

**MINUTES  
BOARD OF ADJUSTMENT  
JULY 8, 2014**

Chair John called the meeting to order at approximately 7:00 p.m. Those members attending included Phil Clithero, Elizabeth Peters, Sean Flanagan, David Townsend and Martha John. Also attending were the Deputy City Clerk, Megan Eldridge, Engineering Manager, Shane Creech, Development Services Manager, Pat Zenner and Assistant City Counselor, Rose Wibbenmeyer.

The minutes from the regular meeting of June 10, 2014 were approved as submitted on a motion by Mr. Clithero and a second by Ms. Peters.

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

**Case Number 1884 was a request by George Smith, attorney for Loop 70 Properties, LLC, for a conditional use permit to allow plumbing, heating, air conditioning, and electrical businesses, which may include related customary activities such as contracting, retail and wholesale sales and distribution on property located at 1604 W. Business Loop 70.**

Chair John opened the public hearing.

No one came forward.

Mr. Townsend made a motion to table Case No. 1884 to the August 12, 2014 Board of Adjustment meeting. The motion was seconded by Ms. Peters and approved unanimously by voice vote.

Chair John continued the public hearing to the August 12, 2014 Board of Adjustment meeting.

**Case Number 1885 was a request by H.A. Walther, attorney for Southport-Yarco, L.L.C., for variances (1) to reduce the rear yard setback to twenty feet; (2) to allow parking in the rear yard setback within six feet of an adjoining residential lot; (3) to allow no screening for a paved area that is greater than 1,500 square feet and that is within 50 feet of a residential lot; (4) to permit paved terraces to encroach into the side yard setback; and (5) to permit off-premise parking on property located at 1805 West Worley Street.**

Chair John opened the public hearing.

Skip Walther, an attorney with offices at 700 Cherry Street, provided a handout and explained he represented the owner of this property. He described the location of the property and stated his client wanted to add 11 units. They were requesting five variances and understood that was a lot, but believed it was important to develop the property in a way that was compatible with the existing neighborhood for maximum connectivity. They wanted to create a blended development that encouraged neighbors to interact. He explained this proposal assured a development that served a maximum number of clients with special needs, which they believed was underserved in Columbia. He agreed they could reduce density, but reducing the proposed development by even one unit meant one special needs client would not be served. He pointed out the proposed development minimized impervious surfaces. He noted the rear building setback and off-site

parking variances could be eliminated by not constructing unit 11, but felt that would be irresponsible and incompatible with the neighborhood as eliminating that unit and pulling the parking back would increase the impervious surface by 600-700 square feet. He pointed out there was no storm sewer system in this area so all of the stormwater flowed to the street.

Matthew Kriete, an engineer with Engineering Surveys and Services, stated his firm had developed a concept plan for the site layout, and explained R-3 uses were available on this site because the property was zoned O-1. He pointed out a monolith structure accommodating 11 units could be placed on this site since the height restriction was 45 feet, but did not feel that would be compatible with the neighborhood since most of the nearby structures were single-story, and a multi-story structure of that magnitude would tower above the surrounding development. He also noted that avoiding all variances would eliminate connectivity with Columbia Square Townhomes because they would have to screen along the property line, which would make it feel like a separate development. In addition, it would probably have its own separate drive to serve the parking lot. He thought the development as proposed would blend well with Columbia Square Townhomes, as the units were similarly structured.

Taylor Hunt, a representative of Yarco Companies, Kansas City, Missouri, stated they managed Columbia Square Townhomes along with a few other developments, and owned the subject property. He explained different ownership entities owned Columbia Square Townhomes, but the owners of the two entities were the same. He commented that Columbia Square Townhomes consisted of 176 townhome apartments, and noted it had been crime infested when acquired in 2000. They rehabilitated the property and corrected the crime issues through screening tenants and working with the Missouri Housing Development Commission, the Police Department, and others. He pointed out the townhomes operated at a 99 percent rate of occupancy, but were not ADA compliant, did not meet Fair Housing requirements, and did not incorporate universal design methods. He described the layout of the proposed 11 units and explained they were one-bedroom apartments that would serve Columbia residents who were severely or mildly disabled or at a stage in life where they felt they needed to enter an assisted living facility. This would allow them to not have to live in an assisted living facility since the services would be brought to them. The cottage-style units were preferred over a monolith structure for connectivity purposes and because it would not require an elevator system. The terraces, which would be within the side yard setback for four units, provided an activity space for residents and visitors. It was a place to congregate and encouraged residents to go outside and meet neighbors. In terms of the parking spaces located on the north part of the lot, he explained a part of those spaces would be on the Columbia Square Townhomes property, and noted an easement agreement allowing access to this property from the Columbia Square Townhomes property would be executed. He pointed out that because the Columbia Square Townhomes property was residential and this site was office, the Columbia Code of Ordinances required parking to be six feet away from any residential property, and they were requesting a variance to that requirement. They were also asking for a variance from the requirement to screen the parking area from the residential area for connectivity and compatibility purposes, and thought there were opportunities to develop a landscape plan that would provide the necessary landscaping throughout the development. He stated they were also asking for a variance to the rear yard setback of five feet, and noted all of the variance requests were intended to promote a unified neighborhood feel.

