Vice-Chair Clithero called the meeting to order at approximately 7:00 p.m. Those members attending included Elizabeth Peters, Philip Clithero, Matt Reichert, Fred Carroz, and Dennis Hazelrigg. Also attending were the Deputy City Clerk, Megan Eldridge, Building and Site Development Manager, Shane Creech, Assistant Fire Marshal, Kyle Edwards, Deputy City Counselor, Cavanaugh Noce and Assistant City Counselor, Ryan Moehlman.

The minutes from the regular meeting of September 9, 2014 were approved as submitted on a motion by Mr. Hazelrigg and a second by Mr. Carroz.

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

**Case Number 1891** was a request by Bryan C. Bacon, attorney for Great Circle (contract owner), for a variance from the required minimum distance between group homes by allowing the proposed group home to be located less than 1,000 feet from another group home on property located at 1026 Westwinds Drive.

Vice-Chair Clithero explained there was a request for this case to be tabled to the December 9, 2014 Board of Adjustment Meeting.

Mr. Hazelrigg made a motion to table Case No. 1891 to the December 9, 2014 Board of Adjustment Meeting. The motion was seconded by Mr. Carroz and approved unanimously by voice vote.

**Case Number 1889** was a request by Phebe La Mar, attorney for the Gary R. Drewing Living Trust dated November 7, 1994, for a variance to the setback requirement for an accessory structure by allowing the detached garage to be located less than 60 feet from the front lot line on property located at 4908 Steeplechase Drive.

Vice-Chair Clithero opened the public hearing.

Phebe La Mar, an attorney with offices at 111 S. Ninth Street, provided a handout and stated she was present on behalf of her client, Gary Drewing, who owned the property located at 4908 Steeplechase Drive. She noted her client had a home under construction on this property and had been under the impression that the layout of the house and garage had been approved for the location proposed in the variance application. As a result, construction commenced and the home was currently under roof, which meant it would be extraordinarily expensive and nearly impossible to move the home. She explained the general idea with regard to the placement of the garage was to block some of the attached garage doors, and to have the garage doors on the rear of the detached garage to make the entirety of the two buildings more attractive from the street. She noted the detached garage was to be constructed with the same materials used for the home’s exterior, and only one garage door would be visible from the street as opposed to four if the detached garage was not placed in its proposed location. She pointed out many garages in
the neighborhood were substantially closer to the street than 60 or 54 feet, and believed the granting of the variance would allow the structure to blend nicely with surrounding homes as well as her client’s home. She mentioned that the garage needed to be located 54 feet from the street in order to provide for the correct turn radius, and due to the location of the house she understood Tim Crockett, an engineer working with the Drewings on this project, had sent a letter stating the garage could be constructed 60 feet from the street, and that was technically correct, but it would make it difficult to get in and out of the garage and less useful. She asked the Board to grant the variance requested based on the practical difficulty and unnecessary hardship of moving the home and in order to allow for a more attractive end product.

Mr. Noce asked Mr. Crockett to explain how building the detached garage 60 feet from the lot line was a hardship or practical difficulty. Mr. Crockett replied the garage could be shifted closer to the house, but the distance between the detached garage and the face of the existing home would be reduced to the point the garage could not be used for its intended purpose of housing vehicles due to the turning radius. Mr. Noce asked if there could be a structural attachment such as a connecting wall between the house and the garage so this was not an issue and the Code of Ordinances could be met. Mr. Crockett replied he thought the builder had inquired about that with City staff, and staff had indicated they would rather have this go to the Board of Adjustment than classify the structural wall as part of the same structure. Mr. Noce asked if Mr. Crockett was aware of any other options that would alleviate the hardship by allowing the structure to be connected. Mr. Crockett replied no. Mr. Noce asked if the garage could be placed to the side or to the rear of the home and still be in compliance. Mr. Crockett replied it could not due to the grade of the site and how it was being graded.

Ms. Peters asked if the garage could be moved further to the right. Mr. Crockett replied it could, but it would still be within the 60 foot setback. Ms. Peters asked if there were three or four garage bays on the large structure. Mr. Crockett replied the existing home had a four-car garage and the detached garage would be a three-car garage. Ms. Peters understood the detached garage was in front of the setback line. Mr. Crockett replied that was correct. Ms. Peters asked where the entrance was to the detached garage. Mr. Crockett replied it was at the rear and unseen from the street.

