ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1991.

Randy Phillips, President

ATTEST:

Louise Olivarez, Secretary

BZA RESOLUTION NO. 23-91

WHEREAS, Wichita Swim Club, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance of the requirement that all food and beverage service at swim clubs located in residential districts be from coin-operated machines. The Wichita Swim Club requests that it be allowed to prepare and sell food and beverages on site during swim meets, as well as conduct occasional fund-raising food affairs (e.g., pancake suppers) on property zoned the "AA" One-Family Dwelling District and legally described as follows:

> A portion of Lot 1, Block 1, Bonnie Brae Third Addition to Wichita, Sedgwick County, Kansas, described as follows: Beginning at the northwest corner of said Lot 1; thence S 89°59'55" E, along the north line of said Lot 1, 695 feet; thence S 00°00'05" W, 230 feet; thence S 56°00'10" E, 125 feet; thence S 29°45'17" E, 338.94 feet; thence S 56°00'10" E, 145 feet to a point on the southeasterly line of said Lot 1; thence S 33°58'26" W, along the said southeasterly line of Lot 1, 260 feet to the P.C. of a curve to the right having a radius of 100.03 feet; thence southwesterly, westerly and northwesterly along said curve through a central angle of 90°01'24" and having an arc distance of 157.17 feet to the P.T. of said curve; thence N 56°00'10" W, along the southwesterly line of said Lot 1, 696.98 feet to the P.C. of a curve to the right having a radius of 512.07 feet; thence northwesterly along said curve through a central angle of 56°24'41" and having an arc distance of 504.16 feet to the P.T. of said curve; thence N 00°24'31" E, 99.99 feet to the point of beginning. Generally located on the south side of Douglas in an area east of Bonnie Brae (8323 E. Douglas).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1991, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that this property, and particularly the use of it by the Wichita Swim Club, is unique and sets it apart from other swim club facilities inasmuch as the Wichita Swim Club holds swim meets which may last all day long and which attract participants and spectators from an area greater than the local neighborhood. Coin-operated food vending machines may not offer sufficient quantity or variety or freshness of food and beverages for this number of people who are on site for many hours at a time; and

WHEREAS, the Board of Zoning Appeals has found that the granting of variances to permit the preparation and sale of food and beverages on site and to permit fund-raisers will not adversely affect the rights of adjacent property owners if restricted as required by the conditions of approval inasmuch as the people partaking of the food and beverages will already be on site, participating in a Wichita Swim Club activity and will therefore not create additional traffic; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the Zoning Ordinance may constitute an unnecessary hardship upon the applicant or, more specifically, upon the persons attending swim meets at the applicant's property inasmuch as without the ability to prepare and sell food on site, the visitors must drive off site to obtain food or be satisfied with food from coin-operated vending machines.

WHEREAS, the Board of Zoning Appeals has found that the requested variance to permit the preparation and sale of food and beverages on site during swim meets and other regularly scheduled Wichita Swim Club activities would not adversely affect the public interest inasmuch as no additional traffic will be generated, due to the fact that persons eating the food are already on site for the scheduled WSC activity; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance to permit the preparation and sale of food on site during swim meets and other regularly scheduled Wichita Swim Club activities would not be opposed to the general spirit and intent of the Zoning Ordinance inasmuch as Section 28.04.182 allows for a variance of the restriction that food service be from coin-operated machines only; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request be approved for variances to permit the preparation and sale of food and beverages on site and to permit fund-raisers on property zoned the "AA" One-Family Dwelling District and legally described as follows:

> A portion of Lot 1, Block 1, Bonnie Brae Third Addition to Wichita, Sedgwick County, Kansas, described as follows: Beginning at the northwest corner of said Lot 1; thence S 89°59'55" E, along the north line of said Lot 1, 695 feet; thence S 00°00'05" W, 230 feet; thence S 56°00'10" E, 125 feet; thence S 29°45'17" E, 338.94 feet; thence S 56°00'10" E, 145 feet to a point on the southeasterly line of said Lot 1; thence S 33°58'26" W, along the said southeasterly line of Lot 1, 260 feet to the P.C. of a curve to the right having a radius of 100.03 feet; thence southwesterly, westerly and northwesterly along said curve through a central angle of 90°01'24" and having an arc distance of 157.17 feet to the P.T. of said curve; thence N 56°00'10" W, along the southwesterly line of said Lot 1, 696.98 feet to the P.C. of a curve to the right having a radius of 512.07 feet; thence northwesterly along said curve through a central angle of 56°24'41" and having an arc distance of 504.16 feet to the P.T. of said curve; thence N 00°24'31" E, 99.99 feet to the point of beginning. Generally located on the south side of Douglas in an area east of Bonnie Brae (8323 E. Douglas).

subject to the following conditions:

1. No deep fryers shall be utilized in this facility. Grills which require a Class 1 ventilation hood and fire supression system shall be limited to one and it may be used only during the regional swim meets, which are limited to no more than six per year, as restricted by BZA 4-90.

2. Plans for the snack bar/concession area shall be submitted to the Office of Central Inspection for review and approval prior to any remodeling for such facilities taking place at the Wichita Swim Club.

