

CITY OF COLUMBIA
MEETING MINUTES, TUESDAY, AUGUST 14, 2018
BOARD OF ADJUSTMENT

I. CALL TO ORDER

MR. WATERS: The August 14, 2018 Board of Adjustment meeting will come to order. Will the liaison please call the roll?

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Here.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Here.

MR. ZENNER: Mr. Waters?

MR. WATERS: Here.

MR. ZENNER: Mr. --

MS. JOHN: Here.

MR. ZENNER: Ms. John, thank you. And Mr. Norgard?

MR. NORGARD: I am here.

MR. ZENNER: Thank you.

II. APPROVAL OF AGENDA

MR. WATERS: Is there any discussion about the agenda? If not, is there a motion to approve?

MR. CLITHERO: So moved.

MS. JOHN: Second.

MR. WATERS: All in favor, say aye. All opposed, say no.

(Unanimous voice vote for approval.) Motion passes.

III. APPROVAL OF MINUTES

MR. WATERS: The July 10, 2018, minutes were distributed to the members of the Board. Are there any corrections or additions to the minutes?

MS. JOHN: Move to approve.

MR. CLITHERO: Second.

MR. WATERS: There's a motion and a second to approve the July 10, 2018, minutes. All in favor, say aye. All opposed say nay. (Unanimous voice vote for approval.) Motion carries. Would the court reporter please swear in the staff?

(Staff sworn.)

IV. PUBLIC HEARINGS

Case No. 1961

An appeal by Caleb Colbert (attorney), on behalf of Bobbie Jo Brown and Patrick Enterprises, LLC (owners), from the decision of the City Community Development Department to deny permission to allow expansion of paved areas and establishment of parking spaces within the required front-yard setback on real estate in the City of Columbia, County of Boone, State of Missouri, requesting that said Board grant a variance to permit more than 30 percent of the required front yard to be paved and permit five parking spaces to be located within the required front-yard setback on property addressed as 402 and 404 McBaine Avenue.

MR. WATERS: Has the notice been properly advertised?

MR. ZENNER: Yes, it has.

MR. WATERS: Has the property been posted with a notice of public hearing?

MR. ZENNER: Yes, it was.

MR. WATERS: Have the parties in interest been notified?

MR. ZENNER: Yes, they have.

MR. WATERS: Have there been any inquiries?

MR. ZENNER: No, there have not.

PUBLIC HEARING OPENED

MR. WATERS: Would the person making the application to the Board please come forward and state your name and address and be sworn in.

MR. COLBERT: Caleb Colbert, attorney, at 601 East Broadway.

(Witness sworn.)

MR. COLBERT: Good evening, Mr. Chairman, members of the Board of Adjustment. Again, my

name is Caleb Colbert, attorney, at 601 East Broadway, and I'm here on behalf of the applicant to request approval of two variances this evening. First, I want to thank you all for your time and your consideration. Before we jump into the details, I will go ahead and submit our exhibits for the record. All right. In your exhibit packet, you should have a total of five exhibits which include certified copies of the -- excuse me -- of the City ordinances that we'll be discussing this evening. You should have a copy of our application, a copy of the site plan, a copy of our presentation this evening, and a copy of the staff report. Mr. Chairman, at this time, I would move to offer those exhibits into evidence.

MR. WATERS: Approved.

MR. COLBERT: All right. Thank you. Again, we are requesting two variances this evening to permit the expansion of Neighborhood Nanny's Daycare at 402 and 404 McBaine. And you'll see that we're asking for a variance to allow parking within the required front-yard setback, and we're requesting a variance to permit more than 30 percent of the front yard to be paved.

To give you a little background, Nanny's Neighborhood Daycare has been in business now for 14 years. They've operated at 404 McBaine for that entire period. They currently serve about 77 children, and have a staff of about 20 folks. You'll see that in the existing configuration at 404 McBaine, they have parking in front of the building and they have a play area behind the building. Under the former versions of the zoning code, that was permitted. And the reason for having this configuration is pretty straightforward. If you have the parking in the front and the play area in the back, you separate the kids from the traffic on the street. You separate the kids from the traffic that uses the driveway, the in and out. You separate the kids from just the general public that may be walking around out there. And it allows -- you see the playground area is completely fenced in. That fence allows the teachers at this location to closely monitor the students as they're using the play area. So the primary justification and the primary purpose of this layout was to have a safe environment for the students, for the teachers, and to provide just a good experience for those kids that attended the school.

Nanny's Neighborhood Daycare now is in a position where they're ready to expand and, when they expand to the south, they'll lose their grandfathered status on the existing parking lot configuration and the existing playground configuration, but we don't think that that is a good outcome overall for the property. And we are asking for a request again under the Unified Development Code, the new zoning code would

put the parking in the back and the playground in the front next to the street, and we don't think that is a good idea for a couple of reasons. First and foremost, the safety aspect for all the reasons we just discussed. If you put the playground in the front of the building, you have that next to the driveway and you have that next to the street. In addition, we have this existing configuration for a reason and it -- as we expand to the south, the traffic flow -- let me jump ahead to the site plan. You'll see the traffic flow comes in from the south and moves to the north, and there is one main entrance. And with that addition, there will still only be one main entrance. It's going to be a keycard or a swipe-code type entrance so that you have a secure facility. So this through circulation provides the safety aspect that we're looking for, whereas if you put the parking in the back, that disrupts the flow of traffic and again it's inconsistent with the one secure entrance that we're looking for. So really, we do think that this is a pretty straightforward request. It is just a matter of safety. We have two amenities, two site features that we have to decide where we're going to locate on the property, parking and a playground area, and where do we want those to be. We think for the safety reasons that we've discussed, it makes the most sense to have the playground behind the building screened in and the parking shown on the site plan that we've presented to you.

Here is just an aerial view of 402 McBaine, which is the location of the proposed expansion. You'll see that again if you consider the site plan in connection with that, you'll see that the driveway is going to be extended down and the playground will be extended down, as well. So Mr. Zenner did an excellent job in his staff report of walking through the different variance criteria and recommending approval, and we, of course, agree with the City staff's analysis of the variance criteria and the overall recommendation of approval. And I'll just run through those real quick for purposes of the record. Of course, we believe we've established that there is a hardship in this case. If -- compliance with the zoning code would again require that the playground be next to the street which creates the safety issues which is a hardship for the students on this property. And again the existing configuration was all legal and conforming when it was originally occupied as a daycare center. Of course, a family daycare center is a permitted use within the R-MF multifamily zoning district. And the proposed use is consistent with Columbia Imagined. This area is within a neighborhood district and Neighborhood Nanny's Daycare serves residents in the area. Again, it provides jobs, it serves many children in the area, and it's really the prime example of a business that

can be integrated into a residential community and serve the folks that are within walking distance of that property. Again the expansion is going to provide additional jobs. It will also increase the services that are available for kids in the area.

The next criteria, the variance that's laid out in 26-6.4 is that we've asked for the minimum modification necessary, and we believe, in this case, we have. We're not asking for an exorbitant amount of paving, we're just asking for the minimum that we need. We think we've met the right balance between meeting the Code's requirements and addressing the safety aspects that would be required with complying with the Unified Development Code.

And last, but not least, and closely related to everything that we've just discussed so far, the requested variances, we believe, will actually promote the public health and safety and welfare in this area. We believe the public -- or the public interest will be served by granting these variances. So to recap really quickly, this is what we're asking. Again, it's all shown in the site plan that's part of our application. And with that, I would be happy to answer any questions. I do have several folks on behalf of Neighborhood Nanny's here that would be happy to answer any additional questions if you have questions on the site plan or parking or any of those type of questions. Yes, ma'am.

MS. JOHN: How many total parking spaces will you have?

MR. COLBERT: And we'll have ten total parking spaces.

MS. JOHN: I was trying to figure out where they would all be on this site plan.

MR. COLBERT: Sure. The site plan --

MS. JOHN: I see the four down at the bottom and three along the side.

MR. COLBERT: And then three at the top.

MS. JOHN: Are the other three at the top? Okay. Those aren't -- I couldn't see the lines.

MR. CLITHERO: So the request as stated has -- somewhere -- more than 30 percent, but the recommendation by staff, I think, is 2,900 square feet; is that satisfactory?

MR. COLBERT: I believe so.

MR. CLITHERO: Yes.

MR. COLBERT: That -- that would be acceptable.

MR. CLITHERO: Okay.

MS. HAMMEN: How many parking spaces are there now?

MR. COLBERT: As it exists right now?

MS. PATRICK: Five.

MR. COLBERT: Five parking spaces.

MR. NORGDARD: And what is the purpose of the additional spaces?

MR. COLBERT: The additional parking spaces?

MR. NORGDARD: Yes.

MR. COLBERT: To meet -- to provide some off-street parking for staff members for use during the day.

MR. NORGDARD: For the additional --

MR. COLBERT: Sure. For the addition.

MR. NORGDARD: Is there any reason why they couldn't park on the street?

MR. COLBERT: Well, I think some -- a lot of folks do. Sure. And, essentially, we're -- the additional parking is going to be required to meet the additional parking requirements from the expansion of the daycare, right? As we increase the square footage of that building, our parking requirements go up.

MR. NORGDARD: But not from a statutory standpoint. This is primarily from a -- a use standpoint?

MR. COLBERT: No. I think statutorily, under the City code as we -- the parking calculation is based on the square footage of your building.

MR. NORGDARD: So there's a calculation?

MR. COLBERT: And so we're adding -- right. There's -- right.

MS. HAMMEN: What's it go up to?

MR. COLBERT: The additional square footage --

MS. HAMMEN: The requirement?

MR. COLBERT: -- is 2,870 feet.

MS. HAMMEN: What's that require? How many more parking spaces?

MR. COLBERT: That will require --

MR. SIMON: Am I allowed to come up?

MR. CALDERA: If you are going to speak, you have to be sworn in.

MR. WATERS: I guess -- please state your name and address.

MR. SIMON: Keenan Simon, 210 Park Avenue.

(Witness sworn.)

MR. SIMON: So with the proposed building addition, it requires nine parking stalls for the site. Utilizing an additional stall would be a benefit for the amount of the staff that they require there. Also at the north end of the site, there's a handicapped stall that's left open for any handicapped accessibility, so technically, there really are only nine regular stalls there on the site.

MS. HAMMEN: And the ordinance requires that parking not be in front, although it's been granted now because it's a conditional-use permit?

MR. SIMON: Per the new UDC and the residential districts, they require parking to be in the rear. Previously, I believe that parking was allowed in the front yard on some zoning districts that were residential. With -- to maintain the existing site use and layout, it would be a benefit to obviously provide the stalls in the front and then from a safety standpoint and everything else, if that makes sense.

MS. HAMMEN: And right now, are you going through a replatting process?

MR. SIMON: We are trying to review whether or not we'll be granted these variances to see if we can move forward with purchasing the property and providing construction documents to the City for this project. Does that make sense?

MS. HAMMEN: Well, I hear what you say. I don't know what that says.

MR. SIMON: It will be -- yeah. It will be replatted in the near future.

MS. HAMMEN: Uh-huh.

MR. SIMON: The property is not 100 percent purchased to the south. It's conditional on whether or not we get approval moving forward, if that makes sense. If they can't do what they want, they're not going to purchase the property to the south of them.

MS. HAMMEN: So who's purchasing the property?

MR. SIMON: It would be the daycare center.

MS. HAMMEN: Oh. And you own the daycare center?

MR. SIMON: I am -- I'm sorry. I'm the civil engineer.

MS. HAMMEN: Oh.

MR. SIMON: I helped provide the site layout and design for the parking calculations and everything of that nature. I apologize, I didn't mention that beforehand. So, no, I am not part of the daycare.

MR. WATERS: Are there any other questions for the applicant?

MR. NORGDARD: I have one more. So you mentioned that this is the least variance that you can do. I'm wondering if you could potentially put the fence in front of the house and ask for a parking variance -- a parking reduction variance that could potentially be a lesser variance?

MR. SIMON: You know, the necessity of the -- of the owner is to have these parking stalls is pretty much imperative for them to function with the amount of staff that they have. So --

MR. NORGDARD: And how many was that again?

MR. SIMON: Currently 20 -- 20 staff members is -- is where they're at now. So if you imagine nine stalls, people get there probably pretty early to -- to get one of those, if that makes sense.

MR. COLBERT: And you -- ultimately, you'd have to have the through in and out for folks to drop kids off, if you were dropping them off for daycare.

MR. NORGDARD: Yeah. That's the drop-off function.

MR. COLBERT: So you're going to have a driveway, it's seems like it -- you know, it's a benefit to have the parking.

MR. ZENNER: Can you stand in front of the microphone, Caleb?

MR. CALDERA: And for the witnesses, please make sure to speak one at a time, so that way we make sure they get a clean record.

MR. COLBERT: Absolutely. Absolutely. I was just saying that because it's a daycare, you're going to have folks dropping kids off. And so they're going to need somewhere -- you know, they're going to need a driveway. And if you have the driveway, it makes sense to have the parking stalls there to provide some off-street parking, if you need it.

MR. WATERS: Any other questions? Thank you. Would anyone else like to speak in favor of the application? Please come forward and state your name and be sworn in -- and address, too.

MS. PATRICK: Yes. Hi. My name is Diane Patrick, and I'm the owner of the daycare. And the address is 404 McBaine Avenue.

(Witness sworn.)

MS. PATRICK: Good evening. Thanks for listening to us. So just to give you a rundown, Nanny's Neighborhood Childcare Center is on McBaine Avenue. I grew up in that area. It was always my dream to come back. And so in 2004, we purchased two lots, tore down one of the houses, and built the center there. We've been there, it'll be 14 years in November. It's been awesome being able to do a lot with the kids that's there in the neighborhood. It's given jobs back to the community. And so we've got an opportunity with the person to the south, when she passed away, the son said to us if we wanted to purchase the property to expand, this would be the time, so this made great sense to us. And so this is what's gotten us here tonight, with that thought we would be able to provide more opportunities to the kids. We've learned that when you start with the kids at an early age, they do much better once they go into the public school system. And so that is our great need right now for Columbia, I think, and for the kids in that area is to provide them with a great start.

The parking for us, the neighbors, they've been very great and supportive of us, but they also felt that it would be nice if we had more parking because, right now, our staff is parking on the side street, which they can park on either side of the street, which is acceptable, but it does make it tight getting in and out of their driveways. So when we do this, this will ease that for them a little bit, because even though our staff will increase some, because we do a day program and an evening program, and some of the teachers either carpool or some walk because they're in walking distance, and so this would be sufficient amount by doing this expansion. Any questions?

