Chair Clithero called the meeting to order at approximately 7:00 p.m. Those members attending included Fred Carroz, Janet Hammen, Paul Girouard, Rex Campbell and Philip Clithero. Also attending were the Deputy City Clerk, Megan Eldridge, Building Regulations Supervisor, John Simon, Community Development Director, Tim Teddy, and Assistant City Counselor, Ryan Moehlman.

The minutes from the regular meeting of January 12, 2016 and the work session of February 9, 2016 were approved as submitted on a motion by Mr. Campbell 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 1915** was a request by Alpha Mu Association of Kappa Alpha Theta for a variance to the minimum off-street parking requirement by allowing fewer off-street parking spaces than required on property located at 603 Kentucky Boulevard.

Chair Clithero opened the public hearing.

Phebe La Mar, an attorney with offices at 111 S. Ninth Street, appeared on behalf of Kappa Alpha Theta. Ms. La Mar provided a handout and presented a Power Point. She explained the applicant wanted to expand the sorority house and was able to design a building addition that complied with all City ordinances, except for the required number of on-site parking spaces. She noted they had found two locations in the vicinity of the house to rent off-site parking spaces. There would be 106 occupants in the house after the addition was completed, so a minimum of 53 parking spaces would be required per the City ordinance. She mentioned 28 parking spaces and eight bicycle parking spaces would be provided on-site, which left a remainder of 17 parking spaces, and they had contracted for 35 parking spaces, which accounted for more than the occupants that would be added to the house. She explained the house was located in the middle of campus and the only way this infill development project would work would be to permit off-site parking in addition to the proposed on-site parking. She noted the applicant had substantially complied with the City zoning ordinance and stated the spirit of the zoning ordinance would be met. They would provide more parking spaces than was required off-street and could just provide for it on-site. She commented that the public safety and welfare of the sorority’s occupants would be protected and mentioned the parking spaces were within a reasonable area. She explained they would not add to the street parking issues if the applicant was permitted to construct the proposed building addition and was granted this variance. She stated it was clear that the criteria for obtaining a variance had been met and requested the applicant be permitted to obtain the additional parking spaces necessary using legally contracted off-site parking spaces.

Mr. Campbell stated this was a highly congested area and parking was in great demand. He asked if the locations of the contracted parking spaces were commercial and met City parking requirements. Ms. La Mar replied they were not commercial. Mr. Campbell understood the locations were not commercial lots, but they were renting spaces. Ms. La Mar stated that was correct. She noted the leases were included in the Board’s packet and the parking spaces were rented from...
other fraternities and sororities in the area. Mr. Campbell understood the lease would be short-term and would be renewed if mutually agreed upon. He stated the building addition would be in place for 50 or 100 years and asked why the parking lease was not for 50 or 100 years in order to conform to the house. Ms. La Mar replied it was difficult to find someone willing to rent for that long, therefore they had to lease on an ad hoc basis. The places they had contacted were unwilling to agree to anything for that long. She noted the City could enforce the parking requirement because if it was not met the applicant would have difficulty keeping the occupancy permit for the additional bedrooms in the house. Mr. Campbell asked how the City could enforce the parking requirement. Ms. La Mar understood the City would contact the applicant if there were complaints and they would be required to show proof of a lease for the required minimum number of parking spaces. She stated the lessee would also provide documentation that showed the parking spaces that were leased to the applicant were in addition to the parking spaces the lessor was required to have on-site to meet their needs. The lots were not commercial per se, but they were providing a service to the applicant. Mr. Campbell noted he was confused as to why the lots were commercial yet not commercial. Ms. La Mar noted the lots were commercial in that they were providing a service to the applicant, but they were not commercial in that it was an R-3 use.

Ms. Hammen asked where the leased parking spaces would be located. Ms. La Mar replied one location was approximately 700 feet away from the subject property and the other was approximately 1,300 feet away from the subject property. Ms. Hammen asked if that complied with Section 29-30(b) of the City Code. Ms. La Mar replied it did not because one location was 300 feet farther than the 1,000 feet. Ms. Hammen asked if a variance was being requested for that tonight. Ms. La Mar replied it was not. She noted that particular section of the City Code only allowed for off-site parking if they owned an additional location, and it did not apply in this instance since the applicant did not own any off-site areas that could accommodate for parking. She clarified they were requesting a variance to the on-site parking requirement.

Mr. Campbell understood both sites for the leased parking were not fenced and asked if the sites were reinforced in any way to ensure adequate rental space.

Brian Connell, an architect with Connell Architecture, 1 E. Broadway, stated the Alpha Gamma Sigma property was providing parking in a parking structure that had an R-3 zoning designation and complied with the City ordinance and noted the second location was located across Providence Road and had a surface lot that lawfully existed under City ordinances. Mr. Campbell mentioned students would park anywhere due to congested parking unless there was a way to enforce parking restrictions. He noted these locations were open parking areas that might be taken by anyone. Ms. La Mar mentioned the parking spaces were available for the property owners to rent. She felt if the property owners were receiving payment for students to park on their property, they would have the incentive to make sure those students were able to park there. Mr. Carroz understood parking spaces would be rented and tags would be provided. Ms. La Mar stated that was correct.

