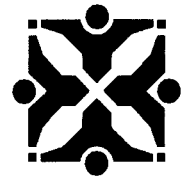


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: REP 47-15
Department Source: City Manager
To: City Council
From: City Manager & Staff
Council Meeting Date: 4/20/2015
Re: Report - Board of Adjustment (BOA) information

Documents Included With This Agenda Item

Council memo

Supporting documentation includes: Spreadsheet of BOA Cases from January 2010 through March 2015; Powerpoint from training provided to BOA in December 2014.

Executive Summary

This report is being provided at the request of Council Member Thomas to provide a more thorough description of the Board of Adjustment, their scope, history and details on applications processed by this body.

Discussion

History:

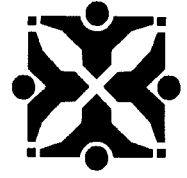
State law provides for the establishment of a board of adjustment ("BOA"), which is a quasi-judicial body granted the power to hear appeals and grant variances in the application of the zoning laws in harmony with their general purpose and intent. The Missouri Revised Statutes governing Boards of Adjustment, Secs. 89.080 - 89.110, can be found at this link: <http://www.moga.mo.gov/mostatutes/ChaptersIndex/chaptIndex089.html>. In addition to the powers set forth in state law, the Columbia City Code has expanded upon the purview of the Board of Adjustment to hear and decide other types of applications (ie - to matters not only contained within the zoning code). City Clerk records indicate the first Board of Adjustment case in Columbia dates back to 1935, and there have been 1,878 cases through March 2015. The BOA has received 109 total applications from January 2010 to March 2015. A spreadsheet containing a list of cases is attached as reference.

Purpose:

Under state law, the BOA has two major responsibilities: (1) to hear appeals of decisions made by City officials in the administration and enforcement of the City's zoning ordinances, and (2) to hear applications for variances from the strict application of the City's zoning ordinances. In appeals, the applicant property owner is essentially arguing that the City official's interpretation of a zoning ordinance is incorrect and is seeking a different interpretation of the zoning ordinance in question from the BOA. In variances, the applicant property owner is not necessarily disagreeing with the City official's interpretation of a zoning ordinance, but is rather requesting the BOA to waive or reduce the application of a zoning ordinance because the applicant believes full application of a particular zoning ordinance imposes a practical difficulty or unnecessary hardship on the applicant's otherwise lawful

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use of their property. In addition to these core functions, state statutes allow a City to assign the BOA other responsibilities to hear applications and render decisions in other proceedings the City may find necessary. The additional duties assigned to the Columbia BOA in the city code are set forth in more detail below.

Membership

The BOA is composed of five regular members and three alternate members appointed by the City Council, who each serve staggered five-year terms. No regular member can serve more than two consecutive full terms. Members may only be removed by the Council for cause, upon written charges and after a public hearing. The BOA is unique in that it requires a supermajority of four out of five members to approve any application it considers.

Staff Support:

The City Clerk's office provides support to the BOA and the City Clerk serves as secretary to the board, is the custodian of its records, arranges for its meetings, and performs some other duties including publication of notices and processing of applications. The Community Development Department provides additional support by appearing at hearings and providing explanation of the zoning ordinance at issue and its underlying decision from which an appeal or variance application is made. The Law Department also provides support by advising the BOA of applicable law and procedures, ensuring that an appropriate record of the proceeding is being made, and providing training.

Powers and Duties:

As noted above, the two main responsibilities of the BOA are to hear and decide variances and appeals from applicant property owners who are "aggrieved" by a decision of a City official in the application and enforcement of the City's zoning ordinance. As a practical matter, the vast majority of the applications heard and decided by the BOA are for variances. Because variances occupy a significant preponderance of the BOA's time and efforts, training that mainly focused on the standards and law that govern variances was presented by City legal staff to the BOA in December 2014. The PowerPoint that accompanied this training is attached your review and information.

In addition to these standard responsibilities of variances and appeals mandated by state statute, the City assigns several additional responsibilities to the BOA, as follows (information in parentheses identifies the City Code Chapter in which the additional responsibility is assigned to the BOA:

- Hear and decide applications for Conditional Use Permits (Chapter 29, Zoning)
- Hear and decide appeals and variances to stormwater regulations (Chapter 12A, Land Preservation)
- Hear and decide appeals of decisions of Historic Preservation Commission (Chapter 29, Zoning)
- Adjudicate district boundary disputes regarding floodplain regulations (Chapter 29, Zoning)



- Grant special permits to expand areas of non-conforming uses up to 25% (Chapter 29, Zoning)
- Hear and decide appeals and variances to floodplain regulations (Chapter 29, Zoning)
- Hear and decide appeals and variances to building line regulations (Chapter 20, Planning)
- Hear and decide appeals and variances to regulations governing plantings in the Public Right-of-Way (Chapter 24, Streets, Sidewalks, and Public Places)
- Modify regulations regarding entrance widths for junkyard business licensees (Chapter 11, Health and Sanitation)
- Approve Sign Plans allowing alternative sign configurations on a parcel of property (Chapter 23, Signs)
- Grant permits for a temporary (2 year) building for commerce or industry in a dwelling district which is incidental to the dwelling development (Chapter 29, Zoning)
- Determine, in cases of uncertainty, the classification of any use not specifically enumerated in the Zoning Code. (Chapter 29, Zoning)

Judicial Review

As a quasi-judicial body, decisions of the BOA are subject to review only in the Circuit Court by way of an action known as a *Petition for Writ of Certiorari*, which may be filed by any person “aggrieved” by the BOA’s decision. A person aggrieved may include an applicant, neighbors, or even the City itself. As such, the City Council cannot unilaterally use its legislative powers to overturn a decision of the BOA. However, the City Council may direct any decision of the BOA be challenged by authorizing an appropriate suit in the Circuit Court be filed to overturn the decision of the BOA.

Fiscal Impact

Short-Term Impact: There is no cost associated with this. It is informational.

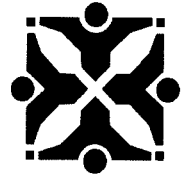
Long-Term Impact: There is no cost associated with this. It is informational.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

This report is informational only and is being provided at the request of Council Member Thomas.

Legislative History

There is no legislative history with this report.

A handwritten signature in black ink, appearing to read "Head Col", written over a horizontal line.

Department Approved

A handwritten signature in black ink, appearing to read "MM", written over a horizontal line.

