Vice Chair John called the meeting to order at approximately 7:00 p.m. Those members attending included Dennis Hazelrigg, Phil Clithero, Martha John, Matt Reichert and Fred Carroz. Also attending were the City Clerk, Sheela Amin, Community Development Department Director, Tim Teddy, Building and Site Development Manager, Shane Creech, and Assistant City Counselor, Rose Wibbenmeyer.

The minutes from the regular meeting of July 9, 2013 were approved as submitted on a motion by Mr. Hazelrigg and a second by Mr. Clithero.

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

**Case Number 1868** was an appeal by Phebe La Mar, attorney for Kathy Doisy and Matthew Knowlton of 1404 Richardson Street, property owners within twenty feet of 1407 Windsor Street and 1406 Liberty Street, to require compliance with the Benton Stephens urban conservation overlay district, and specifically Section 4(e)(3) of the Benton Stephens urban conservation overlay ordinance, which discusses landscaping requirements associated with parking areas containing more than two spaces on property located at 1407 Windsor and 1406 Liberty Street (owned by Haker Property Management LLC).

Vice Chair John opened the public hearing.

Phebe La Mar, an attorney with offices at 111 S. Ninth Street, explained she was representing Matthew Knowlton and Kathy Doisy, whose home was located across Liberty Street from the property at issue tonight. She submitted for the record certified copies of Section 24-31 of the City Code, Ordinance No. 016424, the Benton Stephens overlay, and regulation 410.02 pertaining to residential driveways. In addition, she provided copies of the presentation slides and the e-mail sent on August 1, 2013 to the developer’s attorney with a copy of the appeal that had been attached. Ms. La Mar pointed out the Benton Stephens overlay included a number of requirements that were over and above what would be required for construction in most areas of the City of Columbia. One of those provisions was that any building face greater than 35 feet in length should be constructed with a differing projection at least once every 35 linear feet. Ms. La Mar displayed a photo illustrating the solution of the developer with regard to that requirement, at that was a 2x6 wood board attached to the back of the house. Although this met the letter of the ordinance, she was not sure it met the spirit of the ordinance. She noted her clients were not appealing this design feature even though they felt the board should be finished in some fashion. The Benton Stephens overlay also required all parking areas containing more than two spaces within twenty feet of a street right-of-way to have a six foot wide street yard landscaping strip within private yards separating parking areas from abutting street rights-of-way. In spite of this requirement, the developer proposed the construction of a driveway that was wide enough to park four cars and the City approved the developer’s request on July 31, 2013. Later that same day, her clients appealed that decision. On August 1, she contacted Skip Walther, the attorney for the developer, and e-mailed him a copy of the appeal to put the developer on notice that construction of a driveway this wide without screening in an area covered by the Benton Stephens overlay was
being disputed. Sometime thereafter, the developer constructed the driveway. She pointed out a certificate of occupancy had not been issued because no plan compliant with the requirements of the Benton Stephens overlay was on file with the Community Development Department even though people had moved into the structure at 1407 Windsor Street on July 27, 2013 and the construction of the parking spaces for four cars was completed shortly thereafter. She commented that application of the overlay required screening of a parking area designed for more than two cars, and when she had spoken with the Community Development staff, she was informed they had concluded the provisions of regulation 410.02, which governed residential driveways was controlling, and because a driveway, such as the one that was proposed, would be permitted in other areas, it should be permitted here as well. She stated staff appeared to be relying on Section 24-31 of the Code, which provided that any person doing any work for which a permit was required hereunder should conduct such work in accordance with standard plans and specifications on file in the office of the Director of Public Works and was marked “Official Copy of Plans and Specifications for Improvements Under Division 2, Article II, Chapter 24 of the Code of Ordinances of Columbia, Missouri.” She felt the determination this section of the Code of Ordinances and the plans and specifications being controlling was incorrect because the area in which the structure was located was not only governed by the ordinances and regulations in place for the rest of the City, but it was also governed by the requirements overlay, which was more restrictive than regulation 410.02. In instances where there was more than one ordinance or regulation that might be applicable, the more specific or restrictive ordinance was the one that needed to be applied. If this was not done, more specific ordinances would be rendered ineffectual and moot. She pointed out her clients were not contesting the developer’s right or obligation to build parking sufficient for at least four cars or the location of the parking area near Liberty Street. Given the specific application of the overlay to this property, she believed the requirements of the overlay must be controlling if a choice had to be made between the application of the requirement of Ordinance No. 016424 or Section 24-31 of the Code and regulation 410.02. She noted the overlay could be applied in a way that allowed the developer to construct the parking spaces necessary for the structure, and the parking area should not have been constructed without screening between some or all of the spaces and the right-of-way on Liberty Street. She understood Liberty Street was not heavily traveled or a highly improved street, but felt that fact was irrelevant to the determination as to whether the overlay should apply. Liberty Street was a street right-of-way and provided primary access for some residences and was the source of street addresses for at least some of those residences. Consequently, the only factor for determining whether the overlay applied was whether the property was located within the geographical boundaries of the Benton Stephens overlay, which it was. She commented that her clients currently were looking at a parking lot from their backyard since there was no screening between the parking spaces and their home, and the situation was compounded by the extra gravel surrounding the parking area. She noted one of the reasons for the implementation of the Benton Stephens overlay ordinance was to prevent someone from looking out of their backyard at a parking lot. She asked the Board to apply the requirements of the overlay to the subject property by requiring the portion of the property that was in excess of two spaces within 20 feet of a street right-of-way to have a six foot wide landscaping buffer separating said parking spaces from the right-of-way, which would ensure no more than two of the parking spaces backing up onto Liberty Street would be exposed.

