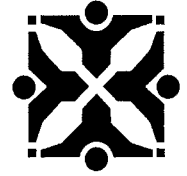


# City of Columbia

701 East Broadway, Columbia, Missouri 65201



**Agenda Item Number:** B 179-15

**Department Source:** Community Development - Planning

**To:** City Council

**From:** City Manager & Staff

**Council Meeting Date:** July 6, 2015

**Re:** Whirlwind Properties, LLC - Rezoning Request (Case #15-127)

## Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

**Supporting documentation includes:** Summary of Board/Commission Reports (including maps, applicant letter, proposed statement of intent, affidavit, and 2007 rezoning ordinance, SOI & development agreement), Excerpts from Minutes

## Executive Summary

Approval of this request will add "Hospitals, medical or dental clinics, sanitariums, and medical laboratories" to the uses permitted on the property, and increase the maximum building floor area from 180,000 square feet to 200,000 square feet.

## Discussion

The applicant is requesting the following two revisions to the 2007 C-P (Planned Business District) Statement of Intent (SOI) that was concurrently approved with the property's annexation and permanent zoning into the city:

1. Increase the maximum gross square feet of building floor area from 180,000 square feet to 200,000 square feet; and
2. Add "Hospitals, medical or dental clinics, sanitariums, and medical laboratories" to the list of permitted uses.

The subject site is currently occupied by Ed's and Sunset Mobile Home Parks and is intended to be used primarily for a hospital, which would initially occupy approximately 50,000 square feet with expansion potential up to 100,000 square feet. The applicant has expressed the desire to have an equivalent floor area (i.e., 100,000 square feet) available for office, retail, and miscellaneous services to support the primary medical use.

While no development plan has been submitted for review at this time, staff estimates that there is sufficient acreage to accommodate the proposed maximum building area and associated parking, open space, and stormwater facilities. The proposed new medical uses for the site generally require fewer parking spaces than the commercial uses already available under the existing C-P zoning. Development-related needs, including any off-site transportation infrastructure improvements will be

# City of Columbia

701 East Broadway, Columbia, Missouri 65201



satisfied by the applicant concurrent with platting and future development plan submittal, pending the recommendations of a required traffic impact study (per conditions in the SOI).

Upon annexation and the designation of C-P zoning in 2007, the property owner entered into an agreement with the City which included conditions intended to reduce crime, provide mobile home park tenants six months advance notice regarding the closure of the parks, and provide three months of rent, water, and sewer fee abatement. The applicant has provided an affidavit verifying that he has and will honor his obligations pursuant to the agreement. According to the affidavit, notice was given to tenants on March 15, 2015 of the parks' closure on September 30, 2015.

At its June 18th meeting, the Planning and Zoning Commission voted unanimously (7-0) to recommend approval of the requested C-P zoning amendment. There were no comments or questions from Commissioners, and no one from the public spoke on this request.

A copy of the Planning and Zoning Commission report (including maps, applicant letter, proposed statement of intent, affidavit, and 2007 rezoning ordinance, SOI & development agreement), and excerpts from the meeting's minutes are attached.

## Fiscal Impact

**Short-Term Impact:** No new capital spending is expected within the upcoming 2 years as a result of this proposal.

**Long-Term Impact:** The redevelopment of this site may increase demands upon the adjacent streets, sanitary sewers, and storm sewers. The costs associated with meeting these demands may be offset by increased property and sales tax revenues and user fees.

## Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Development

Strategic Plan Impact: N/A

Comprehensive Plan Impact: Land Use & Growth Management

## Suggested Council Action

Approval of the C-P zoning amendment

## Legislative History

Ord. #019602 (8/20/2007): Approved annexation, C-P zoning, and development agreement

\_\_\_\_\_  
Department Approved

\_\_\_\_\_  
City Manager Approved

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 179-15

### **AN ORDINANCE**

changing the uses allowed on C-P zoned property located on the southeast corner of Lenoir Street and Roosevelt Avenue (4130 and 4150 S. Lenoir Street); approving a revised statement of intent; repealing all conflicting ordinances or parts of ordinances; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The permitted uses on property in District C-P located on the southeast corner of Lenoir Street and Roosevelt Avenue (4130 and 4150 S. Lenoir Street), and further described as follows:

A tract of land in the north half (N 1/2) of the northeast quarter (NE 1/4) of Section 32, Township 48 North, Range 12 West in Boone County, Missouri being the land described in the warranty deeds in Book 2915 at pages 139 and 140 and also Parcel 1 of the land described in the warranty deed in Book 2757 at page 17, all of the Boone County Records and containing 20.75 acres, more or less, specifically described as follows:

Parcel 1: A tract of land containing 16.1 acres, more or less, located in part of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of Section Thirty-two (32), Township Forty-eight (48), Range Twelve (12), Boone County, Missouri, as shown by Survey recorded in Book 297, Page 606, Records of Boone County, Missouri; and

Parcel 2: Twenty-three and three-fourths (23 3/4) acres, more or less, the north-east part of the Northeast Quarter (NE 1/4) of Section Thirty-two (32), Township Forty-eight (48) North, Range Twelve (12) West, of the Fifth (5th) Principal Meridian, in Boone County, Missouri, more particularly described as follows: Beginning at the northeast corner of said Section Thirty-two (32) in the center of the county road; thence south along the east line of said Section Thirty-two (32), one thousand two hundred seventy (1,270) feet to the center line of the Columbia and Ashland Gravel Road (now State Highway 63 leading from Columbia to Jefferson City); thence along the center line of said highway north fifty (50) degrees west two thousand sixty-

seven (2,067) feet to the north line of said Section Thirty-two (32); thence east on the north line of said Section Thirty-two (32) in the center of the county road, one thousand five hundred eighty-eight (1,588) feet to the beginning. Excepting therefrom three (3) acres, more or less, as shown by survey recorded in Book 270, Page 564, Records of Boone County, Missouri; and also excepting therefrom sixteen and one-tenth (16.1) acres, more or less, as shown by survey recorded in Book 297, Page 606, Records of Boone County, Missouri; and also excepting therefrom any part conveyed, taken or used for road purposes.

are amended to include the permitted uses set forth in the statement of intent.

SECTION 2. The City Council hereby approves the terms and conditions contained in the revised statement of intent dated June 2, 2015, marked "Exhibit A," which is attached to and made a part of this ordinance, which replaces the statement of intent attached to Ordinance No. 019602 passed on August 20, 2007, and it shall be binding on the owners until such time as the Council shall release such limitations and conditions on the use of the property.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

**BROWN WILLBRAND, P.C.**

**ATTORNEYS AT LAW**

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P.O. BOX 1304  
COLUMBIA, MISSOURI  
65205-1304

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EMAIL: bdsimon@brownwillbrand.com

June 2, 2015

Steve McIntyre  
Department of Community Development  
City of Columbia, Missouri  
PO Box 6015  
Columbia, MO 65205-6015

Re: Fulton Medical Center/Whirlwind Properties

Dear Steve:

I enclose herewith a revised Statement of Intent with respect to the request of Fulton Medical Center, LLC, and Whirlwind Properties, LLC, to add additional uses and square footage of building area, as currently permitted by Ordinance No. 019602.

