Chair Townsend called the meeting to order at approximately 7:00 p.m. Those members attending included Martha John, David Townsend, Philip Clithero, Rex Campbell and Fred Carroz. Also attending were the City Clerk, Sheela Amin, Community Development Director, Tim Teddy, Building and Site Development Manager, Shane Creech, City Arborist, Chad Herwald, Planner, Steve MacIntyre, Building Regulations Supervisor, Phil Teeple and Assistant City Counselor, Rose Wibbenmeyer.

The minutes from the regular meeting of March 12, 2013 were approved as submitted on a motion by Mr. Campbell and a second by Ms. John.

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

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

Chair Townsend understood the applicant had requested this item be tabled to the June 11 Board of Adjustment meeting.

Mr. Campbell made a motion to table Case No. 1852 to the June 11, 2013 Board of Adjustment meeting. The motion was seconded by Mr. Clithero and approved unanimously by voice vote.

Case Number 1859 was a request by Phebe La Mar, attorney for Broadway & Broadfield Properties, LLC, to grant a variance to the requirement to maintain at least twenty-five (25) percent of climax forest area by allowing less or no climax forest to be preserved; or for a determination there is no climax forest, or a determination only approximately 6,500 square feet of climax forest is required to be preserved, or allowance of a trade so the amount of climax forest required is preserved on another lot on property located at 3200 W. Broadway, 3301 Broadway Business Park Court, 3401 Broadway Business Park Court, 3304 Broadway Business Park Court, 3410 Broadway Business Park Court (lot with climax forest identified for preservation on plan submitted in 2001), 3302 Broadway Business Park Court, 3200 Broadway Business Park Court (all C-1 zoned lots); and Yorkshire Drive (two R-1 zoned lots immediately to the south of 18-20 Yorkshire Drive and lots with climax forest identified for preservation on plan submitted in 2001).

Ms. Amin explained an e-mail had been received from Doug and Annie Perry, who were protesting the removal of the trees at this time because those trees were the only buffer between the business and residential area.

Chair Townsend opened the public hearing.
Daniel Beckett, an attorney with offices at 111 S. Ninth Street, explained he was representing Broadway and Broadfield Properties, LLC, the owner of Lot 3 of Broadway Farms Plat 15 as recorded in Plat Book 35, Page 42 of the Boone County, Missouri records, and that he would refer to the property as the subject property. He noted the applicant was also the owner of Lots 22 and 23 of Broadway Oaks Plat 1 as recorded in Plat Book 33, Page 31 of the Boone County, Missouri records. He displayed the location of the properties on the overhead, and noted the subject property was zoned C-1, and was surrounded by commercial development to the east and north and residential lots to the west and south. He showed the trees in question on the overhead and stated they were on the subject tract and the residential lots – Lots 22 and 23 of Broadway Oaks Plat 1. He noted the applicant was requesting a variance to the application of Section 12A-49, which would require the applicant to maintain a minimum of 25 percent of the climax forest area on Lots 1-5 of Broadway Farms Plat 15, by allowing no climax forest to be preserved or alternatively to determine only 6,500 square feet of climax forest would be required to be preserved on Lots 1-5 of Broadway Farms Plat 15 and to let the said 6,500 square feet to be preserved on the adjacent residential lots, Lots 22 and 23 of Broadway Oaks Plat 1 instead of Lots 1-5 of Broadway Farms Plat 15. He entered Exhibits 1 through 11 into evidence, which included a certified copy of Sections 12A-49, 12A-5, 12A-110 and 12A-223 of the Columbia Code of Ordinances, a site plan showing the trees that would be preserved on the residential lots if the applicant was allowed to clear the vegetation and trees on the commercial subject tract, an aerial picture of Lot 3 of Broadway Farms Plat 15, a copy of the land disturbance plan for Broadway Farms Plat 15 approved by the City in 2001, a copy of the land disturbance plan for the subject tract approved by the City in December 2002, a copy of the land disturbance plan for the subject tract approved by the City in January 2013, a topographical map of the subject tract and Lots 22 and 23 of Broadway Oaks Plat 1, and a copy of the USGS map showing a stream running through Lot 22 of Broadway Oaks Plat 1. He explained, in 2001, the land disturbance plan for Broadway Farms Plat 15 was approved by the City and a permit was issued. The plan mistakenly included forested area contained within the adjacent residential lots and the total square footage used to determine the amount of climax forest that should preserved on Lots 1-5 of Broadway Farm Plat 15 was in error.

He stated Lots 1-5 of Broadway Farms Plat 15 only had approximately 25,000 square feet of wooded area on it, and 25 percent of 25,000 square feet equaled 6,250 square feet, so he believed only 6,250 square feet should be required for preservation if the forested area qualified as climax forest, and that this error in calculation created an unreasonable hardship the applicant could not be compelled to satisfy. In 2002, a second land disturbance was approved by the City and reduced the square footage of climax forest to be preserved on the subject tract to 6,500 square feet. By virtue of this new plan, he believed the tree preservation plan had been amended obligating the applicant to ensure only 6,500 square feet of forest be preserved on the subject tract. In 2013, a third land disturbance plan was approved by the City requiring the applicant to preserve 6,500 square feet of climax forest on the subject tract. The applicant was proposing the removal of all of the trees on the subject tract and dedicating the forested area annotated by the checkered area on Exhibit 5 to the City forever. This area consisted of approximately 6,455 square feet of trees, so the applicant was requesting the tree preservation burden be placed on the residential lots instead of the subject tract. Without this trade, the City codes would allow the applicant and any successor in title to clear the trees from the residential lots. He noted the granting of the variance would not result in any increase in quality or velocity of flow, degradation of water quality or negative impacts upon adjoining or downstream properties or the stormwater system as the status quo would be maintained. He commented that the degree of variance was the minimum necessary to afford relief from the unreasonable burden imposed by the requirements of Section 12A-49 of the Code of Ordinances, and the variance could be granted without defeating the public health, safety and welfare purposes and intent of Section 12A-49.
because approximately 6,455 square feet of climax forest on the adjacent residential lot would be preserved when the forest could otherwise be removed from those lots. Absent the variance, he believed the subject property was undevelopable. He commented that if it was the Board’s determination the variance would result in a lower level stormwater control, Section 12A-110 was controlling and the Board could still grant the variance as this section would allow the Board to impose certain measures if the variance would likely result in a lower level of stormwater control, to include the donation of privately owned lands or the grant of an easement to be dedicated for tree preservation if such lands were adjacent to a stream corridor. He noted a stream corridor ran east/west on Lot 22 of Broadway Oaks, which was adjacent to the subject tract and in the vicinity of the detention basin shown on the site plan. He referred the Board to the topographical map and the USGS survey map as they both depicted the stream corridor running through Lot 22 of Broadway Oaks. He commented that the Code did not define a stream corridor, but indicated the definition of a stream was a perennial and intermittent water course as identified through site inspection and the USGS survey maps. As a result, he felt the Board had the authority to accept the grant of easement encumbering Lots 22 and 23 of Broadway Oaks to be dedicated for tree preservation purposes. He asked the Board to grant the variance, which would permit the clearing of climax forest from the subject tract conditioned upon the applicant’s dedication or grant of easement of 6,455 square feet of climax forest on Lots 22 and 23 of Broadway Oaks.