Cory Ridenhour explained he represented the Thornbrook Home Owners Association’s Board of Directors and stated the Association and some surrounding neighbors opposed this variance request as they believed the detached garage was not in character with the neighborhood and would be too close to the street. He noted there was a problem in the Association’s approval process in that a previous management company had approved this, but the Association’s records did not prove it had been reviewed and approved. He reiterated they did not believe this variance should be approved.

Mr. Clithero understood the Thornbrook Home Owners Association’s concern was that the garage was detached. Mr. Ridenhour understood there were no other detached garages in the neighborhood and they felt it was out of character. Mr. Clithero clarified the Board of Adjustment could only be concerned with the zoning ordinance. Mr. Ridenhour understood, and commented that the Association felt there was a reason for the ordinance and the Board should not approve the variance request.
Ms. La Mar provided the Board a copy of a letter from the Thornbrook Home Owners Association approving the plan and felt it was too late to object to this now.

Ms. Peters asked if this was a private home. Ms. La Mar replied it was.

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

Mr. Creech explained staff had discussed connecting the garage in some fashion, but did not feel a foundation wall was an adequate connection in terms of meeting the intent of the ordinance. Mr. Noce asked if a six-foot or 10-foot wall from one edge of the house to the garage would provide enough of a structural connection to alleviate this concern. Mr. Creech replied no. Ms. Peters understood the garage would still be too close to the road. Mr. Hazelrigg explained it was not an issue if the garage was a part of the main structure.

Ms. Peters asked for the setback for the house itself. Mr. Carroz replied 25 feet. Mr. Creech stated 25 feet was the standard for R-1 zoned property.

Mr. Noce thought the Board needed to delineate between the Home Owners Association’s issue regarding approval of the plans, which was a separate issue, and the adjustment issue in terms of practical difficulty and hardship and whether the applicant had met that threshold or if it had other options to make it work under the law.

Mr. Clithero understood the notice of hearing indicated the applicant was requesting a variance to the setback requirement for an accessory structure by allowing the detached garage to be located less than 60 feet from the front lot line, but the application specifically stated 54 feet. Mr. Noce suggested the Board be very specific, and believed Ms. La Mar had tried to be very specific by saying only six feet was needed. He thought the minimum amount required to meet the hardship, if there was one, was important.

Mr. Carroz asked Mr. Crockett for the distance between the house and the detached garage. Mr. Crockett replied the plan was for 32-33 feet, but if they did not get the variance, it would be 27 feet and extremely difficult.

Ms. Peters asked if these plans did not have to be approved by the City prior to construction. Mr. Creech replied the City did not require detailed construction plans for residential houses, but a plot plan was required. The plot plan showed the house and a permit was issued for it. The applicant requested a permit for the detached garage afterwards. Ms. La Mar commented that the plot plan showed the location of the garage and the garage space was included in the permit request. Mr. Creech stated the building permit application did not include the additional three bays. Ms. La Mar explained the application included space for the four-car garage and the detached garage. Mr. Creech understood from conversations with everyone that the detached garage was not included or calculated in the payment for the permit.

Mary Jo Henry explained she was a general contractor on the project and the application for the building permit stated the square feet of the garage at 1,800 square feet. A typical three-car garage was 500-600 square feet and the fact they had shown nearly 1,800 square feet indicated there was more. She commented that the plot plan had showed the drive area as well as the
square for the detached garage, so she felt it was very clear it included more than a three-car garage due to the combination of information on the application and the plot plan.

Ms. Peters asked if it was unclear at that time a 60 foot setback was needed for a detached building. Ms. Henry replied she could not speak to that. Ms. La Mar stated the architect drew the plan and gave it to the builder, who submitted the plot plan to the City, and she did not know why the architect was unaware of the requirement. She reiterated that the plot plan included the square for the detached garage, and the square footage for the garage on the permit application included both the four-car attached garage and the three-car detached garage. She understood the City thought they were only granting the permit for the house, but the builder and owner thought the permit was being granted for the entire thing. She pointed out the house could have been moved six feet at that time, but it was nearly impossible to move now. Ms. Peters understood the architect was unaware of the zoning requirements. Ms. La Mar stated that was her best guess.

