

**MINUTES OF A REGULAR MEETING
URBANA ZONING BOARD OF APPEALS**

DATE: June 21, 2006

APPROVED

TIME: 7:30 p.m.

PLACE: Urbana City Building
City Council Chambers
400 S. Vine Street
Urbana, IL 61801

MEMBERS PRESENT: Paul Armstrong, Anna Merritt, Joe Schoonover, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

MEMBERS ABSENT Herb Corten

STAFF PRESENT: Robert Myers, Planning Manager; Matt Wempe, Planner II; Teri Andel, Planning Secretary

OTHERS PRESENT: James Bantz, George Beck, Julie Yoder Booth, Brandon Bowersox, Pat Cardenas, Sarah Carsey, Gregory Danner, Terry Davis, Jr., Audrey Fisher, Tim Gibbs, Laura Huth, Ron Keller, Bridget McGill, Bland Palmore, Heidi Pickett, Dorothee Schneider, Michael Stone, Paul Tatman, Laura Taylor, Kathy Wallig

1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM

Chair Merritt called the meeting to order at 7:30 p.m. Roll call was taken, and a quorum was declared present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Regarding the minutes of the May 24, 2006 Zoning Board of Appeals meeting, Mr. Warmbrunn moved to approve the minutes as presented. Mr. Schoonover seconded the motion. The minutes were approved by unanimous vote as presented.

4. WRITTEN COMMUNICATIONS

- Revised Conditions recommended by City staff
- Letter from Terry A. Davis, Jr.
- Letter from Gregory James Danner
- Email from Tim Brumleve
- Email from Pat Cardenas
- Letter from Barbara Gladney
- Letter from the Urbana School District 116 (Handed out during meeting)
- Email from Jonathon Pines

NOTE: Chair Merritt swore in members of the audience who were planning to give testimony during the public hearings.

5. CONTINUED PUBLIC HEARINGS

ZBA-06-MAJ-03: A request to allow a 96% increase in the size of a gas station canopy sign at 2007 North Lincoln Avenue in the B-3, General Business Zoning District.

Robert Myers, Planning Manager, noted that this case had been withdrawn by the petitioners.

6. NEW PUBLIC HEARINGS

ZBA-06-MIN-01: Request to reduce the area of a Common-Lot-Line development lot below the 4,500 square feet minimum to 4,356 square feet at 1906 Prairie Winds Drive in the R-2, Single-Family Residential Zoning District.

Mr. Myers presented the staff report for this case to the Zoning Board of Appeals. He gave a brief introduction by describing the development that is currently under construction. He explained that the petitioner is requesting a minor variance to reduce the lot area of one of the common-lot-line lots (one side of a duplex). He reviewed the variance criteria from Section XI-3.C.2.c.3 of the Urbana Zoning Ordinance that the Zoning Board of Appeals must consider when determining whether or not to approve the minor variance request. He read the options of the Zoning Board of Appeals and presented staff's recommendation, which is as follows:

Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Urbana Zoning Board of Appeals approve the minor variance in ZBA Case No. 06-MIN-01 as requested.

Chair Merritt opened the public hearing up to hear testimony from the audience.

Paul Tatman, Manager of Tatman-Horve, LLC, explained that Prairie Winds is a three-part development with a subdivision in the back by Stone Creek Subdivision, a fenced in 55 years of age and older community in the center, and an assisted living/nursing facility. The concept behind Prairie Winds is to have the homes designed to accommodate as people get older.

Mr. Schoonover inquired if most of the duplexes were already built. Mr. Tatman replied by saying that 12 of the duplexes were built. There will be 42 units/ 21 buildings in total once the development is complete.

Chair Merritt closed the public input portion of the hearing.

Mr. Schoonover moved that the Zoning Board of Appeals grant the minor variance as presented. Mr. Armstrong seconded the motion. Roll call was as follows:

Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes	Mr. Armstrong	-	Yes

The motion was approved by unanimous vote.

ZBA-06-C-02: Request by Terry A. Davis, Jr. for a Conditional Use Permit to establish a “Fast-Food Restaurant” at 117 West Washington Street in the B-1, Neighborhood Business Zoning District.

Matt Wempe, Planner II, began the staff report for this case by giving a brief introduction of the conditional use permit request. He mentioned that the proposed use would be a small carry-out only restaurant that would serve the immediate neighborhood and campus area. He clarified that the Urbana Zoning Ordinance has three levels of food service establishment classifications, which are restaurant, café and fast-food. Carry-out is only permitted under the fast-food classification. He described the proposed property noting its current zoning and previous land uses. He discussed the development regulations regarding building size, required parking, placement of the garbage dumpster, signage, and hours of operation. He talked about the requirements for a conditional use permit according to Section VII-2 of the Urbana Zoning Ordinance.

Mr. Wempe pointed out that the petitioner held an open house meeting so neighbors could come and express their concerns, learn more details about the proposed use, and give input as to how to make the proposed use successful. Some of the concerns that had been expressed during the meeting were students littering and loitering.