Jay Gebhardt stated he was a civil engineer with A Civil Group and explained they had approximately 20,000 square feet of trees, but were required to save about 6,500 square feet on the C-1 portion of the lot so they could remove some of the trees, but not the last 6,500 square feet. He stated they wanted to trade the trees on the C-1 lot for the trees on the R-1 lots. He commented that the trees could be removed from R-1 lots once the lots were developed, so some might feel it was not a fair swap. In order to resolve that issue, they would preserve those trees in a conservation easement so they could not be removed. If the trees were not removed from the commercial lot, it would create the need for some severe walls and other items they preferred to avoid. He pointed out the new stormwater ordinance had been approved since this development was platted, and meeting those requirements should alleviate concerns since they would be providing a higher level of stormwater quality and quantity control. He commented that the R-1 lots were a little higher than the C-1 lot so the trees in that location provided a better buffer, and that the developer would build a privacy fence to help with screening and buffering of the residential property from the commercial property. He believed a more attractive project could be built if they were allowed to save the trees on the R-1 property versus the C-1 property.

Mr. Campbell stated he was concerned with this proposal and noted they had not addressed how the increase in runoff from the commercial property to the residential district would be handled. Mr. Gebhardt explained they had received one land disturbance permit on this lot since the stormwater ordinance was revised, so they would have to increase the water quality and the amount of detention provided, so they would clean up and improve the existing detention pond. Mr. Campbell felt the application was incomplete without information on how runoff and other negative effects would be handled. Mr. Gebhardt stated the reason it was not included was because they were saving 6,500 square feet and taking 6,500 square feet causing an equal impact. He pointed out the trees on the R-1 property would be removed if the variance was not granted. Mr. Campbell did not believe that was accurate. Mr. Beckett noted they were not asking for a variance from Article V – Stormwater Management. They were requesting a variance from the tree preservation article. Mr. Campbell understood, but pointed out they were converting 6,500 square feet of grassy, tree area to a paved area, so runoff would be increased and would impact areas below this. Mr. Gebhardt asked Mr. Campbell if he would agree they only had to
save 6,500 square feet and it was the same whether it was saved on R-1 or C-1 property. Mr. Campbell replied no.

Phil Wulff, 101 Yorkshire, explained his property was directly across from the current vacant lot and noted he was in favor of following the plans approved in 2001. He did not believe the status quo could be preserved because the runoff would be less with a residential home. He noted there was a narrow strip of land on the north side of his home that tended to swell to the point it was eating away at the side of land by his house due to the construction of Walmart, and wondered who was and would be responsible for addressing that issue. He commented that he might not have been as concerned with the proposal had the structure that was built in the northwest corner near Yorkshire been a single story structure as it dwarfed the duplexes and ruined the skyline. The second structure to the south that was under construction had fascia on the front and back that was higher than the duplexes. As a result, he did not trust anything this builder would construct, and preferred a residential home in terms of stormwater. He reiterated he was concerned about runoff and the building height.

Terry Alfermann, 104 Yorkshire, stated he and his wife were at Lot 24 so they were just south of Lots 22 and 23, and they were opposed the swapping of the trees. The corner of his lot and the corner of the C-1 lot were within three feet of each other. When they purchased their property in 2001, they assumed every vacant lot on Yorkshire Drive would eventually have a home on it, and he preferred a home to a vacant lot as he did not believe undeveloped land helped the value of existing developed properties. He was not sure how trading trees on C-1 property for trees on R-1 property was even possible as it did not seem to be fair. He pointed out that when the development plan was proposed in 2001, it was agreed to by everyone to include the developer, so he believed it should be the same now. He commented that they understood development would occur on the C-1 property, but also understood those trees would remain as it was the buffer for his property and the neighborhood. He agreed with Mr. Wulff in that the existing two story structure towered over the duplexes, and did not believe anyone would want that.

Bill Moyes, 107 Coventry Court, stated he was the President of the Coventry Court Neighborhood Association and noted the Association was in opposition to this variance request. He understood at least 13,000 square feet of trees could remain if the swap was not allowed. He commented that Mr. Gebhardt had indicated the trees on Lot 23 would be removed because the developer had that ability if this variance was not approved by the Board. He understood Mr. Gebhardt stated a privacy fence would be installed as a buffer between the commercial and residential area, and passed around photographs of the fence installed around the stormwater basin on Lot 23. He pointed out it was ugly and had missing boards. In addition, there were areas small children could climb through and under. He felt this indicated the developer did not want to be a good neighbor.