This Amended Statement of Intent should replace the Statement of Intent which I submitted with our application, and my letter of May 5, 2015.

If this does not suffice and additional information or changes are required, please let me hear from you.

Sincerely,



B. Daniel Simon

BDS:lwg

**AMENDED STATEMENT OF INTENT FOR C-P REZONING REQUEST BY  
WHIRLWIND PROPERTIES, LLC AND FULTON MEDICAL CENTER, LLC**

Location of Tract: 20.57 acres located at 4130 and 4150 South Lenoir Street and is presently  
Sunset Mobile Home Park and Ed's Mobile Home Park

A. **THE USES PROPOSED:**

State/private educational facilities  
Public utility buildings  
Federal/state government buildings  
Private research laboratories  
Office buildings  
Barber/beauty shops  
Dry cleaners  
Pet store  
Photo shops  
Physical fitness center  
Day care  
Printing shops  
Radio and television sales  
Repair of household appliances  
Shoe repair  
Retail stores  
Bakery  
Restaurants  
Hospitals for small animals  
Trade school  
Shops for custom work  
Garment storage  
Bicycle repair shops  
Sign painting shops  
Florist  
Wholesale sales office  
Medical and dental clinics  
Religious institutions  
Hospitals, medical or dental clinics, sanitariums, and medical laboratories

- b. Conformity with Requirements of Section 8 of Ordinance No. 019602. The Developer of the Property shall be required to conform with all requirements for the placement of the Property in Zoning District C-P, as provided for by Ordinance No. 019602, adopted by the City Council of the City of Columbia, Missouri on or about August 20, 2007, including, but not limited to, those of Section 8 of such Ordinance, meaning that the Property is subject to the following conditions:

1. The Developer shall be required to submit a Traffic Impact Study before or in conjunction with its C-P Development Plan for all or any part of the Property.
  2. The Developer shall be responsible for all off-site improvements recommended by the Traffic Impact Study.
  3. The Property shall be platted prior to the issuance of any building permits and all necessary right-of-way for adjacent streets shall be dedicated as a part of the platting process.
- e. The maximum gross square feet of building floor area proposed is 200,000 square feet.
- d. The maximum building height proposed is 45 feet.
- e. The minimum percentage of the site to be maintained in open space is twenty-five percent (25%)

Whirlwind Properties, LLC (Owner) and  
Fulton Medical Center, LLC (Contract Purchaser)

By: 

B. Daniel Simon, Mo. Bar No. 20248

BROWN WILLBRAND, P.C.

601 E. Broadway, Suite 203

P.O. Box 1304

Columbia, MO 65205-1304

Phone: (573) 442-3181 Fax: (573) 874-3796

e-mail: bdsimon@bwsplaw.com

*Attorney*



## SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

Summary of Board/Commission Reports (including maps, applicant letter, proposed statement of intent, affidavit, and 2007 rezoning ordinance, SOI & development agreement), Excerpts from Minutes



**AGENDA REPORT**  
**PLANNING AND ZONING COMMISSION MEETING**  
**June 18, 2015**

**SUMMARY**

A request by Whirlwind Properties, LLC (owner) for a major amendment to the C-P (Planned Business District) zoning on approximately 20.75 acres of land located on the southeast corner of Lenoir Street and Roosevelt Avenue, and addressed as 4130 and 4150 South Lenoir Street. (Case #15-127)

**DISCUSSION**

The applicant is requesting the following two revisions to the 2007 C-P (Planned Business District) Statement of Intent (SOI) that was concurrently approved with the property's annexation and permanent zoning into the city:

1. The maximum gross square feet of building floor area be increased from 180,000 square feet to 200,000 square feet; and
2. "Hospitals, medical or dental clinics, sanitariums, and medical laboratories" be added to the list of permitted uses.

The intended primary use of the property is a hospital, which would initially occupy approximately 50,000 square feet of the allotted building floor area, with future plans to expand to 100,000 square feet. The applicant has expressed the desire to have an equivalent floor area (i.e., 100,000 square feet) available for office, retail, and miscellaneous services to support the primary medical use.

While no development plan has been submitted for review at this time, staff estimates that there is enough space on the 20-acre site to accommodate the proposed 200,000 square feet of building area along with associated parking, open space, and stormwater facilities. Furthermore, the proposed hospital and related medical uses generally require fewer parking spaces than the commercial uses, which are already available to the site under its existing C-P zoning designation. Development-related needs, including any off-site transportation infrastructure improvements will be satisfied by the applicant concurrent with platting and future development plan submittal, pending the recommendations of a required traffic impact study (per conditions in the SOI).

The subject site is currently occupied by Ed's and Sunset Mobile Home Parks. Upon annexation and the designation of C-P zoning in 2007, the property owner entered into an agreement with the City which included conditions intended to mitigate crime, provide mobile home park tenants six months advance notice regarding the closure of the parks, and provide three months of rent, water, and sewer fee abatement. The applicant has provided an affidavit verifying that he has and will honor his obligations pursuant to the agreement. According to the affidavit, notice was given to tenants on March 15, 2015 of the parks' closure on September 30, 2015.

## RECOMMENDATION

- Approval of the proposed C-P Statement of Intent (SOI)

## ATTACHMENTS

- Locator maps
- Applicant letter
- Proposed Statement of Intent
- Affidavit
- 2007 rezoning ordinance, Statement of Intent, & development agreement

## SITE HISTORY

<b>Annexation Date</b>	2007
<b>Existing Zoning District(s)</b>	C-P (Planned Business District)
<b>Land Use Plan Designation</b>	Commercial District
<b>Subdivision/Legal Lot Status</b>	Surveyed tracts

## SITE CHARACTERISTICS

<b>Area (acres)</b>	20.75 acres
<b>Topography</b>	Flat to gently sloping
<b>Vegetation/Landscaping</b>	Grass & small clusters of mature trees
<b>Watershed/Drainage</b>	Clear Creek
<b>Existing structures</b>	Mobile homes

## SURROUNDING LAND USES

<b>Orientation from site</b>	<b>Zoning</b>	<b>Land Use</b>
<b>North</b>	City R-3 (Medium Density Multiple-Family)	Retirement facility
<b>South</b>	Boone County A-1 (Agriculture)	UMC-owned property
<b>East</b>	County A-1	UMC-owned property

<b>West</b>	N/A	US Highway 63
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#### UTILITIES & SERVICES

<b>Sanitary Sewer</b>	City Public Works
<b>Water</b>	Consolidated Public Water Supply District No. 1
<b>Electric</b>	Boone Electric Cooperative
<b>Fire Protection</b>	Columbia Fire Department

#### ACCESS

<b>Roosevelt Avenue</b>	North side of site
<b>Major Roadway Plan</b>	Neighborhood Collector (unimproved), requiring 60 feet of ROW
<b>CIP Projects</b>	None
<b>Sidewalk</b>	5-ft sidewalk required

<b>Lenoir Street</b>	West side of site
<b>Major Roadway Plan</b>	Major Collector (unimproved), requiring 66-76 ft of ROW
<b>CIP Projects</b>	None
<b>Sidewalk</b>	5-ft sidewalk required

#### PARKS & RECREATION

<b>Neighborhood Parks</b>	A. Perry Philips Park (1,000 feet southwest of site)
<b>Trails Plan</b>	No proposed trails adjacent to site
<b>Bicycle/Pedestrian Plan</b>	No proposed bike/ped facilities adjacent to site

#### PUBLIC NOTIFICATION

All property owners within 200 feet and City-recognized neighborhood associations within 1,000 feet of the boundaries of the subject property were notified of a public information meeting, which was held on May 26, 2015.