Mr. Walther pointed out the zoning ordinance permitted terraces to invade setbacks on the front and rear yards, but not on the side yards. He felt the spirit of the ordinances would be observed by granting all of their variance requests. He believed it was important to encourage

developments that served the type of clientele they served. He also felt their requests were innocuous because the developments were interconnected and closely aligned in terms of use. He stated they were unsure of a better way to develop this property so the needs of future and existing clients were met. He explained his client had spent a great deal of money creating a real neighborhood in Columbia Square Townhomes and wanted to add to that with ADA-accessible and universal design units in order to serve an underserved clientele.

Ms. John asked why they were so intent on putting residential units on an O-1 lot instead of rezoning the lot to residential. She understood at least two or three variances would then not be required. Mr. Walther replied they would probably have to rezone to a PUD and there was no assurance they would be successful in getting the needed density, and if they had less than 10 units they risked losing tax credits, which meant they risked not having a development. Ms. John stated she did not feel it was logical to leave it zoned O-1, and noted the ordinances required O-1 zoned property to be screened from a residentially zoned property. Mr. Walther did not believe that requirement met any public need or interest because they were creating a residential use adjacent to a residential use as permitted under the zoning code. They were not creating a substantial change in the character of the neighborhood. He pointed out two curb cuts for this O-1 zoned tract would be eliminated, which he felt was a benefit to the public. He did not think there would be any adverse effect to surrounding properties.

Ms. Peters understood people coming into this property would come from the Columbia Square Townhomes parking lot. Mr. Hunt stated the entrance to Columbia Square Townhomes came off of Claudell Lane and the entrance to this development would come off of that same access.

Ms. Peters understood the fence between the two properties would be removed for parking. Mr. Hunt stated that was correct. Ms. Peters understood sidewalks went to these units. Mr. Hunt stated that was correct.

Ms. Peters understood a variance was needed for off-site parking. Mr. Hunt stated that was correct. He explained they could eliminate that variance request by losing a unit, but it would create the need for more asphalt. Ms. Peters asked if asphalt was currently on the Columbia Square Townhomes side of the property line. Mr. Hunt replied yes. Ms. Peters understood that was not existing parking. Mr. Hunt stated it was a driveway. Ms. John stated she thought the line at the end of the parking area was where the drive was now. Mr. Hunt explained the beginning of the parking stall would be at the end of the driveway to the south.

Mr. Flanagan understood a request to rezone to a PUD was a longer process and there was no guarantee the request would be approved, but noted his concern was bypassing that review process. Mr. Walther explained the ultimate result of a rezoning would be the realignment of drawn lines on a piece of paper. They would wind up with the exact same development, number of units, and configuration. They felt that was unnecessary and fraught with risk because there was no way to know whether they would get the density they had the right to get with this zoning. There was a chance they would not be able to build because it would not make financial sense, and the community they were trying to serve desperately needed this housing.

Ms. John commented that at least two variances would go away if the property was zoned residential, so it appeared to be a self-created problem. Mr. Kriete explained none of the requested variances came from the O-1 zoning ordinances. Some were from R-3 ordinances, but the rest were from the parking requirements and landscaping requirements that applied to all

zoning districts. Ms. John noted a residential district did not have to be screened from another residential district. Mr. Kriete stated the screening variance was due to the pavement so a variance would still be required regardless of zoning. He explained they would ask the City Council for these same variances even if they rezoned to a PUD because they would still have to meet Sections 29-30 and 29-25 of the Columbia Code of Ordinances, which discussed parking and landscaping requirements. Rezoning would just put them in front of a different public body.