Terry Black, 105 Yorkshire, explained he and his wife were opposed to this variance request. He agreed with Mr. Moyes in that what was there now had not been well kept and was likely a reflection of what to expect in the future. He commented that there was currently not much of a buffer because he could hear every business in the area in terms of orders at food places, conversations in the parking lots, etc., and the removal of those trees would make it worse. He commented that when he moved to his home in 2002, he did not expect this much commercial development near his house. He was concerned more commercial development would make his home less appealing when he tried to sell it. He felt all of the trees needed to remain, and noted some of the trees on the periphery were low and small, while the trees on the subject lot were higher.
Tamara Trim, 102 Coventry Court, commented that there was strong opposition to this variance request. She did not believe anyone in the area was in agreement to the developer removing any of the trees, and pointed out the ones on the commercial lot appeared to be the larger, more mature trees, so the trading of the trees from the commercial lot to the residential lots would not be a fair swap. The removal of the mature trees would greatly impact them in terms of noise and visual appeal. She noted dumpsters, bottles, generators, etc. could be heard during the night, and believed more trees were needed as a buffer.

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

Mr. Creech stated the memo he had written, which was a part of the packet, provided the staff comments, but pointed out, for clarification purposes, that his memo was referring to the 2001 plan. The packet included the 2002 plan, and that plan did not show the two residential lots discussed. It only showed the commercial area and the 6,500 square feet in that location.

Ms. Wibbenmeyer explained the legal standard for a variance was set forth in Section 12A-110 of the Columbia Code of Ordinances, and noted the Board should have a copy of it. Subsection (b) listed the requirements the Board must find in order to grant the variance.

Mr. Campbell commented that in the past, this Board had been fairly generous in taking neighbor testimony into account, and noted he had wished the developer would have met with the neighborhood in order to work something out with them. He had not heard of any attempt to negotiate or work out an arrangement that was agreeable to both parties. He felt there was a plan in place and the neighbors had purchased their properties with that plan in place, and as a result, he believed the Board should honor that agreement.

Chair Townsend asked whether the ordinance even provided a mechanism for off-site mitigation. Ms. Wibbenmeyer commented that an issue was not knowing what evidence the applicant would present to the Board, and referred to Section 12A-110 of the Code of Ordinance as it indicated that if a variance granted by the Board would likely result in a lower level of stormwater control, the Board should impose reasonable mitigation measures including, but not limited to, the purchase and donation of privately owned lands or the grant of an easement to be dedicated for preservation or reforestation, and that the lands must be adjacent to a stream corridor in order to provide permanent buffer areas to protect water quality and aquatic habitat. As a result, the Board would first need to determine if the applicant had presented sufficient evidence to justify a variance and whether the variance, if granted, would likely result in a lower level of stormwater control. The Board would then have authority limited to the provisions in that section.

Mr. Campbell made a motion to deny the variance request. The motion seconded by Ms. John.

Mr. Clithero understood the building would be built regardless of whether the variance was granted. He commented that a lot of the opposition he had heard from the neighbors involved the buildings being there versus the removal of the trees, and the trees staying or being removed from the C-1 lot would not impact the construction of the building. He also pointed out the removal of the trees on the C-1 lot would not affect the water quality because of the new stormwater regulations.

Chair Townsend asked, if the variance was granted, whether it would likely result in a lower level
of stormwater control. Mr. Creech replied any time trees were removed, there would be more runoff from the site, but he could not say there would not be an increase in velocity or flow. Chair Townsend wondered if it would be prudent to have that reviewed by the engineers. He understood if the variance was granted, the applicant would have to purchase and donate privately owned land or grant an easement and have proper stormwater mitigation as a result of the removal of the trees. Mr. Creech explained there were more regulations in place now than in 2001, but he could not say that removing the trees versus what they were required to do was equal or more, without knowing exactly what they wanted to do and reviewing the calculations. Chair Townsend understood they had to make a decision based on the evidence presented. Mr. Campbell noted that was why he felt the information provided was incomplete. Chair Townsend asked if the applicant could work out a plan with the City to ensure the stormwater requirements were met. Mr. Creech replied if the only concern of the Board was the stormwater concern, he would suggest this item be tabled or assurances be included in the motion.

Mr. Gebhardt suggested this issue be tabled, and noted they could work with staff to ensure stormwater was either equal or better. He commented that they had offered to meet with neighbors, but the neighbors had not been interested, and stated they would still be willing to meet with the neighbors. Chair Townsend thought this should be tabled so further engineering studies on stormwater could be conducted and the applicant could meet with the neighbors in an effort to address their concerns.

Kimberly Felter, 101 Coventry Court, stated she lived at 101 Coventry Court and owned the adjacent lot, Lot 10, and the stream went through both of her lots. She pointed out the only time they were approached by Mr. Gebhardt was immediately after the last meeting when it was tabled. She commented that she was opposed to the variance request. She understood a building would be constructed, but did not believe a fence would hide it. She was also concerned about runoff as the creek raged like a river when it rained hard.

Mr. Moyes stated there was no contact by the applicant to meet with the Neighborhood Association.


Mr. Clithero made a motion to table Case No. 1859 to the May 14, 2013 Board of Adjustment Meeting. The motion was seconded by Mr. Carroz and approved unanimously by voice vote.

**Case Number 1860 was a request by David Walker, attorney for North County Shopping Center, LLC, to grant a conditional use permit for the purpose of constructing and operating a service station on property located at 2900 Paris Road.**

Chair Townsend opened the public hearing.

David Walker, an attorney with offices at 3210 Bluff Creek Drive, stated he was representing the applicant, North County Shopping Center, LLC, and explained Dillon Stores, who ran the Gerbes store and was a tenant of the Shopping Center, wanted to construct a fuel station. He referred to the application as it included a diagram showing the location of the fuel station in the existing parking lot of the Shopping Center. He pointed out it would just have fuel pumps and an attendant building. There would not be any repairs associated with auto service. He referred to the staff
report and noted the requirements and conditions for the granting of the conditional use permit had been satisfied. The C-1 zoning was appropriate and this use was authorized as a conditional use. It was in conformance with the character of the adjacent area and was located in front of a commercial shopping center.