Matthew Knowlton, 1404 Richardson Street, commented that he and his wife, Kathy Doisy, had not only made this appeal for their sakes and pointed out they had done it for their neighbors as well. He asked those in support of the appeal to stand and approximately 25 people stood. He noted he and his wife had lived in Benton Stephens for most of their adult lives and had been
involved peripherally in the construction of the Benton Stephens ordinance in the late 1990’s. They had come away from that experience with a certain understanding of what the ordinance would and would not do in terms of development in the neighborhood, which was why they decided to stay in the neighborhood. It provided a certain level of protection that was not available in older parts of the community. As a result of their involvement with the development on Windsor Street, they found some of what they thought was true of the ordinance was not being applied in action. They submitted the appeal in order to obtain clarification on some of the specifics of the ordinance they thought they understood, but were not being interpreted the same way by Community Development Department staff. They had not known they would have to argue over the meaning of the word “separate” in terms of a parking lot. He pointed out there was a lot of intense development, and the Benton Stephens overlay ordinance was intended to provide a certain level of protection in the neighborhood in order to make it possible for single-family homes to remain viable without being driven out by higher density development. The ordinance was intended to be restrictive and to level the playing field for single-family homes, and as result, it was important to them to have the ordinance enforced the way it was intended. They felt the decisions of the Community Development staff had watered down the provisions in the ordinance. The purpose of this appeal was to defend what they felt was the original meaning of the ordinance, and in this case, the specific wording in the ordinance. He hoped the Board would agree with their interpretation and help them support the overlay ordinance.

Kurt Albert, 400 High Point Lane, commented that never in the history of Columbia’s zoning laws had so few, caused so much harm to so many. Benton Stephens was a thriving family neighborhood and property values were growing faster there than any other Columbia neighborhood. This was a result of investments and the labor of love of many, and as a result, they wanted to protect and defend their homes. He noted they worked for many years to develop a law that was passed by the City Council, and thought this law would protect them. He stated they now had some doubt, and noted the Board would determine whether they would live under the rule of law or whether criminality would reign. He asked the Board to help the Benton Stephens neighborhood.

Mary Kristen Heitkamp, 600 Paris Court, stated she understood a few parking spaces might seem minor, but the Board would be setting a precedent with its decision as other developers were intent in overriding the overlay district ordinance. She asked them to keep that in mind when making their decision.