MR. WATERS: Questions for Ms. Patrick? None?

MS. JOHN: How many students or kids do you have now and how many more do you expect you will have?

MS. PATRICK: We are licensed for 67. Because we do a day program and an evening program, we're at about 77 to 80 right now. The expansion will allow us an extra 39 kids, which will put us, you know, right at 100 -- a little over 100. And we stay open until 11:45 at night so some of the parents that works the evening shift, then this makes it more accessible. Because of the licensing restrictions, we're only allowed so many infants and toddlers per the square footage of the classrooms, so with the expansion, we'll be able to offer more.

MS. JOHN: Thank you.

MS. PATRICK: Yes.

MR. WATERS: Any other questions? Thank you, Ms. Patrick.

MS. PATRICK: Thank you.

MR. WATERS: Would anyone like to speak in opposition to the application? Hearing none. Staff report?

Staff report was given by Mr. Patrick Zenner of the Planning and Development Department. Staff recommends approval of the variance.

MR. WATERS: Any questions of staff?

MR. NORGDARD: I have one. Being relatively new to this, I may find out something tonight. I'm just curious about the matter of applying a variance to two separate lots which will then be replatted into a single lot. Is it true that the replatting action essentially erases the zoning that was just there?

MR. ZENNER: No. The zoning -- the platting action does nothing to the underlying zoning of the property, nor the variances granted to that property. A variance runs with the land. Part of the reason that this has been advertised as 402 and 404 McBaine is to ensure that the variance runs with those historically addressed and platted parcels. So a platting action will do nothing but ensure that the future expansion of the structure, which would cross over a property line, then addresses other subdivision-related requirements that we have. The zoning and subdivision, while they're all within our Unified Development Code, do follow two separate and distinct processes. Variances, which are part of our zoning provisions, are in the Unified Development Code, as well, but they have specific application to the property regardless of its ownership, regardless of its configuration. If the parcel were to be completely redeveloped, the variances associated with this particular property, if I am not incorrect, and Mr. Caldera can correct me on this, through full redevelopment, any inconsistencies, I should say, any nonconformities, would not be allowed to be extended or continued. The nonconforming aspects of the site that exist after full redevelopment would need to basically be -- any new development would need to comply. The variance component, however, as it relates to parking within the front setback and then other aspects that you would be granting tonight, if I'm not incorrect, will carry forward with the land regardless of its redevelopment status.

So this variance applies in perpetuity. It does not -- it's not limited to just the fact that this particular property, as individual lots or as combined lots, may or may not be redeveloped. So the site plan that will come with the platting action or the formal building permit is really going to tie all of that together. And as Mr. Simon indicated, it is not uncommon for an applicant to seek approval of a variance before proceeding forward to the next more costly phase of development for platting actions and then for building construction. If they can't achieve the variance that they need, they're either going to have to regroup and reconsider how they want to improve their properties or abandon those development plans entirely. In this particular instance, I would suggest that abandonment of plans to expand a neighborhood-based daycare center because of the lack of garnering support for allowing encroachment -- continued encroachment in an area that's been encroached upon for 14 years would potentially be a disservice to the neighborhood and the City as a whole. Hence, the reason for our recommendation of approval.

MS. HAMMEN: So there's not a current plan for replatting or it's not in process at this time?

MR. ZENNER: We have held a concept review as it relates to the replatting action. This particular property has over 120 feet of roadway frontage when combined; therefore, it would require Council approval. It could not be processed as an administrative plat; therefore, the surrounding property owners will have an opportunity to be -- have public input into it, and that is a -- a provision that was created as part of the adoption of our new Unified Development Code. Parcels greater than 120 feet of roadway frontage or greater than two lots being combined require Council authorization. And part of that Council authorization and criteria has to deal with the replatting action changing the general character of the neighborhood which is a criterion that Council may be able to utilize to deny replatting action to allow the consolidation, but that is at the Council's discretion.

We would evaluate the plat based upon its conformance with our technical requirements of the Code. The site is already served by public infrastructure. It has adequate roadway frontage. There's a sidewalk. All of the other typical technical features exist. It's really the issue that Council has to address based upon the neighborhood's concerns of a changed character. Again, this is a proposed variance that would relate to a platting action to allow for the expansion of a neighborhood daycare. You know, this is not to raze the buildings and redevelop them for multifamily uses which are otherwise allowed. And to that effect, if the site were to be razed, multifamily proposed, the variance, while there's a nine -- there would

be allowance of parking within it, the parking requirements associated with the new use, because it's a change of use, would be significantly different. So yes, they may have the ability to park up to 2,900 square feet of impervious area in the front-yard setback, which is what the limitation is, and a maximum of five vehicles -- or a maximum of six vehicles -- I apologize -- a maximum of six vehicles, that may or may not help at all with a future redevelopment site if this were to occur as something other than the daycare. They may have to, at some point, come back and ask for either additional relief or not develop as intense a project. But that's not what is at hand here. Those are the -- that's the potential for future redevelopment. What the applicants are asking for is clearly tied to an expansion of the daycare for a 2,900-square-foot addition, roughly.

MS. HAMMEN: But the second -- the second variance is for 30 percent or less than 30 percent, so --

MR. ZENNER: Greater. It would be greater than 30 percent.

MS. HAMMEN: Yeah.

MR. ZENNER: So their parking, right now, the maximum -- as stated in the staff report, the maximum amount of impervious surface that would be allowed at the 30 percent, and this is based on the combined parcel frontage, is roughly 1,113 square feet, if I recall correctly -- 1,137 square feet. The proposed square footage that would be in the required front-yard setback is roughly 2,880. We typically when we -- there's always variations between what's shown on a design plan and what physically gets built in the field, so the recommendation that staff is making is a maximum of 2,900 square feet of paved surface and a maximum of six parking spaces, because there are actually a total of five and a half that actually would be in the front-yard setback as we round up. And that would be all that would be allowed moving forward if the parcel is developed as proposed with the additional daycare or if it were to be allowed to be redeveloped -- razed and redeveloped as a compliant R-MF property.

MR. WATERS: Any other questions of staff? Mr. Colbert, do you have anything else to add?

MR. COLBERT: I'll just briefly summarize again. Thank you for your time this evening. But overall, I'll hit on what Mr. Zenner talked about. There were a lot of concessions made to get to this site plan. This isn't like we just threw this together and came up with it overnight. There were a lot of concessions and a lot of consideration to alternative locations and alternative layouts, and we reached the

same conclusion that City staff reached in that this is the best site plan for this property to accommodate the safety concerns that we discussed earlier, but to provide a service that's needed in the community.

And so we respectfully request your support on the requested variances. Thank you.

MR. WATERS: Thank you, Mr. Colbert. Ordinarily, we'd close the public hearing, right? But --

MR. CALDERA: Unless someone who has spoken in opposition would like to have an additional statement.

MS. JOHN: We didn't have anybody speak in opposition, so --

MR. CALDERA: Exactly. In which case -- correct.

MR. WATERS: So it's okay to close now?

MR. CALDERA: I believe so.

PUBLIC HEARING CLOSED

MR. WATERS: The public hearing is closed. Comments of legal?

MR. CALDERA: I'll be brief. Thank you, Mr. Colbert, for providing all of the exhibits, so I have no additional exhibits to introduce into evidence. With that said, I'll jump right to the criteria. So, as the Board knows, there is five specific criteria that the Board -- the Board must consider and find under 29-6.4 before granting a variance. I believe we have two variances today; is that correct?

MS. JOHN: Uh-huh.

MR. CALDERA: Therefore, you must find that the five criteria apply to each. With that said, it's my understanding that you have a copy of the five criteria laid out in front of you laminated and highlighted, so I will offer to read those aloud if you need me to, but otherwise, I'll let you guys get to work.

MR. WATERS: No, thank you.

MR. CALDERA: Okay.

MR. WATERS: Comments from the Board?

MS. JOHN: I would like to go ahead and make a motion.

MS. HAMMEN: Well, I would like to speak.

MR. WATERS: All right. Go ahead, Ms. Hammen.

MS. HAMMEN: Thank you. The -- the fact of the variance going with the property and the replat

not being granted does bother me. And I have no doubts this is -- or I have no -- I have no idea if the plat-replat will be approved, but probably, of course, it will. It's such a good cause. But I'm bothered by this procedure of allowing variances that go with the properties before the property is in final form.

MR. CLITHERO: Well, if we were to have waited on the motion, those concerns would probably have been met --

MS. HAMMEN: What do you mean?

MR. CLITHERO: -- because I am guessing that Ms. John would include that a submission of the replat -- consolidate the parcels would be --

MS. JOHN: A condition.

MR. CLITHERO: -- a condition of the approval of the variance.

MS. HAMMEN: But the variances will be conditional on a replat being approved?

MR. CLITHERO: Correct.

MS. HAMMEN: Uh-huh. Okay.

MR. NORGDARD: Can we do that?

MR. CLITHERO: If you would read the --

MR. CALDERA: Pat, correct me if I'm wrong. I believe they can do that. I know they can add conditions onto their --

MS. JOHN: Submission -- the submission part is what it says in this.

MR. CALDERA: I believe that's right.

MR. ZENNER: That -- that would be correct. I do not believe that it is outside the purview of the Board to condition the approval of the activation, for lack of a better term, of the variances that you are recommending based upon --

MR. CLITHERO: That's what -- that's what it says.

MR. ZENNER: And that is -- that is what it says, and that is -- I think what Mr. Caldera is asking me to confirm for you, that is consistent with the authority that you have granted. That, again, is to address and protect the integrity of the process, so you can condition the approval as is identified in the notes below the approval action, which is number two, submission of a replat to consolidate. Now, if you want to parse the word, submission with approval, you are more than welcome to modify what staff

provided you as a -- as a potential direction. If you want approval of the replat to be the condition, just make that as part of your motion.

MR. CLITHERO: No. Well, I guess I read that to mean that the submission of the replat would be to you.

MR. ZENNER: Submission of a replat would -- yeah.

MR. CLITHERO: The fact that it's replatted means it's replatted.

MR. ZENNER: Well, it -- technically -- technically, I think, Mr. Clithero, it's submission to us, processing to Council. Council has to approve the replat in order for it to effectuate --

MR. CLITHERO: When it's -- when that's approved, then that replat would be submitted to Building and Site Development, right?

MR. ZENNER: It would be a requirement because you cannot build across a property line.

MR. CLITHERO: Right.

MR. ZENNER: And therefore the replat has to occur for any of the activities -- any of the redevelopment activity to occur on the site.

MR. CLITHERO: Right.

MS. HAMMEN: So if the -- if the replat does not take place in 30 days, that doesn't matter if this condition is attached to our motion and voted on, and it's only then 30 days from the time it goes into effect?

MR. ZENNER: There is no time --

MS. HAMMEN: Talking about the 30 days that -- that someone can --

MR. ZENNER: Oh. For appeal -- to appeal.

MS. HAMMEN: -- appeal a decision of the Board of Adjustment, Martha.

MR. CALDERA: So you're talking about the period after the -- you guys render your decision?

MS. HAMMEN: Uh-huh. Uh-huh.

MR. CALDERA: Okay. Okay. I think that's right. I think that's correct. I'd have to double-check our rules.

MR. WATERS: Any other comments from the Board? Ms. Hammen, do you have any further comments?

MS. HAMMEN: I'm sorry? No. I'm not sure I'm clear. Is it 30 days after the replat then and that's when the variances would go into effect?

MR. CALDERA: So if I remember correctly, and I apologize, I don't have the rules up in front of me. The clock starts whenever the -- you issue your decision. So the clock would start the minute you guys -- regardless of whether or not you put a condition on there, I think the clock would start the minute you sign off on the decision.

MS. JOHN: The clock for what?

MR. ZENNER: The actual --

MR. CALDERA: To appeal -- to appeal to the circuit court.

MR. ZENNER: Let me -- yeah. I have the rules here. Just happen to have the rules here this evening.

MR. CALDERA: Thank you.

MR. ZENNER: So time for appeal. "Persons wishing" and this is what is in your rules of procedure adopted January 18 of -- I'm sorry -- February 19 of 2018. "Time for appeal. Persons wishing to be heard by the Board relative to an appeal from an order, requirement, decision, or determination of an administrative official of the City of Columbia shall file a notice of the appeal to the Community Development Department within 90 days," so that's -- when we deny something, they have to file within 90 days. The appeal to circuit court -- find it here --

MR. CALDERA: We included that in here, didn't we?

MR. ZENNER: It's here, and it is -- if I am not incorrect, it is 30 days. I'm just not finding it and I apologize. I thought I had it when I was reading to you.

MR. WATERS: Ms. Hammen, would you like for staff to continue looking for the statute?

MS. HAMMEN: I guess I just want to understand --

MS. JOHN: Can I ask who you would imagine would appeal this?

MS. HAMMEN: You know what? I don't think I have to imagine who would appeal it. I think we are -- I just follow rules, and that's all I'm asking is what the rule is and how it would apply. And I know we disagree, but I'm going to ask for respect and not having disrespect because of disagreeing with what I might want to do.

MS. JOHN: That's not what --

MR. WATERS: Ms. Hammen, do you have any further comment?

MS. HAMMEN: No.

MR. WATERS: Okay. Ms. John, would you like to go forward with your motion?

MS. JOHN: Yes. I would like to move that we approve both variances with the condition that the landscaping and screening standards contained within Section 29-4.4 of the Unified Development Code and the submission of a replat to consolidate the parcels pursuant to Sections 29-5.1, et cetera, be followed up on. I lost track of what I was saying. The condition -- that the two conditions that I just read off be done by the applicant.

MR. CLITHERO: Second.

MR. WATERS: I think you -- okay. We have a motion and a second. Would you like for me to restate the motion? Probably a good idea.

MS. JOHN: Go right ahead.

MR. WATERS: Okay. Let me see about this. Okay. So we -- the motion is to approve a variance to allow the maximum of six vehicle parking stalls to be located within the required front-yard setback and to allow a maximum of 2,900 square feet of impervious surface to occupy the required front yard of 402 and 404 McBaine, conditioned upon the landscaping and screening standards comply with the relevant section of the Unified Development Code and the approval of a submitted replat to consolidate the subject parcels into a single development lot. Is that close enough?

MR. CLITHERO: Very well done.

MR. CALDERA: If that's your intent, yeah. That sounded clear enough.

MS. JOHN: That's exactly what I meant.

MR. WATERS: Okay. So there's a motion and a second. Would the liaison please call the roll?

MR. ZENNER: Yes. Relative to the matter and the motion that has been made for Board Case 1961. Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Mr. Norgard?

