

**MINUTES
BOARD OF ADJUSTMENT
MAY 14, 2013**

Chair Townsend called the meeting to order at approximately 7:00 p.m. Those members attending included David Townsend, Philip Clithero, Fred Carroz, Ann Peters and Martha John. Also attending were the City Clerk, Sheela Amin, Building and Site Development Manager, Shane Creech, and Assistant City Counselor, Steve Van Matre.

Ms. John noted an adjustment was needed to the April 9, 2013 minutes, and explained there was an extra "not" in a sentence on page 6 during the comments of Kimberly Felter. She stated it should read "...but did not believe a fence would hide it." The minutes from the regular meeting of April 9, 2013 were approved by voice vote with the correction pointed out by Ms. John, on a motion by Mr. Clithero and a second by Mr. Carroz.

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

Case Number 1859 was a request by Phebe La Mar, attorney for Broadway & Broadfield Properties, LLC, for 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).

Case Number 1863 was a request by Bryan Bacon, attorney for BFH Commercial Holdings, LLC, for variances to the minimum site size of two (2) acres, the maximum number of animals that can be cared for at the facility, and the requirement that the outside animal run structure, pen, or enclosure be fully fenced (including overhead) by allowing the proposed dog daycare to care for more animals than permitted and be located on a site that is less than two (2) acres, and for the outside animal run structure, pen or enclosure to not include overhead fencing on property located at 500 Big Bear Boulevard.

Chair Townsend explained Case Nos. 1859 and 1863 had been withdrawn.

Case Number 1864 was a request by Scott Seitter, attorney for McDonald's Corporation and Franchise Realty Corp, for a variance to the requirement for fifteen percent (15%) of the land area to be landscaped and the requirement for a six (6) foot wide landscaping strip within private yards separating parking areas from abutting street rights-of-way as indicated in Section 29-25(e)(3) of the Columbia Code of Ordinances by allowing less than fifteen percent (15%) of the land area to be landscaped and not requiring the six (6) foot

landscape strip on the west (Illinois Avenue) side of the lot on property located at 205 Business Loop 70 E and the lot on Illinois Avenue to the north of 205 Business Loop 70 E.

Ms. Amin stated a comment had been received by Patty Purves, who had seen this published in the Columbia Daily Tribune and was encouraging the Board to deny the variance. She indicated this area of town was developed in the 1950's when automobiles were king, and while improvements were being made, most of the Business Loop still lacked any sense belonging for people in terms of landscaping, sidewalks and crosswalks. With the recent improvements at Providence and the Business Loop, she felt the deficiencies were starting to be addressed, but thought the businesses along it should acknowledge their responsibility to the community by conforming to the desires of the citizens as evidenced by the codes and ordinances.

Chair Townsend opened the public hearing.

Scott Seitter, an attorney with offices at 1301 Oak Street, Kansas City, Missouri, explained they were requesting a variance from the green space requirement. He noted this was one of the older stores in the area and was located on a small lot of less than 0.9 acre. Although the building would be marginally smaller than the old building and the number of parking spaces would be reduced, they were adding a sidewalk along the south and west sides of the lot, which was impacting the green space areas they had. He stated the new site would accommodate eleven percent green space, which was about what they had now. He pointed out they were paying for the conduit to underground the electric lines along Illinois Avenue as well.

Ms. Peters understood the new building would be smaller than the current building. Mr. Seitter stated it was minimal as it would go from 4,398 square feet to 4,366 square feet. Ms. Peters asked why the building was being rebuilt. Mr. Seitter replied it was obsolete in terms of design, style and functionality. A new building would allow them to upgrade the parking lot and other items as well. He noted they would install four bike racks in lieu of some vehicle parking and a pervious hard surface for stormwater drainage on the north end.

Mr. Carroz asked for the current and new parking counts. Mr. Seitter replied they currently had 55 parking spaces and would have 45 parking spaces after redevelopment, which met the requirement. He noted there would be 41 actual vehicle parking spaces and the other four spaces would be accommodated with bicycle parking. Ms. Peters understood the parking lot size would be decreased. Mr. Seitter stated they were decreasing the number of parking spaces. The actual area for parking was about the same. Ms. John understood there would be a double loop drive-thru. Mr. Seitter agreed and explained the parking on the west side would be parallel versus angled due to code requirements, which was where they were losing parking spaces. Mr. Clithero felt the double loop drive-thru would help keep traffic waiting to get to the drive-thru off of the Business Loop. Mr. Seitter agreed the new design would allow for more stacking on-site.