City Manager Approved



SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

Spreadsheet of BOA Cases from January 2010 through March 2015

PowerPoint of BOA Training provided December 2014

BOARD OF ADJUSTMENT CASES FROM JANUARY 2010 THROUGH MARCH 2015

CASE NO.	TYPE OF CASE	FINAL ACTION	PROPERTY ADDRESS		PROPERTY OWNER	ATTORNEY	MEETING DATES	CERTIFICATE OF DECISION	SUBJECT TO CONDITIONS:
1790	Variance	Approved	1100	North Seventh Street	First Assembly of God, Inc.	Danny Miller	January 12, 2010	variance to the front yard setback requirement by allowing the front yard to be reduced to fourteen (14) feet and six (6) inches	
1791	Variance	Approved	216	South Garth Avenue	Bonnie Kerridge	n/a	January 12, 2010	variance to the side yard setback requirement by allowing the north side yard to be reduced to two and seven-tenths (2.7) feet	
1792	Conditional Use	Approved	4040	Bearfield Road	Central Missouri Sheltered Enterprises, Inc.	Daniel Beckett	March 9, 2010	conditional use permit for the purpose of operating a greenhouse/nursery and retail business engaging in the sale of greenhouse/nursery products	(1) No new structures shall be permitted. (2) all deliveries of greenhouse/nursery materials shall occur on-site from 8:00 a.m. to 5:00 p.m. Monday through Friday and shall not encumber any public right-of-way. (3) outside storage areas shall not reduce the amount of available parking on-site and shall be shown on the screening plan approved by the Planning and Zoning Commission prior to storage activities commencing. and (4) the hours of operation for retail sales shall be restricted from 3:00 p.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday.
1793	Variances	Denied	1609	Paris Road	Market Ready, LLC (owner) and Tiger Tots Child Development Center (tenant)	Randall Johnston	April 13, 2010	n/a	
1794	Variance	Approved	4100	West Broadway	West Broadway Swim Club, Inc.	Kevin O'Brien	May 11, 2010	variance to the sign ordinance by allowing the sign to be twelve (12) feet above the roadway, which is six (6) feet higher than permitted	
1795	Conditional Use	Approved	2650	Ballenger Lane	Sprint-Nextel (lessee) & Robert E. & Audrey E. Gerou Trusts (owner/lessor)	Curtis M. Holland	July 13, 2010	conditional use permit for the purpose of constructing a 120 foot monopole communications antenna and tower and the related above ground communications equipment shelter	The drive to be extended to the subject site be improved with a dust-free, pervious surface.
1796	Conditional Use	Approved	5720	Abercorn Ridge	Mill Creek Manor, Inc.	B. Daniel Simon	October 12, 2010	conditional use permit for the purpose of constructing and operating a private outdoor swim club and associated facilities	Enhanced landscaping and buffering, beyond the minimum required by Section 29-25, be provided along three sides of the proposed improvements that abut adjacent residential properties.
1797	Variance	Approved	25	East Worley Street	Jacinto and Yoleidis Facio	n/a	November 9, 2010	variance to the side yard setback requirement by allowing the existing residential structure to remain in its current location with the northeast side of the structure only being five (5) feet from the existing fence, which is assumed to be the property line	
1798	Variance	Withdrawn	1510/1512	W. Worley Street	Hardt's Rental, LLC	Lori L. Green	December 14, 2010 January 11, 2011	n/a	
1799	Variance	Withdrawn	1513	W. Rollins Road	Dan & Shirley Pierce	Tom Schneider	December 14, 2010	n/a	
1800	Variance	Approved	16	E. Sexton Road	Jada Lea Jesse	n/a	December 14, 2010	variance to the requirement that a detached garage be at least three feet away from any side property line by allowing a new detached garage to be constructed on the existing footing/foundation of a prior detached garage, which is less than three feet from the east side property line	
1801	Variance	Approved	814	Rollins Road	Roy & Marganta Tye	n/a	December 14, 2010	variance to the median front yard setback requirement by allowing the residential structure, which includes a covered front porch and deck, to be located forty-four (44) feet from the back of the curb	
1802	Variance	Withdrawn	4303	S. Providence Road (Rock Bridge High School)	Columbia School District	David Walker	January 11, 2011 February 8, 2011 March 8, 2011	n/a	
1803	Variances	Approved	201	S. College Avenue	MU Crew, LLC	Phebe La Mar	January 11, 2011	variances to the rear and side yard setback requirements, the off-street parking requirements and the minimum lot size requirement by allowing the expansion a non-conforming building that does and/or will encroach into the required rear and side yard setbacks and not meet the off-street parking and minimum lot size requirements	
1804	Variance	Approved	1600	E. Broadway	Boone Hospital Center	Thomas Schneider	January 11, 2011	variance to the sign ordinance by allowing wall signage (one sign) at the north elevation to be two hundred sixty and four-tenths (260.4) square feet in area and wall signage at the west elevation (two signs) to be five hundred sixty-eight and four-tenths (568.4) square feet in area, which exceeds the maximum square feet permitted	
1805	Appeal or Variance	Approved	2703	E. Broadway	The Broadway Shops	David G. Brown	January 11, 2011	variance to the sign ordinance by allowing a tenant to place a sign on the east wall of 2703 E Broadway that is not considered an on-premise wall since the tenant does not utilize the space adjacent to the wall	
1806	Variance	Approved	1510/1512	W. Worley Street	Joel Hardt	n/a	February 8, 2011	variance to the minimum lot area per dwelling requirement by allowing the construction of a new two-family (duplex) structure on a lot, which is approximately 8,900 square feet	
1807	Variance	Approved	201	Nebraska Avenue	GRD Properties, LLC (owner) & Joe Machens Nissan, Inc. (tenant)	Marjorie M. Lewis	February 8, 2011	variance to the sign ordinance by allowing one additional freestanding pylon sign along the I-70 right-of-way	
1808	Variance	Approved	220 and 260	S. Tenth Street	10th and Elm, LLC & Walnut Brook, LLC	Kerry Bush	March 8, 2011	variance from compliance with Article V of Chapter 12A - Stormwater Management as it pertains to water quality by allowing the site to meet a level of service of 3 for water quality treatment instead of the required level of service of 4 for water quality treatment	
1809	Variance	Withdrawn	515	E. Broadway	Bette Heidman Douglass Properties, LLC (owner) Tropical Liquors Corporation (tenant)	Josh Oxenhandler	March 8, 2011 April 12, 2011	n/a	
1810	Conditional Use	Approved	1505	Sylvan Lane	1505 Sylvan, LLC (owner) and Child Abuse & Neglect Emergency Shelter Inc., dba Rainbow House (tenant)	Phebe La Mar	April 12, 2011	conditional use permit for the purpose of operating a teen emergency shelter and associated counseling center	A semi-annual report be submitted to the City of Columbia - Public Works Department - Building and Site Development Division stating the maximum monthly occupancy level and support services provided.
1811	Variance	Approved	5004	Cherry Blossom Lane	Built for You Construction, LLC (owner)	Michael Foster	April 12, 2011	variance to the rear yard setback requirement by allowing a reduced rear yard of four (4) feet limited to the current footprint of the structure (including deck) as shown in Exhibit A attached hereto and incorporated by reference. This requires modifications to the current footprint of the deck to comply with the reduced yard.	