Ms. Hammen stated it seemed Section 29-30(b) of the City Code required off-site parking to be within 1,000 feet. She asked what ordinance allowed parking to be located wherever off-site and if it was legal to rent parking spaces in an R-3 zoning district next to a residential facility. Ms. La Mar understood the leases that had been entered into were lawful, and there was no ordinance that allowed for parking in excess of 1,000 feet away, which was why they were seeking a variance. The ordinance that allowed for off-site parking required the off-site area to be owned by the party that would be parking in that location and the applicant did not fit into that exception. She noted they
were seeking a variance to be permitted to use off-site parking they had rented. She mentioned at
least one other house had been granted a similar variance several years ago.

Mr. Girouard asked if the parking structure on the southeast corner of Tiger Avenue and Kentucky
Boulevard was owned by the University. Ms. La Mar replied she believed it was, and understood a
majority of the sorority’s occupants would have the right to park in student parking of which there
was a lot of in this area. She noted a shuttle would come by on the corner so a resident who chose
to use student parking would have access to a shuttle to get to their car.

Mr. Girouard stated the lease with Alpha Gamma Sigma did not include an address and asked if
that was accidentally left out. Ms. La Mar replied she believed it was unintentionally left out. Mr.
Girouard commented that the lease was not binding in a sense because a physical address was not
included. Ms. La Mar stated it was binding as a physical address did not have to be included if the
document was specific enough to communicate which property was being referenced. Mr. Girouard
asked how the property was identified. Ms. La Mar replied it was the Alpha Gamma Sigma property.
The lease did not include the address, but that did not mean it was not enforceable. Mr. Girouard
noted the second lease pertained to property across Providence Road that was located several
blocks north and west from the subject property. He asked for a convincing argument that students
would want to utilize that parking lot. Ms. La Mar replied she did not know that students would want
to use the parking lot, but they would have to follow the rules in order to stay in the sorority.

Mr. Girouard asked for the number of existing parking spaces that would be removed from the
subject property in order to accommodate the building addition. Mr. Connell replied he thought the
number of on-site parking spaces would be reduced from 36 to 28. Ms. La Mar pointed out they
would substantially add more parking spaces than was being removed.

Ms. Hammen stated she was leery of the leases and asked what would happen if one of the lessors
decided not to renew the lease. Ms. La Mar stated they would have to find another location. Ms.
Hammen asked what would cause the applicant to go to another location if the Board granted this
variance. Ms. La Mar replied if they did not go to another location and the City received complaints,
the City would ask for the lease. Ms. Hammen felt it was difficult to accept that argument. Ms. La
Mar commented that there was no 50-year parking lease in the city of Columbia.

Ms. Hammen asked for the height of the building addition. Ms. La Mar replied it was in
compliance. Mr. Connell stated it was well below the height of the existing structure. Ms.
Hammen asked if the addition was two stories. Mr. Connell replied it was three stories over a
basement. Ms. La Mar noted the only variance the applicant needed was in regard to parking
and mentioned the proposal would improve the parking situation by leasing more spaces than
necessary. Mr. Connell stated the leases were currently being utilized.

Mr. Moehlman asked if the applicant was proposing a condition of the requested variance that
sufficient off-site and off-street parking would be made available through a lease agreement.
Ms. La Mar replied they were and noted they were willing to meet and/or exceed the minimum
parking requirements with off-site parking.

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

Mr. Simon stated City staff had concerns about the distance the proposed parking was located and
the ability to track the leases.
Mr. Moehlman stated the practical difficulty standard would apply.

Ms. Hammen commented that she thought it was illegal to rent parking spaces at residential facilities with an R-3 zoning designation. Mr. Moehlman stated he could not speak to whether renting excess property on an otherwise permitted R-3 use would be allowed in the R-3 district as he had not had the opportunity to research it. Ms. Hammen asked Mr. Teddy to comment. Mr. Teddy understood the would be occupied buildings on all of the lots and there would not be a standalone principle use parking lot. If there was, staff would consider it a commercial use. When two facilities had a need for parking, they would look for complementarity between them. He explained City ordinances recognized that for commercial, office, and industrial uses, but the principle of shared parking between properties was not really recognized. There had been a recent amendment to the City ordinance, but it required a separate lot be dedicated for parking within 1,000 feet of the R-3 zoned use, and it was only applicable to Greek houses in Greek Town. Ms. Hammen understood a property owner with excess parking in an R-3 zoning district could rent out excess parking and asked for clarification. Mr. Teddy replied an arrangement with another party could be entertained if a variance was obtained for the property. Ms. Hammen asked if that applied in this case and noted the applicant was already utilizing the leases. Mr. Teddy stated there was no registration for those types of agreements, so there was no registry of vehicles and what belonged where. The City could only look at whether there were parking problems on the affected lots and would not know of shared arrangements unless there was a variance and lease arrangement. He mentioned a property owner could not open up for business and offer daily parking, and stated he imagined there were informal agreements between property owners if there was no evident parking problem on either lot. Ge pointed out the City had no control over that. Ms. Hammen stated she had always been under the impression that it was illegal.

Mr. Girouard asked Mr. Moehlman for his interpretation of Ms. La Mar’s comment in regard to a lease not requiring a physical address. Mr. Moehlman stated he agreed with Ms. La Mar.

Chair Clithero commented that he intended to support the applicant’s request. Anything that could reduce the chaotic situation with parking had to be a good thing, and this seemed like a perfect example.