Mr. Clithero stated he did not feel the issue was whether the architect was aware of the zoning requirements if the garage was shown on the plot plan, but he understood City staff did not believe it was on the plot plan. Mr. Creech explained the plan in the Board’s packet was not the plan approved with the house. Ms. Peters asked if anyone had the plot plan. Mr. Creech replied he did not have the plot plan or building permit application with him.

Ms. Peters believed a paid architect should know the rules and be able to follow them, and agreed it would be very difficult to move the house now as it was quite well-constructed.

Mr. Clithero made a motion to grant a variance to allow the detached garage to be built 54 feet from the front lot line. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1889 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, CARROZ, HAZELRIGG. VOTING NO: PETERS. The variance was approved as requested.

Case Number 1890 was a request by Richard and Maria Parker for a variance from the required distance of the nearest street frontage by allowing the center of the rear wall of an accessory dwelling unit to be located more than 150 feet from the nearest street frontage on property located at 215 W. Sexton Road.

Vice-Chair Clithero opened the public hearing.

Richard Parker, 215 W. Sexton Road, stated the structure for the accessory dwelling unit had been on this property when it was purchased about 12 years ago, and it had been previously used as a shop. He explained he and his wife thought the structure would be a nice place to live when they retired and was appropriate to move into when accessory dwelling units became available.

It was a slab building so constructing the unit elsewhere would make it unusable. The ordinance, as he read it, said the center of the back of the house must be within 150 feet of the nearest street and the center of the back of the unit was approximately 135 feet from Benton Street, which was not the street that the unit faced but was the nearest street. The center of the front of the structure would be 165 feet from Benton Street, but that was not how the ordinance read. He
pointed out it would be impossible to put a building on this lot with the required setbacks from lot edges and noted there was about 12 feet between the back of the building and the lot edge. He explained their goal was to convert an existing structure.

Mr. Noce understood this structure could not be lifted and moved because it was on a foundation and asked if that was correct. Mr. Parker replied the structure was on a slab and would become at least four pieces if it was lifted. Mr. Noce understood that was one of the hardships and practical difficulties. Mr. Parker stated that was correct and commented that it was impossible to move the slab.

Mr. Noce noted one concern was that Mr. Parker’s property did not go all the way to Benton Street and asked if that was correct. Mr. Parker replied that was correct and stated he did not own the house behind his property. Mr. Noce stated a concern of his was that Mr. Parker could not control the property behind his, and if that property owner built a taller structure or a large fence, it would increase the distance in terms of fire safety. The reason for the 150 feet requirement was due to life safety. Mr. Parker commented that he understood the concern, but did not think any of that was in the ordinance.

Mr. Clithero pointed out that the word “frontage” was in the ordinance, which he believed was described as the street on the front of a property. Mr. Noce read the applicable part of the ordinance, which stated “for the purpose of providing adequate fire protection access, the distance from the nearest street frontage to the center of the rear wall of the accessory dwelling unit shall not exceed 150 feet of the travel distance.” Another issue he thought Mr. Parker needed to be aware of was that a fire code provision mirrored this requirement and it could not be varied except by the Fire Department, so even if Mr. Parker was able to convince the Board of Adjustment to grant the variance, he would still need approval from the Fire Department.

Assistant Fire Marshal Edwards commented that if there was a structure fire at this building, the Fire Department would respond to 215 Sexton Road. In addition, City fire trucks had pre-connected hose lines that allowed them to go 150 feet all the way around the structure. It appeared this structure was 266 feet away from Sexton Road so they could not achieve that from Sexton Road. He agreed with Mr. Noce regarding access from Benton Street in that they had no control over those properties in terms of barriers, fences, pools, etc. that would prohibit the Fire Department from getting there or delaying them from putting the fire out. Mr. Parker explained he now had a fence with a gate going straight through between the two properties. He understood the Fire Department might have confusion about where to take a fire truck.

Mr. Clithero pointed out that if the variance was granted it would go with the property, and noted he was concerned for Mr. Parker’s safety and the safety of those who might live in this structure in the future. Mr. Parker explained he and his wife planned to move into the structure and sell the property to his son. He also expected his wife to live there for the next 30 years. He agreed other people would likely live there afterward.