Ms. John asked why they wanted to place a gas station at this location as there were two others nearby in each direction. Mr. Walker replied he understood it was business decision and reiterated it was properly zoned. He believed there was a market trend to add fuel sales to the grocery store and provided Hy-vee as an example.

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

Mr. MacIntyre explained staff was in support of the request. He pointed out that if this conditional use permit was approved, any future site plan and permits would be dependent upon meeting all of the regular requirements of the City codes to include stormwater.

Ms. Wibbenmeyer commented that Section 29-23 of the Columbia Code of Ordinances set forth the legal standards, and listed those standards.

Mr. Campbell made a motion to approve the conditional use permit as requested. The motion was seconded by Mr. Clithero.

CASE NO. 1860 VOTE RECORDED AS FOLLOWS: VOTING YES: JOHN, TOWNSEND, CLITHERO, CAMPBELL, CARROZ. VOTING NO: NO ONE. The conditional use permit was approved as requested.

Case Number 1861 was a request by Garrett Taylor, attorney for Warnken Properties IV, LLC, to grant a variance to the requirement that parking spaces not be allowed in the required front yard for R-3 zoned properties by allowing the exiting four (4) parking spaces to remain in the required front yard on property located at 1314 Anthony Street.

Ms. Amin noted Marjorie Lewis, the attorney for the East Campus Neighborhood Association, had requested this item be tabled to the May 14, 2013 Board of Adjustment Meeting, and a response from Craig Van Matre, the attorney for the applicant, indicated they did not want this issue tabled. In addition, letters were provided by Janet Hammen, the President of the East Campus Neighborhood Association, and residents of the East Campus Neighborhood, Sarah Smith on University Avenue, Don and Kathy Love on University Avenue, Elizabeth Peters on McNab Drive, Christopher Kassing on Anthony Street, and Bonnie Bourne on University Avenue, indicating they were opposed to the granting of this variance.

Chair Townsend opened the public hearing.

Craig Van Matre, an attorney with offices at 1103 E. Broadway, provided the Board a copy of the powerpoint presentation and explained this case involved a human error, which was why it was now before the Board for resolution. He stated they were asking for a variance to allow the status quo that had existed for the past nine years with respect to this property to continue. He provided an aerial view of the property, which was acquired by the applicant in 2003, and noted a site plan for a 4-plex and eleven parking spaces had been submitted through the normal process and
approved. He displayed a zoning map, and noted the property was zoned R-3 and was not within the East Campus Neighborhood Association area or a single-family zoned district. The zoning in the area was predominately R-3 or an equivalent intense zoning, such as O-1. Following approval of the site plan and construction of the 4-plex, a certificate of occupancy was issue in 2005, and neither the City nor the applicant were aware violations of City ordinances had occurred. He noted, since the date of completion, the 4-plex had continuously been leased. The 4-plex had four units and each unit contained four bedrooms, and the occupants of the building parked on the lot. He explained the applicant had considered combining this lot with adjacent property, and during the course of studying the plat and re-platting the property, the mistake was discovered and a complaint was made to the City. An investigation was made as a result of the complaint, and it was determined there was a violation of Section 29-30(a)(6) of the Columbia Code of Ordinances. He noted the applicant was asking to cure the effect this mistake potentially had through the granting of this variance. If the variance was not granted and they were required to remove four parking spaces, they would no longer satisfy the City’s parking ordinance for the site, which required 2.5 parking spaces per dwelling unit containing three or more bedrooms and totaled 10 parking spaces, so they would lose the ability to use two of the units or would have to ask the Board to waive the parking requirement, which they believed was a poor solution to the problem.

Philip Warnken, 2509 Vista View Terrace, stated he was the authorized agent of the applicant and was involved in the development of this property in 2003 and 2004. He noted he had hired Marshall Engineering to assist in its development, and no one had ever advised him that this violated any City ordinance. He explained that when Marshall Engineering was laying out the site, they had indicated the parking could go in the back or the front, so he and his wife decided to locate the parking in the front. If they had located the building toward the front of the lot, the two story building would have overlooked a one story home occupied by a family directly to the east. They did not want their tenants looking into the windows of that structure so they put the building toward the back of the lot with parking in the front of the lot. He noted he had close to $1 million invested in the property as determined by an appraiser. If one or two of the units had to be vacated, the value of the property would be about half that value, but they would still have the same expenses as the entire building would still need to be maintained and taxes would still need to be paid on the entire building. He pointed out they had debt on the property and the income from only two of the units would not cover that debt and associated expenses. He commented that he had owned this property for nine years and had tried to be a good neighbor. He pointed out they had not heard from anyone in the neighborhood of any issue with regard to parking in the front of the lot and asked the Board to allow them to continue to use the four parking spaces in the required front yard. If they were denied the use of those four parking spaces and were still allowed to rent all of the units, four vehicles would have to go on the street, so they would not be able to lease the units as easily. In addition, he felt everyone would lose and no one would gain since more cars would be in the street. He believed the status quo should be maintained. He commented that if they lost the ability to rent out two of the units, they would have to evict eight tenants right before finals week, which was not ideal, and noted it would be difficult for them to find alternate housing at this time. In addition, they had leases for next year so they were obligated to provide rooms for sixteen people as those leases were signed prior to being made aware of this situation, and those sixteen people would likely have difficulty in finding alternative housing at this time as well. He pointed out there would not be harm to anyone if the variance was granted.

Sandra McDannold, 2608 Lizzie Lane, Rocheport, stated she was a residential real estate appraiser and had appraised the subject property at about $995,000 based on the cost, sales comparison and income approaches, but the most weight had been placed on the income
approach. She commented that if half of the tenants were lost, the value of the property would be reduced by about 50 percent.