CASE NO.	TYPE OF CASE	FINAL ACTION	PROPERTY ADDRESS		PROPERTY OWNER	ATTORNEY	MEETING DATES	CERTIFICATE OF DECISION	SUBJECT TO CONDITIONS:
1812	Variance	Withdrawn	5003	Cherry Blossom Lane	Kimberly R. Black	n/a	April 12, 2011, May 10, 2011, July 12, 2011, September 13, 2011	n/a	
1813	Variance	Approved	12	E. Clarkson Road	Betty Houchin Winfield Revocable Living Trust	Kerry Bush	April 12, 2011	variance to the side yard setback requirement by allowing a reduced east side yard of one and one-half (1.5) feet so the structure can remain in its existing location	
1814	Variance	Approved	3204	Rock Quarry Road	Campus Crest at Columbia, LLC	B. Daniel Simon and Ashley Franz	April 12, 2011	variance to the requirement that no clearing of vegetation can occur within the eighty-three (83) foot vegetative buffer running alongside Rock Quarry Road by allowing grading and excavating within the required vegetative buffer subject to the creation of a landscaped area that would be 80 percent opacity and made largely from native plants so it appears natural	
1815	Variance	Approved	200	Edgewood Avenue	David & Laura Roloff	n/a	April 12, 2011	variance to the side yard setback requirement by allowing a reduced north side yard of six and nine-tenths (6.9) feet so a kitchen/dining room and garage addition can encroach into the required side yard	
1816	Variance	Approved	5612	E. St. Charles Road	Western Oil, Inc.	Marjorie Lewis	April 12, 2011 May 10, 2011	variance to the sign ordinance by allowing two freestanding signs along the I-70 frontage, whereby the sign at the southeast corner of the lot would be permitted to be eighty (80) feet in height and the sign at the southwest corner of the lot would be permitted to be forty-five (45) feet in height, which exceeds the maximum height allowed	
1817	Variance	Approved	502 1307 and 1313 1300	S. College Avenue Wilson Avenue Rosemary Avenue	Zeta Phi Corp of the Beta Theta Pi Fraternity and The Beta Theta Pi Club of Columbia	Garrett Taylor and Craig Van Matre	April 12, 2011 May 10, 2011 June 14, 2011 July 12, 2011	variance from compliance with Article V of Chapter 12A - Stormwater Management as it pertains to detention by allowing a fourteen (14) percent net reduction in impervious area	Subject to a payment of \$5,000 to the City of Columbia for additional studies in the stormwater area as the mitigation measure since this variance resulted in a lower level of stormwater control.
1818	Variance	Approved	702	Range Line Street (South Building)	Columbia College	Daniel Beckett	May 10, 2011	variance to the zoning ordinance by allowing the west entrance canopy to have a roof area of one hundred fifty-five (155) square feet and projection of nine (9) feet into the required front yard, which is greater than that permitted	
1819	Variance	Approved	3401	Clark Lane	White Castle Systems, Inc.	Robert Hollis	May 10, 2011 June 14, 2011	variance to the sign ordinance by allowing the installation of a forty (40) foot tall freestanding sign on the Clark Lane frontage, which exceeds the maximum height permitted	
1820	Conditional Use	Withdrawn	1211, 1213, and 1215 . 113	E. Walnut Street College Avenue & Walnut Street College Avenue	College and Walnut, LLC	Adam Patchett	June 14, 2011 July 12, 2011 August 9, 2011 September 13, 2011	n/a	
1821	Variance	Withdrawn	914	West Boulevard South	St. Andrews Evangelical Lutheran Church	Lawrence Leip	June 14, 2011	n/a	
1822	Variance	Approved	4303	S. Providence Road (Rock Bridge High School)	Columbia School District	David Walker	July 12, 2011	variance to the yard setback requirement by allowing the construction of a pole frame storage building to be placed eighteen (18) feet from the west property line, which is seven (7) feet less than required	
1823	Variance	Approved	507	Rollins Street	507 Rollins, LLC	Marjorie Lewis	July 12, 2011	variance to the parking aisle width requirement by allowing the parking aisle width for 90 degree parking to be twenty-two (22) feet, which is two (2) feet less than required	
1824	Variance	Approved	201	S. College Avenue	MU Crew, LLC	Phebe La Mar	July 12, 2011	variance from compliance with Article V of Chapter 12A - Stormwater Management as it pertains to the use of best management practices (BMP's) by allowing the proposed renovation without requiring the installation of water quality BMP's	
1825	Conditional Use	Approved	2100	E. Broadway	Blaylock Wise, LLC (owner) and Global Biologics, LLC (tenant)	Jeffrey Blaylock	August 9, 2011	conditional use permit for the purpose of operating a research and development laboratory	The permit be limited to a single office unit within the building addressed as 2100 E. Broadway.
1826	Variance	Approved	1400	Gary Street	Casey Goodman & Peter Holmes	n/a	September 13, 2011	variance to the side yard setback requirement by allowing a reduced east side yard of five feet and five inches, which is less than required, so the structure and a recent addition can remain in their existing locations	
1827	Variance	Approved	608	E. Cherry Street	Columbia College	Daniel G. Beckett	September 13, 2011	variance to the sign ordinance by allowing the installation of two (2) nine and three-quarter (9.75) square foot freestanding signs (three and three-quarter (3.75) feet in height and five and one-half (5.5) feet in width), one at the northwest side corner of the lot set back approximately four (4) feet from the Cherry Street and Sixth Street sidewalks and the other at the northeast side corner of the lot setback approximately two and one-half (2.5) feet from the Cherry Street and Seventh Street sidewalks	
1828	Variance	Approved	406	Burnam Avenue	Rho Alpha of Chi Omega Fraternity, Inc.	Robert J. Buckley	December 13, 2011 January 10, 2012	variance to the building height requirement by allowing the building height to be forty-four and nine and three-eighths inches (44' 9 3/8"), which exceeds the maximum height permitted	
1829	Variance	Approved	1600	E. Broadway	Boone Hospital Center	Thomas Schneider	December 13, 2011	variance to the sign ordinance by allowing wall signage (two signs) at the east elevation to be eight hundred sixty-seven and three-tenths (867.3) square feet in area, which exceeds the maximum square feet permitted	
1830	Conditional Use	Approved	1221	E. Walnut Street	College and Walnut, LLC	Craig Van Matre	December 13, 2011	conditional use permit for the purpose of constructing and maintaining an uncovered, surface off-street parking area	The parking structures substantially conform to the site plan and rendering submitted with the conditional use application as shown by Exhibits A and B.
1831	Variance	Approved	520 1300 and 1306	South College Avenue Rosemary Lane	Zeta Phi Corp. of the Beta Theta Pi Fraternity and The Beta Theta Pi Club of Columbia	Craig Van Matre and Garrett Taylor	December 13, 2011	variance to the building height requirement by allowing the building height as measured per Section 29-2 of the Code of Ordinances to be forty-two feet and four inches (42' 4"), which exceeds the maximum height permitted	
1832	Variance	Approved	604	West Boulevard South	Donald Eugene Light Revocable Living Trust	Christopher Schappe	December 13, 2011	variance to the off-street parking space requirement by allowing the two required off-street parking spaces to be in the required front yard	
1833	Variance	Approved	5003	Cherry Blossom Lane	Kimberly Black	Michael Foster	January 10, 2012	variance to the rear yard setback requirement by allowing a reduced rear yard setback of two (2) feet, which is less than permitted	Subject to the fence being located within the property line.
1834	Variances	Denied	1101	Merrill Court	Glenda Parker Hammond Trust	Thomas M. Schneider	February 14, 2012	n/a	

CASE NO.	TYPE OF CASE	FINAL ACTION	PROPERTY ADDRESS		PROPERTY OWNER	ATTORNEY	MEETING DATES	CERTIFICATE OF DECISION	SUBJECT TO CONDITIONS:
1835	Conditional Use	Approved	1035	Elieta Boulevard	Housing Authority of the City of Columbia, Missouri (owner) and Bluebird Media Network, LLC (tenant)	Marjorie M. Lewis	March 13, 2012	conditional use permit for the purpose of constructing and installing a shelter and related equipment to be used for fiberoptic high speed data transmission	The width of the parking area be enlarged from twenty (20) feet to twenty-four (24) feet to ensure adequate area for vehicle turn-around and on-site maneuvering, the length of the proposed parking area be reduced by ten (10) feet to ensure the overall length of driveway plus parking is not greater than one hundred and fifty (150) feet (the maximum length of a terminal street/access without permanent turn-around), the proposed landscaping be extended around the southwest corner of the proposed lease area and extended northward no less than twenty-four (24) feet such that the additional landscaping screens all proposed parking areas, and privacy fence slats along all chain-link fence sections be installed or there be landscaping around the proposed fence line with evergreen plants no less than six (6) feet in height and spaced no less than eight (8) feet apart (should additional landscaping be installed to meet this condition, it shall be in addition to that presently was shown on the applicant's "Overall Site Plan")
1836	Variance	Approved	709	N. Eighth Street	Columbia College	Daniel Beckett	March 13, 2012	variance to the front yard setback requirement by allowing a reduced front yard of ten and nine-tenths (10.9) feet for the proposed canopy, eleven and five-tenths (11.5) feet for the existing structure and twelve and six-tenths (12.6) feet for the proposed addition, which is less than permitted, so the existing structure can remain in its existing location and a proposed addition and a proposed canopy can be built	
1837	Variance	Approved	2405	Katy Lane	Tommy and Nicole Hackett	n/a	March 13, 2012	variance to the front yard setback requirement by allowing a reduced front yard of twenty (20) feet, which is less than permitted, so a proposed addition can be built	
1838	Variance	Denied	3610	Southland Drive	Daniel Carroll and James and Marlene Carroll	n/a	April 10, 2012	n/a	
1839	Conditional Use	Approved	1206, 1208, and 1210	E. Walnut, the lot identified as E. Walnut on the west side of 1206 E. Walnut, and the west 20 feet (approximate) of 1214 E. Walnut	Walnut II, LLC	Craig Van Matre	June 12, 2012	conditional use permit for the purpose constructing and maintaining a temporary uncovered, surface off-street parking lot until August 1, 2014 or the date the private parking garage associated with the project on the north side of Walnut Street is completed, whichever is sooner	All of the lots identified in the legal description above are zoned C-2.
1840	Conditional Use	Approved	304	S. College Avenue	Campus Lutheran Church (owner/lessor) and St. Charles Tower, Inc. (lessee)	Dale Linneman	July 10, 2012	conditional use permit for the purpose of constructing a thirty-five (35) foot tall steeple and a six (6) foot tall cross, which will extend the bell tower of the church to a maximum height not to exceed one hundred eight and five-tenths (108.5) feet and will house a stealth communications tower and antennas, and the related communications equipment shelter, which will be mounted on the roof behind the bell tower	
1841	Variance	Approved	1711	Cunningham Road	Bryan and Susan Hartnagel	n/a	July 10, 2012	variance to the minimum setback requirement for an accessory structure by allowing the garage to be thirty-nine (39) feet from the front lot line, which is less than required	
1842	Variance	Approved	809	Richmond Avenue	Alpha Gamma Chapter of Alpha Delta Pi House Corporation	Craig Van Matre and Garrett Taylor	July 10, 2012 August 14, 2012	variance to the off-street parking requirement by not requiring the thirteen (13) off-street parking spaces necessitated by an increase in density, subject to the condition that adequate off-site/off-street parking is maintained through parking agreements over the life of the building, and if at some point, adequate off-site/off-street parking is not maintained, the occupancy in the house would be reduced accordingly	
1843	Conditional Use	Approved		West Broadway (the lot on which the buildings addressed as 1201, 1203 and 1205 West Broadway sit)	Broadway Office Park Condominium Association and Broadway Office Park, LLC (owner/lessor) and St. Charles Tower, Inc. (lessee)	Daniel Beckett	August 14, 2012, September 11, 2012	conditional use permit for the purpose of constructing a one hundred ten (110) foot stealth flag pole communications antenna and tower and the related above ground communications equipment shelter	The initial installation of required landscape screening surrounding the wrought iron fencing is, upon planting, a height of no less than eight (8) feet tall.
1844	Variances	Approved	201	S. College Avenue	MU Crew, LLC	Phebe La Mar	August 14, 2012	variances to the off-street parking requirement and the minimum lot size requirement by allowing an additional unit for a total of eleven (11) units without meeting the off-street parking and minimum lot size requirements	
1845	Variance	Approved	21	Bingham Road	Scott and Julie Swain	n/a	August 14, 2012	variance to the front yard setback requirement by allowing the front yard setback to be twenty-eight (28) feet, which is less than required	
1846	Variance	Withdrawn	1206, 1208, and 1210	E. Walnut, the lot identified as E. Walnut on the west side of 1206 E. Walnut, and the west 20 feet (approximate) of 1214 E. Walnut	Walnut II, LLC	Craig Van Matre	August 14, 2012	n/a	
1847	Variance	Approved	3750	Miller Drive (which is within the parcel commonly known as 3300 New Haven Road)	Lutheran Senior Services	Suzanne Sheldon	November 13, 2012	variance to the building height requirement by allowing the maximum building height to be fifty-eight (58) feet, which is higher than permitted	
1848	Variance	Approved	602	Turner Avenue (formerly 701 Maryland Avenue and potentially to be 701 Tiger Avenue)	Saint Thomas More Newman Center	William Arnet	November 13, 2012	variance to the front yard setback requirement by allowing the front yard setback to be ten (10) feet, which is less than required, on the Tiger Avenue side	
1849	Conditional Use	Approved	906	Woodson Way	MacRiley Properties, LLC	Thomas Schneider	December 11, 2012	conditional use permit for the purpose of constructing an uncovered, surface off-street parking area	