He went on to read the options of the Zoning Board of Appeals and presented staff’s recommendation, which is as follows:

Based on the evidence presented in the written staff report and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Zoning Board of Appeals approve the proposed conditional use in case ZBA 06-C-02 with the following conditions:

1. *That the proposed use shall operate as “delivery only” from 9pm to 11pm, Sunday through Wednesday, and shall close no later than 11pm on all days of the week.*
2. *That dine-in business shall not be permitted until such time as the necessary building code improvements are approved by the Urbana Building Safety Division and, as necessary by the Department of Public Health.*
3. *That the petitioner shall submit a copy of the agreement with Barr Real Estate to locate the garbage dumpster and grease container in the adjacent driveway east of the building.*
4. *That the petitioner shall submit and adhere to a Site Management Plan to the Urbana Community Development Services Department detailing measures that the petitioner will use to address potential problems such as loitering, litter, and other public safety or nuisance issues.*
5. *That the conditional use approval, if granted, shall not be transferable to any other type of business at this location and/or to any other business that is not owned and/or operated by the petitioner, Terry A. Davis, Jr.*
6. *That no vending machine be allowed on the property outside of the building.*

Mr. Schoonover asked if there were any other complaints other than students littering or loitering around with the previous businesses at the proposed location. Mr. Wempe responded by saying that the most recent business was Sunshine Grocery. The loitering and littering were big issues that were not contained on the site. It was a matter of trails of trash from the business to the school and to other surrounding areas.

Mr. Armstrong discussed the potential for dine-in service. He mentioned that there were a limited number of on-site parking spaces. Adding dine-in service to the proposed use would presumably increase the number of cars that would likely be there. He wondered if it would be an issue with the residents in the neighborhood for customers to park on the streets. Mr. Wempe believed that there should not be any additional concern about on-street parking unless there were vehicles illegally parked on Race Street or parking spilled over into the school district's parking lot. Ms. Merritt added that parking is severely restricted at noon if one does not live in the neighborhood.

Mr. Warmbrunn commented that he was a little confused because there is a sign posted on the proposed site stating that there are two properties for lease. One property is 950 square feet, and the other is 600 square feet. However, the staff report states that the area which the petitioner intends to lease measure 1,400 square feet. Mr. Wempe stated that the 1,400 square feet is more accurate for the northern portion of the building, which is what the petitioner is interested in renting for the proposed use. From his understanding, there currently is an art studio in the other part of the building, and the tenant of the art studio might be moving in December of 2006.

Mr. Warmbrunn wondered if there were any parking requirements for the art studio. Mr. Wempe answered by saying that the Urbana Zoning Ordinance requires one parking space per every 500 square feet for an art studio; therefore, the art studio at the proposed site is required to have two parking spaces.

Mr. Warmbrunn inquired if the art studio had hours of operation. Mr. Wempe explained that the art studio is more of a private art studio. The tenant is a retired professor who uses the art studio for his own personal reasons. It is not used as a gallery.

Mr. Warmbrunn questioned how it was determined that the petitioner would close up his walk-up business at 9:00 p.m. on Sunday through Wednesday and allow walk-up business on Thursdays, Fridays, and Saturdays. Mr. Wempe stated that City staff proposed the condition for Sunday through Wednesday hours. Thursday through Saturday would be considered weekend hours. The petitioner agreed to this condition. The original hours were set by the petitioner.

Mr. Warmbrunn asked if City staff had police statistics available on the proposed property. Mr. Wempe replied that there were not police statistics available. He talked to the Urbana Police Department, and there were obviously problems at this location when Sunshine Grocery was there. This was at a point when all students, freshmen through seniors, were allowed to go off campus for lunch. The proposed site kind of turned into a congregating point for some students. There was a lot of drug abuse, loitering and students smoking on the site. However, this is not something that anyone could predict happening with the proposed use. The Police Department mentioned to him that a couple of things have helped with these problems. One of which is that the Urbana School District #116 restricted only juniors and seniors to be allowed to go off campus for lunch if they want. The other thing is that the City has increased police presence in general. Another thing that would help prevent these problems from reoccurring with the proposed use is good management practices for businesses. City staff has confidence in the petitioner in that he would be able to handle many of these issues better than most people.

Mr. Warmbrunn wondered if there had been any conclusion about the agreement with the neighbors regarding the grease and the garbage dumpster placement. Mr. Wempe stated that a final agreement had not been reached as of yet. The petitioner is hopefully that he will be able to reach an agreement with his neighbors. City staff would encourage that if the dumpster has to be in the front of the building, that the petitioner push the dumpster as close to the building as possible. As part of the Site Management Plan, City staff would require that there is a garbage can in front of the building to minimize littering. The petitioner would be responsible for providing the garbage can.

Chair Merritt opened the public hearing up to hear testimony from the audience. She began with people who wished to speak in favor of the proposed conditional use permit.

Terry Davis, Jr., petitioner, commented that Mr. Wempe had explained everything that they had discussed over the last several weeks. He mentioned that it is his intent to uphold the reputation of the neighborhood in its entirety.