Mr. Campbell stated he had two problems with this proposal and could not support this request. One was that one of the parking areas was located across Providence Road, which was a poor intersection for pedestrians to cross. He mentioned that he traveled down Providence Road daily and people frequently ran across Providence Road. He thought this proposal would create a dangerous situation for pedestrians. Secondly, he understood the problems with short-term leases, but was concerned about the length of the leases. There was nothing in the leases that would prevent either party from cancelling the lease. The leases had six month terms, which did not appear to be a viable solution for long-term parking needs.

Ms. Hammen made a motion to approve the variance as requested. The motion was seconded by Mr. Campbell.

CASE NO. 1915 VOTE RECORDED AS FOLLOWS: VOTING YES: CARROZ, CLITHERO. VOTING NO: HAMMEN, GIROUARD, CAMPBELL. The variance was denied.

Chair Clithero recessed the meeting for five minutes.
Case Number 1916 was a request by Woodcliffe Investments, LLC for a variance to the minimum lot width requirement by allowing a lesser lot width than required on property located at 1513 Windsor Street.

Ms. Eldridge noted correspondence had been received from Jerry Swartz, DJ Dometrorch, Bob and Sandy Craig, and John Gordon, and that the associated correspondence had been provided to the Board members.

Chair Clithero opened the public hearing.

Tom Harrison, an attorney with offices at 1103 E. Broadway, provided a handout of exhibits numbered 1-9 which included: the applicant’s application for a variance, a certified copy of Section 29-8 of the City Code, the building permit for the subject property, an e-mail sent by City staff member Shane Creech to the applicant, e-mails between the applicant and City staff, drawings and plans, letters of support, and photographs of the subject property before it was purchased by the applicant. He noted a stop work order had been issued after a building permit was issued for the subject property because the lot was about 50 feet wide at the building line and was required to be 60 feet wide per the City ordinance. He commended City staff for their cooperation during this difficult situation. He explained the applicant had purchased the subject property, had many conversations with City staff, had demolished an unsightly house that was on the property, had plans drawn and approved, had obtained a building permit, and had cleaned up the property. The building permit was issued in October, and City staff contacted the applicant in February informing him the building permit had incorrectly been issued. The stop work order was issued on February 15, 2016 after substantial work had been done on the subject property. He stated they were requesting an area variance of about 10 feet. One factor when looking at whether practical difficulties existed was how substantial the requested variance would be. He commented that the requested variance was not very substantial, particularly in regards to what had occurred prior to the stop work order being issued. Another factor to consider was whether the variance would result in a substantial change to the character of the neighborhood or create a substantial detriment to adjoining properties. He noted the subject property was residential with an R-3 zoning designation and would remain as such. The character of the neighborhood would not be negatively affected and would be enhanced by the proposal. A third factor to consider was whether justice would be served. He stated justice would be served if the variance was granted due to the substantial expenditures made by the applicant before the stop work order was issued.

Justin Naydyhor, offices at 1515 Chapel Hill Road, stated he was the owner of Woodcliffe Investments, LLC, which was the entity that owned 1513 Windsor Street, located in the Benton Stephens neighborhood. He had owned property in the neighborhood for over 10 years and currently managed and maintained multiple properties in the area. He commented that he had been an active member of the community, and had always requested feedback and discussed his developments and properties within the neighborhood. On September 30, 2015, he had entered into a contract with the seller of the subject property with a 15-day contingency period for building and site plans to be reviewed and approved by the City. He had submitted building plans to the City on October 5, 2015 and had noted he was interested in purchasing the property if the building and site plans met all requirements of the City and the Benton Stephens neighborhood. He had requested that City staff review the plans closely as a substantial amount of earnest money was being deposited and he did not want to back out of the contract and lose the earnest money. He was told by City staff that the plans were fairly straightforward and that even more staff would be brought into
the review process in order to become familiar with the Benton Stephens overlay district. On November 8, 2015, the President of the Benton Stephens Neighborhood Association had e-mailed the plans to the community contact list to review and provide comments, and to his knowledge no comments were made. On November 12, 2015, City staff had noted issues on the building plans that needed to be addressed. He mentioned corrections were made and the plans were resubmitted to the City. On November 13, 2015, he was notified the plans had been approved and he paid the permit fee of approximately $10,000 on November 20, 2015. On December 1, 2015, he had entered into signed leases with eight students to rent the subject property beginning August 1, 2016. On February 5, 2016, he had contracted to have the house on the property demolished, and on February 12, 2016, footings were dug, inspected, and approved by the City inspector. On February 15-16, 2016, a stop work order permit was issued citing an ordinance violation that the lot was not wide enough to construct the proposed duplex. After the stop work order had been issued, City staff had been very cooperative and apologetic for the honest mistake. He explained the Benton Stephens neighborhood was composed of rental property and owner-occupied properties. His plans were consistent with existing duplex and three-plex structures on 50 foot wide lots located on each side of the subject property and in the surrounding area. Before the stop work order was issued, over $110,000 had been spent on purchasing the subject property, permits, demolishing the structure on the subject property, and construction.