CASE NO.	TYPE OF CASE	FINAL ACTION	PROPERTY ADDRESS		PROPERTY OWNER	ATTORNEY	MEETING DATES	CERTIFICATE OF DECISION	SUBJECT TO CONDITIONS:
1850	Conditional Use	Approved	2400	S. Providence Road	Greg and Misti Post (owner/lessor) and St. Charles Tower, Inc. (lessee)	Daniel Beckett	December 11, 2012	conditional use permit for the purpose of constructing a one hundred (100) foot stealth communications tower and the related above ground communications equipment shelter contingent upon City Council approval of the revised statement of intent governing the usage of the site and the required O-P development site plan	The stealth communications tower is constructed to resemble an elm tree with a leafy green appearance and a support pole designed to resemble brown bark, and with maintenance upkeep to follow as needed.
1851	Conditional Use/Variances	Approved	1201	Paquin Street	Housing Authority of the City of Columbia, Missouri (owner/lessor) and Full Stream, LLC (lessee)	n/a	December 11, 2012	conditional use permit for the purpose of installing communications antennas on existing antenna support structures, antenna support structures, towers, accessory equipment, equipment shelters and/or cabinets, power and optic fiber conduit and other materials and items as provided for in the plans and variances to the maximum height requirement so as to permit the installation and mounting of communications facilities on the Paquin Tower roof up to a height of ten feet above the Paquin Tower penthouse rooftop and waiving the screening requirements for the communications equipment shelters, cabinets and guy anchors.	
1852	Appeal	Withdrawn	1407 1406	Windsor Street Liberty Street	Kathy Doisy and Matthew Knowlton (appellants) (Property owned by Haker Property Management LLC)	Phebe La Mar	January 8, 2013 March 12, 2013 April 9, 2013 June 11, 2013	n/a	
1853	Conditional Use	Approved	2400	S. Providence Road	Greg & Misti Post (owners/lessors) and St. Charles Tower, Inc. (lessee)	Daniel Beckett	February 12, 2013	conditional use permit for the purpose of constructing a one hundred (100) foot cellular tower (on wheels) and for variances to the screening and landscaping requirement contingent upon approval of an amended O-P development plan	The applicant providing a report from a structural engineer showing the cellular tower (on wheels) meets the current building codes of Columbia, specifically in terms of wind, based upon a review by staff, the site plan is amended to show the installation of an eight (8) foot high chain-link fence surrounding the cellular tower (on wheels) facility, the driveway accessing the site in the location depicted on the O-P plan and the height of the tower by annotation, and the cellular tower (on wheels) facility is removed within six months of February 12, 2013 or when the permanent stealth elm tree tower is installed and operational, whichever occurs first.
1854	Variance	Approved	1209	Haven Road	Ashley Houk	n/a	February 12, 2013	variance to the front yard setback requirement by allowing the front yard setback to be five (5) feet, which is less than required, so the carport can remain in its existing location	
1855	Variance	Approved	107	E. Ridgeley Road	Chns Teeter and Donna Checkett	n/a	February 12, 2013	variance to the rear yard setback requirement by allowing the rear yard setback to be eleven (11) feet, which is less than required, so an addition to the existing non-conforming structure can be constructed	
1856	Variance	Approved	1111	East Broadway	Broadway Lodging, LLC	Robert Hollis	February 12, 2013	approval of the sign plan and/or variances to the sign ordinance by allowing the hotel wall signage (one sign) at the west elevation and the hotel wall signage (one sign) at the east elevation to have sign areas of one hundred forty-two and one-half (142.5) square feet, which is more than permitted, and a twenty-two and one-half (22.5) square foot monument hotel sign at the main entrance, pursuant to the plans and materials submitted to the Board of Adjustment	
1857	Appeal	Approved	210	St. James Street, Ste D	St. James in North Village, LLC (owner) and DogMaster Distillery, LLC (leaseholder)	Skip Walther	February 12, 2013	operation of a microdistillery by allowing the operation of a microdistillery in a C-2 zoned building	
1858	Variance	Approved	906	Woodson Way	Michael & Jewel Keevins	n/a	March 12, 2013	variance to the screening and landscaping requirements by not requiring the parking area to be screened at its west property line from the view of the adjoining residential use as indicated in Section 29-25(e)(5) of the Columbia Code of Ordinances	
1859	Variance	Withdrawn	3200 3301, 3401, 3304, 3302 3410 . . 3200	W. Broadway Broadway Business Park Court Broadway Business Park Court (lot with climax forest identified for preservation on plan submitted in 2001) Broadway Business Park Court (all C-1 zoned lots) Yorkshire Drive (two R-1 zoned lots immediately to the south of 18-20 Yorkshire Drive and lots with climax forest identified for preservation on the plan submitted in 2001)	Broadway & Broadfield Properties, LLC	Phebe La Mar and Daniel Beckett	March 12, 2013 April 9, 2013 May 14, 2013	n/a	
1860	Conditional Use	Approved	2900	Paris Road	North County Shopping Center, LLC	David Walker	April 9, 2013	conditional use permit for the purpose of constructing and operating a service station	Approval of all building plans that demonstrate compliance with all applicable zoning regulations.
1861	Variance	Approved	1314	Anthony Street	Warnken Properties IV, LLC	Garrett Taylor and Craig Van Matre	April 9, 2013	variance to the requirement that parking spaces not be allowed in the required front yard for R-3 zoned properties by allowing the existing four (4) parking spaces to remain in the required twenty-five (25) foot front yard as shown in Exhibit A	
1862	Variance	Approved	2409	Rock Quarry Road	Michael and Jewel Keevins	n/a	April 9, 2013	variance to the requirement for all new and expanded vehicle parking and maneuvering areas to be paved with concrete, asphalt, or an alternative paving material as determined by the director of the community development by allowing a portion of the driveway/access route to be gravel as shown in Exhibit A, and pending approval of the plat by the City Council	
1863	Variances	Withdrawn	500	Big Bear Boulevard	BFH Commercial Holdings, LLC	Bryan Bacon	May 14, 2013	n/a	