They held a neighborhood meeting on Saturday, June 17, 2006 in the morning so that members of the community could stop by and express some of their concerns regarding littering and parking, etc. He is positive that they could come to some type of common ground to achieve a mutual goal.

Initially, he had proposed to be open from 11:00 a.m. to 11:00 p.m. After talking with City staff, he agreed to restrict the hours of 9:00 p.m. to 11:00 p.m. on Sundays through Wednesdays to delivery service only to cut down on the amount of traffic in the neighborhood after 9:00 p.m.

Regarding parking, Mr. Davis pointed out that there are about seven on-street parking spaces that are less than 50 yards from the proposed site. Another concern that was expressed at the neighborhood meeting is littering and loitering. He did not see this as a problem. He mentioned that there would always be two or three people working at all times in the proposed store to go around and pick up litter or move people along off the property.

Ms. Uchtmann noticed that Mr. Davis had mentioned in his petition that he would provide a healthy menu for his customers. She asked what Mr. Davis planned to have on his menu. Mr. Davis stated that he planned to have soups, salads and sandwiches, etc. He noted that he is in the process of developing a menu. He is willing to listen to suggestions from the neighbors and try to incorporate their ideas into his menu if possible.

Ms. Uchtmann inquired as to what types of materials Mr. Davis would be using to package his products. Mr. Davis answered by saying that his packaging would be a variation, but it would mostly be Styrofoam, aluminum foil and wax paper.

Mr. Warmbrunn questioned whether Mr. Davis planned to have a security system. Mr. Davis replied that his budget did not allow for a security system in the beginning stages of opening the proposed business. However, over time, he planned to install a security system.

Gregory Danner, owner of the proposed property, mentioned that he bought the property in 1997. Sunshine Grocery was the first tenant of his to require a conditional use permit. Sunshine Grocery was located at the subject site for over six years. In about the second year of being located there, Sunshine Grocery received an award from one of the local newspapers for being everyone's favorite grocery store. He also owns and once resided in the house directly across the street at 201 West Washington Street. He lived there for ten years, so he is pretty familiar with the neighborhood both when Pizza World was located there and when Sunshine Grocery opened up. He also owned the audio/video shop that was located in the smaller unit of the proposed building.

He noted that the two units are not equally sized. Basically, the unit in question is about 2/3 of the square footage of the building. The other unit, which fronts on Race Street, is only about 1/3 of the square footage of the building.

As mentioned, there is a retired University of Illinois art professor using the smaller unit at least until the end of December. He may or may not renew his lease at that point in time. The tenant is using the unit as a private painting studio and not as a commercial use. The proposed unit has

almost always had some sort of food service business located in it whether it was restaurant, carry-out, pizza, or grocery store.

Mr. Danner stated that as the property owner they have had the proposed unit for lease and available for approximately 10 months. He would say that he gets 3 to 5 calls every week from people responding to the "For Rent" ad. Probably 8 out of 10 calls that he receives is someone interested in opening some sort of food service business.

J.D. Bantz, of 110 West Iowa Street, lives directly across the street from the north side of the Urbana High School. He stated that he is in favor of the proposed use. It would be convenient for him to walk to.

Mr. Schoonover inquired as to how long Mr. Bantz lived at this address. Mr. Bantz noted that he has lived there for 8 years. Mr. Schoonover said that Mr. Bantz had been around when other businesses had been located at the subject site. How was he affected by the previous businesses? Mr. Bantz did not feel that the proposed use would be a problem. Kids are kids, and there is not much one could do to control them. However, he is very happy about the changes that the Urbana High School has made. The changes seem to have a positive effect on the neighborhood.

Bridget McGill, wife of Gregory Danner and co-owner of the subject property. She could vouch for problems that can occur on the corner whether it is because of a business or the high school students. She went on to read an email from a friend of theirs, Jonathon Pines, who is in support of the proposed conditional use permit.

Laura Huth, of 808 South Race Street, lives across the street from the proposed new business, and she spoke strongly in favor of the new business. She mentioned that she has lived in her home for 11 years and has faced her fair share of picking up trash left by high school students and others. She believes that the students who will be traveling off campus to eat lunch will either go to Wendy's or other fast food restaurants and leave that garbage in her yard or they will go to Ben's Kitchen and perhaps leave maybe a Styrofoam plate or two in her yard. Not opening a restaurant at the proposed site would not make any difference in what she has to do in maintaining her yard.

She went on to say that the revenues that the proposed business promises to bring into the City of Urbana are something that we cannot pass up. She would much rather see a healthy, vibrant business in that spot than a vacant store. Ben's Kitchen is a viable business that is being presented to the City, and she would gladly frequent the business. She would also gladly give up the on-street parking space in front of her home for the petitioner's clients to use.

Outside of serving the students in the area, she feels there are a number of residents in the area that would walk to a business like this. She encouraged the petitioner to put up a bike rack to encourage some of his clientele to bike to the restaurant to pick up their food. She believes the proposed use would be a healthy addition to the community. She noted that when she was on City Council, she had heard over and over again about the City's need for neighborhood business just like the one being proposed in this case.