Jerry Swartz, 1201 Epperson, Moberly, stated a few years ago he was in a situation similar to Mr. Naydyhor in that he wanted to build on a 50 foot wide lot he owned. The City had informed him that he would need a variance, so he had obtained 150-200 signatures from people in the neighborhood who supported his plan for a duplex at 604 N. William Street. He thought his duplex had enhanced the neighborhood, and did not believe the lot width had negatively impacted the neighborhood. He noted the Board had approved a similar variance about 10-12 years ago. He felt bad for Mr. Naydyhor because he had done his due diligence. He asked the Board members how they would feel if they had begun an addition onto their house and were told by the City that the addition could not be constructed. He noted that would be financially devastating. He supported the applicant’s plan as it made good sense, was the best use for the property, improved the neighborhood, and was consistent with other variances the Board had granted for himself and other properties. He commented that he hoped the Board would grant the variance to do what was right.

Sam Bodine stated he owned a duplex at 1511 Richardson Street and 1512 Brighton Street, and his property neighbored the first property that Mr. Naydyhor had owned in the Benton Stephens neighborhood. He felt Mr. Naydyhor took care of his property better than 99% of residents in the Benton Stephens area and also personally did all of the yard work to make sure everything looked good for his tenants. He believed the variance should be granted. He stated it was not Mr. Naydyhor’s mistake and noted it was an honest mistake by the City.

Jeff Radel, 2551 West Woodie Proctor, stated he was a realtor with House of Brokers for almost 30 years and owned numerous rental properties, to include a duplex at 1510 Windsor Street, which was located diagonally from the subject property. According to ShowMeBoone.com his property had the highest assessed value of properties that were in view of the subject property, so he had as much to gain or lose as anyone else. He noted the home on the subject property had been in definite disrepair. Two homes to the west of the subject property, which were beyond economic repair had been removed, and was made into a community garden. He thought the median property values in the neighborhood would increase since a more expensive property would be constructed there. The applicant’s duplex proposal fit within the neighborhood zoning of R-2 and R-3 as there were several existing rooming houses or homes that had been converted into apartments. He stated
he was concerned about the permit process as the City had accepted payment and issued a building permit after examining Mr. Naydyhor’s plans. He felt the City had two choices: allow Mr. Naydyhor continue with his duplex, which would increase the neighboring property values, or compensate Mr. Naydyhor for his expenses, which would cost taxpayers about $100,000. He requested that Mr. Naydyhor be allowed to continue with the duplex that he had previously been permitted to build.

Adam Dushoff, 211 Anderson Avenue, stated he owned property at 414 and 416 N. College Avenue. He had known Mr. Naydyhor a long time and they had owned property in different areas that were adjacent to each other. He commented that he felt there was a simple and easy fix for this situation, and believed it was problematic that Mr. Naydyhor had to come before the Board of Adjustment. Mr. Naydyhor was issued a building permit, had purchased the property, and had invested money into the property by demolishing the previous structure. He thought Mr. Naydyhor should be granted a variance because revoking the building permit placed an undue burden on him. He explained the subject property was not the first property Mr. Naydyhor had owned in the Benton Stephens neighborhood, and believed Mr. Naydyhor took good care of his properties and was willing to work with everyone to resolve problems.

Kurt Albert stated he had an office at 1512 Windsor Street, which was located across the street from the subject property, and also owned property at 1508 and 1506 Windsor Street. He explained his life’s work had been the preservation of the Benton Stephens neighborhood and he opposed this variance. He noted the applicant was a licensed realtor and developer and should know the laws and ordinances. He mentioned that ignorance of the law was no excuse. He felt the applicant had a responsibility to the Benton Stephens neighborhood, the City of Columbia, and to himself to perform due diligence, and had a history in this neighborhood of minimum compliance and sharp dealings. He noted the lot width was only 44 and one-half feet wide if a driveway easement on the east was taken into account. He believed the adjoining property owners would suffer a loss if eight tenants and their cars were added to this small lot. He commented that zoning ordinances and overlay districts were the law and were designed to protect everyone. He requested the applicant follow the same laws as everyone else. He stated the Board could grant a variance only if the variance did not defeat the spirit and intent of the zoning ordinance and if the problem was not self-imposed. He felt this variance would defeat the spirit and intent of the zoning ordinance and this was a self-imposed problem. He noted the developer could build a nice four-bedroom home, whose rent would be economically sustainable. The granting of this variance would set a precedent and cause others to ask for it. He stated he was not aware of a variance ever being granted for a lot width of 50 feet.

Brendon Steenbergen, 700 N. Ann Street, Vice-President of the Benton Stephens Neighborhood Association, stated he thought most of those in the neighborhood cared about their property. The people in attendance and speaking in opposition had two issues with this variance: it was a clear violation in terms of lot size and there was a feeling that there had been continued developments of this nature that were described as improving and enhancing the neighborhood by non-residents of the neighborhood. He explained those speaking in opposition to this variance had far more at stake than profit. There was a feeling that the overlay district and zoning had allowed these developments, which were unwanted by most of the residents, to happen because they were too soft. In this situation, there was a clear violation, and he wondered what good any of the zoning and variance laws would be if that violation was allowed. The neighborhood was already unhappy with these developments, and the requested variance would allow a 16-20% deficit in the required size, which was huge. He agreed this was a simple issue in that it was simply not allowable by law. He commented that the applicant was requesting autonomy in how he used his property, but was
placing due diligence on the City and the neighborhood, which he felt was unacceptable. He pointed out none of the advocates were residents of the neighborhood and asked what value there was in having an overlay district if a variance of this nature in an already soft overlay district was approved. He noted this proposal had been portrayed as taking out a decrepit residence and putting in a wonderful property, but he did not think it was as great as it was being portrayed as was evidenced by those in opposition. The neighbors were not in favor of a duplex on a small lot with a ton of parking and residents.