Mr. Parker stated he did not understand Mr. Clithero’s comment regarding street frontage. Mr. Clithero asked if he was correct with regard to frontage. Mr. Creech replied the second structure would be addressed off of Sexton Road and thought the frontage was to Sexton Road. He believed Assistant Fire Marshal Edwards was saying they would respond to Sexton Road if there
was a 911 call because that was the address. Mr. Parker stated he did not understand why the ordinance referred to the nearest street and noted three Building and Site Development staff members had indicated the nearest street was Benton Street. Mr. Noce thought frontage typically meant the front and facing area of the street. If a property was on a corner lot, the frontage could potentially be on either street or if the same person owned the property where both streets abutted the property, the frontage could potentially be argued.

Mr. Hazelrigg stated he was concerned about the fact that they could not control what would occur on the property behind Mr. Parker’s property and reiterated a person could put up a fence which could obstruct the Fire Department and create a safety concern if somebody was living in that structure.

Mr. Clithero commented that the definition of street frontage did not make any difference because the distance was over 150 feet regardless of which street was used. Mr. Hazelrigg agreed the distance from Benton Street to the back of the structure was greater than 150 feet. Mr. Clithero explained the Fire Department needed to get behind the building by going all the way around the building, and if the building was more than 15 feet wide the distance would be more than 150 feet. Mr. Parker commented the distance would be about 165 feet, but that was not how the ordinance read.

Mr. Creech explained the language regarding the 150 feet was put into the ordinance based on the fire code, which stated the fire apparatus access road shall comply with the requirements of the section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls for the first story of the building as measured by an approved route around the exterior of the building or facility. He believed the intent was that the rear wall was dependent on the street being faced, and felt the rear wall would be the wall furthest from the access street even if the lot was a through-lot.

Mr. Parker noted this lot was fairly large and did not believe the back of the already existing house was within 150 feet. He thought it would be impossible to build an accessory dwelling on this lot with the rear wall being within 150 feet of Sexton Road. He suspected the 150 foot restriction would eliminate roughly half of the lots the City Council was told would be eligible for accessory dwellings. He thought it was appropriate to grant a waiver based on the fact the building could not be moved. He pointed out he would attempt to obtain right-of-way from the house behind him to prevent them from building a large building or obstruction if the City thought it was needed.

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

Mr. Clithero asked if there would be any opportunity for approval of this proposal if the house was sprinkled. Assistant Fire Marshal Edwards replied the Fire Department would need to look at the submitted plans if the house was sprinkled.

Mr. Noce stated he offered a certified copy of pages from the fire code for the record per Missouri Revised Statute Section 490.240. He commented that this issue had two parts in terms of the task of the Board of Adjustment and the approval of the Fire Department. He understood the Fire
Department might reconsider its stance if the area was sprinkled or an access easement was granted, but unfortunately those were not the facts the Board had before them tonight.

Mr. Hazelrigg stated he would have a safety concern even if right-of-way was granted because an obstruction could still be built as the property changed owners over time in the future.

Assistant Fire Marshal Edwards stated it was a delay of response issue for them because they would go to 215 Sexton Road and would then have to go to Benton Street. Mr. Hazelrigg agreed minutes and seconds mattered in those situations.

Mr. Reichert stated the zoning ordinance indicated 150 feet from the street frontage, and this structure was well beyond that in terms of property frontage, but even if they looked at Benton Street, the distance was still over 150 feet from the rear wall.

Mr. Clithero commented that this was a safety issue and thought this requirement was put into the ordinance for a very specific reason, and he did not feel very comfortable granting variances to safety.

Mr. Parker asked if it would make a difference to the Fire Department if a Benton Street address was granted for the unit. He noted the address for utilities to the structure was 217 W. Sexton Road. Assistant Fire Marshal Edwards replied it ultimately came down to the property behind Mr. Parker’s property and the barriers they could create. There was no way the Fire Department could allow it as there was a lot of chance for things to go wrong. Mr. Parker asked if an access easement would satisfy concerns. Assistant Fire Marshal Edwards replied he did not see how it would, and reiterated from the Fire Department’s perspective it was a delayed response issue. Mr. Parker stated if the structure had a Benton Street address there would not be a delayed response issue. Mr. Creech commented his staff issued addresses and they would address off of the street the building fronted, which was Sexton Road. He noted there was no way to get to the structure from Benton Street so he would not grant a Benton Street address, mainly due to emergency services. Mr. Parker stated emergency services had said that was a confusion for them. Mr. Hazelrigg reiterated that even if the structure was accessed from Benton Street the distance from the back of the structure was still greater than 150 feet.

