Commissioner Colby's opinion was that the Hearing Examiner's decision was correct, and passing the motion would in effect be rewriting law of the County on setbacks, and he was not willing to do that.

Ms. Lee confirmed with the Building Director that no building permit was required at the time the 4' retaining wall was built. Penalties are assessed by the Hearing Examiner as part of a code violation action. The case at hand was not treated as a code violation, but as a request for variance. The Building Department is able as a penalty measure to double the building permit fee (which in this case would be $72 instead of $38).

Commissioner Caldwell indicated that if the motion passed, he would separately ask that the Board direct the Building Director to utilize that penalty.

Mr. Taylor confirmed purchase of Lot 18 with the intent to build a garage, and advised that it would not create an undue hardship on them to remove the carport when the garage is completed.

Commissioner Koetje explained that he seconded the motion in order to discuss options. He was not thrilled with the setback requirements for the corner lot, but did have a problem with the fact that it already encroaches a 5' setback on the side yard.

Commissioners Colby and Koetje voted against the motion made by Commissioner Caldwell. Commissioner Caldwell voted for.

Commissioner Colby moved to uphold the verdict of the Hearing Examiner in this instance and require the applicant to remove the carport within a two year period. Motion, seconded by Commissioner Caldwell, carried unanimously. [Findings and Decision of the Board to be prepared and presented for the Board's signature next meeting]

FINAL SITE PLAN SPR #035/89 BY PHILIP NIENHUIS

Joyce Humble, Planner, presented for the Board's approval the Final Site Plan for SPR #035/89 by Philip Nienhuis; she confirmed all conditions of preliminary site plan review had been satisfied.

Chairman Koetje did not participate in this matter since he is related to Mr. Nienhuis. He did comment that should the Board approve the Final Site Plan, he would sign the Final Site Plan.

Commissioner Caldwell moved that the Board sign the Site Plan. Motion, seconded by Commissioner Colby, carried by majority vote; Commissioner Koetje abstained for reason noted.

Ms. Humble apprised the Board that a bond was held on the project for landscaping the northern portion and she would bring for the Board's approval and signature Monday a resolution to release same.

Final Site Plan signed.

USA #010/90 OSCAR AND GLENNA JENKINS

The public meeting, continued from April 22, 1991, came on before the Board, on USA #010/90 by Oscar and Glenna Jenkins, for Use Approval incorporating Site Plan Review, a proposed Non-Residential (NR) Floating Zone on North Whidbey, on Rural Residential (RR) zoned property contiguous to and lying northerly of the Plat of Northgate Terrace. The Island County Planning Commission recommended approval of the application, subject to ten conditions. At the April 22nd meeting, Larry Kwarsick, Planning Director, confirmed this would authorize over a 10 year period the applicant to pursue the limited course of non residential development and not mandatory for applicant to build each of the four buildings, i.e., if applicant does not have one building done by the end of that time, then it would revert in total. The Board at that time, after lengthy discussion, passed a unanimous motion approving Proposal, Findings, Conclusions

and Recommendation of the Island County Planning Commission in the case of Use Approval #010/90 by Oscar and Glenna Jenkins, with the proviso that a reversionary clause be placed on the proposal in accordance with ICC 17.02.100, with that reversionary clause to be drafted by the Planning Department and presented to the Board at the first opportunity for signature.

Staff presented this date, the reversionary clause language in accordance with the Board's motion on April 22, 1991, per ICC 17.02.100, but did not include that language within the permit approval language presented today.

Commissioner Caldwell explained that the sole reason the Board wanted that language was because the Board felt the project as proposed was fine, but did not wish to grandfather any other non-residential rights to that particular parcel of property.

The Chair re-read specific comments by Mr. Kwarsick's regarding this matter April 22:

> "Mr. Kwarsick confirmed this would authorize over a 10 year period the applicant to pursue the limited course of non residential development and not mandatory for applicant to build each of the four buildings, i.e., if applicant does not have one building done by the end of that time, then it would revert in total."

Ms. Lee confirmed that intent. That language has been included she feels as stated in ICC 17.02.100:

> "the Board in its action approving a non residential floating zone may determine that once uses authorized by a non-residential floating zone have been completed discontinued or terminated the zone shall expire and the parcel so classified shall revert to the previous zone classification".

Planning depends on Use Approval code for reversionary clause which would apply in this case.

The Board concurred that it was relying on that specific language that the Board made the motion on April 22, 1991.

The Board, by unanimous motion, as agreed by motion April 22, 1991, approved and signed UA Permit #010/90 (incorporating preliminary site plan review) for Oscar and Glenna Jenkins, and incorporating site plan review. Permit UA 010/90 along with the Site Plan Map were signed. (ordinance not signed for parcel rezone until time of final)

APPLICATION: Oscar and Glenna Jenkins **Administering Agency:**

Permit No. USA 010/90 Island County Planning Dept.
P.O. Box 5000
Coupeville, WA 98239

Date of Planning Commission Recommendation: March 26, 1991

Name and Address of Applicant: Mr. and Mrs. Oscar Jenkins
4399 N. Northgate Terrace
Coupeville, WA 98239

REQUESTING THE FOLLOWING: Use approval incorporating preliminary site plan review to reclassify the project site from Rural Residential (RR) to Non-Residential (NR) Floating Zone and expand the mixed uses on site through the addition of a mini-storage facility consisting of four storage buildings measuring 84-feet by 24-feet (2,016 square feet) each (total: 8,064 square feet).

UPON THE FOLLOWING PROPERTY: 4399 N. Northgate Drive, Oak Harbor, North Whidbey Island, Island County, Washington, in the Southwest