MR. NORGARD: No.

MR. ZENNER: The motion carries 4-1.

MR. WATERS: Okay. Thank you.

Case No. 1962

This is an appeal of Phebe LaMar (attorney) on behalf of OTA Properties, LLC (owner) from a decision of the City's Community Development Department to deny permission to allow construction of a building in excess of the maximum building height in the M-N (Mixed-use Neighborhood) zoning district requesting that said Board grant a variance to permit a maximum building height of 47 feet on property addressed as 705 and 709 Fay Street. In addition, the applicant requests that the Board approve the request to designate the property at the same address as further -- as M-N Pedestrian in accordance with the provisions of Section 29-6.4(j) of the Unified Development Code.

MR. WATERS: Before we get started on this, if there are any Board members who want to make any statements or need to disclose anything, would they do so now?

MR. NORGARD: I would love to.

MR. WATERS: Mr. Norgard?

MR. NORGARD: Yes. I spoke at the -- I'd like to disclose that I spoke at the Planning and Zoning Commission hearing on this matter. My comments were directed primarily at City staff and not at the applicant, and they were general in nature. By their action at their hearing, they -- they attached a rider to their -- their decision, which effectively eliminated my concern. And, therefore, since I am using the criterion that we have established here to make my decision, I believe I can offer a fair and impartial decision.

MR. WATERS: Okay. Thank you. Does any Board member have any further comment? If that's

the case, has the notice been property advertised?

MR. ZENNER: I apologize, Mr. Chairman.

MR. WATERS: Case No. 1962. I'm asking if the notice has been properly advertised.

MR. ZENNER: Oh. Yes, it has, sir.

MR. WATERS: Has the property been posted with notice of public hearing?

MR. ZENNER: Yes, it has.

MR. WATERS: Have the properties in interest been notified?

MR. ZENNER: Yes, they were.

MR. WATERS: Have there been any inquiries?

MR. ZENNER: No, there have not.

MR. WATERS: Would the person making the application please come forward and state your name and address and be sworn in?

MS. LAMAR: Good evening. My name is Phebe LaMar, and I have offices at 111 South Ninth Street.

(Witness sworn.)

PUBLIC HEARING OPENED

MS. LAMAR: I am here this evening on behalf of the applicant, OTA Properties. My client has a vision for the properties that he owns in this area, and he's going to describe that a little bit more here in a few minutes. The crux of the vision, in essence, is a function of the location of this property which is, as you can see on the screen and as you saw in the packet, within easy walking distance of downtown and it's also within easy walking distance of the bus system, which is on the screen in front of you right now, thus making it a perfect live and work location. The building proposed here is contemplated to be zoned M-N and is intended to serve residents of this building, as well as nearby residents. The City staff report also did a good job of explaining all of that to you. The further intent is to expand the residential uses in the area as well, making the pedestrian standard even more appropriate in this area.

As you can see, the location is slightly north of the downtown area, but is nearly adjacent to the designated future pedway that was previously used by the COLT Railway. It's also, as mentioned by staff, adjacent to the Columbia College campus. Within one-tenth of a mile from here is the old shoe factory

building, which is now an office building, and is in excess of 35 feet tall. Within a half-mile, going the other direction, is the Brookside Midtown building, which is a four-story apartment building with rooftop amenities. It's also several feet taller than this building. In addition, by walking or driving distance, this building is less than a mile from The Broadway, which is a seven-story -- seven stories, plus a substantial built-out area for the roof. It's also important to note that this building is not designed to compete with the student housing market as it is right now, and Bobby will be discussing in a few minutes about whom this building and the properties he owns in this area are actually designed to appeal to. For all of these reasons and those mentioned by staff, this site is an excellent location for application of the pedestrian zoning to M-N -- for the M-N zoning that's going to be in front of the City Council on Monday.

In addition, the application also meets the criteria for granting of a variance for the height of the building. The project in front of you is a type of infill. It's right in the middle of the downtown area. Repurposing of property in the town center, which avoids contributing to urban sprawl and perfectly fits within the parameters of the comprehensive plan and other visioning documents that we, as a City, have adopted as our goals is actually what we need to do. Since this is infill, however, the size of the lot is not unlimited. It's not a matter of my client simply being able to pay a little more to buy a larger site. Rather, my client must work within the parameters of what's actually available in this area. What he's buying with the -- with the lot that he's purchasing or that he owns is what he can get. He can't get any more in order to try to expand the building and -- and to allow for the uses that he's trying to do with a larger site. Therefore, in order to really meet the goals of providing an appealing living and working area in this location, with easy access to public transportation and the other amenities of downtown, it is a hardship to strictly enforce the height standards for M-N zoning in this location.

It's also important to note that if this property were to remain I-G zoned, as it currently is, and as numerous properties around it remain, there would be no height maximum in this zoning classification. So if this were to remain its current zoning, there would be no 35-foot maximum height and we wouldn't be having this conversation at all, except that you can't have any kind of residential use in a -- in a property that's zoned industrial. Granting of the variance will not permit uses that would otherwise be permitted in an M-N -- that would otherwise not be permitted in an M-N zoning district. Rather, granting this variance will permit the uses that are specifically called out for the zoning district itself. Further, the rooftop patio

concept likely will fit better within the comprehensive plan than might a building without that addition.

The variance that's requested will not be a detriment to the public health, safety, or welfare, or in any way cause harm to neighboring properties. In contrast to staff's analysis, the proposal in front of you this evening is, in fact, the least amount of a variance that is possible to accommodate the uses that are proposed. In contrast to many of the other rooftop amenities offered near this location, the totality of the height variance is intended to accommodate only an elevator and stairwell to permit safe and -- safe access to the roof. Without the elevator, for example, the building would not maintain and meet ADA standards. Without the stairwell, there would be no safe exit in the event of a fire. Both of these are necessary for provision of safe access. However, this -- the ordinance, the way it's written, allows for something in excess of the maximum height standards only for parapets and elevators, not for stairwells. So while we could come closer to meeting the standard with regard to the elevator and with regard to the parapets, which are not included in the analysis that we've done at all, we can't include stairwells which are necessary in order for safe exit in the event of a fire. Staff -- nowhere in the -- sorry. I got confused, and now I have lost my place.

What we're trying to do at this point is to provide a safe and additional detail for a workable solution in order to -- I totally shouldn't have said that. Let me start over again on that sentence -- sorry. What we're going to do this evening, and the engineers are actually going to get up and talk in a minute with regard to the reason why it does not work to simply shrink the size of the building by six feet or seven feet in order to meet the standards the way they're -- the way they're written at this point. They're going to provide you with the -- with the reasoning. I'm not an engineer, I'm only the lawyer who is up here talking. But they'll tell you why it doesn't work to simply shrink it. It's also important to remember that the total amount of area that's proposed in this plan that would exceed the -- exceed the height permitted under the ordinance is only about 10 percent of the footprint of the building, and only approximately 4 percent of the whole building site. So what we're doing is trying to keep to a minimum the amount of area that will actually exceed the height maximum that's proposed -- that's included in the ordinance and, at the same time, we're also attempting to make sure that we can meet the -- that we can meet the needs of the people and -- that are in -- that are in this building and actually meet the goals of the M-N zoning.

For all of these reasons, the standards established by the City for granting of a variance have all

been met and, in addition to applying the pedestrian standard to this M-N zoning, the requested height variance to permit the stairwells and the elevator shaft to be constructed to a height of 47 feet, should be granted. I'm here to answer any questions you may have for me. In addition, Bobby Campbell, who is a member of OTA Properties, will be providing you with some additional information regarding his vision for these properties. And Matt Kriete from Engineering Surveys and Services will provide additional information about why it's not workable to simply shorten the building. I'm happy to answer any questions.

MR. WATERS: Any questions of Ms. LaMar?

MS. LAMAR: Thank you.

MR. WATERS: Thank you. Anyone else who wishes to speak in favor of the application, please come forward and state your name and address and be sworn in.

MR. CAMPBELL: Yeah. Bobby Campbell, 5706 Sundance Drive.

(Witness sworn.)

MR. CAMPBELL: Thanks for taking time for me today to talk about my vision, and Phebe is right in talking about a vision. And if you'll be patient with me for a little bit, I'll tell you my story because my story kind of plays into my vision. Not only am I developing, but I originally started as a start-up founder. I founded my first company in Forest Village, an apartment, out of my spare bedroom with \$20,000, and I thought that was a ton of money to start a company, and sometimes ignorance is bliss. And went out there, I had a month or three months to make a profit or we would go bankrupt. Well, we made a profit, and that first company was Division D. And actually Division D now is down on Fay Street, at 602 Fay Street, we built a building down there and moved it down there. But when we started, we started out of our spare bedroom, and then we started to grow and hire employees, and we were, like, well, where do we go.

And so, in Columbia -- which I'm a big fan of Columbia. I live here, my kids live here, go to school here -- there are not a lot of options for startups. And so we went into a strip mall. And so, as Division -- Division D grew, we went into one sized strip mall, and then as it got bigger, we went into another sized strip mall. And then we started another company called Ad Karma, and we put Ad Karma in another strip mall. But in Columbia, there is no real area for startup or innovators to go and call home and share ideas and grow their companies and use the cross-pollination of other people striving to create some new things

and create an environment where they can innovate. And so -- which was fine, because, you know, we were scrapping and doing what we could do to build our companies. But, you know, as far as when we came and -- I had the company Ad Karma that I started, when we decided, hey, it might be an option to sell this company, we went out to the Coasts and we talked to money people and we talked to strategic companies about buying our company, and the hardest thing to them was getting them to come to Columbia, Missouri. And I'd say, hey, yeah, we're from Columbia, Missouri, and they used to always joke that when I talked to them on the phone, they would -- their vision of Columbia, Missouri, is we're in the middle of cornfields with hogs out back. And I was actually talking to one guy at a conference one time, he goes, well, I mean, is that what Missouri is like? And I'm, like, actually, I grew up like that when I was a kid, so I never thought about that, but I actually grew up on a farm with hogs out back.

But once I got them here to Columbia, you know, and showed them the University and showed them the people and the workforce that we had built out of the University and the people that live in this community, and the great community, they got it, right? But we were still in a strip mall. We were still out behind Buckingham's, or we were still somewhere that they don't have it as a vision for where a startup or a company that they're going to invest in is going to be in. And so, you know, I'm more than just a developer asking you guys to approve a variance on a development. I'm a guy who has a vision for something that I think can help Columbia take its place as far as cities -- especially in the Midwest. I don't know if you guys have heard of the term, the Silicon Prairie, which are cities in the Midwest that are startup cities, whether it's Omaha or Boulder -- we've all heard of Boulder. There's no reason that Columbia shouldn't be considered as -- in the same place as an Austin or a Boulder or Omaha or a Fargo, as a place where people can go and innovate and build companies.

And so my real vision -- first off, I don't talk about it a lot, I used to be a columnist for the Tribune and I talked about resources and Columbia resources and who Columbia is as an identity and that, you know, we are more than just a college town. We are more than a place where people collect rent money from college students and beer money from college students. We're a place where we need to take the town that we developed at the University and we need to try to hold onto that, because each year we lose so many people who are great, who are going to create the new companies, who are going to create the Apples, that go to St. Louis or they go to Kansas City or they go to Chicago or they go to New York,

because they don't see Columbia as a place to start that next step in their life, and they -- and they also don't see Columbia as their number one option for starting a startup. And so I've also served down in the Incubator at the University as both a mentor and an investor, and in mentoring startups in the Incubator, a lot of times they hear that, you know, Omaha has a better, you know, environment, a more centralized environment where startup companies are sharing ideas and people can feed off of each other. And so as both a way to develop and, you know, build something, I also have a vision for creating an area, bit by bit, as I build building by building, because I don't own everything around there, that is a place where people can innovate and come, and where that people can envision their company is going to -- to live in an environment where they can work, they can live, and they can play.

And I don't know if you've been down to Fay Street. It's a pretty rough area. There's some really good things about Fay Street. There's Logboat, there's the Brown Shoe Factory, there's the old mule barn, which they've done great things in, and I just have a vision of that spreading all the way down the street, of having a place where it's not college students, but it's young professionals, young families that can live in that area or live around that area. And so that is what I'm looking to do down there. And so, you know, I brought a newspaper, I didn't bring it up with me, but I'm not someone who is coming in here and asking for \$100 million in tax, you know, abatements, or anything like that. I'm putting myself and my investment out there. I'm asking for ten feet and a variance on a few parking spaces so that I can continue to implement a vision for what essentially is an innovation district, a district where startups can go, they can get their footing and they can do great things. And so I've moved my company, Division D, down there. There are other great companies in the old mule barn. It's called the Fay Street Lofts, right? I'm blanking on that. And -- and also give young professionals a place to live in Columbia, envision themselves living in Columbia in a centralized area that, in the future, I think will grow.

And so along with that, you know, this isn't all about me developing, it's about me also working with the City, because this is a long-term process, and I think this is something that, in the long term, is a good thing for the City. And I think the City sees the -- will see the positives of that, and the community. And so I love talking about this. I love talking to neighborhood groups. I've talked to the North Columbia Neighborhood group here. I'm going to come talk to your neighborhood group about that, and I'll talk to anybody about it because I think it's something we can all agree on. And so it still costs money though to

build things. You still have to be able to keep the lights on. And so part of why I'm here is to ask for variances that will help me do that.

And, you know, with the pedestrian standard, moving the building up, we can create a cool area. You know, think of Third Street Promenade in Santa Monica, which is an area that has blown up as far as the tech world and just a place that will attract people, that has a little bit of sizzle. When I sold my company, Ad Karma, he's like, you know -- the guy who bought it, or the company that bought it, their CFO is, like, hey, you know, the company is great, your numbers are good and stuff, but, you know, we had a production facility in it that didn't do much business, make much money, but it was a lot of fun. He goes, you know what, the sizzle helps. And so, in your production company, the sizzle helps. And so to have a little bit of sizzle in the area that draws people's attention is a great thing to happen, too. And so I hope you consider my vision for the future of this area. It's a blighted area and we're turning it around, and I think that will be great for the community, great for the City, and great for the companies that will come down there and try. So, yeah. Thanks for your time.

MR. WATERS: Thank you, Mr. Campbell. Any questions for Mr. Campbell? Anyone else wishing to speak in favor of the application?

MR. KRIETE: My name is Matthew Kriete; I'm with Engineering Surveys and Services, and the engineer on the project.

(Witness sworn.)