Ms. John asked if they were planting along the side street. Mr. Seitter replied yes. Mr. Clithero thought a sidewalk would be placed on the west side. Mr. Seitter stated there would be a sidewalk and some green space on the west side. The green space would be from the retaining wall to the curb. It was equivalent to what was there now less the space they were losing due to the installation of the sidewalk. He thought there would only be about four feet to the back of the curb once the sidewalk was installed.

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

Mr. Creech stated staff had been under the impression the building size would increase as a result of discussions with the engineer. He explained the applicant was in a position where a variance from the number of parking spaces, landscaping or a sidewalk would be needed, and they were requesting the variance from the landscaping requirements.

Mr. Van Matre commented that he believed their packet contained the five factors the Board needed to consider in the granting the variances.

Chair Townsend understood they had to address the landscape strip on the west side. Ms. John thought the area varied along the strip. Mr. Seitter explained the requirement was that they had to have a six foot green strip buffer between the side street and the parking, and the area between the street curb and the back side of the parking lot varied, but was approximately four feet. Chair Townsend asked if they could state approximately four feet in their motion and whether that would provide the necessary wiggle room if it were slightly less. Mr. Creech replied staff preferred the Board chose a measurement staff could ensure the applicant would meet, if the true intention of the Board was to grant the variance. Chair Townsend suggested they require it to be at least three feet.

Mr. Clithero made a motion to approve the variance allowing eleven percent of the land area to be landscaped and for the landscaping strip on the west (Illinois Avenue) side to be no less than three feet. The motion was seconded by Ms. John.

CASE NO. 1864 VOTE RECORDED AS FOLLOWS: VOTING YES: TOWNSEND, CLITHERO, CARROZ, PETERS, JOHN. VOTING NO: NO ONE. The variances were approved.

Case Number 1865 was a request by Skip Walther, attorney for Delta XI Housing Corporation for Delta, Delta, Delta, for variances to the minimum number of off-street parking spaces required, the requirement that no parking be permitted within six (6) feet of an adjoining lot in a residential district, the twenty-five (25) foot front yard setback requirement for the west lot (500 Burnam), the restriction of parking in the required front yard, the twenty-five (25) foot rear yard setback requirement for the east lot (901 Richmond Avenue), and for the Board to determine the west lot (500 Burnam Avenue) be considered an on-premises parking facility by allowing a parking lot to be constructed on the west lot (500 Burnam Avenue) that has less parking than required, is less than six (6) feet from the adjoining lot, which is in a residential district, is within the required twenty-five (25) foot front yard, and by determining the parking on the west lot is on-premises, and by allowing building additions on the east lot (901 Richmond Avenue) to be within the required twenty-five (25) foot rear yard on property located at 901 Richmond Avenue and 500 Burnam Avenue.

Chair Townsend opened the public hearing.

Skip Walther, an attorney with offices at 700 Cherry Street, provided a handout and stated he was representing Delta, Delta, Delta, who was constructing a significant addition to their existing house. They planned to demolish the existing annex, which was on the west side of the property, and move the girls that lived in the annex into the main house, so they were not increasing the number beds or residents. The improvements to the house would include sprinkling, fire rated