3. The construction and operation of all food service facilities shall comply with all applicable Health Department food handling regulations.

4. Operation of the snack bar/concession area shall be limited to the times of scheduled swim meets and other Wichita Swim Club activities and shall provide food service only to those participants and spectators at these events.

5. All food preparation, sales and seating shall be indoors.

6. Fund-raising events shall not be promoted to the general public.

7. The dates of the regional swim meets shall be provided to the Office of Central Inspection on a semi-annual basis in advance of the meets.

WICHITA — SEDGWICK COUNTY
W-SC
METROPOLITAN AREA PLANNING DEPARTMENT
CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688
(316) 268-4561

October 3, 1991

Wichita Swim Club
8323 E. Douglas
Wichita, KS 67206

Re: BZA 23-91 - Variances to permit the preparation and sale of food and beverages on site and to permit fund-raisers on property zoned the "AA" One-Family Dwelling District, located on the south side of Douglas in an area east of Bonnie Brae (8323 E. Douglas).

Gentlemen:

Enclosed is a signed copy of the above-referenced BZA resolution adopted by the Board of Zoning Appeals on September 24, 1991. This resolution reflects the official action of the Board to grant your request and sets out the conditions of approval. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please contact our office.

Sincerely,

Louise Olivarez

Louise Olivarez, Secretary
Board of Zoning Appeals

LO:jcm
Enclosure

cc: John Morse, 8100 E. 22nd St., Bldg. 500, 67226
Paul Hays, OCI
J.R. Cox, OCI
Ray Sledge, OCI
Pat Burnett, Deputy City Clerk

RECOMMENDATION: Because all five factors cannot be found in the applicant's favor regarding the variance request for fund-raising food affairs on site, the Secretary recommends that only the variance to permit food and beverage preparation and sales for swim meets be approved, and that it be approved subject to the following conditions:

1. No grills, deep fryers or other cooking equipment which would necessitate the installation of a ventilation hood and fire supression system shall be permitted.

2. Plans for the snack bar/concession area shall be submitted to the Office of Central Inspection for review and approval prior to any remodeling for such facilities taking place at the Wichita Swim Club.

3. The construction and operation of all food service facilities shall comply with all applicable Health Department food handling regulations.

4. Operation of the snack bar/concession area shall be limited to the times of scheduled swim meets and shall provide food service only to those participants and spectators at these swim meets.

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. 5

September 24, 1991

SECRETARY'S REPORT

CASE NUMBER: BZA 23-91

OWNER/APPLICANT/AGENT: Wichita Swim Club (owner/applicant)
John R. Morse (agent)

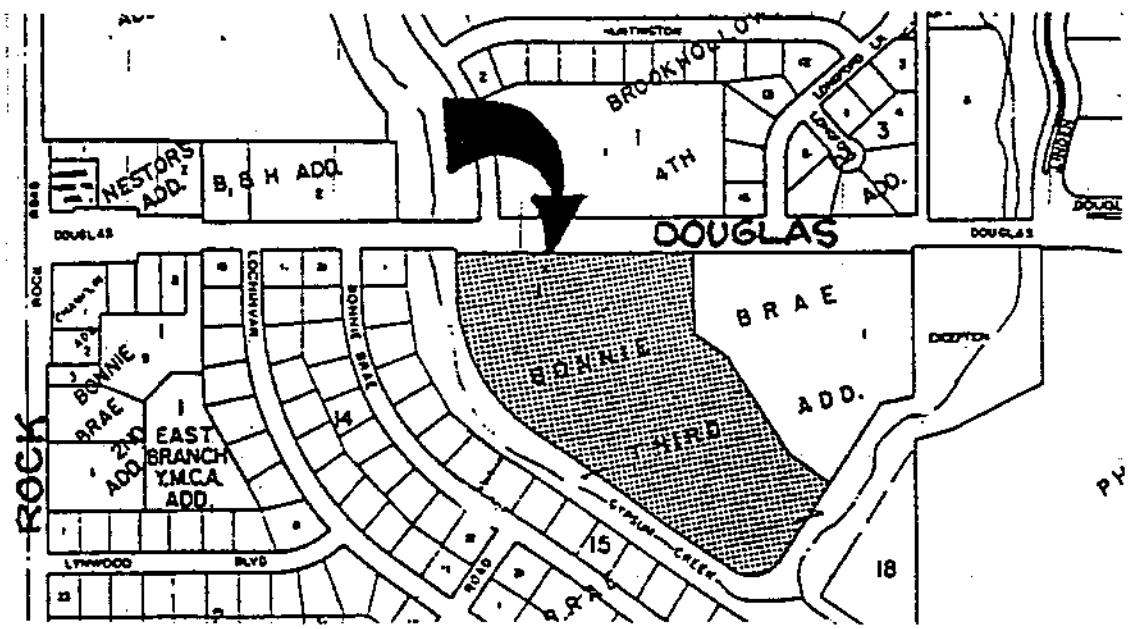
REQUEST: Variance of the requirement that all food and beverage service at swim clubs located in residential districts be from coin-operated machines. The Wichita Swim Club requests that it be allowed to prepare and sell food and beverages on site during swim meets, as well as conduct occasional fund-raising food affairs (e.g., pancake suppers).