MR. KRIETE: I'm going to talk about some boring things after all that excitement there. So in terms of the height, I want to discuss, you know, why -- why is the building the height it is, why do we need this additional height. Certainly for the access to the roof, I mean, I think Ms. LaMar has discussed that well, of needing those points of access -- the elevator for accessibility access. And two -- two stair towers, ultimately for emergency exit. I mean, in fact, only two are going to be required, but why the height it is. And I spoke with the architects, you know, other engineers, and other disciplines and all, and so we talked about what is this floor-to-ceiling height that's required. As of right now, I believe you've seen on the blow-up updated rendering of what you've seen in your packet, but the first floor being a 12-foot height, pretty typical for a commercial type space. That's needed to, you know, give an adequate floor-to-ceiling height for -- for, you know, occupiable space, as well as provide room for, you know, mechanical

equipment, lighting, plumbing, insulation, and then a structure. And as you continue up, you can see then we drop to 11 foot, and 11-foot height on the second and third floor. Much the same thing, the structure, the plumbing, and, you know, all these items need to be placed in the ceiling and you need to have some sort of then, you know, whether it's a dropped ceiling or whatever that might look like architecturally, there needs to be room for all that to be placed in there. As well as on the -- I think those top floor units start running into a lot of insulation and needing room for that.

As was brought up, you know, we could go six feet above, arguing whether the stair tower would be considered a permitted height above that. That would be two feet additional cut from each floor, leaving a ten-foot and two nine-foot floors. And that just does not leave adequate room for the structure, all this equipment, plumbing, lighting, you know. Really, what we provided at this point is really the bare minimum to comfortably get that in there, and provide flexibility for the space in the future, you know. And as tenants change, you know, you don't know exactly what you're going to need, but you need to be able to provide that flexibility. So with that, I'd be happy to answer any questions that you guys might have.

MR. WATERS: I have a couple of questions.

MR. KRIETE: Yeah.

MR. WATERS: I think you've answered some of them. One of them is why there aren't any windows in the building, but clearly there are some windows.

MR. KRIETE: There's some windows. It was an early rendering.

MR. WATERS: And the other question has to do with kind of what you were discussing with the requirements for mechanical and whatnot in the ceiling.

MR. KRIETE: Uh-huh.

MR. WATERS: And I -- I think you've answered those questions about why you can't just shrink each floor by two feet in order to comply.

MR. KRIETE: Yeah. And I think, as an example, we -- we have a good -- we have a good example in this building, if you've been up in the old Daniel Boone Building, you know. It's an older structure and it wasn't planned for all that kind of equipment that we have in a modern building, and the floor-to-ceiling height is pretty short, you know.

MR. CLITHERO: Just to make sure that everybody understands, those numbers are not

floor-to-ceiling heights, they're finished floor to finished floor.

MR. KRIETE: Finished floor to finished floor, yes. Yeah. To be clear about that. Thank you.

MR. CLITHERO: Structure out of each one of those numbers first, and then talk about mechanicals within that.

MR. KRIETE: Uh-huh.

MR. CLITHERO: So, I don't see how it could get any shorter.

MR. KRIETE: Correct.

MR. WATERS: But to follow up, and this is a little beside the point, but it's a bigger question about whether you think the Code has inadequate allowance for a three-story building to be built?

MR. KRIETE: In a three-story building at 35 feet, that's your bare minimum finished floor height from what I've seen -- you know, floor-to-floor height. You can't scratch in much tighter than that. And, you know, it is what the Code is. We've been -- we've been doing it for years, but it's -- as time has gone on, I just hear it becoming more and more of a problem with all the new modern equipment that's going in the buildings.

MR. WATERS: Well, that may be something we'll want to address later. But for now, my last question is -- has to do with the elevator enclosure. That seems to be the tallest structure on the building.

MR. KRIETE: Uh-huh.

MR. WATERS: And it -- unless I'm misreading the documents, it looks like you're allowing 12 feet for that?

MR. KRIETE: Yes.

MR. WATERS: Is that standard for -- or is this an unusually tall elevator?

MR. KRIETE: I would actually say it's not standard, actually shorter than standard. If you look in our Code, we're allowed a six-foot height variation above the maximum for the elevator. You know, we're -- we're basically saying, well, we're going to build two, so it's really limiting your space down, but you can't go any shorter and still provide the room needed for the elevator to, you know, basically rise all the way up to the -- to the rooftop level.

MR. CALDERA: Mr. Chair, I have one quick question. This is an evidentiary question. I notice that the rendition that we have on the big screen up here is different than the one that we've attached to

the agenda. Is this one that we're looking at on the big screen the accurate rendition that the Board is considering?

MR. KRIETE: This has gone through more -- well, it's further along, yes. I think this is -- this is probably a little more accurate to what you have.

MR. CALDERA: Okay.

MR. KRIETE: I would venture to say the space on top may be a little larger than what's really needed just from point of reference, but, yes.

MR. CALDERA: Ms. LaMar, is this rendition something you guys are going to want admitted into evidence?

MS. LAMAR: I would be happy to submit it.

MR. CALDERA: Okay. Okay. Well, then when -- come my time, I'll go ahead and move to get it submitted, but we'll need a copy, obviously.

MR. KRIETE: Okay.

MR. WATERS: Any other questions for Mr. Kriete?

MR. NORGARD: Are we only talking about the variance right now? We're only talking --

MR. ZENNER: Actually -- actually, if I may, and we probably should have noted this at the very beginning of the presentation. You have two separate actions here. You have first an action to determine the appropriateness of establishing the M-N pedestrian standard on this property. Then you have an action to determine the appropriateness of a height variance. There is one variance, there is one standard action which is an alternative or optional development standard approval.

MR. CALDERA: And Mr. Zenner, let me interject real quick. And Mr. Norgard, for the M-N pedestrian, it is a different criteria than for the variance, so they will need to be two separate actions, as Mr. Zenner was suggesting.

MR. ZENNER: And there is in front of you the criteria for the determination of optional development standards. That's in a separate nonlaminated folder that you have on a yellow sheet of paper.

MS. JOHN: This one?

MR. ZENNER: So those are the criteria that staff will be evaluating the M-N pedestrian request

against, and that you need to be considering as you render your decision. And then the standard variance criteria that's on the laminated sheet with the highlighted yellow will be for the height variance. And depending on the outcome of the M-N pedestrian standard, the corresponding and accompanying case 1963, which is on your agenda next, may be moot. It is a parking variance that is based upon -- is subject to the outcome of the M-N pedestrian standard determination. When we get to that point --

MR. CALDERA: Yeah. Let's not get too far into that. Let's deal with the case that we've got in front of us.

MR. NORGDARD: Well, I do have a question actually then. I'm reading your letter to -- your letter -- I forgot your name. Mr. -- Matthew, I've read -- I've read your letter, and I have some questions about it because it seems you're asking for two opposing things in terms of the parking standard. There is a statement that you are seeking to make this a walkable system, a walkable development, and that, therefore, you don't require as many parking spaces. And then you're also saying that during the daytime, your parking lot will be emptied out as people drive to work. So I'm -- I'm just curious which standard is being applied here. I'm concerned primarily about excessive off-street parking -- or insufficient off-street parking, I should say.

MR. KRIETE: And -- and I don't think they're really contradictory in a sense, because you still can encourage a walkable community and a multimodal transit. We're sitting right next to a -- you know, the start of a pedway, which we hope will expand as time goes on. We're near three routes on the city transit system. We're in walkable distance to downtown. So I think from -- from that multimodal aspect, providing bicycle parking, and as you see, we're also providing in excess to the Code, we're going to want to encourage that in this -- in this area. But at the same time, you know, as there's demand, it -- you know, you're still going to have the transition of folks in from residential and the commercial, those peaks are still going to be offset. And it just helps further reinforce the fact that -- that this isn't going to be flooding off into the on-street areas and clogging up the streets, that we will have sufficient off-street parking.

MR. NORGDARD: Okay.

MR. KRIETE: Did that help?

MR. NORGDARD: I'm -- I'm not entirely convinced, but, yes. That helps a little. And then I

had -- I'd be remiss if I didn't ask about the -- the design standard essentially eliminates your setback, you have a zero setback --

MR. KRIETE: Uh-huh.

MR. NORGARD: -- as opposed to a 25-foot setback if you maintained in the M-N standard. I guess the question is to the applicant or to you, anybody who chooses to respond, what is your feeling about the value of green space in residential, mixed-use areas?

MR. KRIETE: Well, to speak of what we'll have, though, too. I mean, you're looking right now as an industrial development that has next to no green space. Predominantly, what's actually green out there today is asphalt that's been overgrown or gravel areas. With -- with the M-N standard now, we're going to be -- well, we're required and we're going to have then buffer yards around the entire -- you know, three sides of the property outside of the front, and we'll provide quite a bit more green space than what's there today, and a nice green space, as well, you know. And in looking into the comprehensive plan, you know, this area is envisioned as a city center, you know. What are we talking? We're talking about going into zero set -- zero lot line type setback scenario that we're working into a more pedestrian oriented development where we want to bring the buildings forward and we want to have that interaction in that -- in that frontage, you know, rather than setting the building back and putting a sea of parking out in front of it or -- or maybe even a large green space. Would you like to say anything?

MR. CAMPBELL: I'm coming. Just wanted to -- do I have to swear back in?

MR. CALDERA: No, just approach the microphone.

MR. CAMPBELL: No, I think that's one of the keys, you know, green space to the area, too. And if you look at the COLT Railroad track there and the future plans potentially down the line, that is like a walking park that's sitting right in the middle of this whole development. And my personal view on green space and -- you know, and neighborhoods and businesses is that they should be all interconnected, right? And because that is going to get more use out of green space than if the green space is way over here and where you live is way over here, and this kind of development where you have the potential for a huge piece of green space that connects the City together from the north side to the downtown, to the south side, through the center of the City, which I think is in the long-term plans for that area, is the perfect place to build offices around and to build places for people to live.

And -- and also the City owns the corner there. There's a little building on the corner that I wish the City would do something with, whatever that -- the City has vision with, but it could also be a micro park right there in the center of it for a place for people to gather, too, you know. You know, the one thing cool about Logboat -- I don't know if you ever go down there. I'm a dad, I have three kids and stuff, is it's a friendly place that, you know, parents can take their kids. We went and did the '80s run-walk with my kids, and so we ran around the neighborhood. And so, where there's more green space in places where people can enjoy their lives and enjoy their children's lives is a great thing. So I think in general that's a great thing, and I would love to see the City do more and for everybody to do more as far as green space in the area. So, yeah.

MR. WATERS: Mr. Kriete, do you have further comments?

MR. KRIETE: I have none. If you guys have any more questions, I'll be happy to answer them.

MR. WATERS: Anyone else have any questions.

MS. HAMMEN: So -- so this has been rezoned?

MR. KRIETE: This will -- this is up on Monday at City Council for the rezoning. So much like your previous question on the previous -- or the case -- your question on the previous case, I mean, this could be also conditioned on approval of the rezoning on Monday, but the applications are certainly in and coming very soon.

MS. HAMMEN: And the replatting?

MR. KRIETE: And the replatting is also there with it. On Monday, it'll also be -- it's on the agenda for -- for hearing.

MR. WATERS: Thank you, Mr. Kriete. Oh, I'm sorry. Ms. Hammen, you have another question?

MS. HAMMEN: Yeah. Sorry. So is this the final building at this point or are you still going through --

MR. KRIETE: I think there's some renditions to go through in the final development of the building, but this is -- this is close to what you're going to see.

MR. CAMPBELL: If you go down there and look at the building I built at 602, it's a building that matches the environment around there, that fits in with the Brown -- the Brown Shoe Building, that fits in with the Fay Street Lofts -- I'm just going to call it that. If I'm wrong, I apologize. And even fits in with

Logboat as far as color scheme, how it looks, and so there is a uniform look that is developing in the area that is aesthetically pleasing and blends -- blends in, so --

MR. WATERS: Any other questions? Thank you, Mr. Kriete.

MR. KRIETE: Thank you.

MR. WATERS: Anyone else wish to speak in favor of the application? Anyone wish to speak in opposition of the application?

MS. FLEISCHMANN: My name is Rita Fleischmann. I live at 1602 Hinkson.

(Witness sworn.)

MS. FLEISCHMANN: I have no problem with development in the area. I have a concept with it setting a footprint that we're going to be following in the area, and I -- I beg people to stop and think and look at what we could be getting into without green space. And I say this because I walk through downtown every day and step on dog shit -- oh, poop, you know, because there's no place for dogs to poop. There's no green space, and they're pooping on the churches' places. So people are going to have dogs. People are going to have lives. People are going to have children. If you are wanting a community, if you're wanting a neighborhood, this needs to be a footprint to be incorporated into it. But it's not just a building that we can bring in, like, technology. You're bringing in people with families and futures and lives and animals, and that needs to be incorporated into it. And to put off, like, say, well, the City needs to make the green space, and we have a little green space here, we see that's not working downtown. It is not. And let's take a moment before we, like, say, and say this is good. And first of all, you know, I'm not understanding why this isn't going to the City Council before it's going through you guys. Just my own question. But I am -- I appreciate your time and I'll be happy to answer any questions if you have any.

MR. WATERS: Any questions for Ms. Fleischmann? Thank you, Ms. Fleischmann.

MS. FLEISCHMANN: You're so welcome.

MR. WATERS: Comments from staff?

MR. ZENNER: Before I turn the floor over to Ms. Bacon, I'd like to point out in relationship to Mr. Caldera's question to Ms. LaMar, the demonstrative exhibit that's been placed before you on the screen has not been reviewed by staff, so we're about to give you a staff report based upon an exhibit that was given to us at the beginning of this application process. There are certain assumptions that were

made in our assessment and analysis of this request as it relates to the site plan, the height, the necessity and the need for parking as it relates to the M-N zoning standard that were based upon the exhibit that we had in the packet. There are certain questions that I have as the individual that produced the denial letter as it related to the site plan and the parking and potential questions that have not had an opportunity to be examined by our building -- our site development staff as it relates to the building height and the improvements that are on the roof.

In accordance with your procedures, you have the ability to recommend a tabling of this request to allow us additional time to review the modified exhibits, or you may take action on your own based on the recommendations that staff will be providing you here this evening. I don't know necessarily if it is appropriate to ask the applicant for clarification of the rooftop enclosed space that was originally not shown as enclosed and how that enclosed space may be used, because that is a very relevant factor as it relates to parking adequacy under the M-N, which affects, again, the corresponding Case 1963. So we have definitely an issue here that we are being provided an exhibit that we have not had an opportunity to evaluate.