Ms. Huth went on to say that she does not necessarily like having to pick up garbage after the students, but the students are part of the community. She believes that people/adults should make an effort to not make the students their enemies. She stated that she always tries to go out and talk to the students if she is around home during the day. She has asked them nicely to not leave their trash in her yard. She even has pointed out where her trash can is should they need to use it. She said that talking to them has made some improvement.

She asked the Zoning Board of Appeals Commission to weigh the pros and the cons. In this case, having a new viable business, such as the one being proposed, on a corner in the neighborhood that would serve a lot of the residents in the neighborhood is something that the Zoning Board of Appeals Commission should say yes to.

Mr. Schoonover inquired if Ms. Huth had ever felt threatened by anyone in the neighborhood. Ms. Huth said no. She feels that the neighborhood for her is very safe. For the past 11 years, she has generally left her doors unlocked. There have been some annoyances that happen from time to time, like the Pizza World delivery truck that had either a big hole or no muffler at all. However, she also remembers that every single year there seems to be a resident of the apartment building across the street from her that also brings this same problem. So, not allowing a food service business that offers delivery service in the proposed location would not solve this problem for the neighborhood.

She did not believe that the City should say “no” to Ben’s Kitchen because of past problems with previous businesses. The City should be looking proactively at how to make Ben’s Kitchen a positive addition to the community.

Heidi Pickett, of 106 East Stoughton, was sworn in by Chair Merritt. Ms. Pickett feels that Ms. Huth’s comments are very accurate. She mentioned that she works with Mr. Davis with Ben’s Kitchen behind the scenes by doing the budgeting and accounting for the business. She spoke to Mr. Davis’s character by saying that he is very hard-working and very dedicated. This is something that Mr. Davis has wanted to do for a very long time, and she is positive that he will put 110% into it if given the opportunity.

She stated that she attended the open house/ community meeting and spoke with many of the community members. The majority of the neighbors gave them good positive responses. The people were really nice.

She pointed out that she has been doing some research on businesses of this sort and how to get things started. She has some ideas on how to make it a little more warm and embracing for the community to get involved with Ben’s Kitchen, such as taking suggestions from the neighbors about the menu and possibly having a tasting so the neighbors could taste the food. She wants to get the community involved in what Ben’s Kitchen would like to bring to the neighborhood.

With no further comments or testimonies from people in favor of the proposed conditional use permit, Chair Merritt turned the public hearing to the people in opposition of the proposed use.

Michael Stone, of 902 South Race Street, lives in the house immediately south of the proposed property. He described some of his experiences with the previous businesses that had been located at the proposed site.

He mentioned that there were actually two Pizza Worlds that were located there. The first Pizza World managers were good neighbors, but the second managers had a lot of problems with their delivery drivers. The delivery drivers would make a lot of noise late at night and would park in his driveway. Another problem he had with the second managers of Pizza World was because the dumpster was located in front of the business, he would get a lot of bugs from the business. When the business left, the bugs left. Parking has been a major issue. As mentioned before, there is another tenant in the smaller unit of the building, so there are two parking spaces that are usually occupied by cars. So, there are fewer spaces actually available for the proposed use than they had indicated. When the parking spaces are filled, people park in his drive rather than finding an on-street parking space further away.

Mr. Stone pointed out that there have been two different classes of businesses located in the proposed site. There have been non-food service businesses, such as Greg's video repair store and a consignment store, "Nearly New". The food service businesses have brought in students from the area. The students have been a major problem over the years.

His last two female roommates have felt threatened by the students. On several occasions they had to call the police. So, he is very leery about a business that would draw in the high school students.

He commented that the managers of the Sunshine Grocery were pretty good managers. Mr. Chen and his wife were usually both on the premises during business hours. Mr. Chen would try to police the area himself and pick up garbage. He misses having Mr. Chen and his wife as neighbors; however, he does not miss the trouble they had with the students. Since the grocery store has left and the Urbana High School has closed down, the quality of life on the proposed corner has greatly improved. So, it is not clear whether it was the locking down of the students or the Sunshine Grocery closing down, but the neighborhood no longer has people hanging out at the proposed site in the parking lot behind the building selling drugs like they use to. He is very reluctant to see this situation come back.

He mentioned that the petitioner had really impressed him and would try to do the best he can, but he did not believe the petitioner could really police all of the area in the way that would be necessary to do. He feels very reluctant to speak out about the proposed use because he would love to see a minority owned and well-run business locate there. However, his worries outweigh his encouragement for the proposed use.

Mr. Warmbrunn asked if students still continue to occupy the lot even after the Sunshine Grocery closed. Mr. Stone replied that a very small number of students still sit on the concrete stoop outside of the art studio. Some students often sit on his porch. The numbers are very much smaller. It is hard to distinguish between whether it is because the Sunshine Grocery left or because the high school restricted off-campus lunch to juniors and seniors only.

Kathy Wallig, representative of the central office of the Urbana School District #116, handed out a letter stating what she planned to speak out about. The topics in her letter include the number of police calls to the proposed site, increased litter, parking, increase disciplinary issues, trespassing, students smoking and neighbors' complaints. Also, attached are copies of the crime statistics for the proposed location of calls for police service during the time that the Sunshine Grocery was open for business and after it closed.