Jimmy Markey, 1406 Richardson Street, explained his backyard was directly across Liberty Street from the development and displayed a photo he had recently taken. If there had been screening, the parked car would not have been able to park at that location. He stated the car being parked there made it difficult to travel the road, and this was not an isolated incident as many cars parked along the road. He asked that the developer be required to install screening to protect everyone in the neighborhood.

Jay Hasheider, 1830 Cliff Drive, commented that he had been a long time resident of the Benton Stephens neighborhood and had been given the opportunity to help work on the committee that had drafted the overlay ordinance. He noted this very fragile neighborhood had survived and thrived due to the network of homeowners that had put their stakes in the ground allowing the neighborhood to remain diverse and an enjoyable place to live. It was predominately rental, but had residential character, and the point of the overlay was to keep the residential character in terms of new development. He pointed out they did not want to infringe on the rights of people to
develop and exercise their authority over their property, but noted they had a written law that provided them the opportunity to be protected as single-family homeowners in a neighborhood with a high rate of rental properties. He asked the Board to require the City to enforce the existing law, and stated if they were subjected to developments that would erode life quality, single-family homeowners would disappear from the neighborhood and those that would remain would not make investments in the property. This would result in oblivion for the neighborhood in terms of character and quality of life. He explained the decision of the Board would have a big impact on the neighborhood, which had over 1,000 people residing in it.

Linda Rootes, 315 W. Seventh Street, Fulton, Missouri, explained she had moved to Fulton a couple of years ago after retiring and had recently given up her seat on the North Central Columbia Neighborhood Association Board of Directors. She noted she had been active with that Association from its founding in 1993 until recently and that she still owned property in the neighborhood. During the time a former administration of the Planning Department was encouraging neighborhoods to organize and to find ways to support the kind of development and reinvigoration needed in the neighborhoods surrounding the downtown, she had been active with other neighborhood associations in the passing of the enabling legislation for overlay districts and had worked with those neighborhoods to come to a consensus on what was wanted for the future of their neighborhoods. She stated she had worked with Benton Stephens and suggested that if this particular item in the overlay ordinance was not working or not appropriate currently, the ordinance should be changed. She did not believe the ordinance should be overlooked. She pointed out the City had gone to great lengths to get citizens to participate in visioning processes, charrettes, and other forms of planning, and wondered why citizens should participate if the outcome would be set aside for the convenience of someone else. The precedent set tonight by the Board would send a message to the citizens of Columbia with regard to whether or not it was important to participate in various processes. She was hopeful the Board would affirm it was a good for citizens to participate.

Sunyata Stutesman-Markey, 1406 Richardson Street, stated she resided behind this duplex and wanted the Board to understand the Benton Stephens neighborhood was an asset to the City. She noted she had purchased a house and had invested her life and business in property in the neighborhood because she enjoyed the neighborhood. She reiterated the neighborhood was asset to the City and a fabulous community. It was a part of a bike route from town, the trails and Stephens Park. She noted many people traveled through the neighborhood and felt they would judge the City based on their experience when traveling through the neighborhood. She believed many people wanted to purchase property in the neighborhood due to the overlay agreement and because those in the neighborhood complied with the overlay agreement.

Rita Fleischmann, 1602 Hinkson, commented that she had been a long time member of the Benton Stephens neighborhood and pointed out there had been times when she was a renter that she would leave notes at people’s homes letting them know she would purchase their home if they were willing to sell it as she did not want to live in any other neighborhood. She now owned a historic house and had purchased another house in the neighborhood that was built in 1896 and now zoned R-3 because she did not want anyone to destroy the home or the neighborhood. She stated she believed in the neighborhood and asked the Board to do what it could to preserve it.