doors, ADA accessibility, a dining area, etc. The elimination of the annex would allow them place parking spaces on that property, and even though the size of the parking lot would increase by about 200 square feet, they would lose 8-9 parking spaces because the parking spaces they previously had were not 8 ½ - 9 feet wide and the circulation path would be upgraded for safety purposes. He noted 20 percent of the parking lot would be constructed with a pervious surface. In addition, they would have an underground detention basin on the south side of the property, so stormwater would be contained and gradually moved off of the property. He pointed out the landscaping they would provide exceeded the minimum required. He stated they were creating an amenity that was significantly better than what existed today, but in order to get there, five variances were needed. He explained they were required to have 47 parking spaces per the ordinance, but would only be able to provide 42 parking spaces due to expanding the size of the spaces, increasing the circulation corridors and the landscaping requirements. Of the 42 spaces, 38 were vehicle parking spaces and four were bicycle stalls. He referred to a photograph he had provided and noted they intended to lease parking spaces in a parking lot owned by a fraternity to the north of their proposed parking lot. He stated they also needed a variance to the setback requirement on the south side of the property line, next to the Sigma Kappa sorority house, due to the design of the parking lot. City ordinance indicated parking could not be within six feet of another residentially zoned property, so a two foot variance was needed. He referred to a photograph and pointed out the Sigma Kappa's were parking on the property line, so the four foot setback would be better than that. He explained the other three variances needed could and would be addressed through a replatting process. He commented that even though the sorority owned both properties and the sorority house was on Richmond, the City considered the west lot to have a front yard on Burnam, so they needed a variance from the requirement that they could not have a parking lot within 25 feet of Burnam and a variance from the City's interpretation that the parking lot was not on-premises with the building. They also needed a variance from the 25 foot rear yard setback for the proposed additions to the building. He reiterated these last three variances would not be needed if they replatted the property into one lot and pointed out they had filed the replat with the City. The City was in the plat review process and would provide comments, which they would respond to, and afterwards, it would likely go to the Planning and Zoning Commission. He explained they needed a building permit issued immediately in order to have the building ready by this August and the entire project completed within 15 months. If they did not get a building permit by Monday, they would have to delay the project for a year. This was the reason they could not wait for the replatting process to be completed.

Ms. John understood the replat had been submitted to the City and wondered how they could word the decision to allow them to get started on the project without granting the three variances that would be addressed by the replat. Ms. Peters wondered why this was an emergency and asked when they had started thinking about this project. Mr. Walther replied the replat was not an emergency. It was a decision they made as they believed it was better to have one legal lot that was fully platted and to simplify the legal description for future improvements to the house since they were always looking for ways to improve the house. He explained the replatting was not necessary and the Board had the authority to grant all five variances requested. Chair Townsend understood the City had notified the applicant of the issues with the development on April 18, and at that time, they decided to apply for the variances and replat the property.

Ms. John asked if there was any way they could grant the three variances that would be addressed by the replatting on a temporary basis. Mr. Walther replied he thought the Board had done something similar in the past. He explained the painted sign on the Flat Brach building was initially given a variance with an expiration date, and that variance was renewed 3-4 times before

becoming permanent. He noted they would not have a problem with that type of condition. Chair Townsend thought they could approve the variances until the replat was approved, and expunge the variances at that time. Ms. John asked if a deadline for the replat could be required. Mr. Walther stated he would be agreeable to that requirement. Ms. Peters asked what would happen if it was not replatted. Ms. John thought the variances would expire then. Chair Townsend commented that the problem was that they would have already started construction at that point, and it was not completely up to them to determine if the replat was approved. If the Board was inclined to grant the variances, he felt they should grant them unconditionally, but if the replat was approved, those variances that were no longer required could then be terminated. Ms. Peters understood they really did not need those three variances if the property was replatted. Mr. Walther stated they could not obtain a building permit without all five variances.

Mr. Clithero commented that the Board had required a contract to be signed to make up for fewer parking spaces for variances they had granted some time ago, and if the contract had become null, some people would have to move out of the house. He asked if they would be agreeable to that type of arrangement.

Kathy Walther, 2209 Yuma Drive, stated she was representing the construction management for Delta, Delta, Delta, and explained parking in Greek Town was a valuable commodity. The people they would lease from would receive \$1,000 per car for the fall semester. She understood they had a first option on 15 spaces in that lot. The University of Missouri had indicated they had a number of spaces and would not run out, and provided shuttle service for many of the outer parking areas. In addition, there were other private lots in the area. She noted the House Corporation had voted to provide a \$150 stipend this next semester to all of the girls with cars in the house and the Chapter had a matching number in its budget. She felt they had addressed parking during the construction period and going forward, even though they would always be limited in terms of parking with more girls with vehicles than spaces. She believed a restriction that was dependent upon a contract with another private organization was unrealistic considering how close they were to the requirement and the increase in pedestrian traffic and bicycle usage.