<b>Public Information Meeting Recap</b>	Number of attendees: Applicant's representative Comments/concerns: None
<b>Neighborhood Association(s)</b>	Lenoir Woods
<b>Correspondence Received</b>	None as of this writing

Report prepared by Steve MacIntyre; approved by Patrick Zenner





## 15-127: Whirlwind Properties LLC Rezoning



City of Columbia Zoning



Boone County Zoning



Columbia City Limit

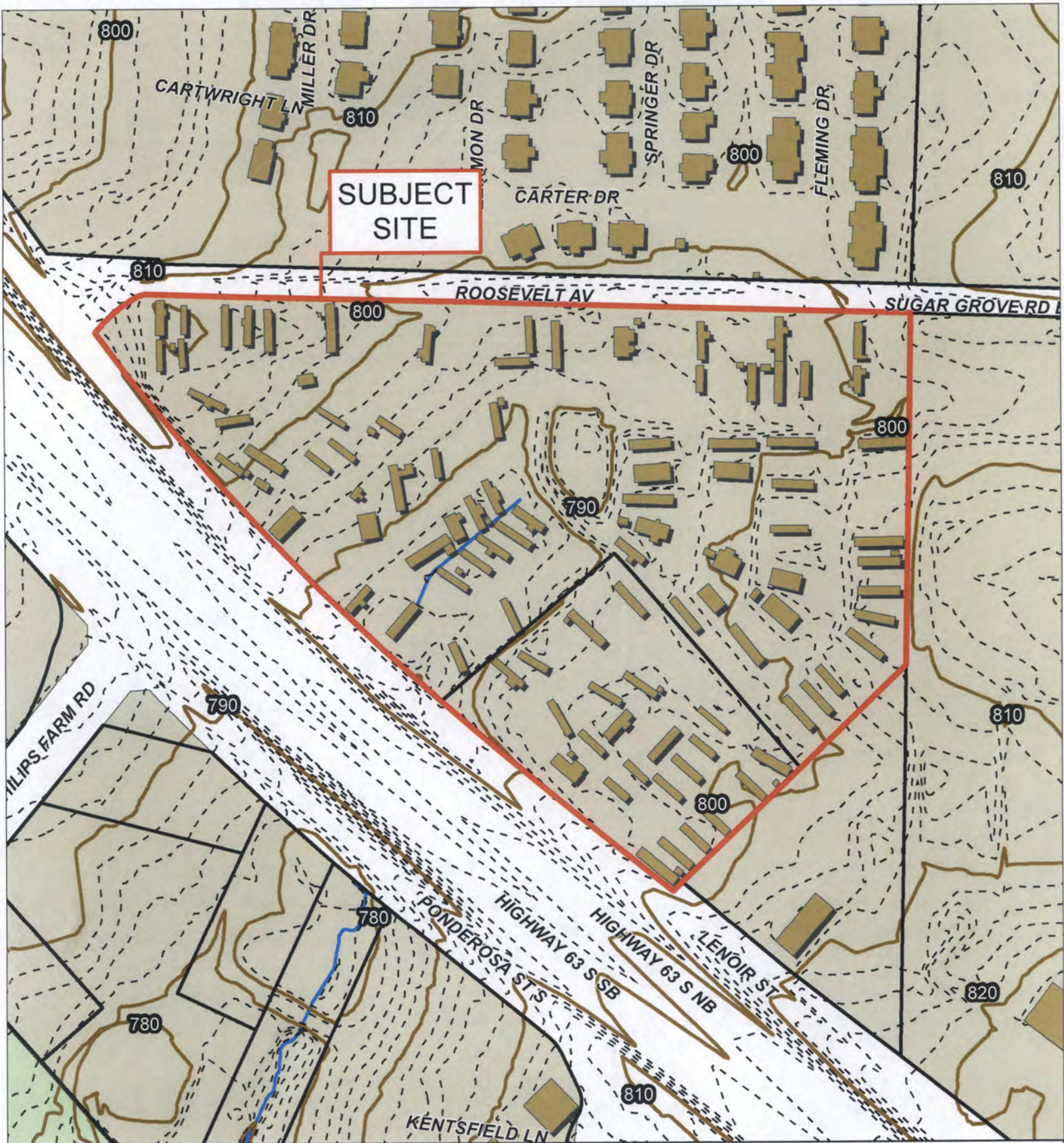


100-Year Flood Plain



Parcels





## 15-127: Whirlwind Properties LLC Rezoning

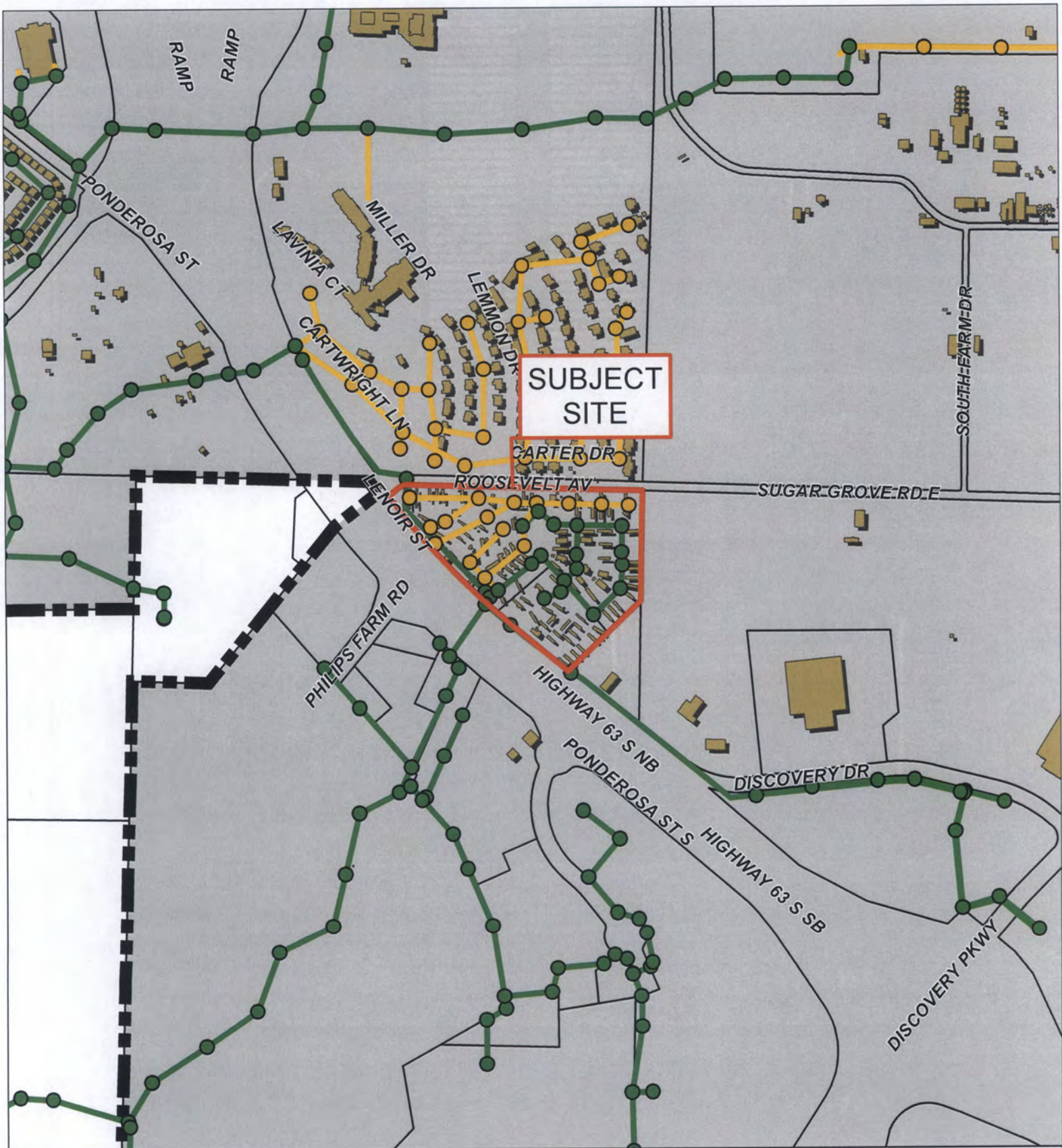


- 10 Foot Contour Lines
- - - 2 Foot Contour Lines
- ▭ Parcels
- Building Footprint

■ Bodies of Water







## 15-127: Whirlwind Properties LLC Rezoning



- City Sanitary Structure
- City Sanitary Line
- Building Footprint
- Private Sanitary Structure
- Private Sanitary Line
- Parcels
- Columbia City Limit



# **BROWN WILLBRAND, P.C.**

## **ATTORNEYS AT LAW**

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EMAIL: bdsimon@brownwillbrand.com

May 5, 2015

Timothy Teddy, Director  
Department of Community Development  
City of Columbia, Missouri  
PO Box 6015  
Columbia, MO 65205-6015

Steve McIntyre  
Department of Community Development  
City of Columbia, Missouri  
PO Box 6015  
Columbia, MO 65205-6015

Patrick Zenner, Manager  
Development Services  
Department of Community Development  
City of Columbia, Missouri  
PO Box 6015  
Columbia, MO 65205-6015

Re: Application of Contract Purchaser, Fulton Medical Center, LLC, and Owner, Whirlwind Properties, LLC, for Amendment of Ordinance No. 019602 (Council Bill No. B 197-07 A), adopted by the City Council of the City of Columbia, Missouri on August 20, 2007 (which such Ordinance placed the Property hereinafter described into Zoning District C-P (Planned Business District)), in order to amend such Ordinance and the "Statement of Intent for C-P Rezoning Request by Whirlwind Properties, LLC," which accompanies such Ordinance, so as to expand the "Maximum Gross Square Feet of Building Floor Area. . . " from 180,000 sq. ft to 200,000 sq. ft. and so as to add additional Permitted Uses for the Property

Dear Mr. Teddy, Mr. Zenner and Mr. McIntyre:

Whirlwind Properties, LLC, owns two (2) tracts of real estate, containing 20.75 acres, more or less, which are located at 4130 and 4150 South Lenoir Street, Columbia, Missouri, and which are currently occupied by Sunset Mobile Home Park and Ed's Mobile Home Park. Such tracts, in combination, are legally described as follows:

A tract of land in the north half (N 1/2) of the northeast quarter (NE 1/4) of Section 32, Township 48 North, Range 12 West in Boone County, Missouri being the land described in the warranty deeds in Book 2915 at pages 139 and 140 and also Parcel 1