Skip Walther, 700 Cherry Street, explained he was an attorney representing the developer, and noted if City staff had told his client they could not do what they had done, he would have likely applied for a variance because the Benton Stephens overlay district had as its purpose the
promotion of development that was compatible with surrounding residential property. He pointed out Liberty Street was primarily used as an access for backyard parking and was compatible with the intent of the Benton Stephens overlay. The structure did not have a Liberty address as it was addressed on Windsor. This was the backyard for the Windsor property and it was used for parking like almost everyone else that utilized Liberty Street. The only difference was that his clients had a concrete drive approach as was required by the City. They were not able to use gravel like the property immediately to the east. He commented that he believed Liberty Street was an alley as it was not paved and did not have curbs, gutters, sidewalks, street lights, traffic control, speed limits signs, etc. The City did not treat it as a street, and everyone that resided there treated it like an alley. He commented that the applicant had the burden to convince the Board that City staff and his clients were wrong, and their argument was to look at the law, and if that was done, the applicants had a problem. Liberty Street had always been an alley, and it had been platted in the City as an alley since 1896. In 1867, Stephens First Addition to the City of Columbia was platted, and it had lots of 10-15 acres in size. This part of Benton Stephens was Lot 4 in Stephens First Addition to the City of Columbia, and in 1896, R.B Price subdivided Lot 4, which was recorded in Book 87 at Page 213. He provided a copy of the subdivision to the Board, and noted the plat identified what was now Liberty Street as a 15 foot alley in 1896. He stated it had never been dedicated to the City of Columbia and had never been a street. The Benton Stephens overlay district prohibited parking greater than two cars without landscaping abutting a street right-of-way, and for that provision to apply, Liberty Street had to be a street, which it was not, and therefore, it did not apply. It was an alley, and the provision did not include alley right-of-way. He believed his client was in compliance with the Benton Stephens overlay, and felt the Board affirming the City staff decision would not abrogate any part of the Benton Stephens overlay district. He asked the Board to deny the applicant’s appeal.

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

Mr. Teddy provided some clarification and explained a driveway was needed to access a parking area. Staff recognized parking areas in the Benton Stephens overlay had to be screened, but the dilemma was not having a mechanism to enforce a narrower driveway to access the spaces. The diagram provided by the applicant showing what they would regard as a compliant parking area had a narrower driveway and a deeper access way from the alley to the parking spaces to allow maneuvering and for landscaping on either side of the driveway. He reiterated they did not have a mechanism to require the driveway to be narrowed or to require spaces to be moved back further within the lot to allow for maneuvering. He noted four spaces were needed in the backyard and they believed landscaping was required, but the driveway specifications allowed for up to a 40 foot driveway and it was common for duplexes for the driveways to double as parking areas. He also pointed out they could not find anything in the ordinance that would prohibit gravel as long as there was a minimum of 25 percent greenspace on the lot. He stated they would enforce the prohibition of parking in the gravel area as that was not allowed and there were problems previously. If the problem continued, the City would require barriers.

Ms. Wibbenmeyer commented that Section 29-2 of the Code provided definitions for an alley and a street, and read those definitions. She noted those definitions should be considered when interpreting the overlay ordinance. She also explained the decision of the Board needed to be based up confident and substantial evidence, and the Board could reverse, affirm or modify the order of the code official.

Mr. Clithero believed this was a special situation and noted the property line was to the edge of
Liberty, which was unlike a typical street that would have a right-of-way of 50 feet for a 32 foot street. He agreed with Mr. Teddy that this made it difficult to tell someone what they could do on their property. He also did not feel an approach was appropriate because an approach generally went on the right-of-way of a street and not on private property. He was troubled by this as it was a special situation. If there was a street with street right-of-way, he thought it would be different.

Mr. Hazelrigg felt another issue was whether it was a street or alley. Mr. Clithero stated he did not feel that made a difference as they had a narrow thoroughfare that people could drive down.

Vice Chair John commented that if she was parking in that parking lot, she would prefer to be able to back up and pull out forward into the alley. Mr. Clithero thought it was more difficult to get off of the side street to get on to the alley than to get out of the parking lot. It was hard to make that corner.

