Vice Chair Clithero called the meeting to order at approximately 7:00 p.m. Those members attending included Philip Clithero, Elizabeth Peters, Fred Carroz and Martha John. Also attending were the City Clerk, Sheela Amin, Building Regulations Supervisor, Phil Teeple, and Assistant City Counselor, Steve Van Matre.

The minutes from the regular meeting of May 14, 2013 were approved as submitted on a motion by Ms. John and a second by Ms. Peters.

The following cases, properly advertised, were considered. All persons testifying were duly sworn by the City Clerk.

Case Number 1852 was a request by Kathy Doisy and Matthew Knowlton of 1404 Richardson Street, property owners within twenty feet of 1407 Windsor Street and 1406 Liberty Street, for the Board to rescind the building permit and require the Community Development Department to enforce compliance within the zoning provisions of the Benton-Stephens urban conservation overlay on property located at 1407 Windsor Street and 1406 Liberty Street.

Vice Chair Clithero explained Case No. 1852 had been withdrawn.

Case Number 1866 was a request by Phebe La Mar, attorney for Matthew McGrath and Frances Dickey, for a variance to side yard setback requirement by allowing the accessory structure (tree house) to remain in its existing location on property located at 601 W. Stewart Road.

Vice Chair Clithero explained the applicant had requested this case be tabled to the July 9, 2013 Board of Adjustment meeting due to the lack of a full Board tonight.

Ms. John made a motion to table Case No. 1866 to the July 9, 2013 Board of Adjustment Meeting. The motion was seconded by Ms. Peters and approved unanimously by voice vote.

Case Number 1867 was a request by Marjorie Lewis, attorney for NWL Real Estate, LLC, for variances to building height requirement by allowing the existing building and proposed addition to exceed the maximum height permitted, and for a special permit to allow the non-conforming use to be expanded on property located at 100 N. Cedar Lake Drive.

Vice Chair Clithero opened the public hearing.

Marjorie Lewis, an attorney with offices at 601 E. Broadway, Suite 203, stated she was representing the applicant, NWL Real Estate, LLC.

Vice Chair Clithero explained there were only four Board Members available tonight and asked Ms. Lewis if she still wanted Case No. 1867 to be heard knowing all four Board Members would
have to vote favorably in order for her application to be approved. Ms. Lewis replied she understood and they were willing to proceed.

Ms. Lewis explained NWL Real Estate, LLC was the applicant and owner of the subject property, 100 N. Cedar Lake Drive East, and noted the property was unique because it was bisected by two zoning districts. The C-1 zoning district was along a strip in the front and the rest of the property was zoned C-3. The applicant intended to construct a 10,319 square foot addition to the existing building, which was 24,595 square feet. On May 21, 2013, the City denied a permit from NWL Real Estate, LLC to erect the addition to the building because the height of the proposed addition and the height of the existing building exceeded the allowed C-1 height, which was 35 feet. The C-3 zoning district allowed 45 feet, and the portion of the building that was on the C-3 zoned property was conforming. She explained the applicant was requesting the Board of Adjustment vary or modify the application of the ordinances to the property, and that the Board grant variances allowing the existing building height and the proposed building height to be 40 feet, thus allowing the proposed construction. She offered exhibits 1-16 into evidence and listed those exhibits, and provided a history of the property. She noted Garry Lewis had obtained a building permit for the property, which had the C-1 and C-3 zoning, in 1996, and construction began in 1997. At that time, the building was constructed to a height of 38 feet and 4 inches, which was a non-conforming height for C-1. In 1998-1999, the Columbia Performing Arts Center acquired the property and made substantial interior and other aesthetic improvements, and began to use the facility as dance facility for dance instruction and dance performances. In 1999-2000, the facility was expanded with conforming additions at the rear and sides of the building causing it to be at its present size. In 2010, NWL Real Estate, LLC acquired the property and in 2013, their application for a building permit was denied due to the height of the existing building and proposed addition. She displayed drawings of the building in its past, present and proposed forms. The height of the proposed addition was 35 feet and 3 inches, and the height of the existing building was 38 feet and 4 inches. She displayed a drawing that showed where the zoning change from C-3 to C-1 intersected the building.

Ms. Peters pointed out the building elevations shown did not go to the top of the roof and asked how the height was measured. Ms. John replied the calculation was based on the median height on a sloped roof. Ms. Lewis stated that was correct.