Ron Lueck stated he was a land surveyor with offices at 914 N. College and had been involved since the site had been surveyed in March 2003. He noted he had been with Marshall Engineering and Surveying at that time and the civil engineer was Aaron Barnhart. He commented that he did not know there was a violation of the front yard setback requirement and had learned of the problem in January or February of this year after plans were developed for a similar development on adjoining property. He explained that if the 25 foot setback was measured from the south curb of Anthony Street, only 2.9 feet of one parking space and the small corner of another space would be impacted, but if the 25 foot setback was measured from the new right-of-way line, three and one-half parking spaces would be impacted. In addition, if the applicant was required to remove four parking spaces, they would deficient on the amount of parking required for the 4-plex.

Mr. Van Matre commented that the literal language of the City’s ordinances indicated the proper way to measure the setback was from the street, and not from the right-of-way line, and discussed the wording of Sections 29-2 and 29-8(d)(3) of the Columbia Code of Ordinances. If the 25 feet was measured from the curb, only 2.9 of one parking space would be required to be removed in order to comply with the ordinances. The staff interpretation was that the 25 feet be measured from the right-of-way line, and in that case four spaces would be required to be removed. Regardless of the way it was determined to be measured, he asked the Board to allow the applicant to keep what they had for almost ten years on this lot. It had existed for nine years without a complaint from anyone until this year, and there would not be any harm to anyone if the variance was granted. If part of the parking lot had to be removed, someone would suffer a substantial hardship because everyone in the area would suffer if parking was lost and the tenancy remained, and the tenant and the applicant would suffer damages if leases had to be broken. He referred to three court cases that he felt were representative of this situation in which the courts favored the party that had been granted a permit in error. He reiterated the variance requested was not substantial and no changes in the use of the property would occur if it was granted. He understood the East Campus Neighborhood Association was in opposition to this and wanted the number of units on this property and anything built on an adjoining property reduced. He pointed out the adjoining property was not at issue. He stated that if the Board sided with the Neighborhood Association, the applicant would be inflicted with an enormous financial hardship. He felt the Neighborhood Association was asking for different standards to be applied than anyone else for the R-3 zoning district. He submitted the 19 exhibits into evidence that had mentioned throughout his presentation.

Ms. John noted the original site plan showed two large oak trees at the street and asked what happened to those trees. Mr. Warnken replied the trees died within two years of the development. Ms. John asked if it would be possible to plant larger trees there if the variance was granted. Mr. Warnken replied there was not any reason they could not plant larger trees.

Marjorie Lewis, an attorney with offices at 601 E. Broadway, stated she was representing the East Campus Neighborhood Association and they were asking that this matter be tabled because not everyone could attend, to include the President of the East Campus Neighborhood Association and the immediately adjacent property owner, and because there had been changes to what had been planned by the applicant in terms of a replat of this and the adjacent lot. In addition, the application indicated a variance was being requested for four spaces, but the applicant was now
arguing the location of the lots lines. She commented that the Board could address the issue of tabling or she could proceed with her response. Chair Townsend suggested she proceed with her responses. Ms. Lewis stated the East Campus Neighborhood Association was interested in this matter, and even though their boundary did not include these two properties, the dividing line was immediately adjacent to the property at issue. In addition, neighbors in the East Campus Neighborhood Association had property immediately adjacent to the property at issue. The East Campus Neighborhood Association had received notice as a parties in interest so that was another reason she believed they were an interested party. She commented that the applicant had parking in the front of the building, which she did not believe should be allowed at all, and if a determination was made that no parking should be allowed in the front yard, the entire parking lot was non-conforming, but if parking was required 25 feet from the right-of-way, four spaces were in violation. She submitted into evidence a certified copy of Sections 29-2, 29-8, 29-21.4, 29-30 and 29-31 of the Columbia Code of Ordinances, a certified copy of Ordinance Nos. 017627, 017733 and 017722, a certified copy of the Rules of the Board of Adjustment, photographs of the property at issue and surrounding properties, the building permit for the premises at issue, the occupancy permit for the premises, an aerial photo of the premises, a city map showing the East Campus urban conservation overlay boundaries, the revised and current plat for the property dated July 8, 2003, letters from the East Campus Neighborhood residents, site plans for the original construction on the subject property, a certified copy of the deed from Warnken Properties IV, LLC to Warnken Properties VII, LLC dated April 4, 2013 for 1312 Anthony, a certified copy of the deed from Timothy Rains to Warnken Properties IV, LLC dated July 27, 2012 for 1312 Anthony, a certified copy of the deed from Gary and Judy Colliver to Warnken Property IV, LLC dated February 21, 2003 for 1314 Anthony, and a certified copy of the certificate of good standing for Warnken Properties VII, LLC showing it was created April 2, 2013. She explained she had a different reading of the ordinances than the applicant. Section 29-8(d)(7) of the Code of Ordinances provided for a front yard of not less than 25 feet and Section 29-30(a)(6) of the Code of Ordinances indicated parking in the front yard was not allowed. In addition, Section 29-2 of the Code of Ordinances stated the yard was the open space between the building and the adjoining lot line, so if the adjoining lot line was the curb, the entire yard area was from the building to the curb. This meant the parking was in the yard, and that was not allowed per Section 29-30(a)(6). She pointed out she did not agree with the interpretation that the lot line was curb, but used it as an example since it had been argued by the applicant. She commented that lot lines were defined as lines bounding a lot as defined in the ordinances and the front of the lot was the part of the lot that abutted and had access to a public street. The lot line front was the boundary between a lot and the street on which it fronted. In addition, the definition of street was broader than the physically paved surface. She believed a public thoroughfare or a place which afforded principal means of access to a property abutting thereon included the right-of-way. She referred to Exhibit 16, which was the replat of the site, and noted the applicant had agreed to the location of its lot lines and setback through that plat. If they agreed with some of the arguments made by the applicant today, they would be setting aside the arguments made in the replat, which was not logical. She believed the applicant should be held to the lot lines and setbacks shown on the replat adopted in 2003. She pointed out it did not matter what was determined as the lot line since the yard was everything in front of the building under the ordinances, and therefore, all of the parking was in violation. If the interpretation was that parking was allowed in the front yard, but not in the setback, four spaces encroached into the setback. She commented that they had heard testimony regarding financial hardship, but that was not the measure. Section 29-31(g)(6)(c) provided the Board the power to pass on appeals where there were practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the zoning chapter or to modify the application of any of the provisions or regulations of the zoning chapter relating to the construction or alterations of...
buildings so the spirit of such chapters were observed, public safety and welfare secured, and substantial justice done. The key was practical difficulties or unnecessary hardships, and those were defined through the Board rules as whether there were unique characteristics of the land, this was self-imposed or a problem common to other properties. She did not feel there were unique characteristics to the property. Although she did not feel the applicant did this intentionally, she believed it was self-imposed per the strict letter of the law. In addition, she did not believe this was common to other properties. If this issue had been found in 2003 after the property had been purchased but before construction, there would have been a limitation on the amount of parking and a smaller building would have been constructed. She reiterated financial loss was not the test as one was not allowed to build a larger building to earn more money if it violated the ordinances. She noted the parking was not approved by the City Council as part of the replat because the replat did not show parking. She commented that they were discussing 1314 Anthony, but 1312 Anthony was also involved as it was owned by the applicant until a few days ago, and the new company was controlled by the same person that controlled Warnken Properties IV, LLC, the owner of the subject tract. If there was a desire to make some adjustment, but not cause significant harm to the applicant, a possibility would be for the applicant to withdraw this variance application and submit another variance application or replat that took into account both lots. Part of the parking on this lot could be placed on the adjacent lot. It might mean Warnken Properties VII, LLC could not build a 4-plex on the adjacent lot, but in the end they would end up with the same number of units had this been done correctly in the beginning. She did not believe it was fair for the neighborhood to have to suffer for this mistake. She also felt some of the parking could be moved to other locations on the subject lot and believed that should be investigated along with the use of the adjacent lot. She pointed out she believed the courts saw no other way out in the cases cited by Mr. Van Matre, but there were options in this situation. She felt there was damage to the neighborhood as well, and noted the photographs provided by the applicant showed the western view, which appeared to be more business-like, but the eastern view was more residential and referred to the photographs and letters provided. The neighborhood felt there was overbuilding, and a lot of students looking for parking as a result of this overbuilding. It also created more noise, trash, etc. She pointed out the neighborhood was a historic district and believed that should be observed. She commented that the ordinance requirements should be met, and if the Board granted the variance, she did not believe there would be substantial compliance with the zoning ordinances, the spirit of the zoning ordinances would be observed, or public safety and welfare would be secured. In addition, substantial justice would not be done. She stated that the parking was either in whole or in part non-conforming, and felt the rules of the Board of Adjustment and the requirements of the ordinances had not been met. She asked that the Board deny the variance.