CASE NO.	TYPE OF CASE	FINAL ACTION	PROPERTY ADDRESS		PROPERTY OWNER	ATTORNEY	MEETING DATES	CERTIFICATE OF DECISION	SUBJECT TO CONDITIONS:
1864	Variance	Approved	205	Business Loop 70 East and the lot on Illinois Avenue to the north of 205 Business Loop 70 E	McDonald's Corporation and Franchise Realty Corp	Scott Seitter	May 14, 2013	variances to the requirement for fifteen percent (15%) of the land area to be landscaped and the requirement for a six (6) foot wide landscaping strip within private yards separating parking areas from abutting street rights-of-way as indicated in Section 29-25(e)(3) of the Columbia Code of Ordinances by allowing eleven percent (11%) of the land area to be landscaped, which is less than required, and the landscaping strip on the west (Illinois Avenue) side of the lots to be no less than three (3) feet, which is less than required	
1865	Variances	Approved	901 500	Richmond Avenue Burnam Avenue	Delta XI Housing Corporation of Delta Delta Delta	Skip Walther	May 14, 2013	variances to the minimum number of off-street parking spaces required, the requirement that no parking be permitted within six (6) feet of an adjoining lot in a residential district, the on-premises parking requirement, the twenty-five (25) foot front yard setback requirement for the west lot (500 Burnam Avenue), the restriction of parking in the required front yard, and the twenty-five (25) foot rear yard setback requirement for the east lot (901 Richmond Avenue) by allowing a parking lot to be constructed on the west lot (500 Burnam Avenue), which provides parking for the lot to the east (901 Richmond Avenue) and is within four (4) feet of an adjoining lot in a residential district to the south, by allowing a total of forty-two (42) parking spaces, which is less than required and is accommodated on both lots through thirty-eight (38) vehicle spaces and four (4) bicycle spaces, by allowing a six (6) foot front yard setback, which is less than required, on the west lot (500 Burnam Avenue) for the proposed parking lot, and by allowing a five (5) foot rear yard setback, which is less than required, on the east lot (901 Richmond Avenue) for the proposed additions to the existing house with the expectation that the replat involving these two lots move forward expeditiously, said replat submission and approval not being a contingency or condition of approval of the variances	
1866	Variance	Approved	601	W. Stewart Road	Matthew McGrath and Frances Dickey	Phebe La Mar	June 11, 2013	variance to the side yard setback requirement by allowing the existing tree house to remain in its current location in its current state with the stipulation that the tree house could be repaired, but could not be added onto or replaced	
1867	Variance	Approved	100	N. Cedar Lake Drive	NWL Real Estate, LLC	Marjorie Lewis	June 11, 2013 July 9, 2013	variances to the building height requirement by allowing the existing building and the proposed addition to have a maximum height of forty (40) feet, which is higher than permitted with the suggestion that NWL Real Estate, LLC make application to rezone the property	
1868	Appeal	Denied	1407 1406	Windsor Street Liberty Street	Kathy Doisy and Matthew Knowlton (appellants) (Property owned by Haker Property Management LLC)	Phebe La Mar	September 10, 2013	n/a	
1869	Variance	Approved	805	Mt. Vernon Avenue	Jean Bruns	n/a	September 10, 2013	variance to the side yard setback requirement by allowing the proposed deck addition to encroach into the south side yard setback with the stipulation that it not exceed the existing south wall of the house in terms of its encroachment	
1870	Conditional Use	Approved	2201	I-70 Drive Northwest	Boone County Fire Protection District (owner) and St. Charles Tower, Inc. (lessee)	Jeff Parshall and Daniel Beckett	November 12, 2013	conditional use permit for the purpose of constructing a 140 foot monopole style telecommunications facility and the associated above ground communications equipment shelter	
1871	Variance	Approved	29	S. Eighth Street	GAP Properties, LLC (property owner) and Columbia Hospitality Management, LLC (manager and owner of restaurant business)	Marjone Lewis	November 12, 2013	variances to the sign ordinance by allowing a projecting sign that exceeds the maximum square feet permitted and projects further from the face of the wall than permitted, and by allowing the top of the sign to be further from the ground than permitted by allowing a 64 (sixty-four) square foot projecting sign that extends twelve (12) feet from the face of the wall, and by allowing the top of the sign to be fourteen (14) feet above the ground	
1872	Variance	Approved	314	McNab Drive	T. Linda Sneed	n/a	December 10, 2013	variance to the minimum setback requirement for an accessory structure by allowing the garage to be located twenty-five (25) feet from the front lot line, which is less than required	
1873	Conditional Use	Approved	2201	I-70 Drive Northwest	Boone County Fire Protection District (owner) and St. Charles Tower, Inc. (lessee)	Jeff Parshall and Daniel Beckett	January 14, 2014	conditional use permit for the purpose of modifying the 140 foot monopole style telecommunications facility, approved per Board of Adjustment Case No. 1870, such that its height may increase by 15 feet to a maximum of 155 feet	Extension of any structural steel beyond 140 feet shall not be permitted without conversion of the existing monopole to a "stealth" design approved by the Board of Adjustment following a public hearing
1874	Conditional Use/Variances	Approved	1100	Business Loop 70 West	H&S 1100 Properties, LLC (owner) and Ferguson Enterprises, Inc. (proposed tenant)	Robert Hollis	February 11, 2014	conditional use permit for the purpose of allowing plumbing, heating, air conditioning, and electrical businesses, which may include related customary activities such as contracting, retail and wholesale sales and distribution and variances to the screening and landscaping requirements cited in Section 29-25(e)(3) of the Columbia Code of Ordinances by not requiring the six foot-wide landscaping strips along the I-70 and Business Loop rights-of-way	Approval of building plans that demonstrate compliance with all applicable zoning and stormwater regulations.
1875	Conditional Use	Approved	4201	I-70 Drive Southeast	CEK Holdings, LLC (owner & lessor) and Vickie Pence (lessee representative)	Ruth O'Neill	February 11, 2014	conditional use permit for the purpose of allowing a church use, including temporary Room At The Inn (RATI) community services, for period not to exceed five years	The parking lot be striped to delineate the required number of parking spaces by May of 2014, and if that condition is not met, the conditional use permit shall be revoked
1876	Variances	Approved	711	Tiger Avenue	Delta Upsilon Alumni Corporation	Robert J. Buckley	February 11, 2014	variances to the maximum building height requirement, the screening and landscaping requirements for paved areas within fifty feet of a residential use/zoning district as required in Section 29-25(e)(5) of the Columbia Code of Ordinances; the requirement that parked vehicles shall be prevented from intruding on the travel lane of the public alley on the west property line; and the front yard setback requirement, and the parking access aisle width requirement by allowing the building height to be forty-one (41) feet, which is higher than permitted; not requiring screening and landscaping for the paved areas along the west property line that were within fifty feet of a residential use/zoning district as required by Section 29-25(e)(5) of the Columbia Code of Ordinances; not requiring curb islands, wheel stops, or other means that would prevent parked vehicles from intruding on the travel lane of the public alley along the west property line, allowing a fifteen (15) foot front yard setback, which is less than required, and allowing the parking access aisle width to be twenty (20) feet (of which ten (10) feet is the public alley adjacent to the west property line of the site and ten (10) feet is the private property along the west property line of the site), which is less than required	

