for the residence.
- FACT 15: The Neighborhood Improvement Enforcement Coordinator recommends approval regarding his area of concern and made the following comments:
1. Parking for 4 vehicles.

2. Three rooms used for daycare.
3. Fenced in backyard.
4. Smoke detector system and alarm system in place and functioning.

FACT 16: The Fire Department recommends approval, subject to the following conditions:

1. Install one 5lb ABC Fire Extinguisher.
2. Post evacuation plans.

FACT 17: The Construction Standards recommends approval regarding their area of concern and made the following comment:

1. Must be for residential childcare and must meet the residential building code

FACT 18: Section 7.B of the Zoning Ordinance, pertaining to the issuance of special use permits, reads as follows:

1. Subject to paragraph 2, below, the board of adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
 - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
 - (b) the application is incomplete, or
 - (c) if completed as proposed in the application, the development will not comply with one or more requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).

In granting such a permit, the board of adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this ordinance.

2. Even if the board of adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and information submitted at the hearing, that if completed as proposed, the development, more probably than not:
 - (a) will materially endanger the public health or safety, or

- (b) will substantially injure the value of adjoining or abutting property, or
- (c) will not be in harmony with the area in which it is to be located, or
- (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 18.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-18 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude:
 1. that the requested permit is within the jurisdiction of the Board to issue;
 2. that the application is complete; and
 3. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Move to grant the Special Use Permit subject to the following conditions:
 1. The applicant and operator of the establishment shall fully comply with all of the requirements of the order together with any other applicable state or local rules, ordinances, laws and regulations of whatever nature.
 2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
 3. The Special Use Permit is granted for a Child Day Care Home - Small, ONLY.
 4. Registration for operation at this location with the State shall be must be accomplished prior to the commencement of the business and shall be maintained.

6. A City Privilege License shall be obtained prior to opening for business and maintained or this Special Use Permit shall become void and of no effect.
7. Any signs displayed concerning this use shall meet all requirements of the Zoning Ordinance.
8. The applicant shall reside on this premises during the operation of this use or the permit shall be considered void and of no effect.
9. All yard trash and debris shall be removed prior to opening for business and be maintained in such fashion for the duration of the business.
10. The applicant must comply with the recommendations of the Fire Department (as noted in FACT 16) prior to the commencement of the business.
11. The applicant must comply with the recommendations of Construction Standards (as noted in FACT 17) prior to the commencement of the business.
12. The residence must be inspected by the Fire Department, Construction Standards and the Health Department prior to the commencement of the business.

STAFF FINDINGS
SEPTEMBER 21, 2010

AGENDA ITEM #2
PROJECT #10-00000276

A request by Orlandus Parker for a Special Use Permit to allow the applicant to erect an accessory building prior to construction of a principal building at 608 Carroll St, E in a RA-6I zone.

APPROVED BY LAND DEVELOPMENT COORDINATOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following "findings of fact" and suggests that the Board, likewise, include these among any specific "findings of fact" that they make regarding this case. Any such "findings of fact" should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

- FACT 1: The property in question is located at 608 Carroll St, E in Wilson County, North Carolina.
- FACT 2: The property is also known as 3721-79-4365.000 (PIN).
- FACT 3: The property is zoned RA-6I, an inner-city multi-family residential district. The surrounding properties are also zoned RA-6I.
- FACT 4: Mr. Parker constructed an accessory building on piers at the property located at 608 Carroll St, E. He did not obtain a building permit for the construction of the building. Mr. Parker was contacted by the City of Wilson Planning and Development Services Department and informed that he did not have a building permit and that he could not construct an accessory building prior to the principal building without first obtaining a Special Use Permit. On November 16, 2009, Mr. Parker applied for a Special Use Permit. At that time, it was determined that he did not own the property and the case could not move forward. On February 18, 2010, a deed was recorded giving Mr. Parker title to the property. Mr. Parker applied for a Special Use Permit again on August 9, 2010.
- FACT 5: Section 8.3.F.10 of the City of Wilson Zoning Ordinance lists the requirements for accessory buildings and structures built prior to construction of a principal building as follows:

Given that an accessory building is "subordinate" to a principal building and "incidental" to a permitted principal use, it follows that a principal building must be established before an accessory building is constructed. The foregoing statement and the sections of the ordinance leading to the formulation of the statement notwithstanding, construction of what would otherwise be classified as an accessory building may be allowed prior to the construction of the otherwise principal building only under the following circumstances and conditions:

- a. The property upon which the accessory building is to be constructed is located in a residential district (as per Section 8.1.A), but NOT in a PRD-4, PRD-7, RA-MH, RA-MS, or RA-M district;
- b. The property is NOT located in the Highway Development District (as per Section 8.38.D.1 and 2), the Historic District (as per Section 8.42.B.1 through 3), or any district bearing a "(CD)" suffix;
- c. Only one (1) such building is constructed on a lot under the provisions of this section;
- d. The building is located to the rear of the minimum rear setback line, or in the rearmost forty (40) feet of the property, whichever provides the greatest building area (and shall not be considered to establish a front yard - during the time that the "accessory building" is the only building on the property, the front yard shall be considered as the area forward of the minimum front setback line);
- e. The building shall be used only for residential storage customary and incidental to a normal residential use appropriate to the zone in which it is located (clarification: among other things, this provision means that the stabling horses in such a building is appropriate in the A-1 district but not in the other residential districts); it shall NOT be used for human habitation;
- f. All other requirements of the Zoning Ordinance shall remain in full force and effect (setbacks, rear yard coverage, etc.); and
- g. This use shall be allowed only upon the granting of a Special Use Permit by the Board of Adjustment.

FACT 6: Paragraph "a" of Section 8.3.F.10 applies to this request. The property in question is zoned RA-6I, an inner-city multi-family residential district.

- FACT 7: Paragraph “b” of Section 8.3.F.10 applies to this request. The property is not located in a Highway Development District, Historic District, or any district bearing a “(CD)” suffix.
- FACT 8: Paragraph “c” of Section 8.3.F.10 applies to this request. Only one (1) such building will be allowed on this property.
- FACT 9: Paragraph “d” of Section 8.3.F.10 applies to this request. The building is located in the rearmost 40 feet of the property.
- FACT 10: Paragraph “e” of Section 8.3.F.10 applies to this request. The building could only be used for storage.
- FACT 11: Paragraph “f” of Section 8.3.F.10 applies to this request. The building meets the other requirements of the Zoning Ordinance.
- FACT 12: Paragraph “g” of Section 8.3.F.10 applies to this request. The Special Use Permit will have to be granted for the building to remain.
- FACT 13: At the present time the building is being propped up with a trailer, tires, and pallets and appears to be unsafe. There are also a number of other violations on the property, including a junked car and trash. Please refer to the attached photographs of the building and property. According to the building inspector, the building could be brought up to building code standards at such time that the applicant obtains a building permit. A building permit cannot be issued unless the Special Use Permit is granted.
- FACT 14: The Neighborhood Improvement Enforcement Coordinator recommended denial and made the following comments:
1. This structure was built without a building permit appears to be collapsing and is in need of repair / or removal
 2. There a flat bed trailer pushed up under this building that is supporting the structure with tires and pallets
 3. The property has a junk vehicle(truck) on it with a flat tire
 4. There is a Camper trailer on the lot that has been identified as having drop cords running to it. Campers in use should be in motor camper facilities.
 5. Condition special use permit to require a building permit be obtained, paid for and have final inspection within 30 days.
 6. All junk be removed from property and nuisance vehicle be removed, repaired, or properly stored on lot.

- FACT 15: The Fire Department has indicated that as the property is residential, the Fire Department is not involved in this project.
- FACT 16: Inspection Standards recommends approval subject to complying with the Building Code.
- FACT 17: Section 7.B of the Zoning Ordinance, pertaining to the issuance of special use permits, reads as follows:

1. Subject to paragraph 2, below, the board of adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
 - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
 - (b) the application is incomplete, or
 - (c) if completed as proposed in the application, the development will not comply with one or more requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).

In granting such a permit, the board of adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this ordinance.

2. Even if the board of adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and information submitted at the hearing, that if completed as proposed, the development, more probably than not:
 - (a) will materially endanger the public health or safety, or
 - (b) will substantially injure the value of adjoining or abutting property, or
 - (c) will not be in harmony with the area in which it is to be located, or
 - (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 17.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-17 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude:
 4. that the requested permit is within the jurisdiction of the Board to issue;
 5. that the application is complete; and
 6. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Because of the condition of the accessory building and property, staff recommends that the Board move to deny the Special Use Permit. However, if the Board decides to grant the Special Use Permit, staff would recommend the following conditions:
 1. The applicant and operator of the establishment shall fully comply with all of the requirements of the order together with any other applicable state or local rules, ordinances, laws and regulations of whatever nature.
 2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
 3. The Special Use Permit is granted for the existing accessory building, ONLY.
 4. The building is to be used for normal household storage only. There is to be no human habitation.
 5. That a building permit is obtained within 30 days, with a final inspection within 60 days.
 6. That the building complies with all building codes.
 7. That the junked car, camper trailer, and all the trash are removed within ten (10) days.