Mr. Noce explained the Board could only consider what had been put into evidence and tonight’s testimony. The Fire Department had to consider this separately under the fire code and they did not have the detailed information to weigh different factors mentioned tonight, such as if it was sprinkled, if it had non-burnable materials, if an access road was provided, etc. Mr. Parker commented that he was trying to figure out what the Fire Department’s response would be to some of those options. Mr. Noce thought the avenue for that would be to go to the Fire Department on another day to determine if there were other options as he did not think it was in the Board’s purview to explore that today with the Fire Department.

Mr. Parker stated he would appreciate the Board’s support for permitting him to use the property much like it was initially designed before the ordinance went into effect.

Mr. Reichert understood the Board’s ruling would be based on this application and the applicant could return with a different application. Mr. Noce stated it was possible with different evidence.
Mr. Clithero pointed out if the Board approved this request, Mr. Parker would still have to appear before the Building Codes Commission as he would be in violation of a building code, and at that time the sprinkler system or a road with a turning radius could be addressed. Mr. Noce thought it would be acceptable if Mr. Parker returned with a substantially different request for a different variance with more information, but he did not think Mr. Parker could return with the exact same request if it was denied. Mr. Hazelrigg understood Mr. Parker would still have the option to return with a significant change to his existing request. Mr. Clithero pointed out the items mentioned had nothing to do with the zoning ordinance as they dealt with the building code.

Mr. Carroz made a motion to deny the variance. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1890 VOTE RECORDED AS FOLLOWS: VOTING YES: PETERS, CLITHERO, REICHERT, CARROZ, HAZELRIGG. VOTING NO: NO ONE. The variance request was denied.

Case Number 1892 was a request by Gary R. Turner for a variance from the rear yard setback requirement by allowing the existing deck and a roof addition over the existing deck to encroach into the required rear yard on property located at 4515 Kirkdale Drive.

Vice-Chair Clithero opened the public hearing.

Gary Turner, 4515 Kirkdale Drive, stated when he bought his house in 2009 there was an existing deck on the back and he now wanted to cover it. He understood the deck had existed for over 10 years based on comments from two previous homeowners, and noted a letter from one of the previous homeowners was included in his application. He explained that he was re-roofing his house and decided to cover the deck at the same time. He commented that he wanted a variance so he would not have to cut the deck down. He noted the contractor had started to cover the deck and provided pictures to the Board of the work. He mentioned the back of his house faced west and it got hot out there so he wanted protection. The deck was not intrusive and did not block anyone's view. He pointed out the house to the south sat above his house and the house to the north sat below his house. The proposed work would add value to the house and the neighborhood, and would look good. He felt it was similar to people pouring a pad in the backyard and covering it.

Mr. Noce asked if the deck currently had no roof over it or if the roof had already been built. Mr. Turner replied the roof over the deck had been started and the work subsequently stopped. Mr. Noce understood construction was stopped as soon as Mr. Turner found out about the problem. Mr. Turner stated the work stopped when they found out there was a problem.

Mr. Carroz commented that the roof was substantially complete and noted there were shingles on the roof. Mr. Turner agreed shingles were down, but noted the underneath portion of the roof had not been finished. He stated he had zero intention of ever enclosing the deck.

Mr. Noce asked Mr. Turner how he became aware that the deck and roof were not in conformance. Mr. Turner replied someone contacted the City so an inspector came out. He understood a permit existed for the existing roof, but not for the roof over the deck, so the
inspector stopped them from working on it any further. He commented that the inspector originally indicated it would be okay if the two support posts on the end of the covered part of the deck were moved back, but they later found out the structure would have to be cut down. Mr. Noce understood Mr. Turner was asking for six feet to correct the issue. Mr. Turner stated that was correct. Mr. Hazelrigg noted it was actually five feet and 10 inches.