CASE NO.	TYPE OF CASE	FINAL ACTION	PROPERTY ADDRESS		PROPERTY OWNER	ATTORNEY	MEETING DATES	CERTIFICATE OF DECISION	SUBJECT TO CONDITIONS:
1877	Conditional Use	Approved	201	S. Providence Road	TKG St. Peters Shopping Center LLC	Nate Keller and Robert Hollis	March 11, 2014 April 8, 2014 May 13, 2014	conditional use permit for the purpose of allowing uncovered, surface off-street parking	
1878	Variance	Approved	108	Crestmere Avenue	Elaine L. Wilson	n/a	April 8, 2014	variance to the minimum side yard requirement for a private garage by allowing a garage to be located 1.95 feet from the east side lot line, which is less than required	
1879	Variances	Approved	213	W. Forest Avenue	Ernest Rigdon, III	n/a	May 13, 2014	variances to the side yard setback requirement and the rear yard setback requirement by allowing the existing structure and an addition to be located four (4) feet from the west side yard lot line and three (3) feet from the rear yard lot line, which is less than required	
1880	Variance	Approved	410	Conley Avenue (located along the south side of Conley Avenue between Fourth Street and Fifth Street)	Columbia Properties II, LLC	Phebe La Mar	May 13, 2014	variance to the requirement that canopies or open porches not have a roof area exceeding sixty (60) square feet by allowing one canopy to have a roof area of 104.01 square feet and another canopy to have a roof area 228.38 square feet	
1881	Appeal	Approved	308	E. Broadway, which is also known as 32 S. Providence Road, 19 S. Providence Road, 320 E. Broadway, 300 E. Broadway, 1 S. Fourth Street, 11 S. Fourth Street, 15 S. Fourth Street, 17 S. Fourth Street, 19 S. Fourth Street, 23 S. Fourth Street, and 25 S. Fourth Street	Roth Properties LLP, Mary M. Hackett Trust #1 (owners) and CVS	Robert Hollis	May 13, 2014	a determination that a conditional use permit is not required for the drive-up facility and to recognize same as a permitted use under the C-2 zoning district by determining a conditional use permit is not required for the drive-up facility and recognizing same as a permitted use under the C-2 zoning district	
1882	Conditional Use	Withdrawn	4617, 4619, 4621 and 4623	Brandon Woods	SS Chapel Properties LLC (owner) and Child Abuse & Neglect Emergency Shelter, Inc. dba Rainbow House (tenant)	Phebe La Mar	June 10, 2014	n/a	
1883	Conditional Use	Approved	4450	Sawgrass Drive	Marjone McGrath Revocable Intervivos Trust and JQB Construction, Inc.	Phebe La Mar	June 10, 2014 August 12, 2014	conditional use permit for a private outdoor swim club, which would include swimming pool(s), restroom facilities, pool decks, and associated off-street parking	Parking spaces shall be increased to meet the requirements of Section 29-30 of the Columbia Code of Ordinances and a final landscaping plan meeting the requirements of Section 29-25 of the Columbia Code of Ordinances shall be submitted.
1884	Conditional Use	Approved	1604	W. Business Loop 70	Loop 70 Properties, LLC	George Smith	July 8, 2014 August 12, 2014	conditional use permit for the purpose of allowing plumbing, heating, air conditioning, and electrical businesses, which may include related customary activities such as contracting, retail and wholesale sales and distribution	No outside storage of supplies or materials shall be permitted on-site and no commercial distribution of plumbing, heating, air conditioning, electrical equipment or supplies shall be permitted as part of the business operation
1885	Variances	Approved	1805	West Worley Street	Southport-Yarco, L.L.C.	H.A. Walther	July 8, 2014	variances (1) to reduce the rear yard setback to twenty feet; (2) to allow parking in the rear yard setback within six feet of an adjoining residential lot; (3) to allow no screening for a paved area that is greater than 1,500 square feet and that is within 50 feet of a residential lot; (4) to permit paved terraces to encroach into the side yard setback; and (5) to permit off-premise parking by (1) allowing a twenty (20) foot rear yard setback, which is less than required; (2) allowing parking in the rear yard setback within six (6) feet of an adjoining residential lot; (3) not requiring screening for a paved area that is greater than 1,500 square feet and that is within fifty (50) feet of a residential lot, (4) allowing only the paved terraces/patios to encroach within three (3) feet of the east side yard lot line, which is less than required, and (5) allowing off-premise parking on the south side of the existing drive aisle for the Columbia Square Townhomes residential development	Southport-Yarco, L.L.C. obtain an access easement from the owner of Columbia Square Townhomes all the way from the parking area to the public street.
1886	Conditional Use	Approved	3504 3411	Wisteria Lane Crape Myrtle Drive	Beacon Street Properties, LLC	Kara Linnemeyer	September 9, 2014	conditional use permit for the purpose of constructing and operating a private swimming pool and clubhouse facility	The future submitted plan meeting all applicable zoning regulations and for a minimum of ten (10) parking spaces to be provided.
1887	Conditional Use	Approved	5621	Spicewood Drive	Columbia Development Group, LLC	Kara Linnemeyer	September 9, 2014	conditional use permit for the purpose of constructing and operating a private swimming pool and clubhouse facility	The building plans demonstrating compliance with all applicable zoning regulations, a minimum of ten (10) parking spaces, the installation of bushes to screen the north and south side of the parking lot, and the planting of trees along the north and south property line at a distance of fifty (50) feet on center.
1888	Conditional Use	Approved	3710	W. Broadway, the proposed private swimming pool and clubhouse facility will be known as 3690 W. Broadway	Kelly Highlands Partnership, LP	Marjorie M. Lewis	September 9, 2014	conditional use permit for the purpose of constructing and operating a private swimming pool and clubhouse facility	Building plans that demonstrate compliance with all applicable zoning regulations being approved prior to the issuance of building permits, a fence and landscaping screen being installed along the south side of the pool deck to provide eighty percent (80%) opacity to a height of eight (8) feet upon installation, the pool, clubhouse and residential portion of the subject site to remain under common ownership, and the site plans present being in substantial compliance with the final site plans
1889	Variance	Approved	4908	Steeplechase Drive	Gary R. Drewing Living Trust dated November 7, 1994	Phebe La Mar	November 11, 2014	variance to the setback requirement for an accessory structure by allowing the detached garage to be located fifty-four (54) feet from the front lot line, which is less than required	
1890	Variance	Denied	215	W. Sexton Road	Richard and Maria Parker	n/a	November 11, 2014	n/a	
1891	Variance	Withdrawn	1026	Westwinds Drive	Great Circle (contract owner)	Bryan C. Bacon and Robert Hollis	November 11, 2014 December 9, 2014	n/a	
1892	Variance	Approved	4515	Kirkdale Drive	Gary R. Turner	n/a	November 11, 2014	variance from the rear yard setback requirement by allowing the existing deck and a roof addition over the existing deck to be located nineteen (19) feet from the rear yard lot line, which is less than required	
1893	Variance	Approved	1400	Creekwood Parkway	Ehrhardt's Macon, LLC	Tom Harrison	January 13, 2015	variance to the sign ordinance by allowing an eighty-three and one-half (83.5) square foot sign on the west elevation as shown in Exhibit A	

CASE NO.	TYPE OF CASE	FINAL ACTION	PROPERTY ADDRESS		PROPERTY OWNER	ATTORNEY	MEETING DATES	CERTIFICATE OF DECISION	SUBJECT TO CONDITIONS:
1894	Conditional Use	Approved	1026	Westwinds Drive	Great Circle (contract owner)	Robert Hollis	February 10, 2015	conditional use permit for the purpose of a group home for mentally or physically handicapped persons	
1895	Vanance	Approved	217-219	North Ninth Street	Jennifer Building, LLC	Jennifer Bukowsky and Marjorie Lewis	February 10, 2015	variance to the sign ordinance by allowing a forty-nine (49) square foot wall sign on the south side/elevation, which does not face a public or private street, or alley, and is larger than permitted	
1896	Variance	Withdrawn	413	Grapevine Court	Michael R. and Angela M. Baker	Marjorie Lewis and B. Daniel Simon	March 10, 2015	n/a	
1897	Variance	Approved	407	Burnam Avenue	Alpha Gamma Sigma Building Association	Skip Walther	March 10, 2015	variance to the building height requirement by allowing the building height to be forty (40 feet), which is higher than permitted.	
1898	Variance	Approved	1511	E. Broadway	Hagan Scholarship Foundation	Marjorie Lewis	March 10, 2015	variances to the height requirement for a cupola and the off-street parking requirement by allowing the cupola height to be one hundred two (102) feet, which is higher than permitted and a total of thirty-nine (39) parking spaces, which is less than required	



City of Columbia Board of Adjustment

Authority, Duties, Meeting Procedures, and Variances

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12/09/2014

Who is the Board and what are they Adjusting?



12/09/2014

Section 29-31(g)(6) Jurisdiction

- To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the administration or enforcement of this chapter.
- In passing upon appeals where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this chapter, to vary or modify the application of any of the regulations or provisions of such chapter relating to the construction or alteration of buildings, so that the spirit of such chapter shall be observed, public safety and welfare secured, and substantial justice done.

12/09/2014

Section 29-31(g)(6) Jurisdiction cont.