With those precursor comments, I will let Ms. Bacon deliver the staff report as it relates to the requested M-N designation on this property, and then the request for the height variance. As has been stated, they are two separate actions under two separate approval criteria, and we will deliver them as a single report so you have them, but we will ask, when we are finished, that both votes be taken individually. With that, unless there are questions of the Board at this point --

MR. CLITHERO: I have one.

MR. WATERS: Mr. Clithero?

MR. CLITHERO: So I can't read the numbers on that thing we're looking at on the screen. I understand your concern about what appears to be possibly an enclosed area on the roof, and that might make a difference in parking. But as far as the first variance is concerned, we're talking about, first of all, not a variance, but designating the property as M-N.

MR. ZENNER: That is correct.

MR. CLITHERO: And the second part of that variance request is the height of the building. So if the numbers on this -- that's on the screen are the same as the numbers in our packet, would you have a

problem with that?

MR. ZENNER: Given that the overall level of the variance may not be being increased, I think we can probably overlook the demonstrative exhibit as being changed. However, I have no impact -- I have no understanding of how that may impact other denial letters that were issued as it relates to the property. There may be other Code related issues that would have identified as part of what the revision is, and I notice Ms. LaMar is approaching the podium. She may want to add at this point.

MS. LAMAR: If I can just clarify. The only thing that's enclosed and shown on the exhibit that you're looking at up there is the elevator and the two stair towers. There is no additional enclosed area proposed or intended to be, and we're fine with a variance that limits us to only the elevator and the two stair towers being in excess of the height -- of the height maximum.

MR. ZENNER: And I understand what Ms. LaMar is indicating, and I think that that's fine. I view what appears to be up there a much larger mass. It's a connection of the elevator shaft, along with the two previous stair towers, and what would appear to me as being glass over a portion of it on the -- what would be our left, your right-hand side. Is that an enclosed stairwell location or is that intended to be utilized for some other purpose?

Again, part of the premise of the staff report is that there is a maximum height of 41 feet permitted within this zone above -- above the parapet that's inclusive of the six feet for the elevator shaft, as well as the parapets themselves, and we will deliver our report as it -- and the calculation associated with it that the almost 47 feet that this building is proposed at, at this point, if that is the dimension, in our opinion, is excessive of the need for a variance, with or without possibly reducing the floor-to-ceiling heights at 11 -- 12, 11, and 11. That gives you a total of 34 feet. So there's an additional six feet -- there's additional -- you get to go another foot and then an additional six feet above that, which gets to 41. And we'll lay out our argument associated with that. I don't know if Mr. Kriete can provide any additional information as to what the architect was visioning, but we've made it very clear in our denial letter that usage of the rooftop for anything other than a passive recreation space for the residents or temporary event space for any retail user on the lower floor was what we understood this space to be used for, and that is -- you know, the denial letter at this point may be questionable as it relates to other aspects associated to this, and that may have an impact as it relates to the overall inclusiveness of what the denial

letter was dealing with.

Be that as that may be, if it is the Board's desire, we'll be more than happy to proceed forward. If, in fact, it's a 47-foot maximum or 46-11, which was what was shown, if the overall height is the same, our recommendation can be based upon still a building that was 46 feet 11 inches, seeking a 47-foot maximum building height. Our recommendation won't change any. The recommendation is denial. The public has seen that. You have seen that. That recommendation won't change. We believe we will lay out a salient argument for why the building height can be less and that that is within the purview of the Board to approve a lesser variance than what is sought. Unless there's additional information Mr. Kriete can provide, we can start our staff reporting at this point.

MR. WATERS: Mr. Kriete?

MR. KRIETE: I want to clarify what you're looking at versus the exhibit that was in there. First off, the elevations match. So what's changed -- I mean, before, effectively you just had an outline of where these stair towers -- the stair tower and the elevators were going to be. In the design of the building, the stairwell has rotated 90 degrees. So when you look at this, you're seeing a larger mass in front of you than what you would have seen on the old elevation. That's because the stair tower was kind of going longitudinal into your page. It's now rotated. The area has not changed. The use of the area has not changed. The enclosure has not changed. We've given it some color.

MR. CLITHERO: Direction as --

MS. HAMMEN: Uh-huh.

MR. KRIETE: The glass -- I'm guessing an open stairwell. I'm not the architect, but I'm guessing that's what we're looking at is trying to get some light into that stairwell. But at this point, that's -- that's what's happened. So it is substantially the same exhibit as what you've seen. We've got a little more detail on the building, kind of gives you a better idea of what we're planning to -- to accomplish here. And I hope that helps clarify that. Sorry for any confusion we might have caused by presenting -- presenting this here tonight. I certainly didn't mean for that to cause confusion or concern to the staff that there may be some concerns in the denial letters or any changes in uses because that's certainly not the case.

MR. CLITHERO: In the denial letter, it states depending on rezoning and/or approval of M-N

pedestrian standards or additional future information, other variances may be required at a later date; however, building height is the only request at this time.

MR. KRIETE: Correct.

MR. CLITHERO: It seems to me the only thing we're talking about is the building height. You may have other concerns, but you stated that they would be addressed later if they come up. We're only talking about a variance to the height.

MR. ZENNER: That is correct, Mr. Clithero.

MR. CLITHERO: Thank you.

MR. ZENNER: And we will determine if, in fact, we need to go to the second corresponding variance to this subject property upon your outcome of the first request. So that is where we get into the other variance, and we'll get there if we have to.

MR. CLITHERO: Okay. Thank you.

MR. KRIETE: Thank you.

MR. WATERS: Staff, would you like to continue your report?

Staff report was given by Ms. Rachel Bacon of the Community Planning Department. Staff recommends denial.

MR. CLITHERO: Did I hear you say that I-G zoning does allow residential use?

MS. BACON: It does not. It's -- it explicitly prohibits.

MR. CLITHERO: That's what I thought, ma'am. That's what I heard you say.

MS. BACON: Yeah. That's -- so in order to have -- so you could still have a mixed-use building, you could just not have the residential component of the mixed-use, so there could be office uses, there could be maybe cottage industries, retail, et cetera.

MR. CLITHERO: Okay. Good. That's good. Good. Got it.

MS. HAMMEN: Would you address -- what did you say about Planning and Zoning granted the zoning, although it has not gone to City Council yet. Subject to the pedestrian designation?

MS. BACON: No. No. With the understanding that the applicant would be coming to you at this meeting seeking the pedestrian standard. So there's a lot of moving pieces that are really intertwined. And so the pedestrian standard for their -- their consideration of the zoning category was just helpful

information. But when they were looking at the plat and why, you know, the -- they granted a design adjustment from a utility easement that would have had -- been in conflict with the setback require -- or the setback allowances under the pedestrian standard. Now, design adjustment was also granted because it was found to not be necessary because all of the utilities that would have otherwise gone in that utility easement were found to be already in the street and of a standard, you know, allowance already. So there were several factors that went into that design adjustment. Just like you have criteria for variances, they have criteria for design adjustments. But the full picture, we're painting a full picture for you tonight of all of the moving pieces, and we painted a whole -- a full picture for the Planning and Zoning Commission for their consideration, as well, on July 5th. Does that answer your question?

MS. HAMMEN: Uh-huh. I'm just wondering why we're seeing it before there's the final City Council approval.

MS. BACON: Well, I think it's -- it's -- the applicant would have to make some very different decisions and provide different demonstratives, different tools should they not be granted the approval that they're seeking.

MR. ZENNER: Ms. Hammen, I believe -- most applicants, again, and this is a choice of our applicants that come before us. As Ms. Bacon has pointed out, we have multiple moving parts often and the phrase, which should not be uncommon to most, is time is money, and our Code allows for concurrent submittals to be run all at the same time. This applicant chose to seek this approval ahead of that that would entitle them to be able to do it. Should the plat be approved, it's going to consolidate this property, which is at any juncture of redevelopment, going to be a requirement because we have two different parcels here, and you can't build over property lines. The southerly most parcel is small, not really going to be able to be utilized to accommodate any type of meaningful redevelopment.

So the platting action could have very easily been taken care of before we even contemplated rezoning to allow for a larger industrial building to be built on the property. Instead, the applicant conceived this entire package, the rezoning request from I-G to M-N, with the intent of using pedestrian standard, which was a Board approval process, and the replatting. As is often encouraged by our staff, paint a full picture before you come and you ask for piecemeal approvals by our regulatory bodies. And that is, in essence, what has happened there. They have painted a picture -- a full picture before our

Planning and Zoning Commission with the request to go M-N, with the intent of using M-N pedestrian to be able to support an approval of a plat. The Planning Commission felt, through their deliberation at the July 5 meeting, the proposal to rezone this property in an area of transition to M-N was appropriate. They liked the idea of the pedestrian standard, but realizing they weren't entitled to make that approval, considered that as part of their deliberation. That, as Ms. Bacon has pointed out, affected how they viewed the variance requests or what we refer to as design adjustments from the subdivision plat in rendering its recommendation of approval of the subdivision plat as well.

Counsel will have to make those decisions and ultimately if neither one is approved, and more importantly, if the zoning is not approved, the proposal in the application before you for M-N pedestrian standard is probably moot. And then, of course, building height, if you choose to make action or make a recommendation of that, that would run with the property, of course, and would allow for a building of mixed use, not inclusive of residential, of course, and not able to use the M-N standard, to be rebuilt. But what's the purpose of a height variance when you have no height in the I-G zoning district. It's just -- so the applicant, I think, contemplated and knew what the outcome potentially could be, and decided they want to have concurrent ability to make application as soon as next week's actions are completed if the Board here is favorable to their request. That's not uncommon. We have people that are asking for approvals when we have concurrent projects and other requirements that need to be met. So, I mean, that's going to be something that is going to be played out multiple times as you sit on this Board and as we come before you, applicants seek to make sure that they -- their time is not costing them their money. They're trying to get all of it done together. We have no stoppage in our Code that says that thou shalt get one approval before the other. So that -- that explains to some extent why we can't -- you know, you can ask the applicant their mindset, but that's from our understanding of how the development process works, that's why.

I think what Ms. Bacon maybe has not pointed out here this evening is, again, as I pointed out, 12, 11, and 11. That's 34 feet. That takes you to the bottom -- or that takes you to the top of the building as proposed, six feet -- add a foot, that gets you to the maximum height limit of 35, add six feet to that, that gets you to 41. The documents that are presented before you have a building height of 47 feet. We would tell you, as the staff report points out, they actually only needed to ask for a six-foot height

variance, not 12. So granting them a 12-foot height variance is, in our staff's opinion, inappropriate. It is a six-foot height variance that you were asking for to get them to their 47 feet. If you want to grant 12 feet on top of 35, again, the same math. However, it's not utilizing the appropriate provisions that we see in the Code where the elevator shaft can extend six feet above the maximum height limit. The stair towers as depicted on the diagram that was in your packet and most likely depicted on the diagram that you have before you on your screen is actually below the top of the elevator. So why they're saying that the actual stair tower can't be built when it is actually shorter than the elevator shaft, without granting this variance, is a little bit perplexing to us. Everything comes down -- and I'll let the applicant explain why that exists. That's not changing any of the floor heights at this point. If you desire to approve the proposal, again, it's a six-foot variance, it's not anything less, but we believe that's not even appropriate. And I think architecturally, the building can be adjusted to potentially fit within the 41.

Again, we go into the one criteria that you have in the variance request and it is the variance being granted the least amount necessary. If you want to keep an 11 -- a 12, 11, and 11, and then utilize the six feet on top of the 35, and come back with a demonstrative exhibit that says, here's what we really need, that's your choice. I can't tell you what that is because I'm not an architect, but I believe it's less than 47 feet. So that's why we're recommending disapproval. We believe that from an architectural perspective and a design perspective, this building can be shorter. It could be closer to compliance, which is 41 feet, and it probably can be within compliance if floor heights were reduced.

This particular section of the Code has not changed. Our C-1 zoning district said 35 feet was the maximum building height. We adopted the UDC in 2017, and we changed C-1 to M-N. It still said 35 feet. They sought M-N as a rezoning request before the City -- before the Planning and Zoning Commission and City Council where they could have sought M-C, which would have allowed them a 45-foot maximum building height right out of the gate. They chose not to. I believe that the use of the variance process to achieve a building height greater than what the six-foot maximum addition to the minimum or maximum within the M-N zoning district is out of convenience. It's not necessarily out of going back, sharpening the pencil, and getting it closer to what the actual maximum permissible building height is within the M-N zoning district. Therefore, we do not support the height. We do support the building, we support the uses within this particular area. We believe it is appropriate. But we believe that the building can be designed

to better accommodate what our maximum height limits are within the district without granting potentially an unnecessary excessive variance.

So the definition -- or the two items that you have before you here this evening again in summary is an M-N pedestrian designation. And what that will allow, as Ms. Bacon pointed out, is a zero front-yard setback and a 30-percent reduction in the overall parking required for the M-N, and that is in addition to the other parking variances or parking modifications that we allow already in the Code. That is one vote. And your second vote would be as respective to the height variance of a 47-foot-tall maximum structure in a district that permits a maximum structure of 41 feet. If you are prepared to either ask us questions or make a motion, we're more than happy to respond.

MS. BACON: And I would just like to quickly read into the record, the criteria that staff considered for the M-N pedestrian standard is in Section 29-6.4(j) of the Unified Development Code, and that's how we recommended approval. The criteria we used to recommend disapproval of the variance to the height is found in Sections 29-2.2(b)(2), Table 29-2.7 and 29-4.1(a), Table 4.11 of the Unified Development Code. So those are the criteria in the Code by which we made our -- our recommendations.

MS. HAMMEN: I have a question.

MR. WATERS: Ms. Hammen?

MS. HAMMEN: So is there -- are there setback requirements for the side yards and the rear yard that there would be landscaping in?

MR. ZENNER: Those are subject to our neighborhood transitional standards, neighborhood protection standards. The adjoining parcels are zoned differently and, therefore, what has been shown on the site plan as the required setbacks do comply. We -- if I recall correctly, we have R-MF on one side and --

MS. BACON: That's I-G all the way.

MR. ZENNER: I-G all the way around, but there is -- because -- and this is new in the Code. It seems a little bit backwards maybe for some. The parcel is being requested to be zoned M-N. So, historically, if you decided to downzone your property, in essence, I-G to M-N, you chose to live next to an industrial property and we didn't require you to put a buffer in. When the Code was adopted in 2017 -- or re-adopted, and we had neighborhood protection standards in and screening and buffering, now you

provide a buffer on both sides of the property line. So the M-N is required to provide a ten-foot screening area, a ten-foot landscape buffer area based on the fact of what it is adjacent to. Given that this is a multi-use building, it is appropriate to have that screening, but that is a requirement directly out of the transitional standards and our screening and buffering in it. Again, as I said, it seems counterintuitive, the lower intensity property is the one that is required to provide it, not the higher intensity. Now, if the higher intensity property were to come in later and -- they would then be required to provide a buffer of equivalent area on their side creating more of an insulating green strip between the two sides. If these were left zoned I-G, there would be no buffer.