Chair Townsend asked why the situation had existed for nine years before someone complained if this had been such a problem. Ms. Lewis replied she thought the neighbors could better respond to his question. Chair Townsend asked Ms. Lewis if she represented the adjoining neighbors. Ms. Lewis replied the adjoining neighbors were a part of the Neighborhood Association and had submitted a letter. She commented that she understood the neighbors had not realized the property was in violation of the ordinances until recently.

Kate Akers, 1411 Anthony Street, stated she and her husband had owned 1411 Anthony Street for more than 16 years and it was less than a block away from the subject property. She walked past this property almost everyday on her way to work. She commented that she was slightly sympathetic to Mr. Warnken as he was one of the better landlords in the East Campus area, but wondered why the parking had been allowed in the front yard in the first place. She pointed out
she was not a developer, attorney or community development expert and had to assume the developers and City did due diligence and had allowed this for some reason, and that was why she had not complained. She understood the Warnken’s had made a big investment in the property, but so had the Kassing’s, who lived next door, and the Drage’s, who lived across the street, and their children had to dodge all of the cars coming in and out of the parking lot. She felt it was an obnoxious placement of a parking lot and detrimental to the neighborhood. In addition, no one else was allowed to park in the front yard as they would be ticketed. She commented that she would like to see a resolution that did not involve Mr. Warnken losing his income from the building, but also wanted to see the parking adjusted as she cared about retaining the character of the East Campus neighborhood. At some point the City Council and those involved with planning and zoning had to take responsibility for the degradation of this neighborhood due to the consistently increasing density of development. She stated the house that had been on the adjacent property was a beautiful old house and was a victim of demolition through neglect, and understood it was not feasible to restore a house that had not been maintained for 30 years. She felt that attitude was being reinforced by allowing variances and replats that increased density. She asked the Board to take some responsibility by helping them work out a situation that respected the neighborhood and incoming up with a more creative solution.

Sarah Smith, 1619 University Avenue, explained she was the Vice President of the East Campus Neighborhood Association, and stated she was a first time homebuyer in East Campus and believed it was a great neighborhood as its character was unparalleled to any other neighborhood in Columbia. She noted purchasing a home was a huge investment and that she invested in a historic property because she believed in historic neighborhoods. She pointed out her letter included a picture of a high density property between the subject property and her home that had been developed beautifully. It housed about twice as many students and had a big front yard, so she felt it was possible to build high density properties that adhered to all of the City ordinances. This mistake, which she believed was the fault of the City and the developer, became her and her neighbors’ problem. She commented that it was not their job to know that was a violation of City ordinances. That was the responsibility of the City or the developer. She stated the parking lot was an eyesore and where a front yard should be located. She agreed Mr. Warnken was a respected landlord in the neighborhood, but felt allowing this would set a precedent and that was scary to her as a homeowner. Most of the properties near her were rental properties, and any of the structures could be demolished and later become an apartment complex that had density beyond what the lot could hold. She did not believe the variance should be approved and asked the Board to help maintain the historic nature of the neighborhood as there were other potential solutions to this situation.