Mr. Noce asked Mr. Turner if he had explored what it would cost to get the deck in compliance. Mr. Turner replied he had not because he did not see it as a problem and would cut it back if required. He was only covering a deck that had been there for 10 years. Mr. Noce explained part of the standard for granting a variance was a hardship or practical difficulty, so he wanted to determine they had explored if there was a way to bring it into compliance first. Mr. Turner believed his options were to tear it down or cut it back five feet and 10 inches, but it would not look as good or would not cover the whole deck if that was done. He understood the deck was likely never in compliance either.

Mr. Clithero asked Mr. Turner if he felt it would cost more to cut it back than it would have to build it in the first place. Mr. Turner replied it would probably cost close to it.

Mr. Noce asked Mr. Turner what he would be left with if he had to cut it back. Mr. Turner replied the deck was currently 14 feet. Mr. Hazelrigg understood that would mean roughly 9.5-10 feet of coverage.

Ms. Peters asked Mr. Turner if he had received any comments from his neighbors. Mr. Turner replied he had not received anything other than positive comments and explained he had written a letter to neighbors behind his property and to the north of his property and had never received a response.

Jo Ann Dennings, 4513 Kirkdale Drive, stated she was the neighbor to the north, and was concerned because this structure was very large and her house sat below it at a maximum distance of only 12-15 feet away. She explained she had been concerned because she never saw a cement truck at the property for the footings so she asked the City if footings had been poured and found out a permit had never been pulled for that structure and they would look into it. She then received a letter on October 29 from the City regarding this hearing so she again contacted the City and Mr. Kenney explained they found it was not in compliance with City ordinances when it was inspected. She noted the applicant had not gotten a permit and had not followed the City ordinance regarding encroachment into the backyard. She understood the permit required the owner to sign an occupancy affidavit, which was also missing. She stated she was concerned another owner could enclose the deck or build onto it once the variance was granted. She did not object to an addition being built to any home in the area, provided the contractor or homeowner abided by the City codes and permit regulations because the City developed those regulations to prohibit additions without City oversight and approval, which was the basis of keeping Columbia a great place to live. She noted she was protecting her investment and the integrity of her neighborhood by speaking. If the initial fees had been paid, the permits issued, and inspections done, the homeowner would have been able to build this addition to the City code and this would not be an issue. If the applicant was granted a variance, it would set a precedent indicating others nearby could do it as well.
Mr. Turner commented that he thought neighbors would be more concerned about how the deck looked and how it would affect them going forward versus whether he was legal on his permits. He noted the footings had been poured and since it was only two posts, a cement truck would not be necessary. He assured the contractor installed the posts using bagged concrete and had gone down 30 inches. Mr. Noce thought Ms. Dennings’ argument was that this was not a hardship and that it was self-imposed because if he had obtained the correct permits and proceeded the way he should have under the law, it would have been caught and only the deck would have been shown to be non-conforming, which he never had controlled.

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

Mr. Creech reiterated staff had received a citizen complaint and had found the house was being re-roofed without a permit. He explained a permit was issued at double the fee to re-roof the house and required them to cease work on covering the deck, and during that process staff discovered the encroachment issue. He commented that he did not have records indicating whether a permit had been issued for the deck. He clarified since the roofing permit was obtained by a contractor, an affidavit would not have been involved. If the property owner had wanted to do the work himself, an affidavit would have been required.

Mr. Reichert asked if the addition had been inspected for safety when staff discovered it was being built. Mr. Creech replied staff had not permitted the covering of the deck so if there was anything covered that staff needed to see that would need to be pulled off. He reiterated they had not issued a permit for it at this time. Mr. Hazelrigg understood staff was waiting for the result of this request. Mr. Creech stated that was correct. If the request was denied, the structure would have to come down anyway. Mr. Hazelrigg understood the applicant would still have to go back to staff for an inspection. Mr. Creech stated that was correct. They would make sure all codes were met. Ms. Peters understood staff would go back to determine the footings were correct. Mr. Creech explained staff would issue a permit and then do all of their normal inspections. Mr. Carroz asked if staff would make Mr. Turner dig down by the post footings. Mr. Creech replied that would be likely.

Mr. Reichert understood the Board was only being asked to consider a variance for the rear yard setback. Mr. Noce replied that was correct and thought the issue involved the hardship. It could not be a self-imposed hardship or a hardship that was similarly situated to anyone else in the neighborhood. Ms. Peters wondered if it was now a hardship since the roof was already over the deck. Mr. Noce thought the legal standard really dealt with the property as it was situated as well as uniqueness to the property, and not necessarily what had happened.