of the land described in the warranty deed in Book 2757 at page 17, all of the Boone County Records and containing 20.75 acres, more or less

Such real estate may hereinafter be referred to as "the Property."

The Property is located in the city limits of the City of Columbia, being annexed to the City by Ordinance No. 019602, which was adopted by the City Council on August 20, 2007. Such Ordinance may be referred to herein as "the Ordinance."

The Ordinance, among other things, incorporated therein a Statement of Intent ("the Statement of Intent") which provided in paragraph b thereof that "The maximum gross square feet of building floor area proposed is 180,000. . ."

The Ordinance also, among other things, defined in Section 7 thereof, certain Permitted Uses, which also appeared in paragraph a of the Statement of Intent.

Whirlwind Properties, LLC ("Whirlwind Properties") has entered into a Contract for the sale of the Property to Fulton Medical Center, LLC ("Fulton Medical Center"). Fulton Medical Center, the contract purchaser, proposes to use the Property for a hospital, which will initially contain, roughly, 53,000 square feet. If the hospital is erected on the Property, then, in the future, the hospital may be expanded, to up to 100,000 square feet. In addition, the contract purchaser proposes to develop the Property, or sell parts of it, for various Permitted Uses, including those described in Section 7 of the Ordinance and its accompanying Statement of Intent, together with the following additional Permitted Uses:

Hospitals, medical or dental clinics, sanitariums and medical laboratories (which are permitted uses allowed by Section 29-15 (District C-3) of the City's Ordinances)

The parties, Whirlwind Properties and Fulton Medical Center, request an amendment of the Ordinance, and an amendment of the C-P zoning of the Property, in order to:

a. Expand the allowable square footage of buildings to be located within the Property from 180,000 square feet to 200,000 square feet; and

b. Add to the "Permitted Uses," which are already listed as Allowable Uses for the Property by way of the Ordinance, described above (which annexed and zoned the property), the following uses:

"Hospitals, medical or dental clinics, sanitariums and medical laboratories "

The parties, the Applicants, Whirlwind Properties and Fulton Medical Center, therefore, include herewith their Application for Rezoning of the Property, although the requested rezoning is

Page 3

simply a request to add the allowable uses (hospitals, medical or dental clinics, sanitariums and medical laboratories) described above and to increase the allowable building square footage from 180,000 square feet to 200,000 square feet.