She stated that the School District does value occupied store fronts in the City. It is just as important to the School District as it is to the City in general. They also value the convenience that the proposed business would provide to the neighborhood.

She reviewed the crime statistics pointing out that there were calls to the police regarding drug activities, gambling, fights, etc. This is not the type of activity that anyone wants in their neighborhood. She pointed out that these statistics were for the hours of 8:00 a.m. to 4:00 p.m. from August 25, 2004 to June 1, 2005. During this time, the school allowed open lunch hour to sophomore, junior and senior classes. Freshmen classes had a closed lunch hour, meaning that they could not go off campus for lunch, because the freshmen students are the biggest offenders of school rules.

On the second page of the crime statistics, the calls were considerably less in number. These statistics were for the previous school year from August 25, 2005 to June 1, 2006. The types of calls were different, and there was very little crime in the area. This after the Sunshine Grocery had left.

Regarding the issue of the litter problem, Ms. Wallig noted that the school has service clubs that go out after school and on the weekends to pick up the litter. The neighbors do not like the litter and neither does the school district. However, this is a reality, so they deal with it.

The greater issue for the school district is the increase disciplinary issues that school staff has to deal with when a food vendor is operating a business in this particular location. The disciplinary issues come back into the high school. Kids who fight are expelled or suspended. Therefore, these are kids that are not in a seat during class time and are not learning. Teachers, staff and parents have to deal with disciplinary issues. It is time consuming, and it is time that they cannot spend educating the children which is their purpose.

Another concern is the people who hang out at the proposed site because they know that students hang out there. It is not unusual to have students from other school districts hanging out in this location as well. Then, there are disreputable non-students who have access to the high school students. You can see this by the drug activity police calls.

There are many times that the neighbors have called the school district and complained about what is going on with the students in the area. The neighbors have either been too intimidated to call the police or they did not see the value in calling the police, because the police say they cannot do anything about it. Students litter, trespass, etc. The reality is that these are teenagers. Teenagers for the most part are well-mannered and well-behaved young gentlemen and ladies.

The school district has always had a group of students who are not this way. The reality is that the school district has to deal with them.

The school district does not have the manpower and resources to send staff out to Wendy's or other fast food restaurants to supervise the students' lunch periods. She commented that she is sure there are other food vendors would appreciate some high school staff, but the school district simply cannot do that. It is not their mission.

Parking is troublesome. She has seen some students park their vehicles at the Sunshine Grocery or in the teacher's parking lot. The parking lot is for the teachers, and there are barely enough parking spaces for the teachers. People who are parking on public streets are students.

Ms. Wallig pointed out that complaints will come to the school district and not to the City government. While the school district respects Mr. Davis and his efforts and wish him well and much success, the school district wishes him success somewhere else other than the corner of Race and Washington Streets.

Mr. Welch disagreed in that these issues are the problem of the Urbana Police Department. Ms. Wallig stated that she agreed that crime, patrol and the service attached are the responsibilities of the police department. However, she thought other neighborhoods prefer to have more police patrol in their areas. She meant to say that it is not the responsibility of the police department. It is simply time that the Urbana Police Department has to devote to the proposed area.

Ms. Wallig went on to say that she spent 12 years in law enforcement services as a 9-1-1 dispatcher for the City of Urbana. She understands the priority assigned to holding calls. She also understands that a police officer who is dispatched for a gambling or drug activity call may not be able to respond if another call takes priority. She believed that the Chief of Police would come in and talk to the Zoning Board of Appeals about the same issues of resources and staff. Mr. Welch commented that this may be true; however, he recalled attending a meeting at the Urbana High School where there were complaints about the students littering and loitering. The Chief of Police was very supportive of the efforts to increase patrols in the area and deal with the problem. He stated that it is a police problem.

Mr. Welch continued by saying that it is a problem primarily around the noon hour. He found it disconcerting that people could suggest that a business not be allowed to operate especially given the hours of operation that Mr. Davis is suggesting for his business. These problems would not be as prevalent in the other hours that he would seek to be in business or during the summer. It would be an overkill to suggest that the solution is that the City should not allow a food service business at the proposed location. He did not feel that this is a solution.

The proposed use is the type of business that is allowed to be there. So, the people in opposition are saying that even though Mr. Davis has an allowable business use that he would like to locate at the corner of Race and Washington Streets and because of past problems with the previous businesses, he should not be allowed to even try to operate a food service business at this location. He did not feel that this was a solution.

The proposed use is an allowable use in this area. Mr. Davis has apparently come up with a plan to police the area. It seemed to Mr. Welch that if Mr. Davis fails in policing and proves to not be a good neighbor, then his business will fail. Mr. Davis's proposed business will not survive by the student business and by appealing them. He will only survive if he appeals to the neighborhood in general. Mr. Welch believed that Mr. Davis should be given the opportunity.