Mr. Carroz asked if the deck was considered an encroachment. Mr. Creech replied the deck was part of the structure so it would have to be setback outside of the 25 feet. Mr. Noce noted the owner had a non-conforming deck at the start. Mr. Carroz understood a concrete patio would not be an encroachment. Mr. Creech replied that was correct. Mr. Hazelrigg understood concrete could have a setback of 12 feet. Mr. Creech stated he did not know if it was 12 feet, but it was less than 25 feet.

Ms. Dennings stated her base concern was that one homeowner did not do what was required, a second homeowner had compounded the problem by not doing what was required, and a third
homeowner could do the same thing, and the fact that it would set a precedent for others. She noted she would not have a problem if the structure met the code and it was safe. She pointed out she was upset about the willful ignorance and denial of coming to the City.

Mr. Noce reiterated if this was similarly situated where it could happen elsewhere and was self-imposed, it was not a hardship or practical difficulty, and the reverse side of the argument was that the structure was illegal when the owner obtained it and he had just unknowingly added onto the illegality and now had a hardship. He noted the legal standard went to the lot itself and what was unique about that lot and area.

Mr. Clithero commented that every case that came before the Board was unique, and the granting or not granting of any variance was in no way setting any kind of precedent. The rules were still the rules. If the Board found there was a hardship or practical difficulty, they could grant the variance. Mr. Hazelrigg agreed and stated the Board looked at each case on its own merits in terms of the uniqueness and significance of that case.

Mr. Hazelrigg made a motion to approve the request for a six foot variance to the 25 foot rear yard setback. The motion was seconded by Mr. Reichert.

CASE NO. 1892 VOTE RECORDED AS FOLLOWS: VOTING YES: PETERS, CLITHERO, REICHERT, CARROZ, HAZELRIGG. VOTING NO: NO ONE. The variance was approved as requested.

Ms. Eldridge noted the City Clerk's office was preparing the Board of Adjustment application instructions for 2015 and explained the City Council would be meeting on September 8, 2015 due to the Labor Day holiday, which was the second Tuesday of the month when the Board of Adjustment usually met. She asked if the Board would be agreeable to meeting on September 9, 2015 instead. The Board members were agreeable.

Mr. Noce introduced the Board to Assistant City Attorney Ryan Moehlman who would be taking over as the Law Department’s staff liaison to the Board. He noted Mr. Moehlman had been practicing in the area of development for seven years and wanted to introduce the Board to some of these issues in order to provide the Board a better feel of the law in terms of a hardship or non-hardship. He thought Mr. Moehlman had ideas to assist the Board in terms of more detailed motions and other issues, and suggested a meeting be held so he could make a presentation.

Mr. Carroz asked if this would be a work session prior to a regular meeting. Mr. Moehlman replied it could be before or after a regular meeting, or on an alternative date. He explained he had a training package he had given to several cities in the past, which took about an hour but could be condensed or expanded at the Board's pleasure. Mr. Clithero thought it would be important to include the alternate Board members. Mr. Moehlman agreed. Mr. Clithero asked if an email could be sent to everyone concerning this. Ms. Eldridge replied yes.

Mr. Carroz understood the Board would not have a work session before every meeting to review the cases on the agenda. Mr. Moehlman explained this would be a one-time training, but noted it was typically a good idea to do it once every two years or once a year depending on turnover.
Mr. Carroz understood Mr. Moehlman wanted to have this session before the December 9 meeting. Mr. Moehlman replied that was preferable but it was not an emergency if it was not doable.

Mr. Clithero felt clarification was needed in terms of what the Fire Department wanted with regard to the accessory dwelling unit ordinance. Mr. Moehlman agreed the ordinance had some problems and staff was in the process of determining a better way to explain what exactly they were trying to accomplish. Mr. Clithero pointed out someone could build an accessory dwelling unit with the front door facing the back of the lot and common sense would say the back of that building was the side closest to the street. Mr. Moehlman stated when trying to protect health and safety, they wanted to be very detailed which was why they were looking at possible amendments to make it a better ordinance.

There being no further business, the meeting adjourned at 8:31 p.m.

Respectfully Submitted,

Megan Eldridge  
Deputy City Clerk