Mary Kristen Heitkamp, 600 Paris Court, stated she resided in the Benton Stephens neighborhood and was the Secretary of the Benton Stephens Neighborhood Association. In her 20 years of service on planning commissions in Boone County, she had used the Boone County Assessor’s parcel map. The parcel map was a tool of the trade for realtors, and it was inconceivable that a realtor would not use it. The legal description clearly stated the lot width was 50 feet, and any realtor or anyone with any connection to real estate or land use would know this. She noted she had reviewed the neighborhood with the Office of Neighborhood Services, and three properties that belonged to Mr. Naydyhor on Ripley Avenue and Hartley Court had trash nuisances. Last summer Mr. Naydyhor had purchased property at 606 Paris Court, which was three houses down from her house, and she did not think her property values had benefited from Mr. Naydyhor purchasing the house as there were aggressive dogs, nuisances, and noise issues. She noted she had called the City, and the Office of Neighborhood Services had finally begun to address some of the problems. Of the properties on her street, 65% were owner-occupied, with some residents being in the third generation of owning their homes.

Peter Norgard, 1602 Hinkson Avenue, stated he was the President of the Benton Stephens Neighborhood Association, but was speaking on his own behalf. He explained Mr. Naydyhor had been communicative with the neighborhood association, which they were appreciative of because not many developers were forthcoming in their willingness to make design changes. The Benton Stephens neighborhood was one of the oldest neighborhoods in Columbia and had a lot of historical value. He noted those that lived in the neighborhood valued the property for its historical value in terms of its sense of neighborhood, and not for its monetary value. Since students resided in the neighborhood, the neighborhood was vacant for half of the year and during the other half of the year Windsor Street had so many parked vehicles that people could not get out of their driveways and cars were parked in intersections. He mentioned they had a fairly aggressive number of developers in the neighborhood who were rapidly converting this historic neighborhood into something that did not resemble what it used to. He stated he had moved to the neighborhood 10 years ago, and since then he had seen 28 housing units go up in the central portion of the neighborhood, not including the massive R-3 zoned development on Paris Road. Owner-occupiers did not feel this proposal contributed to the overall beauty of the neighborhood. He agreed the structure on the subject property had been in bad shape, but pointed out a number of residents, who were landlords and owned homes that were not in good shape, had managed to make those homes rentable, profitable, and compliant. As a realtor, Mr. Naydyhor knew what the requirements were, so this was a self-inflicted problem. In addition, the variance ran counter to the Benton Stephens overlay plan, which was to limit the density of development. He felt the applicant had a way out of this situation as he understood Mr. Naydyhor had someone interested in purchasing his property. The City could also recognize a mistake was made and refund the permit fees.

Rita Fleischmann, 1602 Hinkson Avenue, asked those who lived in or owned property in the neighborhood to stand and about 17 people stood.
There being no further comment, Chair Clithero closed the public hearing.

Mr. Teddy stated the subject property had an R-3 zoning designation, which was a medium density multiple-family dwelling district, and was located within the Benton Stephens overlay urban conservation district. The R-3 zoning designation and the lot area permitted a two-family dwelling; however the subject property was deficient in lot width. Section 29-8(d)(2) of the City Code clearly indicated the lot width was to be not less than 60 feet at the building line, provided that where a lot with a lesser width than herein required, in separate ownership at the time of passage of Ordinance 9958, this regulation will not prohibit the erection of a one-family dwelling. He explained that meant a lot with a width of less than 60 feet that was platted prior to the effective date of the zoning ordinance in 1983 would only be allowed to have a single-family dwelling on it. He commented that the Benton Stephens overlay district had no modification of the underlying zoning district for lot width and area, so the R-3 zoning standards were to be followed.

Mr. Simon agreed with Mr. Naydyhor’s timeline. He noted that he informed Mr. Naydyhor there was an issue with the lot width on the Friday prior to the stop work order being issued and understood at that time the foundation had not been poured.

Mr. Moehlman stated the general standard for variances would apply in that the property must face practical difficulties in meeting the ordinance.

Mr. Girouard asked how the overlay district interacted with proposed boundary adjustments or the replatting of lots. Mr. Teddy replied the overlay district modified other standards in the ordinance such as height, but the standards for minimum lot width and area were the same as the R-3 zoning district.

Mr. Girouard understood a community garden had been established in the lots to the west of the subject property and asked if there had been any discussion of replatting the lots in order to bring it into conformance. Mr. Teddy and Mr. Simon replied they were not aware of any discussion.

Ms. Hammen asked if the City had a procedure in regard to errors. Mr. Teddy replied the City was obligated to enforce the ordinance regardless of when the deficiency was discovered in the permit sequence. Ms. Hammen asked if the City could refund the applicant’s building permit fee in the event he did not proceed or was prevented from proceeding with construction. Mr. Teddy replied the request would probably have to be made to the City Manager.