Mr. Flanagan stated he felt the rezoning process was the most appropriate method if it would fit better as a PUD. Mr. Kriete commented that he did not think this project would fit any better as a PUD than it did as R-3 or O-1. Going to the Council provided an opportunity to ask for variances. He believed people came to the Board of Adjustment if the property was already platted or had open zoning. He felt both public bodies served the same purpose in terms of thoroughness. The public had opportunity to speak here just like they did at a City Council meeting or a Planning and Zoning Commission meeting. Ms. Wibbenmeyer pointed out the authority of those public bodies was different. The Board of Adjustment's authority was limited under the ordinances whereas the City Council had authority in those other situations. At this point the applicant was in front of the Board of Adjustment and had the burden of proving the practical difficulties were not self-created and were unique and peculiar to the property. Mr. Walther stated he thought practical difficulties that were not self-created occurred in that they were trying to create a development that matched the Columbia Square Townhomes, which was already in existence.

Ms. Peters asked what type of client the applicant planned to have living in these units. She wondered if they would be wheelchair-bound. Mr. Hunt replied they would be disabled individuals of all ages, and would mostly be people that needed the support services that came with this development. Those on-site support services would be funded through rents and would include services such as physical training, mental assistance, etc. Ms. Peters asked if the residents would be self-sufficient enough to not need a 24-hour caretaker. Mr. Hunt replied yes, and explained he believed this development was designed for disabled people in need of support services and people that might be close to the point of having to live in a nursing home or an assisted living facility, but still wanted to be independent.

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

Mr. Creech explained staff originally had concerns about the number of variances being requested and whether this was the proper way to go as they often saw this as rezoning to a PUD. He noted he even questioned whether or not the two lots could be merged since the same uses were allowed in O-1, but understood they had a desire to have two separate ownerships. He explained his largest concern was the off-premise parking for which the applicant had agreed to do an access easement. He asked the Board to be specific in its motion that the applicant would need to provide an access easement from the City right-of-way, and including the required parking, if the Board agreed to grant the variances because it was the only way this property had parking if one of the lots sold. He reiterated he wanted to ensure there was an easement from the public right-of-way all the way to and including those parking spaces.

Ms. Wibbenmeyer explained applicants had to bear the burden of establishing that practical difficulties or unnecessary hardships existed in order to obtain a variance. In determining practical difficulties justifying a non-use variance, relevant factors included how substantial the variation was in relation to the requirements, the effect of increased population density if the variance was allowed on governmental facilities, whether substantial change in the character of the

neighborhood would be produced or a substantial detriment to adjoining properties would be created, whether the difficulty could be prevented by some method feasible for the applicant other than the variance, and whether interests of justice would be served by allowing the variance in view of the manner in which the difficulty rose and in considering all factors. She pointed out the general rule courts recognized for a variance to be granted was that the hardship was based on circumstances unique and peculiar to the property, and the reason she prepared the memo to the Board was because there did not appear to be any basis in the application. She noted the Board, under its authority and rules, could continue questioning the applicant to see what specific character was peculiar to this property. The applicant trying to make this development cohesive with an existing building on an adjoining property was not sufficient, as she did not know of any case law that recognized that as justifying a hardship. Most cases involved lots with an unusual shape or steep grade, something really unique to the property. She reiterated that was their burden to establish, and without it there was no legal justification. She commented that while what the applicant wanted to do was noble and fit the neighborhood, the applicant needed to pursue this through the rezoning or replatting process. She explained the fact the applicant could pursue those methods or make a design change worked against their justification for establishing the requirements for the variances. The Board could allow the applicant to reopen the hearing to allow additional evidence, or the Board could continue the case to allow the applicant to bring back sufficient evidence with a majority vote. She noted it was a factual determination for the Board, and there was a possibility they heard something she had not heard tonight.

Mr. Clithero asked if this would look or function differently if rezoned. Ms. Wibbenmeyer replied it depended on what was passed or how that zoning district was established. She noted that was a function of the City Council and the planning and zoning process under the Columbia Code of Ordinances and State Statute requirements. The applicant had a legal burden to establish there was something specific and peculiar, and that a hardship on the property justified granting these variances, otherwise the Board had no legal justification to make a decision.

Ms. Peters asked Ms. Wibbenmeyer if she felt the applicant should not have come before the Board in the first place because they were not asking for anything the Board could grant. Ms. Wibbenmeyer replied she prepared the memo because from the application she could not see the applicant had proven legal justification for the hardship, but as she had told Mr. Walther on the phone, he had a right to present evidence to the Board. She noted she had hoped to hear some demonstration about the grade of the property or something like that versus an improvement to the neighborhood or concerns with the rezoning process due to the possibility of losing tax credits. The practical difficulties or unnecessary hardship appeared to be of the applicant's making.