MS. HAMMEN: And the rear yard?

MR. ZENNER: Same.

MS. HAMMEN: The same. Ten foot, two sides, and the rear?

MR. ZENNER: Yes. That's correct.

MS. BACON: Let me also, just to clarify. The difference under M-N between the pedestrian standard and just a regular M-N, there are two differences in the setbacks. So the first is that front-yard setback that is clearly a consideration this evening. So you go from having a 25 required minimum setback for the regular M-N to between zero, so no fewer than and no more than ten feet for your front-yard setback. The setbacks for rear lots and side lots remain the same between the two different standards with one exception, and that is for corner lots, of which this property is not.

MS. HAMMEN: And so this has a zero-foot setback?

MR. ZENNER: It would be the minimum that it could maintain. The maximum under the pedestrian standard is ten.

MS. HAMMEN: Oh. But we don't know what they're going to do.

MR. ZENNER: It allows for flexibility. So the idea of the pedestrian standard is to pull buildings to the front. You -- you would typically not want to grant a pedestrian standard and then have the building constructed at 25 feet back. It -- it doesn't make any sense and it doesn't fulfill the objective of the pedestrian requirement. So when the Code was adopted and this optional development standard was conceived, it was intentional that we stated a maximum setback when you were trying to create a different environment. So, again, if the M-N is -- the pedestrian standard is approved, based on the site plans that

we have seen, it would be at a zero-foot front-yard setback, and that is consistent with the approvals that were recommended by the Planning and Zoning Commission as it relates to the plat. So the standard ten-foot front-yard utility easement that is required was a design adjustment modified by the Planning and Zoning Commission, which would be considered by City Council as part of their approval. Had it not been, the building would have been sitting back at its maximum front-yard setback and for no real intended purpose because all of the utilities, as Ms. Bacon pointed out, are out in Fay Street right now. And, therefore, that was what the logic behind the Planning and Zoning Commission's evaluation and then their ultimate recommendation was based upon. There was no need for the utility easement.

MR. WATERS: Other questions of staff? Does the applicant have anything to add?

MS. LAMAR: Just a couple of things. First of all, I would like to respond to one thing that was brought up early on after I spoke with regard to the green-space requirement. As you all were just discussing, there is still a green-space requirement on three sides of this piece of property. And as a result, the amount of green space that is going to be on the property is about 20 to 25 percent. It's not like there is not going to be a place for dogs to go to the bathroom. It's not like we're going to put people in a situation where they don't see any green when they get up in the morning and then they go to work and -- we're not trying to put all of the burden for green space on the City. The reality is, we're just trying to pull things to the -- to the front of the lot so that, in fact, we can accomplish the purposes that Pat was talking about just now with regard to creating a pedestrian environment. And so this is not a situation where we're placing no value on green space. We're, in fact, going to have green space and we're going to -- and we're -- and we're -- that's one of the focuses of doing -- of doing the project in this fashion.

Second thing, with regard to the standard for hardship, I guess I just disagree with the way that staff is interpreting hardship. But at the end of the day, there is a hardship to infill insofar as that you can't just expand a lot in order to accommodate the additional area that you want to be able to provide for the people who are in this building. And as a result, without going excessively over the limitation, we're asking for a variance in order to exceed the height limitation somewhat for this building.

Now, with regard to how much we're exceeding the height -- the height maximum in this particular type of zoning, the maximum zoning -- the maximum height is 35 feet. It can be exceeded up to 41 feet for parapets and elevator towers. In order to accommodate the stairwell -- the stairwell, that stair -- that

stair tower -- those stair towers are ten feet tall. So we cannot get those within the height maximum of 41 feet and still accommodate the equipment and the other things that have to go into this building in order to make it workable for the mixed use that is proposed in this -- in this building. The elevator tower will be 12 feet tall or it'll -- one inch short of 12 feet, I guess, is what we're looking at. So at the end of the day, what we're asking for is a maximum height of 47 feet. We're not -- how you get to that in -- if you choose to grant the variance is not something that I'm terribly concerned about. But at the end of the day, in order to build the building that we're talking about here, it is necessary for us to get to a maximum height of 47 feet. And part of that is in excess of the 35 feet that is permitted under the -- under the way the ordinance is written, because there is no exception included in the ordinance for a stair tower, which has to be ten feet tall in order to -- in order to accommodate what's necessary in order to access the roof. So we're minimizing to the extent that we can. We are minimizing the amount of area that it exceeds the height. We're minimizing the amount of area -- the height of that in order to accommodate the uses that are proposed in this building. But at the end of the night, we do believe there's a hardship. We do believe that this is something that fits the criteria for a variance and, as a result, we're asking that you grant not only the pedestrian standard, but also the variance. Thank you.

MR. WATERS: I do have a question.

MS. LAMAR: Sure. No problem.

MR. WATERS: So Mr. Zenner raised a couple of interesting -- well, just questions that I think are worth an answer. And one of them is, why not go for M-C zoning that would have allowed 45 feet and maybe lesser of a variance requirement?

MS. LAMAR: Because at the end of the day, we're trying to make this into a neighborhood. At the end of the day, we're trying to use the uses that are provided for under M-N rather than expanding the uses. At the end of the day, if you -- if you grant M-C, you are upping the ante as far as what can be included in this building and, frankly, that's not what we're looking to do. We're looking to limit the uses in the building, but, at the same time, we're looking to provide the amenities that go along with the slight variance in the height of the building.

MR. WATERS: So it sounds like what's really driving this height problem is either the -- the patio on the roof.

MS. LAMAR: Right.

MR. WATERS: And if you didn't have the patio, then you wouldn't need the --

MS. LAMAR: That's correct.

MR. WATERS: -- additional height, right?

MS. LAMAR: Correct.

MR. WATERS: Or the -- or the third story, because if you had a two-story building with a patio, then you'd still be -- you would be okay. You could do that.

MS. LAMAR: We could do that. But the issue that you run into then though is that you're not providing all of the same uses that you're -- that you're trying to provide in the -- in the building. With -- with limiting the number of -- the number of apartments up there, you're also limiting the number of people who can socialize on the -- on the top of the building and that sort of thing, which then does not fit within the vision that we're trying to get these people to stay here and provide them with a place to live.

MR. WATERS: So it -- I mean, what are your options if you don't get this variance? Are you -- does it -- does it kill the project? You know, does it kill the patio? Does it kill the second story? Does it make you need to go --

MS. LAMAR: We go back to the drawing board and we probably lose people. We lose -- we lose the ability to house the people that we're trying to house -- at least some of them.

MR. WATERS: So is -- is it still a feasible project at that point?

MS. LAMAR: It's questionable. We hope so, but we -- we have to figure that out.

MR. WATERS: Thank you.

MS. LAMAR: Thank you.

MS. HAMMEN: I have a question of staff.

MR. WATERS: Ms. Hammen?

MS. HAMMEN: I have a question of staff. It seems that there is some diametrically opposed opinions here about the ability to put in a three-story building with an elevator, with stairwells. Can you -- I mean, am I --

MR. ZENNER: I don't know if they're diametrically opposed. I think we have -- and it sounds, you know, sinister. I think what we end up with is there is an architectural -- there's a difference in

architectural opinion. An 11-foot floor-to-ceiling height or finished floor to finished ceiling, which is not the case. This is floor to floor.

MS. JOHN: It's floor to floor.

MR. CLITHERO: It's floor to floor.

MR. ZENNER: And the necessity to run the mechanicals and all of the other issues from a design perspective -- now I'm not an architect. I'm not an engineer -- a structural engineer or anything of that nature. We have had a 35-foot height limit in our multifamily zoning districts for quite some time.

MR. CLITHERO: We've done several variances because the buildings absolutely won't work at a 35-foot height. They just don't.

MR. ZENNER: And that is true, Mr. Clithero.

MR. CLITHERO: And when it became time for the UDC to be discussed, this Board was asked if there was anything we would like to present, and that's one of the things we asked and it didn't change, as you said.

MR. ZENNER: And I was not part and party to the request, nor was our department, at that point, responsible for your views.

MR. CLITHERO: We were asked. That's all I'm saying.

MR. ZENNER: If you were asked by our code consultant, our code consultant did not heed the request, and we proceeded to adopt our Code the way that our Code was previously written with the height limitations within it. Again, I don't think that it's a diametrically opposed approach, it's a difference in opinion as to how to design a building to comply with the standards. And if, in fact, as Mr. Waters pointed out, if construction techniques and construction standards do not permit a standard three-story building to be packaged within a 35-foot maximum height zone, that is an issue that needs to be addressed by our Planning and Zoning Commission through direction of City Council to amend the Code accordingly to avoid this type of variance to be brought forth in the future. Part of staff's obligation as the regulators and enforcers of our code is not to just openly support waiver. We are here to uphold what the Code has to say. The hardship needs to be created, and if you're compelled by the applicant's argument without any other submission of any documentation that this is the mechanical location, this is the mechanical cavity that it needs to fit into to make a recommendation to approve the height variance, that is your choice.

Staff is not -- staff isn't convinced and staff will not be convinced potentially until either we're provided a greater set of development plans or design detail plans, which the applicant is not wanting to produce without the variance being granted, so it's a chicken and an egg. We are holding to what our Code has to say. We are holding to what has been a historical practice. Yes, the Board has granted height variances in Greek Town for other structure types. You do not set precedent. And the Board -- and the staff is not influenced by the prior actions of the Board. We are making a recommendation on what is here in the Code. We believe that the height can be adjusted.

And I would like to go back and just clarify a point. I think we are talking a little bit semantics as it relates to the maximum construction height and the variance that needs to be requested. Ms. LaMar has indicated that the top of the elevator shaft is actually 12 feet above the roof. They need 12 feet to accommodate the elevator; 34 plus 12 is 46. You have a maximum building height of 41 feet considering the parapet and the elevator. That is a five-foot variance to grant a 46-foot maximum building height.

MR. CLITHERO: You know, we're --

MR. ZENNER: So that's -- that's -- I think, again, that's part of where there's maybe semantics here with a 47-foot building height and a 12-foot variance. Again, our responsibility is to ensure that what's in the -- what the Board makes and renders its decisions on is correctly stated. We're looking at a variance to yield a building of a maximum height, and that's part of where our -- our -- again, our comments are coming from. So --

MR. CLITHERO: We got that.

MR. ZENNER: -- should you choose how you want to make the decision, that's -- regardless. If you want a maximum building height, which we've done previously, or you want to specify what the variance is in the allowable height, that's your choice. Our recommendation is as it's stated, and we will come back to the fact that it is a five-foot variance, not twelve, and it would yield a maximum building height of either 46 or 47 feet, whatever you would like.

MR. WATERS: So go ahead, Mr. Clithero.

MR. CLITHERO: Two things. I don't -- I'm not sure, and I would like a very brief answer, please. The building height is not from the finished floor of the building to the top of the building; is that correct?

MR. ZENNER: Based on the diagrams we've seen, yes, it is.

MR. CLITHERO: How do you determine the height of a building? Isn't it from grade plane?

MR. ZENNER: Average grade plane, a distance from the building to the tallest portion of the roof.

This is a flat-roofed structure and, therefore, you're measuring to -- if I'm not incorrect, and this is a new definition that we have within the Code, and it is not an area that we deal with.

MR. CLITHERO: Correct.

MR. ZENNER: But it would be measured from the rooftop. It is not inclusive of the parapets.

MR. CLITHERO: I understand that. I'm talking about grade plane, and, I mean, we used to do this about three different ways. And so it depends on the distance from the building to an average grade plane; is that how it's done now?

MR. ZENNER: I can read you the definition, unless, Matt, you have it memorized.

MR. KRIETE: I would like to say I completely have it memorized, but I don't.

MR. CLITHERO: Okay.

MR. KRIETE: It's -- it's not -- there's not nearly as many options in the UDC, in that Code.

MR. CLITHERO: Okay. Right.

MR. KRIETE: And from this case, we've given you a fairly simplified document -- diagram that shows you from finished floor. The reality of that front face is there's a slope on the street.

MR. CLITHERO: Right.

MR. KRIETE: You've got to move out to the face, partial -- a portion of that left side of the building is going to be below grade. A portion on the right side is going to be above grade. The average grade there, it's going to be approximately finished floor.

MR. CLITHERO: Okay. Okay. So just to make it clear that, you know, this is a nice picture with a nice straight line at the bottom, but that's not how it exists out there, so I don't think it's unreasonable to ask for a few extra inches or feet, depending on how that building height ends up being measured.

The second comment I would like to make is that -- and I understand what you said, that we need to state the variance in such a way that it's not a 12-foot variance, but it's a definite building height. Now, I've put in a few elevators and I know what goes in them and I know why it has to be as high as it has to be, and I understand and I believe that the 12-foot and 11-foot, and 11-foot is not unreasonable. But I also know that when they design this building and build this building, they're not going to just build it 47

feet tall and have a bunch of wasted space in there. They're going to design the building in the most efficient and economical way they can. And it may turn out to be less than 47 feet. But it seems to me that just -- I mean, this looks like the 47 feet is the minimum I would even consider for the height of this building. So, that's my thought for the night.

MR. WATERS: And I have a question about the UDC. So the UDC says maximum mixed-use building height is 35 feet.

MR. ZENNER: That is correct, sir.

MR. WATERS: And -- and it doesn't say how many floors you can put in that, but there are standards for how -- you know, how much space you have to allow for the floor, right?

MR. ZENNER: Yes.

MR. WATERS: So that -- given those standards, the Code presumably envisions a three-story building to be allowable in -- within the maximum building height; is that a fair assumption?

MR. ZENNER: I would suggest, yes, it is, sir. I mean, I think you can adjust floor heights if you took a flat-roof building and did three ten-story floors, you're at 30 feet, allowing yourself then an additional five feet before you reach the maximum height, plus an additional six feet for an elevator shaft. The choice is architectural at this point based on the mechanical-related issues, and that's historically you choose how big your floor heights are. The only zoning district that we have minimum and maximum floor heights is our downtown and M-DT zoning district where we specify first-floor heights, a distance back from the face of the building, and then we specify minimum floor heights for second and above. We state a maximum building height within the M-DT. And the minimum floor height in the M-DT for mixed-use buildings is nine feet, second floor and above. That's the minimum. So, you know, again we have built many a building here in the City of Columbia in a 35-foot limited height district and, yes, we have architectural variations that we've had. We've had adjustments that have come forward for residential buildings, which has had the same height limit, and you have approved higher buildings.