Mr. Carroz asked if the plans had been distributed to the Benton Stephens Neighborhood Association at the time they were submitted to City staff and if any comments had been received. Mr. Simon noted the memo from Mr. Creech had indicated on December 11, 2015 Mr. Norgard had verified that the neighborhood had asked Mr. Naydyhor to make changes to the outward appearance of the proposed duplex and had discussed his mixed feelings of Mr. Naydyhor’s offer to add a parking spot. As a result, he understood there were only some questions about the outward appearance. He pointed out that on October 12, 2015, Mr. Norgard responded with various concerns, mainly regarding the perceived limitations or disagreement on how the overlay was being interpreted and had asked about the parking required on the lot. Staff had responded and Mr. Naydyhor had resubmitted plans, which were re-routed. He understood there were no further comments from the neighborhood association.
Chair Clithero stated one thing he had heard tonight was the concern for a precedent, and noted he did not believe that any decision ever made by the Board would set a precedent in any way. He thought they might only set a precedent if someone received a building permit from the City, started construction, received a stop work order, and requested a variance. If the City did not approve a permit, a person could request a variance and the Board would not have set a precedent by approving this request because that would be a different situation. He commented that he hoped the Board would not have to deal with variance requests for situations such as this ever again, and noted he intended to support this variance request.

Ms. Hammen stated a person involved in real estate in Columbia should be well aware of the dimensions of property, and in her opinion, being unaware of the property dimensions and ignorant of the law was not an excuse or a hardship. She felt this was a self-imposed hardship that should not be excused or validated, and putting responsibility on the neighborhood association to catch the error was not legitimate. She agreed the City should have caught the error. She commented that errors had happened before and they hoped those errors would never happen again, but that did not excuse the property owner or give the property owner the right to proceed with something that was illegal. In addition, having spent money on something illegal was not a basis for granting a variance. She stated she could not support this request. She felt the property owner caused the difficulty and that the City shared in the responsibility. She commented that it would be nice if the City refunded the building fee. She did not believe neighborhoods should be blamed for the mistakes of developers and the City. She commented that she hoped the Board would not grant this variance request.

Chair Clithero stated he did not recall any blame being placed on the neighborhood association. Ms. Hammen thought that had been implied with regard to what the neighbors saw. Chair Clithero commented that he had not had that impression.

Mr. Campbell stated a professional should know the rules and regulations and should not completely rely on City staff. He commented that he could not support this proposal because it did not fit the neighborhood, which was important.

Chair Clithero made a motion to approve the variance permitting a lot width of fifty (50) feet and to rescind the stop work order. The motion was seconded by Mr. Campbell.

CASE NO. 1916 VOTE RECORDED AS FOLLOWS: VOTING YES: CARROZ, GIROUARD, CLITHERO. VOTING NO: HAMMEN, CAMPBELL. The variance was denied.

Chair Clithero recessed the meeting for eight minutes.

Case Number 1917 was a request by Adam Saunders and Adrienne Stolwyk for the Board to determine that the subject property is a lot with a principal one-family dwelling and a variance to the minimum off-street parking requirement by allowing fewer off-street parking spaces than required on property located at 214 Saint Joseph Street.

Chair Clithero opened the public hearing.

Mr. Moehlman stated there was a unique procedure for this case as it had two parts. The first part of the request was an appeal of the decision by the Community Development Director that the subject property was not a lot with a principal one-family dwelling, which City staff believed was a
requirement to allow an accessory dwelling unit. The second part of the request was a variance to the parking standards that would be imposed by adding the accessory dwelling unit. The variance request would be moot if the appeal was not approved.

Mr. Carroz understood the second part of the applicants’ request would not be discussed. Mr. Moehlman believed Ms. Stolwyk would make a combined presentation, but noted the two requests needed to be considered separately.

