

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 55-07

AN ORDINANCE

authorizing the City Manager to execute an amendment to the Fairview Marketplace development agreement with Broadway-Fairview Venture, L.L.C. and Broadway-Fairview Transportation Development District; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute an amendment to the Fairview Marketplace development agreement with Broadway-Fairview Venture, L.L.C. and Broadway-Fairview Transportation Development District. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2007.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

**AMENDMENT TO DEVELOPMENT AGREEMENT
(Fairview Marketplace)**

On this _____ day of _____, 2007, the City of Columbia, Missouri, a municipal corporation, Broadway-Fairview Venture, L.L.C., a Missouri limited liability company, and the Broadway-Fairview Transportation Development District, a Missouri transportation development district, amend their development agreement of March 8, 2006 as follows:

1. Paragraph 7.b.(7) of the development agreement, which imposed an obligation on the developer to construct a wrought iron fence at least six (6) feet in height along the rear of the Wal-Mart store, is amended to read as follows:

(7) A wrought iron fence as least four (4) feet in height must be installed along the rear (north side) of the Wal-Mart store as depicted on the plans.

2. All other provisions of the development agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have caused this amendment to be executed by their duly authorized agents on the day and year first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
H. William Watkins, City Manager

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Fred Boeckmann, City Counselor

BROADWAY-FAIRVIEW VENTURE, L.L.C.

By: _____
R. Otto Maly, Manager

BROADWAY-FAIRVIEW TRANSPORTATION
DEVELOPMENT DISTRICT

(SEAL)

By: _____
Hiram Watson, Chairman of the Board
of Directors

ATTEST:

Marc Kirchhoff, Secretary of the
Board of Directors

Source

Law Department

TB

TO: City Council
FROM: City Manager and Staff *[Signature]*
DATE: January 25, 2007
RE: Broadway-Fairview Wal-Mart Development Agreement

SUMMARY:

A council bill has been prepared that would allow a four-foot wrought iron fence behind the Broadway-Fairview Wal-Mart rather than the six-foot fence previously agreed to.

DISCUSSION:

A letter from Craig Van Matre is attached to this memorandum explaining that through mistake and inadvertence a four-foot wrought iron fence was installed behind the Broadway-Fairview Wal-Mart rather than the six-foot wrought iron fence required by the development agreement.

A council bill has been prepared that would authorize an amendment to the development agreement to provide for the four-foot fence.

SUGGESTED COUNCIL ACTION:

Passage of the ordinance.

Fiscal Impact

YES
NO X

Other Info.

RECEIVED

JAN 16 2007

CITY MANAGERS OFFICE

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*ADMITTED IN MISSOURI AND ILLINOIS
**ADMITTED IN MISSOURI, ILLINOIS, AND WASHINGTON, D.C.

January 15, 2007

Mayor Darwin Hindman
Members of the City Council
H. William Watkins, City Manager
John Glascock, Public Works Director
Tim Teddy, Planning Director
City of Columbia
701 E. Broadway
Columbia, MO 65201

Re: Request for modification of "Development Agreement" dated March 8, 2006, between the City of Columbia, Broadway-Fairview Venture, L.L.C., and Broadway-Fairview Transportation Development District / Approval for reduction in height of provisions of paragraph 7, b, (7) to change height of decorative fence from 6 feet to 4 feet

Dear Mr. Mayor, Members of the City Council, Mr. Watkins, Mr. Glascock, and Mr. Teddy:

Request is hereby made on behalf of Broadway-Fairview Venture, L.L.C., and Broadway-Fairview Transportation Development District that Ordinance No. 018943 and related Development Agreement dated March 8, 2006, be modified as follows:

1. **Existing Ordinance:** On March 6, 2006, the City approved Council Bill No. B 87-06A which approved the final plat of Fairview Marketplace. Section 4 thereof approved the execution of a Development Agreement which was attached as "Exhibit B" to said Ordinance. A copy of said Ordinance and its attachments (including the Development Agreement) is attached to this letter incorporated herein by reference.

VAN MATRE, HARRISON, AND VOLKERT, P.C.

Mayor Hindman, City Council Members,
Mr. Watkins, Mr. Glascock, and Mr. Teddy

January 15, 2007

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2. **Fence Paragraph:** Paragraph 7, b, (7) of the Development Agreement imposes the responsibility on the Developer to construct a fence along the rear (north side) of the existing Wal-Mart SuperCenter. The language in the agreement reads as follows:

"With respect to the Wal-Mart store to be constructed within the Shopping Center and within the vicinity of the Wal-Mart store in the Shopping Center, the following restrictions and obligations shall apply: . . . (7) a wrought iron fence at least 6 feet in height must be installed along the rear (north side) of the Wal-Mart store as depicted on the Plans."

3. **Mistake:** Through mistake and inadvertence, the Developer's fence contractor constructed a fence only slightly more than 4 feet in height along the north side of the Wal-Mart store. Thus said existing fence does not comply with the above-referenced Ordinance or Agreement.

4. **No Corrective Measure Feasible:** There is no practical way to add additional height to the existing fence. Such additions would be unsightly, would require extensive welding, and would not be practicable. Accordingly, the only way to comply with the Ordinance is to completely remove the existing fence and replace it at substantial cost.

5. **Fence is Decorative Only:** The existing fence is decorative only and does not serve any practical purpose, i.e., it is not a sight barrier or noise barrier, but rather is purely decorative in function. Applicants submit that the aesthetics offered by the existing fence are equal to that which would be provided by a fence of a greater height, and thus do not believe there is any good reason to replace this fence and incur the substantial additional cost involved.

6. **All Other Promises Have Been Met:** The Developer has honored its promises made to the City in connection with this development and has expended substantial additional sums on landscaping that were not originally reflected in the Plans. The Applicants believe that the development involved is a compliment and benefit to the City of Columbia, and that the Applicants are deserving of the requested dispensation under the circumstances.

7. **Needed for Occupancy Permit:** In the absence of a resolution of this issue, the permanent occupancy permit for the Wal-Mart store in this development cannot be issued. This is the only remaining unfinished (noncompliant) issue affecting the issuance of said permanent occupancy permit. The existing temporary occupancy permit will expire in approximately 30 days. Accordingly, this issue is of importance and significance to the Applicants and to the City.

VAN MATRE, HARRISON, AND VOLKERT, P.C.

Mayor Hindman, City Council Members,
Mr. Watkins, Mr. Glascock, and Mr. Teddy
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8. **Request:** Accordingly, request is hereby made to modify the above-referenced Development Agreement by substituting the dimension "4 feet" for the dimension "6 feet" where it appears, and to modify the enabling Ordinance accordingly.

If further information is required, please advise. Please let me know if you want this application for a modification to said agreement to be presented to you in a different or more formal fashion (e.g., as a modification to a C-P plan).

Sincerely,

VANMATRE, HARRISON, and VOLKERT, P.C.

By:



CAVM/tew
Enclosure

pc: TDD Directors
R. Otto Maly
Fred Boeckmann
H. William Watkins