MR. CLITHERO: And when you say nine foot, is that floor to ceiling or what is that?

MR. ZENNER: Yes. That's clear area. That's clear span.

MR. CLITHERO: Okay. So nine foot floor to ceiling, and then you've got floor joists and then you've got mechanical.

MS. JOHN: Floor joists and mechanicals and --

MR. ZENNER: And so, again, the idea is to create units, of course. And I mean, Ms. John is an architect, I'm sure, and Mr. Clithero from working in construction, that's a standard that came not from our making, that came from our code consultant, and our form base code consultants working in multiple jurisdictions nationally and internationally to determine what appropriate floor-to-ceiling heights were. And so how you package all of that in the maximum height, entirely left up to the designer. And it was designed again. So I think to your question, Mr. Waters, 35 feet, and how you allocate that space, entirely left up to the imagination -- your own imagination. It's not intended to be exceeded. And again a three-story building, and correct me if I'm wrong, because I am not the expert in the building code, either, a three-story building does not require an elevator. So you do not need to have an elevator shaft. And as Ms. Bacon pointed out, we are looking at creating a rooftop patio space here. That is an amenity that, yes, we as a staff would support, but it is not a necessity. And to not have that amenity does not then require this variance because we do not have a Code requirement that says a three-story building requires the elevator.

MR. WATERS: What about a three-story building with a patio?

MR. ZENNER: A three-story building with a rooftop patio, if you're wanting to have accessibility to it, you have to gain that accessibility, which would be why we're here.

MR. WATERS: Is the accessibility required?

MR. KRIETE: Yes.

MR. WATERS: Okay. So --

MR. KRIETE: And -- and then to that effect, too, it would be a violation of fair housing not to provide an elevator to the second floor here, as well as a violation of ADA. No. You have to have an elevator in this building, whether the City code requires it or not, we have federal standards that we have to comply with.

MR. ZENNER: And that's a result though of the fact that you have residential in the building, correct?

MR. KRIETE: If it were an office space with commercial on the first floor, we would have to have an elevator. You have to provide reasonable accommodations to all users of the building. We have to

have an elevator. That's not -- that's not in question; that has to be done.

MR. WATERS: Whether it's got the patio or not?

MR. KRIETE: Whether it has the patio or not, yes.

MS. BACON: So a point of fact, if it was a three-story residential building, could you not provide ADA accessible units on the first floor to meet the ADA requirements and then not put in an elevator?

MR. KRIETE: If it was all residential, I think there would be some -- some room in the Code to allow that to happen. I'm getting out of my area of expertise, and -- and reasonable accommodations and such, but -- but, yeah, I have seen that happen, as long as there's accessible units provided on the ground floor.

MR. CLITHERO: And what -- this isn't residential on the first -- this building we're looking at is not residential on the first floor.

MR. ZENNER: And correct. And I think let's pull ourselves back to what the request is at hand. The request at hand is a mixed-use building, which is supported by staff, supported by our Planning Commission to get the zoning district changed. We do not not support mixed use. We have concern with the maximum height --

MR. CLITHERO: Right.

MR. ZENNER: -- which I think, as we have explored in our conversation here, could be adjusted potentially to fit within the height parameters with the parapet/elevator bulk out -- or elevator shaft bulk house -- penthouse exception, and that's where the discussion is, and that's the decision that the Board needs to make.

MR. WATERS: Yet we're hearing the applicant say that they can't do that.

MR. ZENNER: Again, I believe what Mr. Clithero's point was and what I wanted to clarify is, we're talking about semantics as it relates to a maximum building height of 47 feet, which is what the applicant is seeking, versus what staff has indicated is that the variance request is in excess of six feet. Regardless, the building would still be 47 feet, if that's what you choose to approve. And that's -- the maximum building height is, it's the amount of the variance beyond what is permitted. The difference between 47 feet and 41 feet is 6. And so it's not 12. That's my point.

MR. WATERS: Okay.

MR. ZENNER: So if you want a 47-foot building here that accommodates the elevator and the stair towers, that's the recommendation you would make. We are not supporting it.

MR. WATERS: Okay. So just to be clear, your staff recommendation against approval is -- doesn't have anything to do with the variance, it has to do with the -- the height that they're asking for?

MR. ZENNER: Yes.

MR. WATERS: The 47 feet, not the 12 feet?

MR. ZENNER: No. It's -- it's the fact that it's a 47-foot tall building that can be potentially within a 41-foot maximum height, to redesign and reconsideration of floor heights.

MR. WATERS: Well, I'm just trying to zero in on what the real issue with this project is. Is this, you know, a project that is flawed because it's too tall or is this a project that's good, but doesn't fit within the confines of the Code, that really doesn't have a problem with this type of project. It's just not possible to do within the Code, so --

MS. JOHN: Can I make a comment?

MR. WATERS: Yes.

MS. JOHN: To your -- to what you're saying. I think part of the problem here is that they have the rooftop patio in mind, which means that the elevator has to go up to the roof, and not just up to the third floor, which means it has to have the head space above the elevator and not just above the third floor. And the stairwell has to go up that high, too, which is the difference, I think, between having a three-story building with just a roof, a flat roof, and a three-story building with a patio on the top that you need access to the patio.

MR. ZENNER: Very well -- very well put, Ms. John. And I -- because the parapet or the additional bulkhead location of a stair -- of an elevator in a standard three-story building could be accommodated to be able to get access to mechanicals for a standard three-story building.

MS. JOHN: Correct. It's the head space, yeah.

MR. ZENNER: You put the deck on the top that's meant to be an active space, as Ms. John pointed out, everything's got to go above that. The project, in staff's opinion, is not consistent with the Code. As a result of not being consistent with the Code, it cannot be supported. As Ms. Bacon pointed out, there is no compelling reason that it cannot be brought into compliance or into closer compliance with

the maximum allowed height of 41 feet. That is why is our recommendation is denial. It's an architectural -- it's an architectural issue in design. It has nothing to do with the value of the project. There is no value assessment being made on this. It does not meet the dimensional standards. The applicant is not entitled by any means to a three-story building with a rooftop deck. If they can get it to fit into the height restrictions, yes. But they're not entitled to it out of the box and, quite honestly, the -- the idea that because they're asking to have a full level above what the maximum height is, and this is why they're asking for the variance, again, I -- I go back to the fact that it is a design requirement, it is a design issue. Come back, design a building that is closer to 41 feet, it may still need to be over 41, but we -- I can't tell you that. And it's the difference between 41 feet and an additional 6 feet is really what the Board is having to wrestle with, against our recommendation. I -- you know, we -- we're sticking with the idea that the design of the building can be adjusted in order to accommodate the height.

MS. BACON: It could be two stories with the rooftop deck, or it could be three stories without. And so, it's difficult for us to support a hardship that is not self-created because it's a brand-new building.

MR. WATERS: All right. I guess so we, as a Board, need to decide if we think the amenity on the third story or the second story all together is worth the -- the five or six feet that they're -- they'd need as a variance.

MR. ZENNER: I would suggest, and as Mr. Caldera will recommend --

MR. CALDERA: I will. I will recommend that you look at Code criteria.

MR. ZENNER: -- you will need to look at your six -- you will need to look at your six criteria and make sure that your recommendation is soundly based upon them.

MR. CALDERA: Correct.

MR. ZENNER: We have provided you -- we have provided you, in essence, the technical standards associated with it, and a -- I would suggest a nonbiased opinion that this does not comply with at least one of those standards. Pursuant to the way that the Code is written, pursuant to the authority granted to the Board, you are not entitled to approve the request because it does not meet the criteria -- it doesn't meet all of them. However, should you be compelled by the information that has been provided to you by the applicant to find justification that the hardship is unique to this particular property, because it is a redevelopment site, you can choose a recommendation of your own choosing. I will suggest that we do

not believe that the hardship has been proven, because this is a redevelopment site. This hardship is no different on any other redevelopment site proposed within the City of Columbia. You can't add property to redevelopment or infill properties anywhere else within the City, so you, however, can comply with the height, and that -- that's not any different anywhere else. We have height requirements in the downtown area, we have height requirements within this particular area. This is a redevelopment scenario, and as a result of the redevelopment and the desire to exceed what the maximum limits are within this particular zone, the Board has to render its decision based upon the evidence provided.

MR. CALDERA: Pat, let me interject real quick, and I know that Ms. LaMar has some things that she probably still wants to say. But I want to clarify. I don't know exactly what the statement "you're not entitled to" -- I want to clarify for the Board that it is within your purview to grant a variance if you determine that the evidence that was given to you fits the criteria that you have before you. So I don't want the record or the Board to be confused and suggest that you don't have authority to grant the applicant's request. With that said, whether or not it meets the criteria is completely up to you guys. I just want to interject with that.

MR. ZENNER: And that statement has to come from the actual if it determines the following are true. That is the last line of the five criteria -- the entrance to the five criteria. Now, how you prove that they are true is your choosing, and that's based upon the testimony that's been given by the applicant this evening and the testimony provided by staff -- how you weigh those.

MR. WATERS: Ms. LaMar.

MS. LAMAR: Can I just respond to a couple of things?

MR. WATERS: Yes.

MS. LAMAR: I have no problem with the statement that the applicant is not entitled to a variance. That is absolutely true. The only way that the applicant gets a variance is if they have proven to you that they meet the criteria. The one that seems to be the biggest issue tonight is whether or not there's a hardship. At the end of the night, you have to determine whether you want to see infill and whether or not you want to see people use sites in ways that are designed -- that require a slight variance in order to use them in that -- in that fashion. I have a huge problem with saying that you would not be entitled to make that. I believe Mr. Caldera has actually clarified that statement. You are absolutely entitled to make a

determination about whether there's a hardship this evening, and whether or not the other criteria that are -- that are included within the criteria for granting a variance have been met. At the end of the night, you are the people who decide whether or not you believe that a nonarchitect and a nonengineer is -- is going to be the person who determines whether or not the height of the building is sufficient. So at the end of the night, you are entitled to make a determination whether or not there is a hardship, whether or not the other criteria with regard to -- to determining a variance have been met. And we will -- we understand that, and we are coming to you and asking you to give us a variance because we understand that we are not entitled to a variance. But by the same token, we are absolutely entitled to ask for a variance and to try to argue to you and show you the ways in which we believe that we have shown you that we meet the criteria for being granted that variance. That's what we have sought to do here this evening. That's what we believe we have accomplished, and we would just ask you to grant that variance.

In addition, to get us back off the variance issue, we also have the other issue that we want you to decide this evening, as well, which is the M-N pedestrian standard. And the reason for bringing that to you right now is because, at the end of the night, we're going to get a yes or a no to that, and then we're going to go to City Council and they're going to make a determination about zoning with that in mind or not in mind based on the -- based on what you decide here this evening. And so we are asking you to give us -- to grant the request for a pedestrian standard and then to turn to the variance and determine whether or not we have met the criteria for granting of a variance, at which point then you'll determine whether you want to grant that.

MR. CALDERA: Mr. Chair, because someone did speak in opposition, I would recommend and advise that you offer them an opportunity to throw in their two cents.

MR. WATERS: Would you care to make any rebuttal or additional comment?

MS. FLEISCHMANN: My name is Rita Fleischmann, 1602 Hinkson. Thank you for the chance and thank you for letting me speak again. Again, I am not opposed to this development. I'm not opposed to developing dead zones and making the community a better community. My concept is, is making it a community, and not a work zone and not a tech zone, but making it a community and making it a place where kids can play. I appreciate the -- the three spaces, like, 30 feet for dogs to do their business in, and so I really do appreciate that. But I give pause. As a public servant, I ask you to give pause and rethink

before you make a footprint on what's going to be a series of Brooksidés, possibly, or a series of developments that we're going to, like, say, gosh, I wish we had a tree to park under or park my bike around. Or, you know, I -- I just wonder if we're going to regret it in the future. I mean, I know there's going to be bike -- I know there's going to be bike things, and things like that. But we can't just look at right now, we have to look in the future by what we're going to miss 20 years from now. That's all I have to say. Thank you.

MR. WATERS: Thank you. Well, I think we're going to close the public hearing.

PUBLIC HEARING CLOSED

MR. WATERS: Comments from legal?

MR. CALDERA: Yes. So there's a few housekeeping things that we need to take care of. Let's see. So there's a bit of record building I've got to do here, so bear with me. I want to admit a few exhibits, if I could. So on the agenda, we had the locator maps, the site plan dated July 18, 2018, and the architectural elevation. If the Board will allow, we would submit that as Exhibit 1.

MR. WATERS: Absolutely.

MR. CALDERA: Okay. Okay. Thank you. I'm trying to keep these nice and orderly. As Exhibit 2, we seek to admit into evidence the application and denial letter, as well as the applicant's correspondence. Again that would be listed as Exhibit 2.

MR. WATERS: Yes.

MR. CALDERA: As Exhibit 3, we submit the public notice, parties in interest letter, and list. Actually, I'll keep that separate from the staff report. So just the public notice and parties in interest letter and list as Exhibit 3.

MR. WATERS: Yes.

MR. CALDERA: As Exhibit 4, the staff report to the Board of Adjustment that was provided to you earlier. We admit that as -- or seek to admit that as Exhibit 4.

MR. WATERS: Yes.

MR. CALDERA: And then I think two more. A few ordinances, so I'm going to read off the ordinances and submit them as one exhibit. So Ordinance 29-6.1, 29-6.4, 29-2.2, and 29-4.1. That includes the ordinances for the M-N pedestrian, as well as the height variance, all included in one. We

seek to admit that as Exhibit 5.

MR. WATERS: Yes.

MR. CALDERA: And then lastly the demonstrative that the applicant presented to us today, which is currently on the big screen and they will provide us a copy of. We seek to admit that as Exhibit 6.

MR. WATERS: Six. Yes.

MR. CALDERA: With that said, as we mentioned earlier in that extensive discussion we had, you guys have two different processes tonight. You have the M-N pedestrian discussion, a decision to make on that. And that brings with it its own set of criterias. There's three specific criterias, which you have in front of you in that yellow document. I'm happy to read those aloud if you guys would like me to. You don't need that? Okay. And then after we -- after we complete that issue and decide on that issue, as Ms. LaMar correctly stated, we also have to deal with the variance. And as you all remember, the variance requires that you meet -- that you find the five criteria apply in this situation before granting the variance. I'm happy to read those aloud if you would like me to. No? Okay.