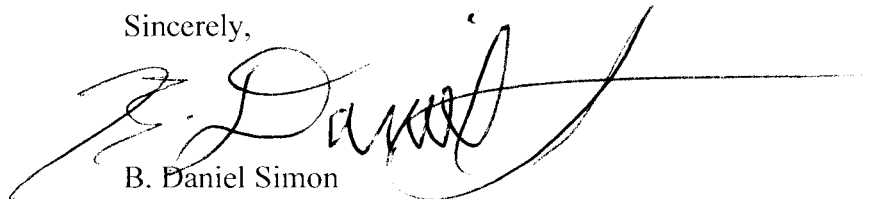
We enclose with the Application for Rezoning a locator map and a legal description, which I have certified to be accurate (and Mr. McIntyre indicated that he believed this would be acceptable). The intention of the Contract Purchaser is to acquire the Property, if certain contingencies to that acquisition are satisfied, and to initially erect on the Property a hospital.

The site contains roughly 20 acres. The hospital will initially contain building square footage of 50,000 square feet, and the hospital may be expanded (as and when the need arises) to up to 100,000 building square feet. The hospital will occupy roughly 50% or one-half of the Property. The Contract Purchaser, Fulton Medical Center, might subdivide the Property, in order to make a part of the Property available for sale to other purchasers, with the intention that all of the Property will be used for uses that are compatible with the hospital. The hospital is what is referred to as a "community focus hospital," which, in many respects, is comparable to an ambulatory surgery center, although the hospital will, at the outset, contain approximately ten beds for overnight stays by patients who need some hospitalization, for a limited period of time, following surgery. The average length of stay would 2.3 days.

We also include, with the Application, an amended Statement of Intent, assuming that might well be required.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Daniel Simon", with a long horizontal flourish extending to the right.

B. Daniel Simon

BDS:lwg  
Enclosures

**BROWN WILLBRAND, P.C.**

---

**ATTORNEYS AT LAW**

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EMAIL: bdsimon@brownwillbrand.com

June 2, 2015

Steve McIntyre  
Department of Community Development  
City of Columbia, Missouri  
PO Box 6015  
Columbia, MO 65205-6015

Re: Fulton Medical Center/Whirlwind Properties

Dear Steve:

I enclose herewith a revised Statement of Intent with respect to the request of Fulton Medical Center, LLC, and Whirlwind Properties, LLC, to add additional uses and square footage of building area, as currently permitted by Ordinance No. 019602.

This Amended Statement of Intent should replace the Statement of Intent which I submitted with our application, and my letter of May 5, 2015.

If this does not suffice and additional information or changes are required, please let me hear from you.

Sincerely,



B. Daniel Simon

BDS:lwg

**AMENDED STATEMENT OF INTENT FOR C-P REZONING REQUEST BY  
WHIRLWIND PROPERTIES, LLC AND FULTON MEDICAL CENTER, LLC**

Location of Tract: 20.57 acres located at 4130 and 4150 South Lenoir Street and is presently  
Sunset Mobile Home Park and Ed's Mobile Home Park

A. **THE USES PROPOSED:**

State/private educational facilities  
Public utility buildings  
Federal/state government buildings  
Private research laboratories  
Office buildings  
Barber/beauty shops  
Dry cleaners  
Pet store  
Photo shops  
Physical fitness center  
Day care  
Printing shops  
Radio and television sales  
Repair of household appliances  
Shoe repair  
Retail stores  
Bakery  
Restaurants  
Hospitals for small animals  
Trade school  
Shops for custom work  
Garment storage  
Bicycle repair shops  
Sign painting shops  
Florist  
Wholesale sales office  
Medical and dental clinics  
Religious institutions  
Hospitals, medical or dental clinics, sanitariums, and medical laboratories

- b. Conformity with Requirements of Section 8 of Ordinance No. 019602. The Developer of the Property shall be required to conform with all requirements for the placement of the Property in Zoning District C-P, as provided for by Ordinance No. 019602, adopted by the City Council of the City of Columbia, Missouri on or about August 20, 2007, including, but not limited to, those of Section 8 of such Ordinance, meaning that the Property is subject to the following conditions:

1. The Developer shall be required to submit a Traffic Impact Study before or in conjunction with its C-P Development Plan for all or any part of the Property.
  2. The Developer shall be responsible for all off-site improvements recommended by the Traffic Impact Study.
  3. The Property shall be platted prior to the issuance of any building permits and all necessary right-of-way for adjacent streets shall be dedicated as a part of the platting process.
- c. The maximum gross square feet of building floor area proposed is 200,000 square feet.
- d. The maximum building height proposed is 45 feet.
- e. The minimum percentage of the site to be maintained in open space is twenty-five percent (25%)

Whirlwind Properties, LLC (Owner) and  
Fulton Medical Center, LLC (Contract Purchaser)

By: 

B. Daniel Simon, Mo. Bar No. 20248

BROWN WILLBRAND, P.C.

601 E. Broadway, Suite 203

P.O. Box 1304

Columbia, MO 65205-1304

Phone: (573) 442-3181 Fax: (573) 874-3796

e-mail: bdsimon@bwsplaw.com

*Attorney*

**AFFIDAVIT**

**Grantor:** Whirlwind Properties, LLC, a Missouri limited liability company [address: Whirlwind Properties, LLC, Attn: Ron Netemeyer, Manager, 401 Locust Street, Suite 401, Columbia, MO 65201]

**Grantee:** City of Columbia, Missouri [address: PO Box 6015, Columbia, MO 65205]

**Real Estate:** The following described real estate situated in Columbia, Boone County, Missouri, commonly known as 4130 and 4150 South Lenoir Street, Columbia, MO 65201:

See **Exhibit A** hereto

**Date:** June 11, \_\_\_\_\_, 2015

## AFFIDAVIT

STATE OF MISSOURI       )  
                                      ) ss.  
COUNTY OF BOONE       )

COMES NOW **Ron Netemeyer**, an individual of Columbia, Missouri ("Affiant") [Affiant's mailing address is: Ron Netemeyer, Attorney, 401 Locust Street, Suite 401, Columbia, MO 65201], an individual of lawful age, who is referred to herein "Affiant," and who, being first duly sworn, upon his oath, states as follows:

1. Affiant personally knows all matters set forth in this Affidavit, of his own personal knowledge, to be true.
2. Whirlwind Properties, LLC, is a limited liability company of the State of Missouri, which is hereinafter referred to as "Whirlwind."
3. Affiant is now and has at all times since the formation of Whirlwind been a member of, and the manager and managing member, of Whirlwind, lawfully authorized to execute all contracts, agreements, conveyances and other documents in the name of and on behalf of Whirlwind.
4. That real estate hereinabove referenced in this Affidavit is the subject matter of City of Columbia Ordinance No. 019602 ("the Ordinance"), adopted by the City Council of the City of Columbia, Missouri ("the City") on August 20, 2007. Such Ordinance annexed the above described real estate into the city limits of the City of Columbia and placed such real estate within Zoning District C-P, Planned Business District.
5. Whirlwind is now and was at the time of the adoption of the Ordinance the owner of the above described real estate.
6. Pursuant to the Ordinance, the City and Whirlwind entered into a Development Agreement ("the Development Agreement"), a copy of which is annexed to the Ordinance as Exhibit B and is incorporated into the Ordinance by reference. Such Development Agreement imposed upon the "Property Owner" of that real estate hereinabove referenced in this Affidavit certain duties and obligations.
7. Such real estate was, at the time of the adoption of the Ordinance, occupied by two (2) mobile home parks, known as "Ed's Mobile Home Park" and "Sunset Mobile Home Park."
8. Under paragraph 3 of the Development Agreement, the Property Owner is required to "... provide a minimum six months' notice to all tenants of Ed's and Sunset Mobile Home Parks prior to the closing of either property." Under paragraph 4 of the Development Agreement, the "Property Owner agrees to abate all lot rent, water payments and sewer expenses for tenants of Ed's and Sunset Mobile Home Parks for the last three months of park operation."

9. Pursuant to the requirements of paragraph 3 of the Development Agreement, as such requirements are quoted above, Affiant, in the name of and on behalf of Whirlwind, the Property Owner, caused to be provided to all of the tenants of Ed's and Sunset Mobile Home Parks that Notice, a copy of which is annexed to this Affidavit as **Exhibit B** and is incorporated into this Affidavit by reference. Such Notice was given to all such tenants, on the 30<sup>th</sup> day of March, 2015. Whirlwind will, therefore, by September 30 2015 have fulfilled all of its obligations for the giving of the required six months' notice provided for by paragraph 3 of the Development Agreement.

10. Whirlwind has agreed to abate and will abate all lot rents, water payments and sewer expenses for tenants of Ed's and Sunset Mobile Home Parks as described in **Exhibit B**, which is annexed hereto and is incorporated herein by reference.

11. All of the obligations of Whirlwind to give notice, as required by paragraph 3 of the Development Agreement, have been fulfilled. All of the obligations of Whirlwind, as provided for by paragraph 4 of the Development Agreement, will be complied with, conformed with and fully satisfied by Whirlwind.

12. It is Whirlwind's intention to close Ed's Mobile Home Park and Sunset Mobile Home Park, and to have all mobile home tenants vacate the property, as provided for by that Notice attached hereto as **Exhibit B**. The operations of the mobile home parks will cease and terminate in all events.

13. Whirlwind has entered into a Contract with Fulton Medical Center, LLC, to convey the above described real estate, and all of the property of Ed's and Sunset Mobile Home Parks, to Fulton Medical Center, LLC. Whether or not the closing of the purchase and sale of real estate provided for by such Contract occurs, Whirlwind is terminating the operations of the mobile home parks, and will not allow or permit tenants to continue to occupy the mobile home parks beyond the date for their vacation of the mobile home park pursuant to that Notice attached to this Affidavit as **Exhibit B**.

14. Further Affiant sayeth not.

IN WITNESS WHEREOF, Affiant has executed this Affidavit on this 11 day of June, 2015.

  
Ron Netemeyer



Subscribed and sworn to before me this 11 day of June, 2015.



CANDANCE MILLER  
My Commission Expires  
November 13, 2016  
Boone County  
Commission #12414256

Candance Miller, Notary Public  
Boone County, State of Missouri  
My commission expires: November 13, 2016

**Exhibit A** - Legal description

**Exhibit B** - Notice

## EXHIBIT A

The following described real estate situated in Columbia, Boone County, Missouri, to wit:

A tract of land in the north half (N 1/2) of the northeast quarter (NE 1/4) of Section 32, Township 48 North, Range 12 West in Boone County, Missouri being the land described in the warranty deeds in Book 2915 at pages 139 and 140 and also Parcel 1 of the land described in the warranty deed in Book 2757 at page 17, all of the Boone County Records and containing 20.75 acres, more or less, specifically described as follows:

Parcel 1: A tract of land containing 16.1 acres, more or less, located in part of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of Section Thirty-two (32), Township Forty-eight (48), Range Twelve (12), Boone County, Missouri, as shown by Survey recorded in Book 297, Page 606, Records of Boone County, Missouri; and

Parcel 2: Twenty-three and three-fourths (23 3/4) acres, more or less, the north-east part of the Northeast Quarter (NE 1/4) of Section Thirty-two (32), Township Forty-eight (48) North, Range Twelve (12) West, of the Fifth (5th) Principal Meridian, in Boone County, Missouri, more particularly described as follows: Beginning at the northeast corner of said Section Thirty-two (32) in the center of the county road; thence south along the east line of said Section Thirty-two (32), one thousand two hundred seventy (1,270) feet to the center line of the Columbia and Ashland Gravel Road (now State Highway 63 leading from Columbia to Jefferson City); thence along the center line of said highway north fifty (50) degrees west two thousand sixty-seven (2,067) feet to the north line of said Section Thirty-two (32); thence east on the north line of said Section Thirty-two (32) in the center of the county road, one thousand five hundred eighty-eight (1,588) feet to the beginning. Excepting therefrom three (3) acres, more or less, as shown by survey recorded in Book 270, Page 564, Records of Boone County, Missouri; and also excepting therefrom sixteen and one-tenth (16.1) acres, more or less, as shown by survey recorded in Book 297, Page 606, Records of Boone County, Missouri; and also excepting therefrom any part conveyed, taken or used for road purposes.

**WHIRLWIND PROPERTIES LLC**  
2000 East Broadway #167  
Columbia, Missouri 65201  
(574) 819-4917

Date: March 30, 2015

To: Tenants of Ed's and Sunset Mobile Home Park

From: Whirlwind Properties LLC

Re: Park Closure

---

This letter is to inform you that Ed's and Sunset Mobile Home Park will be closing *October 1, 2015, 6 months from the date of this notice*. Rent and pad fees will abate beginning April 1, 2105. Any balance you have prior to April 1<sup>st</sup> is still due and owing. If you have paid April rent, a refund will be issued to you.

There are many other mobile home parks throughout the city and county, and it is our hope that each of you makes a smooth transition to another park of your choice on or before October 1, 2015.

If you have any questions, please contact Ron Netemeyer at the number above.