Ms. John asked how close they were to the required number of parking spaces. Ms. Walther replied they were required to have 47 spaces and had 38 vehicle spaces and four bicycle spaces for a total of 42 spaces. They were technically short five spaces. She explained they had squeezed 48 spaces on the two lots for several years, but they were not normal or legal parking spaces. In addition, the turning and exit radiuses were not safe.

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

Mr. Creech explained the plat referred to had been submitted to the City on Friday, and the earliest it would be voted on was the middle of July due to timing in terms of its review by staff, it being considered by the Planning and Zoning Commission, and then considered by the City Council. From a staff perspective, they felt the variances that could be addressed by the replat were best rectified by that process versus being provided a variance, and recommended those not be approved. Staff did not have an issue with the four foot setback instead of the required six feet due to its location in Greek Town. In terms of the number of parking spaces, he commented that many fraternities and sororities had redone their houses and/or parking lots and had been able to accommodate the required number of spaces needed. As a result, staff was hesitant in supporting the variance request. If the Board was in favor of granting the variance involving the number of parking spaces, he would encourage a discussion of what Mr. Clithero had suggested earlier in

terms of having the additional required parking. He noted it was not something staff could enforce or ensure was in place, but it would be consistent with previous decisions. He explained staff would not issue a building permit until the replat was approved if the Board did not grant all five variances because they did not want to create a precedent setting situation with other projects that might not even need a variance, but still wanted to start prior to plat approval.

Mr. Van Matre stated the five factors for the Board to consider were similar to those considered in the previous case. He suggested the Board approve all five variances without contingencies or require the applicant to wait until plat approval to begin construction. He was concerned about including the contingency involving the plat because the plat might not be approved, and the applicant would then be required to remove anything that had already been completed. If the Board wanted to allow this project to move forward now, he felt all five variances needed to be granted without any contingency.

Ms. John stated she was in agreement to granting all five variances with the expectation they would proceed with the platting process and make every effort to get it completed. She understood it would not have much of an effect, but wanted it on the record. Mr. Walther commented that they planned to move forward with the plat.

Ms. John made a motion to approve the variances to the number of parking spaces required and the requirement that no parking be allowed within six feet of an adjoining lot in a residential district unconditionally, and to approve the variances to the 25 foot front yard setback for the parking lot, the 25 foot rear yard setback for the proposed additions to the home, and to the interpretation that the parking lot was not on-premises since it was on the lot adjoining the lot the house was on, with the expectation the applicant would be expeditiously proceed with the replat.

Chair Townsend understood all five variances were being granted without exceptions in the motion, but there would be a comment that the Board expected to see the replat move forward expeditiously. Ms. John explained if the plat was denied, the variances would still be applicable.

Ms. Amin understood the motion would allow 42 parking spaces instead of the required 47 spaces, a four foot setback instead a six foot setback for the parking area from the adjoining residential lot to the south, the parking lot to be considered on-premises and a six foot front yard instead of a 25 foot front yard for the lot with the parking lot, and asked what the measurement was for the variance to the rear yard setback required for the proposed additions to the building at 901 Richmond Avenue. Ms. John thought it appeared to be at about 20 feet, meaning the additions would be within five feet of the rear property line. Mr. Walther thought the additions would be about eight feet from the rear property line, but suggested the variance be for five feet to be safe. The Board was agreeable.

The motion made by Ms. John to approve the variances to the number of parking spaces required and the requirement that no parking be allowed within six feet of an adjoining lot in a residential district unconditionally, and to approve the variances to the 25 foot front yard setback for the parking lot, the 25 foot rear yard setback for the proposed additions to the home, and to the interpretation that the parking lot was not on-premises since it was on the lot adjoining the lot the house was on, with the expectation the applicant would be expeditiously proceed with the replat, was seconded by Mr. Clithero.

CASE NO. 1865 VOTE RECORDED AS FOLLOWS: VOTING YES: TOWNSEND, CLITHERO,

CARROZ, PETERS, JOHN. VOTING NO: NO ONE. The variances were approved.

There being no further business, the meeting adjourned at 7:58 p.m.

Respectfully Submitted,

Sheela Amin
City Clerk