Ms. Wallig questioned if this is an allowable use, then why does the petitioner need approval of the requested conditional use permit. Another thing is that the only thing anyone can use on addressing the future is what has happened in history. Mr. Welch responded by saying that the history in this case is being defined by the Sunshine Grocery. The problems with Pizza World were different from those with Sunshine Grocery. As he mentioned earlier, the petitioner is planning to open at 11:00 a.m.; whereas, the Sunshine Grocery was opened in the early morning hours just before school started. Ms. Wallig stated that the school district is concerned about the lunch hours. Mr. Welch commented that students could hang out in the vacant area just as well if no one seeks to stop them from doing so. He mentioned that he drives by this location every morning and sees students hanging out. Ms. Wallig pointed out that if there is a draw, such as food, then there would be even more students hanging out there. Mr. Welch did not feel that the proposed use would be the same type of draw as the Sunshine Grocery. The Sunshine Grocery was a grocery/ convenience store. Ben's Kitchen would be a restaurant without the ability to dine in. Without the ability to dine in, Mr. Welch believed it would be beneficial for the business owner to keep traffic moving rather than having a bunch of people loitering there or parking there. It would not help his business if the parking lot is full of people just "hanging" out. The petitioner has an incentive to patrol and to make the proposed site as attractive as possible.

Mr. Warmbrunn inquired if Ms. Wallig had any crime statistics for Dominoes or the bus stop across Vine Street. Ms. Wallig said no. Mr. Warmbrunn questioned whether the school district keeps track of the crime statistics all around the school. Ms. Wallig explained that she had asked for the crime statistics of the proposed location when Mr. Wempe notified the school district about the proposed conditional use permit.

Mr. Warmbrunn asked if the school district view Dominoes in the same light as the proposed Ben's Kitchen. Ms. Wallig replied that the school district does not deal with the residual affects of Dominoes as much as with Sunshine Grocery. It would be a further walk for the high school students to go to Dominoes. Dominoes is located closer to the middle school, and they have a closed lunch policy. She could request the crime statistics if the Zoning Board of Appeals wanted to review them.

Mr. Warmbrunn commented that the problem seems to be the students and not the business. A person could open a barber shop at the proposed site. Students will hang out and do the same thing in the parking lot of a barber shop probably just because they have gotten by with it in the past. He agreed with Mr. Welch in that the last thing a business owner would want is to have 16 kids hanging out in his restaurant at 11:30 a.m. Even the Marathon gas station has a sign up that says "Only 4 school-aged kids allowed in here at one time between the hours of 11:00 a.m. and 4:00 p.m.", because they do not want to handle 10 kids running around inside at once.

Mr. Warmbrunn inquired if the school had the opportunity to buy the proposed property in 1997. Ms. Wallig stated that she did not know, because she was not employed by the school district at that time. The Urbana School District #116 is no longer considering the purchase of the proposed property, because it is preserved as neighborhood business in the 2005 Comprehensive Plan.

Mr. Warmbrunn wondered what type of business the school district would like to see go into the proposed site. Ms. Wallig responded by saying that the problem is with a food vendor, because that is why the students go to the proposed site. They go there to buy food.

Ron Keller, of 208 West Washington Street, mentioned that he has owned his property for the last 13 years. He is supportive of a neighborhood business in the proposed location; however, he felt there are some problems with the plan as he has seen it. His families' concerns fall into basically three areas, which are crime, traffic and garbage.

Crime is the largest concern. With any cash business that is open late at night, it will attract crime. Pizza World had at least two armed robberies since he moved in. Sunshine Grocery was burglarized and vandalized several times. He preferred to not have this happen across the street from his house again.

During the time when Sunshine Grocery was located at the proposed site, there were several times when he would come home for lunch to find the Urbana Police Department parked in his driveway without any prior permission from himself. They were trying to supervise and control the situation at Sunshine Grocery. On one occasion he came home to find students fighting in his yard. The petitioner has mentioned that he would move the kids along on their way off his property. This only means that the kids will probably be hanging out in his yard or the yards of his neighbors, where they will be outside the purview of the petitioner.

Traffic is another problem. While he understands that any business would have increase traffic, delivery drivers pose their own problems. They make money based on how rapidly they can get out to the customers and how often they can get back. There are a lot of children in the neighborhood. The corners of Race Street and Washington Street are already very busy and have poor records of people complying with the stop signs.

Garbage is another issue. While the neighbors have been assured that there is going to be a Site Plan to deal with this problem, he is sure that past members of the Zoning Board of Appeals have done diligence and received assurances from previous business owners that the garbage from their business would not be a problem.

When Pizza World was located at the proposed site, he would frequently take his children to Carle Park and find garbage from Pizza World in the park. He is sure that the City of Urbana ended up paying the bill for the park to be cleaned up.

These are the three main concerns for his family. Many of these concerns will be present to a smaller degree no matter business goes into the proposed site, but he would like to see a better fit for the neighborhood.

Tim Gibbs, of 904 South Race Street, asked if the zoning had changed since the previous carry-out business was located there. Is that the reason why the proposed use needs a conditional use permit? Mr. Wempe explained that the property has always been zoned for business uses. Ms. Merritt added that each business has to get their own conditional use permit in order to operate. The conditional use permit does not stay with the property.