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

Mr. Teddy commented that the right-of-way line was used when measuring the required setback or yard from the street, and it had been that way for decades. In addition, it was the way building lines were expressed on plats of subdivision. As a result, they did not agree with the argument that the required yard depth was measured from the street surface. He noted Section 29-30(a)(6) of the Columbia Code of Ordinances stated parking spaces for all other uses in residential districts shall not be located in the required front yard, with all other uses meaning other than one- and two-family structures, and the required front yard was the 25 foot depth. He did not believe it meant parking was not allowed in front of the building. It just could not encroach into the 25 foot setback. He pointed out the need for a correction had been discovered in the context of a plan review for both 1314 and 1312 Anthony Street as a combined development. That plan and accompanying
plat had since been withdrawn, so they were looking at a variance on the one lot.

Ms. Wibbenmeyer stated Section 29-31 of the Columbia Code of Ordinances set forth the legal standard of practical difficulties or unnecessary hardship, and that standard was to be established by the applicant. She noted it should be unique to the property and pointed out the Board had the ordinances in front of them to review.

Mr. Campbell commented that he had started his acquaintance with Anthony Street a long time ago as his first advisor lived at 1616 Anthony and he became the guardian of his widow. He regretted seeing what had happened to the street. The small brick house they had lived in was torn down for a 4-plex. He believed the crucial decisions involving this neighborhood were the lines drawn for the Neighborhood Association and the blanket zoning of R-2 and R-3 in the area. He stated the discussion being held tonight should have been held ten years ago before the subject property had been redeveloped with the 4-plex, and felt that was a mistake that had been made. He explained he had consistently taken the position that any time the City made a mistake, the Board, as the City, did not have the right to impose standards that would penalize the person for the City’s mistake. The applicant in this situation had submitted applications, received approvals and built to that approved plan. He did not think the Board had any other choice and felt they should approve the variance request.

Mr. Campbell made a motion to approve the variance as requested by allowing the four parking spaces to remain in the required front yard. The motion was seconded by Ms. John.

CASE NO. 1861 VOTE RECORDED AS FOLLOWS: VOTING YES: JOHN, TOWNSEND, CLITHERO, CAMPBELL, CARROZ. VOTING NO: NO ONE. The variance was approved as requested.

Case Number 1862 was a request by Michael and Jewell Keevins to grant a variance to the requirement for all new and expanded vehicle parking and maneuvering areas to be paved with concrete, asphalt, or an alternative paving material as determined by the director of community development by allowing a portion of the driveway/access route to be gravel on property located at 2409 Rock Quarry Road.

Ms. Amin pointed out Jewell Keevins, who was also listed on the deed for the property, had provided an e-mail on March 26, 2013 indicating she was aware of the application for a variance for a gravel driveway.

Chair Townsend opened the public hearing.

Michael Keevins, 713 W. Broadway, provided a handout depicting the driveway location and explained he and his wife were requesting a variance from the hard surfacing of the entire driveway. They had a plat that was in the process of being approved by the City for approximately 25 acres at 2409 Rock Quarry Road. They also had additional acreage that abutted the property, making the total acreage about 38 acres. They had applied for a plat for a single-family home so they had replatted a major piece of the property as a single legal lot, and wanted to build the home on the back of the property. He commented that they were requesting a variance to allow a big portion of the driveway to be gravel, and there was already a current gravel driveway that went to the back of the property, so they planned to leave a big part of that driveway as gravel. He stated they would be willing to concrete the first 200 feet that adjoined Rock Quarry Road. They believed
the intent of the ordinance was to control dust and felt this property qualified as it was unique in that it was a large tract close to town. They did not plan to develop the property at this time and only wanted to put their family home on it. They wanted to keep the trees and have less impervious area. The property adjoined the Greenbelt Coalition and Nature Conservancy property on most of the north side and some of the property to the west. A City park and the Hinkson Creek were toward the back of the property. The south side had some forever green space that was dedicated for PUD. They believed removing trees and additional impervious space was against the desire and mission statement of the scenic roadway overlay and the mission of the Nature Conservancy. The size of the lot along with the placement of the existing gravel road allowed the heavy wooded area and vegetation to control dust that would be created by the traffic of a single-family home. He believed this variance was unique, and noted that he and his wife understood that if they added home sites in the future, they would have to plat it, and at that point, they would look at the development and size and adhere to what they believed was the best and most suitable road or driveway for the property at that time.

Mr. Campbell commented that there was a small development with 3-4 houses that had existing roads going to them, and asked where those were in relationship to his property. Mr. Keevins replied it was to the south and the turnaround was about half way to the property line. He understood they could come off of Stags Way, but he and his wife wanted to keep it as a home site for them as they had four children. He believed a new road off of a City street would take a multi-family development and noted they were trying to preserve the land at this time. He commented that the driveway they were asking for already existed. Mr. Carroz understood that property was primarily student housing. Mr. Keevins agreed. Mr. Campbell pointed out the three homes in the area did not house students.

Mr. Campbell thought Mr. Keevins should be commended for creating a drive that would not increase runoff.

Ms. John stated she did not believe this would be the first time the Board of Adjustment granted a variance of this type.

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

Mr. Teeple provided a handout and stated he believed some of the facts were different than had been presented to the Community Development Department when Mr. Keevins had requested staff to examine the driveway. He was not aware of the fact the driveway went all of the back to where Mr. Keevins was planning to site his future house and the location of the drive in the packet was different than what was shown the handout provided tonight. He explained the fire code required a 20 foot wide access within 150 feet of a building, so they were looking at a 20 foot wide, half-mile long gravel road. He believed this was a self-created hardship as the placement of the house on the property was creating the need for the variance. Staff was not supportive of the granting of the variance as issues involved the maintenance of the road and the requirement for a dust-free surface. He pointed out Mr. Keevins was a developer, so he thought they needed to examine the future possibilities of what could happen at this site as the variance ran with the land. If the Board felt the variance was justified, he asked them to consider whether the gravel areas should be paved if the property was subdivided, rezoned or issued a conditional use permit, the uses that were allowed within this zoning district as Mr. Keevins, who operated a construction company with construction equipment, had mentioned constructing a barn or accessory structure for work purposes, the allowable area of non-dust free surface to be defined, the area being within
the Hinkson Creek Watershed, which was an impaired waterway, the effects of this variance on
stormwater requirements in the future if the property was subdivided, and whether the property
could be rented. He suggested the Board consider requiring the driveway to come off of Stags
Court as it would allow for a shorter driveway and better site distances or requiring the driveway to
be paved progressively over time. He provided sample wording for a motion to address some of
these issues if the Board was to grant the variance.