Mr. Walther stated he understood the Board had discretion to decide what it wanted. He did not believe the Board approving the variances was an abuse of discretion from a common sense standpoint. He commented that he believed they had presented a unique circumstance in that they could not develop this property compatibly with the neighborhood without asking for these variances. He felt there was sufficient evidence for the Board to justify approval of these variances.

Mr. Clithero asked what other restrictions staff would include if this was rezoned PUD. Mr. Creech replied he did not think staff would add any restrictions, but noted the Council could ask for something additional. Mr. Zenner explained staff conducted a concept review of this project and had identified these issues. The City had a cascading zoning district so the R-3 use was allowed. Planned developments were intended for unique parcels of property that required some

modification to basic dimensional requirements. There probably were opportunities to modify the site plan to work within the boundaries of the existing O-1 zoning, but it would require reviewing how the site was laid out. He pointed out this layout would eliminate two curb cuts on Worley and traffic congestion along a major arterial, and he thought they would run into the same problem if this property was rezoned in terms of a variance for parking and potentially screening. He commented they would be right back where they were, but as indicated by Ms. Wibbenmeyer, they would be within the purview of the zoning process. He explained, as planners they tried to avoid the use of planned zoning districts from a tracking perspective and the administrative morass it put them in as an organization. There were better ways to use the zoning code than having everything zoned as planned. He stated he would not want to see this come back as a planned zoning district and would prefer to see use of the City's basic standards. He explained that did not necessarily mean a reduction in density, but it would require another look at the design of the site. He thought the Board needed to decide whether they felt they had purview. From the zoning perspective, he did not believe they would see greater density or a difference in the site plan as it came forward with a statement of intent and design parameters. He noted the rezoning process would take 2-3 months of the applicant's time.

Mr. Townsend stated it appeared this site did not need much grading, and asked if it was ideal for disabled people. He asked if it would be unique in that regard. Mr. Kriete replied he agreed this property was very flat in relation to most undeveloped or developable property in Columbia.

Mr. Townsend asked if the property had to be owned by another entity in order to obtain tax credits. Mr. Hunt replied that was one reason why it was owned in that manner. Mr. Townsend understood the same number of variances would not be needed if the ownership of this site was the same as Columbia Square Townhomes, and asked what types of hardships were created that were unique to this land due to the way it was owned. Mr. Hunt replied separate general partner and limited partner entities were needed for tax credits because the owner of Columbia Square Townhomes already had their ownership entity embedded in the tax credit system. He did not believe SY Columbia Square Investors LP could apply for tax credits for that piece of land. Mr. Townsend asked who the tax credits were through. Mr. Hunt replied the tax credits were awarded by the Missouri Housing Development Commission (MHDC). Mr. Townsend understood tax credits would be awarded specifically for this project on this property. Mr. Hunt stated applications through MHDC for this property were due September 5, 2014. Mr. Townsend understood the deadline would be missed without these variances and the applicant would be unable to apply for tax credits in time to redevelop this property in this manner. Mr. Hunt stated that was correct and noted the tax credits provided the equity to construct the project. Mr. Townsend understood MHDC encouraged housing for disabled people. Mr. Hunt stated the MHDC generally did not provide points for it, but they did provide preference to applications or developers who provided enhanced services, so it increased the ability for an approved application. Mr. Townsend asked where this type of project would be developed if not at this site. Mr. Hunt replied if the tax credit deadline was not met, they could potentially sit for two or more years as that was how the development cycle worked in the tax credit world.

Ms. Wibbenmeyer reminded the Board that the reason courts held the need for it to be unique to the land was because the variances ran with the land. If the Board granted the variances and the owner sold the land, the variances would still be in place and could be developed by someone who was not building for people with special needs and not taking advantage of tax credits. Mr. Hunt replied the owners of Yarco Companies and the principals of this development were invested in providing services to residents and their intent was not to dispose of the property.

Ms. Peters made a motion to approve the variances for a reduction in the rear yard setback, parking in the rear yard setback within six (6) feet of an adjoining residential lot, no screening of the paved area, and off-premise parking variances as requested, and to approve a variance for the east side yard so only the patios could extend within three feet of the side yard, but to require the building setback on the east side to still be ten feet, with the condition that an access easement all the way from the parking area to the public street right-of-way was obtained. The motion was seconded by Mr. Townsend.

CASE NO. 1885 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, PETERS, FLANAGAN, TOWNSEND, JOHN. VOTING NO: NO ONE. The variances were approved with the condition that an access easement be obtained.

There being no further business, the meeting adjourned at 8:11 p.m.

Respectfully Submitted,

Megan Eldridge  
Deputy City Clerk