Mr. Gibbs went on to say that he did not want to speak in direct opposition. Unfortunately, he could not attend the open house/ neighborhood meeting. His intention for coming to this meeting was to hear what the petitioner is planning. He attended the meeting as a concerned citizen.

He felt that Ms. Huth spoke eloquently about supporting the business, and he agreed. However, he is concerned about the proposed business being held at gunpoint and robbed. It is not the fault of the business, but it draws this type of activity. It would be nice if there were some alternative or solution. He would like for the petitioner to try his business, but at the same time it is terrifying to get woke up by kids fighting in your front yard. You do not know what is going to happen.

Pat Cardenas, of 204 West Iowa, noted that when the Sunshine Grocery left, the quality of life increased dramatically. There was almost no garbage to speak of. She has lived in her house for 18 years and spent a lot of time picking up garbage in that area. There were times in the past when she wanted to move, because the students scared her and there would be garbage everywhere.

She mentioned that she met Mr. Davis at the open house/ neighborhood meeting and likes him. She wishes him well in a different location. The staff report even states that the unit is much bigger than Mr. Davis needs, so perhaps there is another location more suitable for his needs as well.

Laura Taylor, Assistant Principal of Urbana High School, was sworn in by Chair Merritt. She realized that this is a very difficult situation. The High School wants progress and if this is approved, they would work with Mr. Davis.

It was previously mentioned that this is a police matter. The police are the ones to handle this when things occur. She stated that the High School does not see it this way. What tends to happen is the neighbors call or a student runs into the school saying that something is happening. The police get called eventually, but the school staff are the first responders. She pointed out that she did not hear of one incident like this happening last school year.

Ms. Taylor went on to say that she cannot say that it is just because Sunshine Grocery closed. The school put in many initiatives as well to prevent fights from happening. They locked doors, shortened their passing period, and restricted off-campus lunch to juniors and seniors only. There are many reasons why their data looks better this year. Their discipline referrals went from 3,800 to 2,000 last year.

Mr. Warmbrunn asked if school staff actually went out onto private property to break up a fight amongst students. Ms. Taylor said all of the time. Mr. Warmbrunn questioned whether there is any legality involved. Ms. Taylor commented that the teachers are told not to break up a fight in the school, but if there is a fight, then you do something. Sometimes the teachers or staffs' presence stop the fight.

Audrey Fisher, of 902 South Orchard, mentioned that she came to this public hearing to hear details of the proposal. She is concerned about the business being a "fast food" service type of business. She would feel more secure if there would be a condition that a drive through would not be allowed. Mr. Wempe explained that a drive through would require a special use permit separate from getting approval for the conditional use permit.

Ms. Cardenas re-approached the Zoning Board to get clarification on the hours of operation for the proposed business. Mr. Wempe stated that the hours of operation would be from 11 a.m. to 11 p.m. seven days a week, with the exception of Sunday through Wednesday from 9 p.m. to 11 p.m. would be for deliveries only. Ms. Cardenas stated that she is concerned about the increase in traffic that the proposed business would generate. She would recommend that the City shorten the hours of operation because of the type of residential neighborhood that the business would be located in.

George Beck, of 205 West Iowa, was sworn in by Chair Merritt. He mentioned that he found a way to get the students to throw their trash away. He leaves his blue recycle box out during the week, and the students would pitch their trash into the box.

He went on to say that one day he came home from lunch and found a student swinging on his front porch. After talking with the student, the student asked him if he planned to call the police, and he said "no".

He stated that he had a suggestion to keep the students from being attracted to hang out at the proposed location. His suggestion is to make the lunch hour be delivery only. However, if Mr. Davis depends on selling food to the high school students as well, then this suggestion would not work.

Mr. Davis, Jr., re-approached the Zoning Board of Appeals. He thanked everyone for making the comments that they made. He mentioned that after the open house/ neighborhood meeting, he came to the conclusion that he would not be opened on Sundays.

In terms of limiting traffic, he stated that he sat at the proposed location and noticed that at least 100 vehicles come through there every hour. He is not sure that his business would have a direct affect on the frequency of traffic in this area in general.

As far as the students, they are really not as unruly and criminal minded as the school administrators are making them out to be. If these problems really exist and are to the extent in which everyone is saying they are, then the most logical step to do would be to close lunch down to restrict off-campus lunch for all students. The students are going to go somewhere else to smoke or do whatever and then come back to school. If this is what the school administrators

and neighbors are worried about, then he suggested closing down the campus. The purpose for letting the students out is because people think that they should be responsible enough to behave themselves to go get lunch and come back to school without causing any problems. He did not feel that his restaurant would potential bring a lot of negativity to the neighborhood in general.

He mentioned that he drives past the proposed site everyday to pick kids up from school, and kids always congregate in that area. The police are parked right across the street over by Dominoes or somewhere else nearby. As long as the students know that the police are near he is positive that the kids will keep on moving. He would definitely not encourage any children to be hanging out and congregating around his store. It would not be good for his business.