Ms. Lewis pointed out the property use was conforming in both zoning districts and the variances being requested would not have any adverse effect on or any prejudice on the neighboring property owners. She described the uses of other properties nearby and explained this use was not out of character or detrimental to the other uses in the area. She noted the Board had the authority to grant the variances requested per Section 29-31(6)(c) of the Code of Ordinances. She felt this property was unique because it was bisected by zoning, and because it had a pre-existing building on it that was not in conformance with both zoning districts. This was not self-imposed since the present owner was not involved in the construction of the original building and this difficulty was not common to surrounding properties. She noted the proposed addition, which was a few inches over the 35 foot height limitation, was designed so it was in keeping with the existing building aesthetically, and the applicant had not been aware of this issue until they had applied for the building permit for the addition. She explained time was of the essence due to the desire to house the additional students. Students were currently using leased facilities and they needed to bring those students to the main building for safety purposes since they had to walk across the parking lot. She pointed out that the applicant was willing to commit to applying for rezoning in the future if the Board desired, but they were asking for approval of the variances now so they could
begin construction. If the Board of Adjustment varied or modified the application of the ordinances as requested, there would be substantial compliance with the zoning ordinances, the spirit of zoning ordinances would be observed, public safety and welfare will be secured, substantial justice would be done and the viability of the zoning ordinance as a whole would be protected. She understood there was a question as to whether Section 29-28(d) of the Code of Ordinances was applicable and noted she did not believe it was applicable. She explained it referred to a non-conforming building, but then stated extensions to the non-conforming building should not be made unless the building was changed to a conforming use. She pointed out the building was already being used in a conforming manner. She commented that a reading of Section 29-28 of the Code of Ordinances as a whole made it seem the entire section was meant to address non-conforming uses. Since the building was already in a conforming use, she did not believe it applied. She stated the applicant was requesting variances to the height of the existing building and the proposed addition for 40 feet. She reiterated C-3 zoning, on which the two-thirds or three-fourths of the building resided, allowed a height of 45 feet or more, so only the front section of the building, which was located on the C-1 zoned portion of the property, was problematic.

Dick Thomas, 501 Covered Bridge Road, explained the Columbia Performing Arts Center (CPAC) was an immense benefit to the Columbia community as it included a state of the art theater that seated 650 people and taught dance to over 600 students annually. In addition, CPAC had given over $300,000 to local charities. He did not believe anyone would complain if the variances were granted. He read a letter from the Insurance Group, which indicated, as neighbors, they supported the proposed enhancements and expansion of the CPAC building and did not have any problem with the building height.

There being no further comment, Vice Chair Clithero closed the public hearing.

Mr. Teeple explained a variance was needed since the existing building height and proposed addition height exceeded what was allowed in the C-1 zoning district.

Vice Chair Clithero asked if there was any issue with regard to Section 29-28(d) of the Code of Ordinances. Mr. Van Matre explained the standard on the variances was the five factor standard set out in Section 29-31(c) of the Code of Ordinances. The issue with regard to the permit mentioned in Section 29-28 of the Code of Ordinances was tough due to the split zoning and it was unclear at to the area they would use to calculate the 25 percent. In addition, Section 29-28(d) of the Codes of Ordinance was poorly drafted as it discussed a non-conforming building and then a non-conforming use, and it was unclear as to what this meant. He stated he understood the City would issue a building permit if the Board granted the variances for the height of the existing building and proposed addition.

Ms. John asked if they could suggest or request the applicant apply for rezoning. Mr. Van Matre replied a rezoning would cure the problem, but would delay construction, and he did not believe the Board could grant a variance contingent upon the rezoning. He noted the Board could put into the record that they hoped the applicant would proceed with rezoning.

Ms. John made a motion to approve the variances as requested and to suggest the applicant seek rezoning. The motion was seconded by Mr. Carroz.

CASE NO. 1867 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, PETERS,
CARROZ, JOHN. VOTING NO: NO ONE. The variances were approved as requested.

Ms. Peters made a motion to delay the annual appointment of the Chair and Vice Chair of the Board of Adjustment to the next meeting since there was not a full Board tonight. The motion was seconded by Mr. Carroz and approved unanimously by voice vote.

There being no further business, the meeting adjourned at 7:33 p.m.

Respectfully Submitted,

Sheela Amin  
City Clerk