STAFF FINDINGS
SEPTEMBER 21, 2010

AGENDA ITEM #3
PROJECT #10-00000299

A request by Anita Anderson for a Special Use Permit to operate a Social Service Organization (Child and Adult Day Treatment Facility) at 903/905 Goldsboro Street South in a B-4 zone.

APPROVED BY LAND DEVELOPMENT COORDINATOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following “findings of fact” and suggests that the Board, likewise, include these among any specific “findings of fact” that they make regarding this case. Any such “findings of fact” should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

- FACT 1: The property in question is located at 903/905 Goldsboro Street South in Wilson County, North Carolina.
- FACT 2: The property is also known as 3721-07-0545.000 (PIN).
- FACT 3: The property is zoned B-4, the “intermediate business” district. The surrounding properties are all zoned B-4.
- FACT 4: There is no listing for a child and adolescent day treatment facility in the Zoning Ordinance. Therefore, staff placed them in the closest appropriate zoning classification, which is social service organization. This is also the classification that we placed Hope Station (homeless shelter) and the previous day treatment facilities.
- FACT 5: Section 8.2.A of the City of Wilson Zoning Ordinance includes a “Table of Permitted Uses” for business districts. That table lists a “social service organization, subject to a special use permit, as a use permitted in the B-4 zone. There are no special requirements for social service organizations.
- FACT 6: According to the applicant, the property will be used as a Mental Health and Substance Abuse center (Day Treatment). At risk youth and adults may come and participate in activities which will enhance their lives. Participants will meet and receive necessary

assessment as designed by the state of North Carolina and the Federal Government.

- FACT 7: The Neighborhood Improvement Enforcement Coordinator recommends approval, subject to a minor site plan or site plan being approved by the Technical Review Committee to address parking issues.
- FACT 8: Construction Standards recommends approval subject to all Building Codes being met.
- FACT 9: The Fire Department recommends approval, subject to the provisions of NC Fire Prevention Code being met.
- FACT 10: Section 7.B of the Zoning Ordinance, pertaining to the issuance of special use permits, reads as follows:
1. Subject to paragraph 2, below, the Board of Adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
 - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
 - (b) the application is incomplete, or
 - (c) if completed as proposed in the application, the development will not comply with one or more requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).

In granting such a permit, the Board of Adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this ordinance.
 2. Even if the Board of Adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and information submitted at the hearing, that if completed as proposed, the development, more probably than not:
 - (a) will materially endanger the public health or safety, or
 - (b) will substantially injure the value of adjoining or abutting property, or

- (c) will not be in harmony with the area in which it is to be located, or
- (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 10.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-10 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude:
 - 7. that the requested permit is within the jurisdiction of the Board to issue;
 - 8. that the application is complete; and
 - 9. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Move to grant the Special Use Permit subject to the following conditions:
 - 1. The applicant and operator of the establishment shall fully comply with all of the requirements of the order together with any other applicable state or local rules, ordinances, laws and regulations of whatever nature.
 - 2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
 - 3. The Special Use Permit is granted for a Child and Adult Day Treatment Facility, ONLY.
 - 4. That the applicant complies with all NC Building Codes and NC Fire Prevention Codes.
 - 5. A minor site plan or full site plan if recommended by the TRC must be submitted and approved by the Technical Review Committee prior to the commencement of the business.

STAFF FINDINGS

August 17, 2010

AGENDA ITEM # 3
PROJECT # 10-00000020

A request by Jessie L. Adams for a Variance from Section 5.5 of the Zoning Ordinance to allow the applicant to operate at church that will not meet the parking requirements (25 parking spaces are required, the applicant is requesting no spaces) at 214 Walnut Street, W. in a RA-6 zone.

APPROVED BY ASSISTANT DIRECTOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following "findings of fact" and suggests that the Board, likewise, include these among any specific "findings of fact" that they make regarding this case. Any such "findings of fact" should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

FACT 1: The property in question is located at 214 Walnut Street, W. in Wilson County, North Carolina.

FACT 2: The property is also known as 3722-00-5402.000 (PIN).

FACT 3: The property is zoned RA-6, a multi-family residential district. The surrounding properties are zoned as follows:

NORTH	- Industrial (I-1)
SOUTH	- Multi-family Residential (RA-6)
EAST	- Single-family Residential (RA-6)
WEST	- Industrial (I-1)

FACT 4: Section 5.5 of the City of Wilson Zoning Ordinance includes the parking requirements for church. The number of parking spaces required for a church is one (1) space per four (4) seats in the sanctuary. The applicant has stated that he would like to have 100 seats in the sanctuary. This would require 25 parking spaces.

FACT 5: Section 5.5 of the Zoning Ordinance also includes the parking requirements for various uses for the property.