019602  
Permanent Record  
Filed in Clerk's Office

Introduced by Hindman  
First Reading 6-18-07 Second Reading 7-2-07  
Third Reading 8-6-07 Fourth Reading 8-20-07  
Ordinance No. 019602 Council Bill No. B 197-07 A

#### AN ORDINANCE

extending the corporate limits of the City of Columbia, Missouri, by annexing property located on the southeast corner of Roosevelt Avenue and Lenoir Street; directing the City Clerk to give notice of the annexation; placing the property annexed in District C-P; setting forth conditions of approval; authorizing an agreement with Whirlwind Properties, LLC; directing the city clerk to have the agreement recorded; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Council hereby finds that a verified petition was filed with the City on April 10, 2007, requesting the annexation of land which is contiguous and compact to the existing corporate limits of the City and which is described in Section 4 of this ordinance. This petition was signed by Whirlwind Properties, LLC, the owner of the fee interest of record in the land proposed to be annexed. A public hearing was held concerning this matter on June 18, 2007. Notice of this hearing was published more than seven days prior to the hearing in two newspapers of general circulation qualified to publish legal matters. At the public hearing all interested persons, corporations and political subdivisions were permitted to present evidence regarding the proposed annexation.

SECTION 2. The Council determines that the annexation is reasonable and necessary to the proper development of the City and that the City has the ability to furnish normal municipal services to the area to be annexed within a reasonable time.

SECTION 3. The Council determines that no written objection to the proposed annexation has been filed within fourteen days after the public hearing.

SECTION 4. The City Council hereby extends the city limits by annexing the land described in Section 1-11.189 of the Code of Ordinances of the City of Columbia, Missouri, which is hereby added to Chapter 1 of the City Code and which reads as follows:

Section 1-11.189. August, 2007 Extension of Corporate Limits.

The corporate limits of the City of Columbia shall include the following land:

A tract of land in the north half (1/2) of the northeast quarter (1/4) of Section 32, Township 48 North, Range 12 West in Boone County, Missouri being the land described in the warranty deeds in Book 2915 at pages 139 and 140 and also Parcel 1 of the land described in the warranty deed in Book 2757 at page 17, all of the Boone County Records and containing 20.75 acres, more or less.

SECTION 5. The City Clerk is hereby authorized and directed to cause three certified copies of this ordinance to be filed with the Clerk of Boone County, Missouri. The City Clerk is further authorized and directed to forward to the Missouri Department of Revenue, by registered or certified mail, a certified copy of this ordinance and a map of the City clearly showing the area annexed to the City.

SECTION 6. The property described in Section 4 is in the Sixth Ward.


SECTION 7. The Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended so that the property described in Section 4 will be zoned and become a part of District C-P (Planned Business District). Hereafter the property may be used for the following uses:

- Public schools, elementary and secondary, private schools with curriculum equivalent to that of a public elementary or high school, and institutions of higher learning
- Buildings and premises for public utility services or public service corporations
- Government buildings and facilities
- Research and development laboratories, provided there is minimal/insignificant use of hazardous materials based on a risk assessment
- Office buildings used for the administrative functions of businesses, professions, companies, corporations; and social, philanthropic, eleemosynary, or governmental organizations or societies
- Barber and beauty shops
- Cleaning, pressing and dyeing establishments, provided that no explosive cleaning fluids shall be used
- Pet stores and grooming shops, for small animals
- Photographic service shops and studios
- Physical fitness centers, private gymnasiums and reducing salons
- Family day care homes, day care centers, pre-school centers, nursery school, child play care centers, child education centers, child experiment stations or child development institutions
- Printing shops, provided the total mechanical power used in the operation of such printing plant shall not exceed five (5) horsepower

Radio and television sales and service  
Repair of household appliances  
Shoe repair shops  
Stores, shops and markets for retail trades, provided merchandise is not displayed, stored or offered for sale on the premises outside a building in the required front yard or in any side or rear yard adjacent to a residential zoning district  
Bakeries  
Restaurants, cafes and cafeterias  
Hospitals for small animals, if within an enclosed building  
Trade schools  
Shops for custom work, or the manufacture of articles to be sold at retail only on the premises, provided that in such manufacture the total mechanical power shall not exceed five (5) horsepower for the operation of any one shop, and provided that the space occupied by the manufacturing use permitted herein shall not exceed fifty (50) per cent of the total floor area of the entire building or the equivalent of the ground thereof, and provided further that such manufacturing use is not noxious or offensive by reason of vibration, noise, odor, dust, smoke, gas, or otherwise  
Garment storage facilities  
Bicycle repair shops  
Sign painting shops  
Wholesale sales offices and sample rooms  
Medical or dental clinics  
Churches, mosques and synagogues

The statement of intent, marked "Exhibit A," is attached to and made a part of this ordinance.

SECTION 8. The zoning of the property described in Section 7 is subject to the following conditions:

- 
1. The developer shall be required to submit a traffic impact study before or in conjunction with its C-P development plan for all or any part of the property.
  2. The developer shall be responsible for all off-site improvements recommended by the traffic impact study.
  3. The property shall be platted prior to the issuance of any building permits and all necessary right-of-way for adjacent streets shall be dedicated as part of the platting process.

SECTION 9. The City Manager is hereby authorized to execute an agreement with Whirlwind Properties, LLC. The form and content of the agreement shall be substantially as set forth in "Exhibit B" attached hereto and made a part hereof as fully as if set forth herein verbatim.

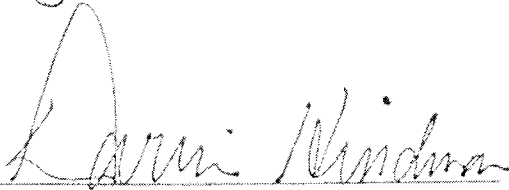
SECTION 10. The City Clerk is authorized and directed to have the agreement recorded in the office of the Boone County Recorder of Deeds.

SECTION 11. This ordinance shall be in full force and effect from and after its passage.


PASSED this 20th day of August, 2007.

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Counselor

STATEMENT OF INTENT  
FOR  
C-P REZONING REQUEST  
BY  
WHIRLWIND PROPERTIES, LLC  
2000 East Broadway # 167  
Columbia, MO 65201

June 1, 2007

Location of Tract – 20.75 acres located at 4130 and 4150 South Lenoir Street and is presently Sunset Mobile Home Park and Ed's Mobile Home Park.

- a. The uses proposed.
- State/private educational facilities
  - Public utility buildings
  - Federal/State government buildings
  - Private research laboratories
  - Office buildings
  - Barber/beauty shops
  - Dry cleaners
  - Pet store
  - Photo shops
  - Physical fitness center
  - Day care
  - Printing shops
  - Radio and television sales
  - Repair of household appliances
  - Shoe repair
  - Retail stores
  - Bakery
  - Restaurants
  - Hospitals for small animals
  - Trade school
  - Shops for custom work
  - Garment storage
  - Bicycle repair shops
  - Sign painting shops
  - Florist
  - Wholesale sales office
  - Medical and dental clinics
  - Religious institutions

- b. The maximum gross square feet of building floor area proposed is 180,000 square feet.

RECEIVED  
JUN 05 2007  
PLANNING DEPT.



- c. The maximum building height proposed is 45 feet.
- d. The minimum percentage of the site to be maintained in open space is 25 percent.