Mr. Clithero made a motion to deny the application appealing the decision of City staff. The motion was seconded by Mr. Carroz.

CASE NO. 1868 VOTE RECORDED AS FOLLOWS: VOTING YES: HAZELRIGG, CLITHERO, JOHN, REICHERT, CARROZ. VOTING NO: NO ONE. The application for the appeal was denied.

Case Number 1869 was a request by Jean Bruns for a variance to side yard setback requirement by allowing the proposed addition (deck) to encroach into the required side yard on property located at 805 Mt. Vernon Avenue.

Vice Chair John opened the public hearing.

Jean Bruns, 805 Mt. Vernon Avenue, noted the contractor, David Brockhouse, would provide the specifics regarding the deck they wanted to install.

David Brockhouse, 5881 Rocky Point Court, explained they wanted to build a deck off of the back of the house. The front door was not the main entrance as it had steep steps, which could not be changed, so the back door was the entrance used the most. The basement entry did not allow them to come straight out, so they wanted to go off to the side. The design would allow the deck to be converted to a ramp in the future as one of the residents had played football and had bad knees, and was one of the reasons they wanted to encroach into the setback. He pointed out the neighbor’s garage was already on the property line. In addition, the overhang of the house was already encroaching as well as the corner of the house, and the deck would go out about as far as the corner of the house.

Mr. Hazelrigg understood the deck was not going out further than the corner of the house. Mr. Brockhouse stated the deck would go out six inches past the corner on the furthest side on the south side of the house. He noted the corner of the house was about 43 inches from the property line.

Vice Chair John asked why it needed to be six feet wide if it was only a passageway. Mr. Brockhouse replied it made it easier to use and allowed for turning at the top if it became a ramp. It also made for a nicer deck sidewalk. Vice Chair John commented that she could see coming out as far as the south house wall, but not any further. Mr. Brockhouse noted it was only six inches.
Vice Chair John stated if it was reduced by six inches she would not have any issue with it. Mr. Hazelrigg agreed they did not want to go any further than the house. Mr. Brockhouse stated he would be agreeable to reducing it six inches.

Tony Bruns, 805 Mt. Vernon Avenue, commented that he was agreeable to reducing it six inches so it did not go further than the far south cantilever part of the home as he had intended for it to be flush because there was a relatively nice flower bed he wanted to preserve. The reason it was designed to be six feet was due to it being the only way to get major appliances in and out of the house. In addition, it was designed to facilitate access for him as he could not ascent stairs easily, so the deck stairs would have a longer run and shorter rise. He pointed out the home did not have an entrance where one did not have to climb stairs to get through the door at this time, and this would change that. He stated the deck was more for facilitating access than for recreation.

Vice Chair John thought five and one-half foot wide would allow for access. Mr. Bruns agreed.

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

Mr. Creech explained a side yard set back of six feet was required for this property and staff did not have the authority vary it, which was why it was before the Board.

Ms. Wibbenmeyer stated the standard was one of practical difficulty or unnecessary hardship.

Mr. Clithero wondered how they should word this variance so it was clear for staff. Mr. Hazelrigg stated it appeared as though the south wall of the house was at 43 inches from the property line. Mr. Clithero was not sure that was a correct measurement. Mr. Creech noted the City did not typically require detailed construction plans for a deck on residential property. They also tended to measure off of what was found at the property. Vice Chair John asked if they could say it needed to be kept in line with the furthest south wall of the house. Mr. Creech replied he would be agreeable to that wording.

Mr. Hazelrigg made a motion to approve the variance with the stipulation that the deck not exceed the south wall of the house. The motion was seconded by Mr. Clithero.

CASE NO. 1869 VOTE RECORDED AS FOLLOWS: VOTING YES: HAZELRIGG, CLITHERO, JOHN, REICHERT, CARROZ. VOTING NO: NO ONE. The variance was approved with the stipulation that the deck not exceed the south wall of the house.

There being no further business, the meeting adjourned at 7:59 p.m.

Respectfully Submitted,

Sheela Amin
City Clerk