Adrienne Stolwyk, 214 Saint Joseph Street, presented a PowerPoint presentation, and explained she and her husband owned and resided at the subject property. She noted Mr. Teddy had brought to their attention the use of the subject property as a rooming house was not in compliance with the accessory dwelling unit (ADU) definition. The rest of their application, except for parking, met the requirements for an accessory dwelling unit. She noted an ADU was defined as a secondary dwelling unit created on a lot with a principal one-family dwelling, which was subordinate to the principal dwelling, and could be internal to or attached to the principal dwelling or built as a detached structure. Although their house was used as a rooming house, she believed it met the spirit of the ADU ordinance. She mentioned that she had sat in on a lot of City meetings regarding ADUs as she was an advocate for ADUs. She stated the Columbia Imagined plan had a policy to support diverse and inclusive housing options by using a strategy to promote homeownership and affordable housing options, and encourage integrated residential densification through flexibility and dwelling unit options. She commented that building an ADU would allow them to continue to own and occupy the house as their family needs changed to include a time when extended family might need to use the property. Rooming houses and ADUs provided affordable housing options and promoted densification without changing the neighborhood character. ADUs supported citizen goals of promoting existing neighborhoods, encouraging dense development within the City core, creating a diverse housing stock, and creating diverse, affordable, and attractive housing. She stated ADUs were appropriate in a historic neighborhood like theirs. She explained they had shared their plans with many neighbors and no one had voiced opposition. The subject property was located close to downtown and two and one-half blocks away from Broadway. The proposed ADU would have a footprint of 432 square feet so it would not have much of a visual impact from the street. They believed the ADU definition was intended to prevent construction of an ADU on R-2 and R-3 zoned properties with uses that were incongruous with an ADU. One lot located at the corner of Circus Avenue and Lyon Street and another lot located on Saint Joseph Street both had R-3 zoning designations and were large enough for an ADU, but there was an apartment house on one lot and a four-plex on the other lot. She stated those types of uses were different than their home, which was originally built as a single-family house, and had the character of a single-family house. The use of the house had changed to a rooming house, but had not really changed visually. The house was owner-occupied with cooperation among the residents, similar to a single-family house. She commented that a rooming house was different than an apartment house as there was a lot of interaction among residents and shared duties. Many homes in this era currently or previously had ADUs or carriage houses. She noted the Historic Preservation Commission had named the subject property a most notable property in 2008. She stated an ADU with two or fewer bedrooms was required to have one off-street parking space. The proposed ADU would have fewer than two bedrooms so it would need one parking space. She mentioned a rooming house needed one parking space for every two occupants that the house was ultimately designed to accommodate, so three off-street parking spaces were needed for the rooming house. The subject property had an existing one-car garage and two parking spaces in the North Village parking district. She stated the North Village parking district issued parking permits for on-street parking to residents on Saint Joseph Street, with each residential unit receiving two parking permits and one visitor card. They
were proposing two on-street parking spaces for the principal dwelling and two on-street parking spaces for the accessory dwelling unit. She noted they were also proposing to demolish the existing garage to gain more access to the site and build an ADA accessible off-street parking spot. She commented that the proposed ADU would be as ADA accessible as possible, and creating an ADA accessible ADU was a high priority. They were not able to easily convert the principal rooming house into an ADA accessible dwelling due to site constraints and the floor line being four feet above grade. She explained they had evaluated different parking configurations but did not want to sacrifice the ADA parking spot with an unloading zone that led to a ramp to the ADU. The hardships in complying with the parking ordinance included demolishing the garage, which they would do in order to gain an extra parking spot and the required six foot setbacks for parking as it would create a constrained space for parking. She noted the most parking spaces that she could fit on the site was three, but it would not allow for an ADA parking space. This was the reason they were proposing the two parking spaces on-site in conjunction with the unique scenario the North Village parking permit program provided. They believed there were benefits for the proposed parking in that on-street parking was a resource and they would not add additional hardscape, stormwater runoff, etc. since the infrastructure and hardscape already existed. She commented that cars parked on a street visually narrowed the street, which caused traffic to slow down, so having parked cars on the street was good for their neighborhood. In addition, not having to pave the entire backyard to shoe horn in a few extra parking spaces would help retain the historic integrity of the subject property. She explained their proposal included bicycle parking and an ADA parking stall, which were not required, but would improve public safety and welfare. She requested the Board consider their requests for the appeal and the variance, and stated their proposal fit with the spirit of the ordinances.

Mr. Carroz asked how many parking stalls would be put in the backyard next to the ADU. Ms. Stolwyk replied they were proposing two off-street parking spaces. Mr. Carroz understood one space would be an ADA parking stall and the other would be a normal parking stall. Ms. Stolwyk stated that was correct.

Ms. Hammen asked how many parking permits the applicant currently had. Ms. Stolwyk replied they had been issued two parking permits for each bedroom. She noted she had clarified this with City staff because there was confusion on whether it was determined by bedroom or residential unit. According to the ordinance, it was determined by residential unit, so she had illustrated the most conservative interpretation of the parking permit program. Ms. Hammen asked how many parking spaces that would provide. Ms. Stolwyk replied the most conservative interpretation would provide four on-street parking spaces. Ms. Hammen understood there would be two-off street parking spaces. Ms. Stolwyk stated that was correct and noted there would be six total parking spaces in contrast to the four off-street parking spaces that would have been required by ordinance.

Ms. Hammen understood Ms. Stolwyk had been part of the ADU ordinance process, and asked if she had anticipated that the ordinance might affect her property. Ms. Stolwyk replied she had not as she had not owned property and was not even thinking about the subject property when she began advocating for accessory dwelling units in Columbia. She had attended meetings regarding ADUs because she was concerned about the application of the ADU ordinance to R-3 zoning districts. She stated she had since gained a lot of understanding about the nuances between a single-family and a rooming house, which had not been on her radar when she was advocating for ADUs, as she would have otherwise advocated for rooming houses to be included in the ordinance.

There being no further comment, Chair Clithero closed the public hearing.
Mr. Teddy mentioned the Board’s packet included a letter he had written to Ms. Stolwyk that was dated February 19, 2016. The letter addressed the applicant’s first application, which had only requested a parking variance, and informed Ms. Stolwyk that the variance request was being dismissed because an ADU was defined as a secondary dwelling unit created on a lot with a principal one-family dwelling. City staff had become aware that the existing building on the subject property was a rooming house, which was a separately defined term. The existing structure had the appearance of a house and was designed for living as a single housekeeping unit, but it would be defined as a rooming house per the zoning ordinance, which was a distinct use from a single-family dwelling. He noted the appeal hinged on that definition. He pointed out a “dwelling, one-family” was defined as a building containing one dwelling unit and a dwelling unit was defined as a building or portion thereof, designed to house a family. The definition of a family in the R-3 zoning district was a group of not more than four persons unrelated by blood, marriage, or registered domestic partnership, living together by joint agreement, and occupying a single housekeeping unit on a nonprofit cost-sharing basis, or an individual married couple, or registered domestic partnership, and the children thereof and no more than two other persons related directly to the individual, married couple or registered domestic partnership by blood or marriage, occupying a single housekeeping unit on a nonprofit basis. He noted the rooming house would exceed the definition of a family by one person. The letter of the law did not allow City staff to classify the subject property as an ADU-eligible lot unless the applicants either abandoned the rooming house in favor of a traditional single-family occupancy or were granted an appeal.