---

Ron Netemeyer  
Whirlwind Properties, LLC

### AGREEMENT

This AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Columbia, Missouri, a Municipal Corporation of the State of Missouri, hereinafter referred to as "City," and Whirlwind Properties, LLC, a Missouri Limited Liability Corporation, hereinafter referred to as "Property Owner."

In consideration of the mutual covenants and considerations herein contained, IT IS HEREBY AGREED by the parties as follows:

This agreement applies to the following property, herein referred to as Ed's and Sunset Mobile Home Parks:

A tract of land in the north half (1/2) of the northeast quarter (1/4) of Section 32, Township 48 North, Range 12 West in Boone County, Missouri being the land described in the warranty deeds in Book 2915 at pages 139 and 140 and also Parcel 1 of the land described in the warranty deed in Book 2757 at page 17, all of the Boone County Records and containing 20.75 acres, more or less.

In consideration for the City of Columbia annexing Ed's and Sunset Mobile Home Parks, located on the southeast corner of Roosevelt Avenue and Lenoir Street, into the City of Columbia, Property Owner agrees to the following terms:

1. Property Owner will enroll for participation in the Columbia Police Department Crime Free Multi-Housing Program.
2. When the decision is made to close Ed's and Sunset Mobile Home Parks, Property Owner agrees to comply with all notice requirements to the tenants of the parks and agrees to investigate, solicit and make available through notification all assistance programs available to the tenants.
3. Property Owner will provide a minimum of six (6) months notice to all tenants of Ed's and Sunset Mobile Home Parks prior to any closing of either property.
4. Property Owner agrees to abate all lot rent, water payments and sewer expenses for tenants of Ed's and Sunset Mobile Home Parks for the last three months of park operation.

5. Property Owner agrees to provide notice of the contents of this agreement to all future tenants of Ed's and Sunset Mobile Home Parks.
6. This agreement is intended to benefit and confer rights on all current and future residents of Ed's and Sunset Mobile Home Parks.
7. The benefits and burdens of this agreement are intended to attach to and run with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns. All persons claiming under the parties shall conform to and observe the provisions of this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WHIRLWIND PROPERTIES, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

STATE OF MISSOURI       )  
   ) ss  
 COUNTY OF BOONE       )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for said state, personally appeared, \_\_\_\_\_, a member of Whirlwind Properties, LLC, a Missouri Limited Liability Corporation, known to me to be the person who executed the above agreement and acknowledged to me that h/she executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
 Notary Public

My commission expires: \_\_\_\_\_.

CITY OF COLUMBIA, MISSOURI

By: \_\_\_\_\_  
H. William Watkins, City Manager

ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Fred Boeckmann, City Counselor

STATE OF MISSOURI       )  
  ) ss  
COUNTY OF BOONE       )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared H. William Watkins, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## **EXCERPTS**

### **PLANNING AND ZONING COMMISSION MEETING**

**JUNE 18, 2015**

#### **V) PUBLIC HEARINGS**

##### **Case No. 15-127**

**A request by Whirlwind Properties, LLC (owner) for a major amendment to the C-P (Planned Business District) zoning on approximately 20.75 acres of land located on the southeast corner of Lenoir Street and Roosevelt Avenue, and addressed as 4130 and 4150 South Lenoir Street.**

MR. REICHLIN: May I have a staff report, please?

Staff report was given by Mr. Steve MacIntyre of the Planning and Development Department. Staff recommends approval of the amended Statement of Intent (SOI).

MR. REICHLIN: Do we have any questions of staff? Seeing none.

#### **PUBLIC HEARING OPENED**

MR. REICHLIN: If we could keep our presentation to three minutes, that would be appreciated. We'll enforce it accordingly.

MR. COLBERT: Absolutely. Absolutely. Caleb Colbert, offices at 601 East Broadway. I'm one of the attorneys for the applicant. First, I'd like to introduce the folks that are here with me on behalf of the applicant. We have Ron Netemeyer with Whirlwind Properties, John Foudray and Catherine Singleton with Nueterra, and then Mark Farnen and I are here on behalf of the applicant in general. You'll be glad to know I didn't prepare a long, lengthy PowerPoint presentation or a handout, so I'll keep my comments brief. Mr. MacIntyre did a great job describing what we're asking for and why. We believe that the proposed hospital use is consistent with the uses that we are already permitted to use on that property. We could bring forward a development plan today for an animal hospital, a restaurant, barber shops, a gym, so we think the hotel use is consistent with what we could do with the property today. We also think the hotel is consistent with the character of the neighborhood. We have on the -- on the map, you'll see we have Lenoir to the north. Obviously --

MS. SINGLETON: Hospital.

MR. COLBERT: I'm sorry. What did I say? I'm sorry. I'm sorry. I got ahead of myself. The hospital use is consistent with Lenoir to the north. Obviously, they have healthcare needs and they provide health services on their site. So we think the hospital will complement Lenoir. Obviously, to the south then, we have University property. We have the Discovery Ridge property. We have ABC Laboratories. You have 63 to the west. We think that this will be a great gateway and visual -- have a lot the visual appeal as you're coming up 63 into Columbia. This will end up being a really nice facility. As far as the additional 20,000 square feet, we're asking for that so that we can expand the use in the future if there are buildings that we decide would complement the hospital use of this site. So, with that, that is the

extent of my comments. I'll be happy to take any questions. If you have any questions from the other folks that are here this evening, we'll be happy to answer those.

MR. REICHLIN: Any questions of this speaker? Seeing none, thank you very much.

MR. COLBERT: Thank you.

MR. REICHLIN: Is there anybody else wishing to comment on this matter, in favor of or against? Seeing no one.

#### **PUBLIC HEARING CLOSED**

MR. REICHLIN: Comments of commissioners, please?

MS. BURNS: I'm inclined to support this -- the applicant's request. I think it's a good use for the property. I think it makes sense where it is, and I think it could enhance the area as we drive into our community.

MR. REICHLIN: I'm happy to see the use for the hospital going in this location. It's contiguous with other medical uses and I think it will be an improvement for the area in general, so I intend to support this. Would anyone care to –

MS. BURNS: I'd like to make a motion that we recommend for approval Case 15-127, a request by Whirlwind Properties, LLC, for a major amendment to the C-P zoning on approximately 20.75 acres of land located on the southeast corner of Lenoir Street and Roosevelt Avenue, and the address as 4130 and 4150 South Lenoir Street.

MS. RUSSELL: I'll second that.

MR. REICHLIN: Ms. Russell second. May we have a roll call, please.

MS. LOE: Yes, Mr. Chairperson. The motion is to support Case 15-127, a request by Whirlwind Properties, LLC, for a major amendment to the C-P zoning.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Burns, Ms. Loe, Mr. Harder, Mr. Reichlin, Mr. Stanton, Ms. Rushing, Ms. Russell. Motion carries 7-0.**

MS. LOE: The vote carries 7-0. The recommendation for approval will be forwarded.

MR. REICHLIN: Thank you. Now going forward.