Ms. Wibbenmeyer commented that the burden was on the applicant to establish practical
difficulties or unnecessary hardship.

Mr. Campbell stated that if the Board required this applicant to pave the driveway, the cost might
be so much that the applicant would have to subdivide the property. He thought they wanted to
maintain this as a natural area and believed a gravel road was closer to a natural area than a
paved road.

Mr. Clithero agreed, and noted that if the applicant was required to pave the driveway, it would not
be in the same location as the gravel road was now.

Mr. Carroz understood the Board’s ruling would be for the recorded survey and not that the plat
that would soon be approved, and asked if that was correct. Ms. Wibbenmeyer replied it would be
tied to the property. Mr. Carroz explained the notice indicated it involved the recorded survey that
pre-dated the plat. He asked if that meant the Board’s ruling went with the property and the plat
could not address anything else afterward. Chair Townsend asked if he felt this might be
premature. Mr. Carroz asked if they should stipulate the variance was approved based on the
approval of the plat. Mr. Campbell understood the road was needed to build the house. Mr.
Carroz wondered how this decision would affect the plat. Ms. John referred to the suggested
motion provided by staff and thought they might want to approve it per the drawings provided and
that the variance should be voided if the property was subdivided, rezoned or a conditional permit
was issued for it. Chair Townsend understood a replat would not necessarily involve any of those
situations. Mr. Campbell understood all requirements would need to be met if the property was
subdivided. Mr. Carroz stated he did not believe that was not correct.

Mr. Teeple asked if there variance could be null and void if the property was ever subdivided. Mr.
Carroz stated he wondered if that could be done as well. Ms. John thought they would want to
include that statement she mentioned earlier. Ms. Wibbenmeyer explained Section 29-31 of the
Code of Ordinances allowed for the Board to make stipulations, but she had not had time to review
the wording of the suggested staff motion as she only received it right before the meeting.

Chair Townsend understood they were currently discussing leaving the existing road for ingress
and egress of a single-family residence. He wondered if it would resolve the concern if they
narrowly defined the variance for the existing gravel road pending approval of the site plan for the
proposed single-family residence.

Chair Townsend understood the concern of the plat and wondered if they should wait for the plat
to be approved prior to the variance being granted. Mr. Creech explained that Mr. Keevins might
not want to go forward with the plat if the variance was not granted, so he understood the desire to
know whether the variance would be granted first.

Ms. John asked what was being platted. Mr. Carroz replied Mr. Keevins was plating a single-
family lot. Mr. Clithero thought it was already a single-family lot. Mr. Carroz replied it was not. Chair Townsend pointed out it was a recorded survey and was technically not a lot. Mr. Creech pointed out it was agriculturally zoned as well. Mr. Clithero commented that he did not believe there was an issue if it was platted as a single lot just as it was surveyed. If it was replatted and subdivided there might be an issue.

Mr. Keevins understood the plat would be considered for final approval at the May 6, 2013 Council Meeting and the reason they platted it was because it did not meet the definition of a legal lot. In order to build the single-family home, they were required to plat it. Ms. John asked if it would include the entire site. Mr. Keevins replied it would be for the 25 acres. He noted they also owned additional tracts of land. The existing road came off of the 25 acres and on to the additional tract they owned. The handout provided tonight depicted the route of the existing gravel road. If it was not allowed for the road to go on the other tract they owned, they would just move that portion of the driveway to the 25 acre lot. Chair Townsend noted the road in the handout was different from the road provided on the plat in the packet.

Mr. Keevins pointed out he had met with the Fire Department and thought they were on the same page in terms of meeting City standards in terms of access.

Chair Townsend stated the plat in the packet showed 100 percent of the road being located on the 25 acre lot. Mr. Keevins commented that he preferred to keep it as it existed currently, which was depicted in the handout, but if they had to keep the road on the 25 acre lot, they would need to move it from its existing location to that lot. He noted the other parcels of land were not legal lots, so he could not build on those at this time.

Mr. Carroz suggested the motion be conditioned upon approval of the plat as the road laid currently in its existing condition. Chair Townsend thought they could only act on what had been filed so the road would have to be moved to be within the 25 acre lot.

Mr. Clithero asked how many houses could be built on one lot. Mr. Teeple replied two on agriculturally zoned land. Mr. Clithero understood they could build one more house on the lot without subdividing it. Mr. Keevins stated he was agreeable to a condition being added that there would only be one single-family home on the property as he did not intend to build a second home.

Mr. Campbell made a motion approve the variance based upon the depiction of the driveway on the drawing that was submitted as part of the packet and pending plat approval by the City Council. The motion was seconded by Ms. John.

CASE NO. 1862 VOTE RECORDED AS FOLLOWS: VOTING YES: JOHN, TOWNSEND, CLITHERO, CAMPBELL, CARROZ. VOTING NO: NO ONE. The variance was approved based upon the depiction of the driveway on the drawing that was submitted as part of the packet and pending plat approval by the City Council.

Mr. Townsend read a statement by Dennis Hazelrigg in which he asked that the Board to extend his appreciation to Mr. Campbell for his years of service to the Board of Adjustment, and that he was disappointed he could not be there in person to extend his gratitude for Mr. Campbell’s dedication and guidance over the years. Mr. Campbell thanked Mr. Hazelrigg and the Board.
There being no further business, the meeting adjourned at 10:02 p.m.

Respectfully Submitted,

Sheela Amin
City Clerk