- To hear and decide all matters referred to it or upon which it is required to pass under the provisions of the laws and ordinances of the city.
- To grant a permit for a temporary building for commerce or industry in a dwelling district which is incidental to the dwelling development, such permit to be issued for a period of not more than two (2) years.
- To determine, in cases of uncertainty, the classification of any use not specifically enumerated in this chapter.
- "Use" Variances are outside Board jurisdiction in Columbia

12/09/2014

Topics

- **Authority, Duties, and Obligations of the Board**
- Board Procedures
- **Standards Court's use in reviewing Board decisions**
- Real Life Examples

12/09/2014

What can the Board do?



- Determine and vary the application of regulations and restrictions of City in harmony with their general purpose and intent and in accordance with general or specific rules therein contained

• § 89.080 R.S.Mo.

12/09/2014

89.100 R.S.Mo. Jurisdiction

- Hear appeals of any decision of the administrative officer by:
 - (1) "aggrieved" persons,
 - (2) certain neighborhood associations, or
 - (3) an officer, department, or board of the city
- All meetings must be open to the public.



12/09/2014

Authority

Code Section 29-31:

- **reverse or affirm, wholly or partly; or modify** the order, requirement, decision or determination appealed from
- make such **order, requirement, decision or determination** as ought to be made
- Has all powers of the officer from whom appeal is taken.

89.090 R.S.Mo.

12/09/2014

Powers of the Board

- May **vary or modify** "application" of regulation to avoid "practical difficulties or unnecessary hardship in ... carrying out **the strict letter of such ordinance.**" §89.090 R.S.Mo.
- Must act only to carry out the "**spirit**" of the ordinance, and
- May not grant a variance without "competent and substantial evidence."

12/09/2014

Procedural Duties

- The Board of Adjustment shall:
 - Fix a reasonable time for the hearing of appeal
 - Give "public notice"
 - Give "due notice" to the parties in interest, and
 - Make a decision within a reasonable time
 - Keep minutes showing the vote (or abstention) of *each* member
 - Keep records of its examinations and other official actions, immediately filed in office of board as a public record
 - Have a court reporter "take down" all testimony, objections thereto and rulings thereon
- These functions are generally carried out by the office of the City Clerk

Code Section 29-31

Motions

- Be specific as possible
 - Identify standard to be varied and what will be allowed by variance
 - Example: Motion to grant a variance to [*identify standard*] to allow [*identify what will be allowed by variance*]
- Take the time to get it right:
 - Can ask for motion to be written out and repeated, if needed
 - Can ask for assistance from City Attorney/Clerk in formulating motion.

12/09/2014

Motions

- Always move to "grant"
 - Remember, affirmative vote of 4 members needed to grant a variance
 - 3 to 2 vote to grant means variance is denied
 - Reduces potential number of votes that need to be taken by Board
 - Example: 2 to 3 vote on motion to deny
 - Result: Ineffective to deny variance; another vote on motion to grant is needed.
 - Over time, this reduces uncertainty in voting
 - "Yes" always means grant
 - "No" always means deny

12/09/2014

Procedural Duties

- Columbia Zoning Code sets requirements & procedures
 - Need concurring vote of **4** members to decide in favor of the applicant
 - Board cannot not meet with less than 4 members (quorum)
 - Chairman or Vice Chairman may administer oaths and compel attendance of witnesses

Code Section 29-31

Conducting Hearings

- It's just like a trial
 - Evidence entered into records as exhibits
 - Witnesses give sworn testimony
 - Transcript of proceedings taken
- Common Sense Rules
 - Frame the issue
 - Discussion through the Chair
 - Stick to the facts
 - Speak to the issue
 - Try not to stray into hypotheticals

Remember: You Are Making a Record!

Procedure - Sunshine Law

OPEN MEETINGS:

- 🕒 **Posting** – 24 hours in advance
- 📅 **Notice** - of time, place and purpose of meeting (agenda)
- 🏢 **Public bodies** – all entities – formal/informal subsets
- 🕒 **Exception** – social or "ministerial" meetings
- 🔒 **Closed votes** – Not allowed
- 👥 **Quorum Rule** – constitutes a meeting subject to Sunshine requirements.
- ☑ **Polling** – possible violation if done in lieu of a noticed public meeting



12/09/2014

Sunshine Law - Penalty

🌱 Fines of up to:

- 🌱 **\$1,000** - for "knowing" violation
- 🌱 **\$5,000** - for "purposeful" violation
- 🌱 **Plus attorneys fees.**
- 🌱 **Fines can be assessed against members personally.**

12/09/2014

Challenges to Decisions of Board of Adjustment

- Appeal to Circuit Court
 - ♦ Potential Challengers:
 - ♦ Persons aggrieved by Board decision
 - ♦ Any taxpayer
 - ♦ Any officer, department, board or bureau of the City
 - ♦ Court defers to Board if there is "substantial and competent" evidence supporting decision
 - ♦ Court generally will not second-guess decision, but will rather ensure that there is substantial evidence to justify a decision and did not abuse discretion
 - ♦ That is why making a clear record is important.

12/09/2014

Ex Parte Communications

- Board is a quasi-judicial decision-maker
 - ♦ Members cannot discuss cases with applicants, proponents, or opponents
 - ♦ "I cannot discuss cases that are before the Board outside the public hearing." CLICK.
- What if an Ex Parte Communications happens?
 - ♦ Member should disclose communication
 - ♦ Member must recuse themselves
 - ♦ Preferably before hearing so attendance of an alternate can be secured.
- If not disclosed and recused, ex parte communications can be challenged as a violation of Due Process constitutional rights

12/09/2014

Variances

- Variances generally not appropriate to:
 - Alleviate "mere inconveniences"
 - Example: alleviating inconveniences related to ice or snow not enough
 - Make valuable or useful property more valuable or useful
 - Effectuate policy differing from ordinance
 - Variance must observe "spirit of ordinance"
 - Allow "wants" vs. "needs"
 - Pools, tennis courts, oversized garages, etc.
 - Provide an easier process or allow applicant to avoid other available processes.

12/09/2014

General Rules

- Applicant (not Board) must prove that he/she would suffer a **practical difficulty or an unnecessary hardship** without variance
- Burden of proof is on Applicant
- **Hardship or practical difficulty must be unique to property and different from that suffered throughout zone or neighborhood**
 - Question to ask in deciding every variance application:

"What is unique about this particular piece of property?"

If that cannot be clearly answered, then there is likely not substantial evidence to support a variance.

12/09/2014

Site Visits

- Group Site Visits
 - ♦ Don't do it
 - ♦ Likely a violation of Sunshine Law as an unposted meeting
- ♦ Individual Site Visits
 - ♦ Discouraged
 - ♦ Decisions must be based on substantial evidence contained in the record – the record is built at the public hearing
 - ♦ If you make a Individual Site Visit:
 - ♦ Disclose at public hearing
 - ♦ Describe conditions observed at Site Visit and how those observations affect your decision
 - ♦ Give Applicants/opponents opportunity to respond/rebut.

12/09/2014

Variances

- The most common and challenging function that a Board of Adjustment performs
- **Primary function: To prevent "takings" of property through otherwise normal function of zoning code**
 - "A variance contemplates a departure to preclude confiscation of property." *Taylor v. BZA of Blue Springs*, (Mo. App. 1987)
- Appropriate only where Code constitutes a **severe interference** with landowner's ability to **use** property
- "[T]he authority to grant a variance should be exercised **sparingly** and only under **exceptional circumstances**." *Doorack v. Bd. of Adj. of City of Town & Country* (Mo. App. 1986)

12/09/2014

Area Variances

- Variance to a **restriction** on a use that is otherwise permitted (i.e., reducing a setback restriction)
- "**Practical difficulties**" standard:
 - "Property cannot be used for a permitted use without coming into conflict" with ordinance
 - "Severe interference" with ability to use land

12/09/2014

Area Variances – Factors of Practical Difficulties

- How **substantial** is variation vs. requirement?
- **Effect** on available governmental facilities (fire, water, garbage) caused by increased density?
- Substantial change in **character of neighborhood**?
- Substantial **detriment to adjoining properties**?
- Any **alternative** other than variance?
- Will **interest of justice** be served by allowing variance, considering above factors and the **manner** in how "difficulty" arose?