He commented that although he is not relying solely on the students in terms of generating money, it would be like shooting himself in the foot to close the restaurant during lunch time to delivery only. It is a busy intersection, and he intends to make a substantial amount of money during the lunch hour from contractors and other business type of individuals driving by.

Mr. Schoonover asked if Mr. Davis works with children. Mr. Davis, Jr. replied that he works at the Don Moyer's Boys and Girls Club. He picks kids up everyday from school. He has no problem dealing with teenagers and is pretty good at it. He mentioned that he would be one of the heads of the Teen Outreach Program at the Don Moyer's Boys and Girls Club. His employer would not have appointed him into this position if they did not think that he is qualified to deal with teenagers.

Mr. Schoonover stated that he asked if Mr. Davis, Jr. had experience with children because many of the neighbors were concerned about violence occurring at the proposed site. Mr. Davis, Jr. replied that he planned to be there at least 80% of the time. When he is not at the store, then there would be a few of his male colleagues present. A couple of his male colleagues work with him at the Don Moyer's Boys and Girls Club.

He would be in contact with the Urbana Police Department. He did not feel that there is a lot of criminal activity going on in the City of Urbana. He felt that it would be the school administrators' duty to make sure that the police watch over the kids at least around the school. He would not have a problem making sure that kids do not resort to any type of violence or criminal activity on the premises or around it. He would definitely encourage the kids to keep moving in the event that they start to congregate outside.

Ms. Uchtmann suggested that the Zoning Board of Appeals add the condition that the proposed use could not be open on Sundays. This might serve as a compromise to the neighbors who are concerned about noise. Mr. Davis, Jr. stated that he would not have a problem with this. Mr. Wempe commented that with limiting hours in general, there is a merit and a tie to zoning and mitigating issues. If there were particular reasons Sundays above any other days were troubling days and there were factors warranting the proposed business be closed on Sundays, then there would be more support for it. In this case, there are more issues about being opened during lunch hours than on Sundays.

Mr. Warmbrunn believed that as far as the hours go, as being a small business man, Mr. Davis, Jr. is about to get into the worst business he could get in to. The failure rate is incredible. He believes that Mr. Davis, Jr. will find that he will regulate his hours because he will figure out when the business thrives and when the business is slow. Mr. Davis, Jr. will find out that he needs a day off. Sundays may be good days of business, because the neighborhood people come more often on Sundays to eat or the U of I does not serve food in the dorms on Sunday nights. Mr. Davis, Jr. may want to close on Mondays, because it might prove to be slower than Sundays. The City needs to let the business owner decide which day he can close or take off, because time and circumstance of him doing business will dictate the hours. Ms. Merritt pointed out that she is not sure this is a zoning issue.

With no further comments from people in the audience, Chair Merritt closed the public input portion of the hearing.

Mr. Warmbrunn expressed concern about the location of the grease and garbage dumpsters. Would Condition #3 sufficiently cover the location? Mr. Wempe noted that Mr. Davis, Jr. is going for an agreement with Barr Real Estate so he could locate the dumpster behind the building on the adjacent lot. If the agreement does not materialize, then there is no other place for Mr. Davis, Jr. to put the dumpster other than in front of the business. The Zoning Board of Appeals could add language that says Mr. Davis, Jr. has to have the dumpster pushed as close to the building as possible. Another suggestion would be to add language that says, "If an agreement is not reached, then garbage dumpster and grease container placement shall be addressed as part of the Site Management Plan". This would give the City negotiating leeway with the petitioner.

Mr. Armstrong clarified that this is a health code issue. Therefore, he expressed concern about not just the location of the dumpster and grease container, but the screening of both as well. He suggested adding language to the end of Condition #3 to read as such, "That the petitioner shall submit a copy of the agreement with Barr Real Estate to locate the garbage dumpster and grease container in the adjacent driveway east of the building. However, if this agreement does not materialize, then the garbage dumpster and grease container shall be screened in such a way to prevent trash from blowing out of the garbage dumpster, to make the garbage dumpster aesthetically compatible with the neighborhood, and to address the location of the garbage dumpster and grease container in the Site Management Plan.

Mr. Armstrong moved that the Zoning Board of Appeals approve the conditional use permit for the reasons articulated in the written staff report along with the revised conditions recommended by staff, with the amendment made to Condition #3 by the Zoning Board of Appeals. Mr. Schoonover seconded the motion. The roll call was as follows:

Mr. Welch	-	Yes	Mr. Warmbrunn	-	Yes
Ms. Uchtmann	-	Yes	Mr. Schoonover	-	Yes
Ms. Merritt	-	Yes	Mr. Armstrong	-	Yes

The motion was passed by unanimous vote.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Myers reported on the following:

- Hunter Garage Major Variance was approved by the Urbana City Council.
- OASS/Billboard Text Amendment was approved by the Urbana City Council. Ms. Merritt believed that this would affect the Zoning Board of Appeals, so she requested a copy of the text amendment.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 9:45 p.m. by unanimous vote.

Respectfully submitted,

Robert Myers, Secretary
Urbana Zoning Board of Appeals