FACT 6: On December 1, 2009, the applicant purchased the property. On January 5, 2010, the applicant meet with the Technical Review Committee to discuss what was needed to convert the existing

warehouse space into a church. He was informed that a Variance would be needed for the parking. The applicant applied for the Variance on January 19, 2010.

FACT 7: The applicant has supplies staff with documentation that he has made arrangements for parking with the owners of the properties at 111 Walnut Street, W. and 115 Hines Street, W. These properties are approximately 500 feet from the applicant's property.

FACT 8: Section 5.2 of the Zoning Ordinance states that "the required parking space for any number of separate uses may be combined in one lot but the required space assigned to one use may not be assigned to another use, except that one-half of the parking spaces required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays." Therefore, based on the 25 spaces required (see FACT 4), 12 spaces could be assigned to another lot. This would still required 13 spaces to be located on the applicant's lot.

FACT 9: Section 20.11(c) lists the conditions necessary for the granting of a Variance and the conditions are listed as follows.
"To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship and so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.

No change in permitted uses may be authorized by variance. In considering all proposed variances to this ordinance, the board shall first find that all of the following conditions exist in each individual case:

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the spirit of this ordinance because:
 - i. If the applicant complies with the provisions of this ordinance, the property owner cannot secure a reasonable return from, or make any reasonable use of, his property;
and
 - ii. The hardship results from the application of this ordinance;
and
 - iii. The hardship is suffered by the applicant's property; and
 - iv. The hardship is not the result of the applicant's own action;
and

- v. The hardship is peculiar to the applicant's property and is due to the particular characteristics of the property because of its size, shape or topography that are not applicable to other lands or structures in the same neighborhood which may reflect an undue stringency of the Zoning Ordinance itself.
- (2) A variance will be in harmony with the general purpose and intent of this ordinance, will preserve its spirit and will do substantial justice. (Variances which change the district boundaries shown on the official zoning map, or which expand or extend a nonconforming use, or which permit a use forbidden by this ordinance, conflict with the "spirit" of this ordinance.)
 - (3) A variance will not impair an adequate supply of light and air to adjacent properties; will not materially increase the public danger of fire and safety; will not materially diminish or impair established property values within the surrounding area; and will not otherwise impair the public health, safety or general welfare.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

A hardship peculiar to the applicant as distinguished from others affected by the general rule must be shown. The fact that property may be utilized more profitably will not be considered adequate grounds to justify the board granting a variance.

The board may grant the minimum reasonable variance required to continue a use, either a nonconforming or conforming one, which has been rendered unusable by virtue of the widening of a public street.

The board is not a legislative body and has no power to rewrite the provisions of this ordinance. It may, however, vary the application of this ordinance in particular cases when the conditions enumerated above are found to exist. The power to grant variances is to be sparingly exercised and only in rare instances and under exceptional circumstances peculiar in their nature and with due regard to the main purpose of this ordinance to preserve the property rights of others."

PROCEDURE: The Board must proceed in accordance with Section 20.11(c) as quoted in FACT 9.

RECOMMENDATION: Staff would like the opportunity to meet with the applicant and his designer to discuss possible parking options for this site. We feel this would be in the best interest of Mr. Adams and the City due to the unique topography of the site and the location of the existing structure. After this meeting, staff feels we will be able to make a recommendation to the Board. Otherwise, staff recommends you proceed as follows:

- Move that Facts 1-9 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude (first option if the motion is to grant the variance, second option if the motion is to deny the variance):
 1. There **are/are not** practical difficulties or unnecessary hardships in the way of carrying out the spirit of this ordinance because:
 - i. If the applicant complies with the provisions of this ordinance, the property owner **cannot/can** secure a reasonable return from, or make any reasonable use of, his property; and
 - ii. The hardship **results/does not result** from the application of this ordinance; and
 - iii. The hardship **is/is not** suffered by the applicant's property; and
 - iv. The hardship **is not/is** the result of the applicant's own action; and
 - v. The hardship **is/is not** peculiar to the applicant's property and **is/is not** due to the particular characteristics of the property because of its size, shape or topography that are not applicable to other lands or structures in the same neighborhood which may reflect an undue stringency of the Zoning Ordinance itself.
 - (3) A variance **will/will not** be in harmony with the general purpose and intent of this ordinance, **will/will not** preserve its spirit and **will/will not** do substantial justice.
 - (3) A variance **will not/will** impair an adequate supply of light and air to adjacent properties; **will not/will** materially increase the public danger of fire and safety; **will not/will** materially diminish or impair established property values within the surrounding area; and **will not/will** otherwise impair the public health, safety or general welfare.