Chair Clithero asked if this was an issue of four or five people residing in the structure. Mr. Teddy replied the ordinance as written classified a one-family dwelling unit and rooming house as two separate things and they were listed separately in the permitted uses for residential zoning districts. He noted a single-family dwelling appeared in the R-1, R-2, and R-3 zoning districts, and a rooming house appeared in the R-2 and R-3 zoning districts. The strict letter of the law stated an ADU was subordinate to a single-family dwelling. Chair Clithero understood it had nothing to do with how many people were in the house but the definition of a rooming house opposed to a single-family dwelling. Mr. Teddy stated a rooming house could have five or more people. Chair Clithero commented that a single-family home could have 20 people. Mr. Teddy pointed out the City limited the occupancy for a single-family dwelling with four unrelated adults being the maximum. Chair Clithero understood it was the number of people not related. Mr. Teddy stated there was a functional characteristic to a rooming house. He explained a rooming house or boarding house was defined as a building occupied as a single housekeeping unit, where lodging or meals were provided for five or more people for compensation, pursuant to previous arrangements, but not for the public or transients; or a building occupied as a group home by five or more persons, each of whom was either a recovering alcoholic or recovering drug addict.

Mr. Carroz understood there would be no problem with having an ADU if the existing structure was not classified as a rooming house. Mr. Teddy stated that was correct. Ms. Hammen stated only four people could live there and the applicants would need to obtain a rental permit. Mr. Teddy stated that was correct. He commented that one way the Board might look at the subject property was that it was capable of reverting to a single-family dwelling at any time.

Mr. Campbell commented that houses had to be separated from rooming houses. This issue had been brought up in the East Campus neighborhood and was a critical question for some areas in the city. Ms. Stolwyk noted the ADU ordinance did not apply to the East Campus or the Benton Stephens neighborhoods. In addition, the existing rooming houses and issues related to an ADU on
rooming house properties in the East Campus neighborhood did not relate to this case because the subject property was not in the East Campus neighborhood.

Mr. Moehlman stated the appropriate standard for the appeal was to determine whether or not the interpretation by the Community Development Director and the interpretation proposed by the applicant were within the spirit of the ordinances.

Mr. Campbell asked what motion the Board would need to make. Mr. Moehlman replied the appropriate motion would be to approve the appeal.

Mr. Girouard asked for the City’s interpretation of increasing the non-conforming use of a property, particularly if the Board approved the accessory dwelling unit. He wondered if that would increase the non-conformity of the subject property. Mr. Moehlman replied he did not believe that it would, and noted if it did, it would be allowable. He believed the ADU ordinance allowed ADUs to be placed on an otherwise non-conforming property. Mr. Teddy stated ADUs were allowed on lots as small as 5,000 square feet and 50 feet wide in the R-2 and R-3 zoning districts.

Ms. Hammen stated the appeal and variance would go with the property and asked about subsequent owners. She commented that she did not know how many people could live in the house and whether that would affect public welfare or create a parking issue. She mentioned that she was conflicted because the current property owners did fabulous work around Columbia, but concerned about whether a five-unit boarding house would remain a five-unit boarding house. She noted she had been part of the ADU ordinance discussion and always thought the ordinance was written and interpreted to mean a one-family single unit house.

Mr. Campbell commented that almost every action the Board took set a precedent that might or might not be followed in the future.

Ms. Hammen asked if this was a hardship. Chair Clithero stated he did not think the Board was considering whether there was a hardship. Mr. Moehlman commented that a hardship was not considered for an appeal and noted the Board was determining whether or not the interpretation of the ordinance by the Community Development Director was correct.

Mr. Campbell made a motion to approve the appeal as requested. The motion was seconded by Chair Clithero.

CASE NO. 1917 VOTE RECORDED AS FOLLOWS: VOTING YES: CAMPBELL, CLITHERO. VOTING NO: CARROZ, HAMMEN, GIROUARD. The appeal was denied.

Ms. Hammen asked if Mr. Moehlman could research whether excess parking could be rented to non-residents in neighborhoods that were zoned R-3. She noted her question pertained to the sorority leasing parking from two fraternities. Mr. Campbell stated he did not think that would be a business. Ms. Hammen commented that she had thought parking spaces could not be rented out
and would like a definitive answer. Mr. Moehlman stated he could look into that. Mr. Carroz
commented that there were six or seven Saturdays each year when that issue occurred, so the
Board had to be careful. Ms. Hammen mentioned she had seen exceptions for football weekends
on certain issues. She assumed the ordinance could address one way of handling football
weekends and another way to handle other days during the semester or year.

Ms. Hammen asked if the City could make a checklist so errors would not be overlooked in the
future. Mr. Simon replied that was already in process.

There being no further business, the meeting adjourned at 9:12 p.m.

Respectfully Submitted,

Megan Eldridge
Deputy City Clerk