WICHITA — SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688
(316) 268-4421
FAX (316) 268-4390

June 30, 1997

Homer Morgan
2110 Industrial
Wichita, KS 67216

RE: BZA 6-96 - Appeal the decision of the Superintendent of OCI that an administrative adjustment approved on 9/11/95, which added restaurants as a permitted use on Parcel 1 of DP-194 did not add restaurants as a permitted use on Parcel 2 of DP-194 (Lot 2, Block 1, Home Design Center Addition to Wichita, Sedgwick County, Kansas)

Dear Mr. Morgan:

Enclosed is a signed copy of the above-referenced BZA Resolution approved by the Board of Zoning Appeals on June 24, 1997. This resolution reflects the official action of the Board and is forwarded to you for your information and files.

Sincerely yours,

Lawrence P. Mitchell, Secretary
Board of Zoning Appeals

LPM/sah

cc: Robert W. Kaplan, Atty, 430 N. Market, Wichita, KS 67202
J. Michael Kennalley, Hershberger, Patterson, Jones & Roth, LC, 600 Hardage Center, 100 S. Main, Wichita, KS 67202
Doug Moshier, Law Department
Kurt Schroeder, OCI
J. R. Cox, OCI
Paul Hays, OCI
Ray Sledge, OCI
Pat Burnett, Deputy City Clerk
Yolanda Anderson, MAPC (resolution only)

COPY

BZA RESOLUTION NO. 6-97

WHEREAS, Homer Morgan, pursuant to Section 2.12.590.(A) of the Code of the City of Wichita, appeals the interpretation and decision of the Zoning Administrator that an administrative adjustment approved on September 11, 1995, which added restaurants as a permitted use on Parcel 1 of the Home Design Center Commercial Community Unit Plan (DP-194) did not add restaurants as a permitted use on Parcel 2 of the Home Design Center Commercial Community Unit Plan, zoned the "GC" General Commercial District and legally described as follows:

Lot 2, Block 1, Home Design Center Addition to Wichita,
Sedgwick County, Kansas.

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 meetings of April 22, 1997, May 27, 1997 and June 24, 1997, consider such appeal.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that, having considered the entire record regarding this matter and having heard the evidence as presented to the Board on April 22, 1997, May 27, 1997 and June 24, 1997, the Board makes the following findings:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section 2.12.590 of the Code of the City of Wichita Kansas; and

2. That the Board concurs with the following findings of fact as presented in the record:

   a) That the Zoning Administrator pursuant to Article V, Section E (15) of the Wichita-Sedgwick County Zoning Code had the authority to make the interpretation of the CUP issued on March 17, 1997.

   b) That the language of the Administrative Adjustment to the CUP on September 11, 1995 added restaurants as a permitted use to Parcel 1 of the CUP.

c) The language of the CUP in reference to Parcel 2, which stated the permitted uses to be the "same as parcel 1" incorporated any and all uses listed in Parcel 1, including any administrative adjustments made to the permitted uses on Parcel 1.

d) The interpretation made by Mr. Schroeder is not supported by the language contained in the Administrative Adjustment on September 11, 1995 and the language of the CUP.

3. The Board further finds that the interpretation of the Zoning Administrator as set forth in his letter of March 17, 1997 was unreasonable and is not supported by the evidence presented in the record.

4. The Board further finds that the appellant has met his burden of proof to show that the interpretation was in error.

THEREFORE, BASED UPON THE FOREGOING, THE INTERPRETATION OF THE ZONING ADMINISTRATOR AS TO THE PERMITTED USES AS TO THE LAND HEREIN IS REVERSED.

ADOPTED AT WICHITA, KANSAS THIS 24TH DAY OF JUNE, 1997.

Keith A Alter

Keith Alter, President

ATTEST:

Lawrence P. Mitchell

Lawrence P. Mitchell, Secretary