CURRENT ZONING: "AA" One-Family Dwelling District (and subject to a use exception for a swim club)

SITE SIZE: 3 acres

LOCATION: South side of Douglas in an area east of Bonnie Brae (8323 E. Douglas).

PROPOSED USE: Wichita Swim Club



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by the State Statutes, are found to exist.

BACKGROUND: Swim clubs are permitted by use exception in residential districts subject to the conditions specified in Section 28.04.182 of the Zoning Ordinance. One of these conditions is that any commercial dispensing of beverages, food and tobacco be from coin-operated machines. It is assumed that the intent of this restriction was to limit the food available on site to that which did not create odors in its preparation and which did not generate business from anyone other than members of the swim club. The code, however, states that these conditions may be varied by the Board. The Wichita Swim Club, approved as a use exception at 8323 E. Douglas in April 1990, is requesting a variance to allow the preparation and sale of food and beverages on site during swim meets, as well as at special fund-raising events, such as pancake suppers. The applicant states that the ability to prepare food on site during swim meets will reduce the amount of traffic entering and leaving the premises, as well as reduce the possibility of trash from fast food items brought onto the property. The applicant also states that the ability to have fund-raising events, such as pancake suppers, would provide them with a substantial fund-raising opportunity.

While the zoning ordinance does allow variances which permit the sale of food by methods other than coin-operated machines, it does not specifically address the issue of fund-raising food events. This is usually considered an accessory activity to main institutional uses, such as churches and charitable organizations. Whether such fund-raising events should be considered accessory to an "excepted" use is at question here. The Swim Club was approved as an excepted use, with the restriction that the number of regional swim meets not exceed six per year. This restriction indicates that for this use to be acceptable at this location, the frequency of high-traffic-generating activities must be limited. Fund-raising activities would generate significant traffic and would appear to be contrary to the limitation of such activities as specified in BZA Resolution No. 4-90, which permitted the Wichita Swim Club to be located at the south end of this three-acre site.

The Health Department has advised that most recreational facilities such as skating rinks, bowling alleys, etc. which provide a food service do so on a very limited basis, with a snack bar/concession area no larger than 10' x 20'. Health regulations require a separate hand-washing sink, a triple-compartment sink for washing, rinsing and sanitizing utensils, and a janitor's mop sink. A more commercial, restaurant-type food service area would utilize grills and/or deep fryers and would be required to have a ventilation hood and fire supression system. To assure that cooking odors do not permeate this neighborhood, the use of grills and deep fryers should be prohibited.

ADJACENT ZONING AND LAND USE:

NORTH	"AA"	Church
SOUTH	"AA"	Drainage right-of-way and one-family dwellings
EAST	"AA" & "R-5"	Undeveloped and residential condominiums
WEST	"AA"	One-family dwellings

UNIQUENESS: It is the opinion of staff that this property, and particularly the use of it by the Wichita Swim Club, is unique and sets it apart from other swim club facilities inasmuch as the Wichita Swim Club holds swim meets which may last all day long and which attract participants and spectators from an area greater than the local neighborhood. Coin-operated food vending machines may not offer sufficient quantity or variety or freshness of food and beverages for this number of people who are on site for many hours at a time.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance to permit the preparation and sale of food and beverages on site during swim meets will not adversely affect the rights of adjacent property owners, as long as no grills or deep fryers are permitted, inasmuch as the people partaking of the food and beverages will already be on the site attending or participating in the swim meet. Therefore, they will not create additional traffic and if no grills or deep fryers are allowed, then the ventilation system which would direct the cooking odors out into the neighborhood would not be necessary. However, the variance to permit fund-raising food affairs, such as pancake suppers, will adversely affect adjacent properties, as this type of activity would generate additional traffic and outdoor activity with its associated noise and lights (if events are held at night).

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant or more specifically upon the persons attending swim meets at the applicant's property inasmuch as without the ability to prepare and sell food on site, the visitors must drive off site to obtain food or be satisfied with food from coin-operated vending machines. The denial of the request to hold fund-raising food affairs should not create unnecessary hardship upon the applicant, however, as there are numerous other methods for raising money and other locations for fund-raising activities.

PUBLIC INTEREST: It is the opinion of staff that the requested variance to permit the preparation and sale of food and beverages on site during swim meets would not adversely affect the public interest inasmuch as no additional traffic will be generated, due to the fact that persons eating the food are already on site for the swim meet and the variance to permit fund-raising food affairs also would probably not adversely affect the public interest because there is ample parking on site and Douglas is a four-lane, paved, arterial street.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance to permit the preparation and sale of food on site during swim meets would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as Section 28.04.182 allows for a variance of the restriction that food service be from coin-operated machines only, but the variance to permit fund-raising food affairs, such as pancake suppers, would be opposed to the spirit and intent of the regulations governing the Wichita Swim Club at this location as specified in BZA Resolution 4-90, which placed a limit on the number of high-traffic-generating regional swim meets.