12/09/2014

Other Permissible Considerations

- Economic hardships (*but generally must pertain to nature of the property rather than the character of the owner*)
 - i.e., *Unique features of land would make complying with ordinance unduly expensive for any property owner.*
- Would denial amount to a denial of any permitted use of the property?
- Did the property owner cause the difficulty or hardship?

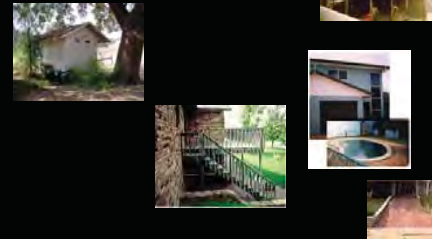
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Self-Created Difficulties

- Generally not appropriate to grant variance to address or correct self-created difficulties.
- Two common types of self-created difficulties:
 - Purchase of property knowing variance is needed
 - A variance should not issue when the applicant caused the difficulty or hardship or when the difficulty predates the applicant's purchase of the property. *J.R. Green Props., Inc. v. City of Bridgeton* (Mo. App. 1992)
 - "One who purchases realty with the intention of applying for a variance cannot contend that restrictions caused him such peculiar hardship that he is entitled to special privileges."

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Examples



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Cases

Swimming pool

McMorrow v. Bd. of Adj. Town & Country (Mo.App. 1989) (affirmed denial of area variance)

The lot "is shaped ... like an anteater's snout"



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Self-Created Difficulties

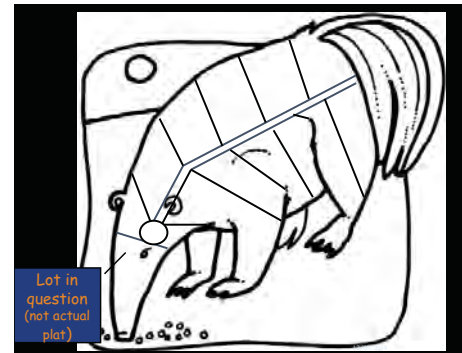
- Making illegal work legal
 - See *Hutchens v. St. Louis County* (Mo.App. 1993): No substantial evidence to support variance to setback for carport even though carport already built
- Conditions personal to landowner not relevant to whether variance should be granted.
- Claimed economical hardship:
 - Lost investment of \$8,300 to build carport
 - \$5,000 cost to tear down carport

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Precedent?

- **pre-c-e-dent:**
 - An act or instance that may be used as an example in dealing with subsequent similar instances
 - *Law.* A judicial decision that may be used as a standard in subsequent similar cases: *a landmark decision that set a legal precedent*
 - If it's unique, there is no precedential effect.
 - Relevant facts are everything!
- Convention or custom arising from long practice: *The President followed historical precedent in forming the Cabinet*
 - If Board consistently grants a variance to a particular ordinance, regardless of unique facts or circumstances, then grants of variances could constitute an abuse of discretion.
- Effect on community
 - If Board can be consistently relied upon to grant variances to Zoning Code, then why should community bother trying to comply with Zoning Code?

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"The land is useable, and is being used, for the use permitted by the zoning ordinances as a single family residence." *McMorrow*

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Failed to show that swimming pool was "a necessity" or "that they will suffer undue financial burdens if one is not built, or that their satisfactory residential use of the property is **impossible** without a pool." *McMorrow*

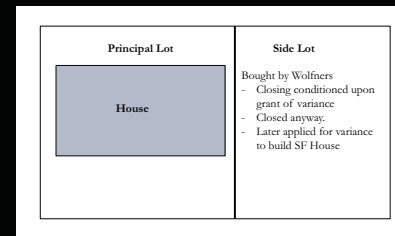
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Board kept asking "why the absence of a pool constituted a 'practical difficulty' ... No explanation was advanced other than that the configuration and topography made construction of a pool impossible without the variances."



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Cases - Wolfner



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Cases

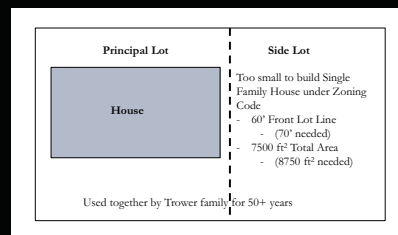
▪ New Home

Wolfner v. Board of Adjustment of City of Warson Woods, (Mo. App. 2003) (affirmed denial of variance)



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Cases - Wolfner



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Cases

▪ New Home - Wolfner

- Denial of variance was supported by substantial evidence
- Wolfners bought property with full knowledge that variance would be needed to construct a single family home
 - \$80,000 purchase price was not evidence of economic hardship
- No evidence that Side Lot could not be used for other appropriate use
 - Was used as side yard/open space for 50+ years
- No evidence that Side Lot had no value if no house was built on it.

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Cases

▪ Carport - *Volkman v. City of Kirkwood*,

(Mo.App. 1981)
(affirmed denial of area variance; slope of yard and having to park on the street, was not unique to their property but was common to the residents on their street.)



Also--*Hutchens v. St. Louis County* (Mo App. 1993)
(affirmed denial of area variance even though carport already built)

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Cases

Carport

Volkman v. City of Kirkwood,
(Mo.App. 1981)



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Cases

- **Carport II**
- *Bd. of Aldermen of Cassville v. Bd. of Adjustment* (Mo. App. 2012)
- *Board of Aldermen appealed Board of Adjustment's grant of the variance as unsupported by the evidence*
- Substantial evidence in support of variance did not show exceptional topographic or other circumstances other than those created by applicant.
- Hardship does not include rain and snow, which constitute only an occasional inconvenience and is not a condition affecting that property greater than another property of the neighborhood.
- *Applicant was forced to tear down illegal carport.*

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Cases

Additional driveway

Doorack v. Board of Adjustment of the City of Town and Country,
(Mo.App. 1986)
(affirmed denial of variance)

-Implicated traffic safety

-Build house despite 2nd driveway being originally denied as part of subdivision process



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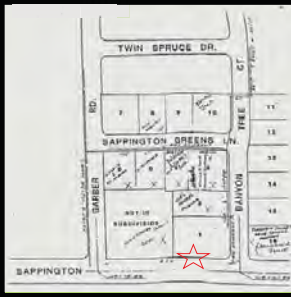
"But, everybody else has one!!!"



Privacy fence

Behrens v. Ebenrech,
(Mo.App. 1990)
-Noise and litter from busy road was not "difficulty different from that suffered throughout the zone or neighborhood."
-Alternatives existed
• Legal fence on building line
• Shrubbery on property line

Cases



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Cases

Storage structure



Slate v. Boone County Board of Adjustment,
(Mo.App. 1991) (affirmed denial of area variance)
• That storage structure increased efficiency of auto salvage business was not a "practical difficulty"
• Applicant had to remove illegal addition

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Cases

Storage structure

State ex rel. Klawuhn v. BZA of City of St. Joseph,
(Mo. App. 1997)

(reversed Board's grant of an area variance)

"Size of the storage building was not dictated by the shape or topography of the lot but rather by the [Applicant's] desire to store their numerous vehicles and equipment inside."



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Cases

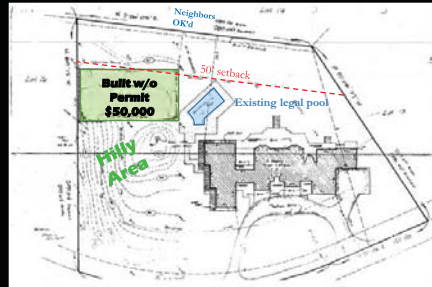
Garage

- *State ex rel. Brannum v. BZA of City of Kansas City*, (Mo.App. 2002) (affirmed denial of area variance)
- construction of a garage that exceeded setback requirements and rear lot coverage limitations **because width of lot was not peculiar to property.**
- Personal conditions such as expense of building and assert that garage would raise property value not relevant
- City not estopped by informal comments by City inspectors



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Example Case: Tennis Court



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Example Case: Tennis Court

Zwick v. Board of Adjustment of the City of Ladue, 857 S.W.2d 325 (Mo.App. 1993)

- Board denied variance
- Denial upheld on procedural grounds
- Relevant Factors?
 - Practical difficulties?
 - Is Use as Single Family Residence impaired by lack of tennis court?
 - Is ability to use land "severely impaired" by lack of tennis court?
 - Self created?
 - Built without obtaining permit in violation of setback
 - Lost investment of \$50,000? Economic Hardship?
 - Other Factors?

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Questions



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