So lastly I would say that there -- through the discussion, I noticed that there was the suggestion that if the ordinance, the 35-foot cap is impractical for real world, you know, development, I would -- I would advise the Board that you are here to decide on the variance request, as well as the M-N pedestrian, and determine hardship if need be, but you're not here to change the ordinance. You're not here to legislate, okay? That is the purview of the City Council. Now, with that said, that doesn't mean that you won't find that there's a particular hardship in this case, but I want you guys to always keep that in mind. All right? With that said, that's all I've got.

MS. JOHN: Can -- just a question. Can we make a recommendation to City Council that 35 feet is impractical?

MR. CALDERA: I absolutely believe you could. I think we would have to do that as a separate agenda item, but that's something that your lovely staff liaison over there will be happy to take up for you.

MS. BACON: Yes.

MR. CALDERA: That was you, Pat.

MR. ZENNER: Thank you, Mr. Caldera. I don't know how lovely they think I am.

MR. WATERS: Okay. So comments from the Board? What's everybody thinking?

MR. ZENNER: Do you want to limit that to one item?

MR. WATERS: No, not necessarily. I mean, I guess, at this point, we don't have a motion to discuss, so I think the discussion is open.

MS. JOHN: Although we don't seem to have any comments at this point, so I'd make a motion to approve the M-N pedestrian designation.

MR. CLITHERO: I second that.

MR. WATERS: A motion and second to approve the M-N pedestrian designation. Any discussion? I think this one is a no-brainer. I agree with the staff analysis of this.

MS. JOHN: Be careful.

MR. CLITHERO: That's a no-brainer, and we can --

MR. WATERS: That's just my opinion. I tend to vote in favor of this one. Any further discussion? Will the court reporter please call the roll -- or the liaison -- sorry.

MR. ZENNER: That's okay. If you want me cut me out, I'm all right. All right. It's in the matter of designating the 705 and 709 Fay Street as M-N pedestrian. Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Mr. Norgard.

MR. NORGDARD: No.

MR. ZENNER: The motion passes 4-1. Moving to your second item.

MR. WATERS: Is there any comment or a motion?

MR. CLITHERO: I intend to support the request.

MS. JOHN: For the sake of a motion?

MR. CLITHERO: Could I?

MS. JOHN: Go ahead.

MR. CLITHERO: That was a question. Oh, gee. I would make a motion to approve the request for a variance to allow a total building height at 705-709 Fay Street at 47 feet.

MS. JOHN: I'll second.

MR. WATERS: We have a motion and a second to approve the variance request to allow a 47-foot maximum height at the address 705 and 709 Fay Street. Any discussion? No discussion? Well, I have a little discussion. I -- I'm a little conflicted about this. This is a great project and it appears to me that it's -- it's just having a hard time fitting within the confines of the Code. And you know, this comprehensive plan envisions infill, high-density development in the City's center, and this accomplishes that. It encourages recreation -- recreational uses of the rooftop, and this encourages that. You know, this allows for that, so this is a good project that I think should be encouraged in this part of the City. The only problem is, the Code doesn't allow it. And to me, that's a failing of the Code.

MR. CLITHERO: That's what we're here for.

MR. NORGARD: Well, I would agree with you, but if there is a failing of the Code, it doesn't make sense to grant a variance for every failing of the Code. I mean, we need -- we have a procedure, a process for petitioning City Council to change things that aren't right, and this might be an opportunity to present them with something that can be corrected. And so, I guess my concern is that if we grant a variance piecemeal every time it comes up, then that doesn't give City Council any encouragement to modify and correct the Code.

MS. JOHN: I would -- I would tend to agree with you to a certain extent, but in this case, I think what we need to do is use this as an example of why they need to change the Code. But because the City Council and Planning and Zoning and all of that takes a long time to do that, we should go ahead and approve this variance as an example of what can be done if they can get just a little more height.

MS. HAMMEN: Or this could encourage the applicant to go back and rethink part of the design and come up with something that's also innovative and get some type of a possible change in part of it, but still come up with some recreational use. I'm thinking of the mule barn and there's a, you know, a living -- there's an outdoor patio on part of that that's not at the very top of the entire building, and there's

several things there.

MR. WATERS: I think it would be possible to go back and design a lesser project that accomplishes all of, you know, what this has, all of the -- you know, it includes all the elements that are included in this project, only to less benefit of the public and the neighbors around there and the City as a whole. I don't know what we'd be accomplishing by doing that. So it's -- it's kind of -- you know, it's a little bit of a dilemma. We're -- you know, we're looking at planning documents and a Code that says, you know, we want more of this type of project, but -- but it's imposing a practical hardship on this type of a project. So, you know, it's a conflict. And, you know, I'm not sure we, at the end of the day, come out ahead if we say, no, this project can't go forward until we spend years redoing the Unified Development Code to allow it. You know, we've -- this body has over the years many, many times looked at a practical -- an impracticality -- an impracticality in the existing Code and said, okay, we're going to allow this, and -- and, you know, keep track of -- of this sort of a thing so that we can go back to the City Council and say, hey, here's a -- here's a problem that's in the Code. But it doesn't mean that we stop every good project that comes along so that this Code revision can happen, and then the project may be -- you know, but probably doesn't come back around again. So I'm -- you know, on that basis, I'm kind of talking myself into saying that this is a -- this is a project that is encouraged by every, you know, planning document we have access to, but there's an impracticality imposed on it by a flaw in the Code. Mr. Clithero, do you have anything to --

MR. CLITHERO: I absolutely agree with that. I just -- I don't want to look at how we, sitting here as a Board, should redesign this building. I think we just can't do that. I think we have to look at the benefits that are many. And I understand that there are some concerns; I have those same concerns. And I don't think slapping somebody on the hand, saying, no, you can't do that, is the way to do this. I think the way to do this, we can have the opportunity to contact engineers, architects, and show the Council why this doesn't work.

MR. NORGARD: Can we make a commitment to do that?

MR. CLITHERO: We absolutely can make a commitment to do that. So how would you like that commitment to be made? I mean, are you willing to take -- are you willing to do that, to work as a group together to --

MS. HAMMEN: Sure. For M-N, it sounds like a good project.

MR. CLITHERO: Well, for -- I think for anything that -- of this type and size of building, we determine if the 30 -- well, in essence, it's 34 feet height.

MS. JOHN: Thirty-five.

MS. HAMMEN: If that includes R-MF.

MR. CLITHERO: Okay.

MS. HAMMEN: Which I think is a problem.

MR. CLITHERO: Okay. Well, we could -- that's part of what we can discuss. And if it needs to be for one particular, that's fine. But I think we need to look at it. Are we willing to do that?

MR. WATERS: Yeah, absolutely. I think this is a bigger issue than this one --

MR. CLITHERO: It is.

MR. WATERS: -- project and this one issue that's raised by this one project.

MR. CLITHERO: That's correct.

MR. WATERS: You know, over and over again, we see -- and this is maybe a better discussion to have after this case wraps up.

MR. CLITHERO: I believe that's true, but I think we need to make sure that everybody --

MS. JOHN: Understands.

MR. CLITHERO: -- understands that this is --

MR. WATERS: I mean, this is the kind of thing that comes up --

MR. CLITHERO: -- important and what we need to do.

MR. WATERS: -- over and over in the business of this Board, you know. We have granted variances of the same variety over and over and over again because we recognize the Code just doesn't accommodate a project that everybody wants.

MS. JOHN: Fit in a certain way or something and you'll lose the amenities that make it the kind of great project that it could be.

MR. WATERS: So we're in the habit and some would say that's, you know, a criticism. You know, people are very critical of that habit to grant variances in cases where the Code has failed, and if we'd all recognize that there's -- there's public benefit to allowing the project to go through and, you know,

there are several examples where we've allowed the same kind of project to go through several times because this flaw still exists and hasn't been addressed. So I don't think we're, you know, deviating, you know. We wouldn't be by approving this project. We're just saying that, hey, you know, look, we've seen a lot of projects that can't really fit into this 35-foot height box, but we think it's a good project, we want it to go forward anyway, and then we just never follow up with Council and do anything about it.

MR. CLITHERO: So there's probably a certain procedure that we would need to follow and --

MR. CALDERA: That is something that I'm sure we can discuss at the general comments section at the end of our deliberations today.

MR. CLITHERO: Okay.

MR. CALDERA: I do need to remind the Board, you don't set precedent. And with that said, I don't mean to take away from the meaning of what you guys are discussing here.

MR. WATERS: Right. So -- okay. So I'm inclined to support the motion on that basis with the understanding that we've got a lot of issues in the Code that we're going to have to address going forward, and this is probably one of them. Any other discussion?

MS. HAMMEN: Can we at least take a vote?

MR. WATERS: Mr. Liaison, after the sidebar discussion over there, please call the roll.

MR. CALDERA: We have the motion, we have the second, correct?

MR. WATERS: That's correct. We do.

MR. ZENNER: We do have a motion and a second, and it is to approve a height variance to allow for a maximum structure height on 705 and 709 Fay Street of 47 feet. Ms. Hammen?

MS. HAMMEN: No.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Mr. Norgard?

MR. NORGDARD: I will vote yes.

MR. ZENNER: The motion passes 4-1.

MR. WATERS: Thank you.

MR. CALDERA: Mr. Chair? I was just going to make sure, because I know that the decisions on these two impact the following case somehow, and whether or not it's --

MR. ZENNER: Well, let me -- let me. Given that the M-N pedestrian standard was recommended for approval with a 4-1 vote, Case No. 1963 is rendered moot, given that it was requesting a variance from standard M-N parking to permit the construction of the proposed structure on the lot. The applicant's representative is here. If the applicant's representative consents to the withdrawal of that case, we will not discuss it this evening.

MS. LAMAR: We would request to withdraw this application.

MR. WATERS: Do we need formal action as a Board on that?

MR. CALDERA: No, you do not.

MR. WATERS: Okay.

MR. CALDERA: It is their application to control.

MR. ZENNER: They have withdrawn.

MR. WATERS: The application is withdrawn.

MS. LAMAR: Thank you all.

VI. NEW BUSINESS

MR. WATERS: Okay. New business? The next agenda item is the Board of Adjustment case tabling procedures, discussion on this topic, and I understand staff has a comment to make on this.

MR. ZENNER: We do, and I will try to keep them brief, given the hour. Obviously, I was not here at your July Board of Adjustment meeting. However, I have reviewed the -- I have reviewed the video and was informed of the outcome. And it would appear that there was some confusion as it related to why particular materials were not included within the packet for the Board of Adjustment as it related to the proposed case that was heard this evening for Nanny's Neighborhood Daycare. Standard operating procedure for the Community Development Department's planning division, when a tabling request is presented, is to provide a staff report indicating that the applicant has requested tabling and provide the

applicant's correspondence associated with that tabling. In accordance with our operating procedure, we do not produce any additional information given that the applicant is generally granted the -- is granted the courtesy of having their item tabled while they may be working out staff-related issues. So the process that was utilized at your July 10th meeting was a process that, for the ten years that I have worked here for the City of Columbia, we have implemented with our Planning and Zoning Commission, and it is to assure or ensure that there is no confusion associated with a project that is being modified as it's going through its delay of the public process. The Board, under its rules, as well as our Planning and Zoning Commission, renders within its prerogative to accept or not accept a tabling request. However, and again as I pointed out, it is generally extended as a courtesy to an applicant when they request to be tabled to grant that.

The other option that exists is the applicant can withdraw the request without prejudice and resubmit for the following month. Often, that is the extreme recommendation when we may not be anywhere near a potential resolution of maybe outstanding staff comments or the applicant may have run into difficulty in obtaining attendance at a meeting by their other parties involved in the case. Or they may be working on other related issues associated with trying to resolve maybe conflict. So we -- it's our lack of producing any other information, case reporting information or anything else, is standard. We -- we don't provide application materials when we do Planning and Zoning Commission tablings, and we followed our exact same procedure we would and did. If the Board is desirous of having something different, it should be specified within the rules of procedure.

The Planning and Zoning Commission's rules of procedure, given that is the body that I have served the greatest length of time on, is very specific as it relates to tabling and what constitutes mandated tablings and what constitutes courtesy tablings. It does not, however, speak to the fact of what materials are provided within their Planning Commission packet because they have left that to the discretion of staff. And as I pointed out, we don't want to provide confused -- we don't want to provide incomplete information to the public that's being worked on. So we retain and we restrain from providing any other site plans or anything else that have been submitted up to that point because they may be modified and therefore it creates confusion possibly about the community if they review the reports. They come in loaded for bear with inaccurate information. They basically are -- they may be uninformed. So

we -- we hold back that information to ensure that we don't create that situation. So that is -- that's how we handle the process, and that is -- that's an entirely administrative aspect of how we set our agendas up for you in order to just ensure that we don't create that level of confusion.

Should you desire to proceed forward to deny a request to table with no public information having been provided, so there is no staff report that's been issued if we continue to follow the standard practice that we have utilized, it creates a transparency issue, in my opinion. The public that is here representing -- or the representatives of the applicant have had no opportunity to prepare for a report because they have no idea what we're going to say. And when we began doing staff reporting, we had one particular attorney here locally that was infuriated that we actually were making a staff report and actually stating a position as it related to the effectiveness of our Code. And it was very clearly pointed out that we are, by our own legal staff, we're well within our purview to be able to do that. And that the process that we have implemented as of January of this year should be as transparent to the applicant as it is to the public, and therefore the applicant is provided the staff report at the exact same time you are. They have the ability to review it. And if that applicant has requested the tabling, he's not expecting the staff report that we've produced based on maybe an incomplete evaluation of their request or incomplete work on it to be presented.

However, again, you have the authority to deny a tabling, but it does create a real conundrum for us as a body, as a staff, as an applicant, as the public. They have no earthly idea what to expect. And we would strongly recommend not to do that. But I can't tell you in all instances what your actions need to be. I can only tell you that the Planning and Zoning Commission allows an applicant to request two tablings. We generally have, with the Planning and Zoning Commission, a little bit more information because we are definitely more deeply engaged in a project and we know the nuances associated with why that tabling is necessary. If the applicant doesn't explain it in his letter, we can explain it to the Planning and Zoning Commission. Often, what happens with Board of Adjustment cases, there may be other aspects that are going on that we do not -- we're not aware of. They may be working with adjacent property owners trying to reduce conflicts or possibly trying to reevaluate how they could be more co-compliant. And they don't have to tell us that.

Again, if we want to set criteria or a specific expectation of what a tabling letter may need to

require, that may be appropriate in the rules of procedure, and then we can refer the applicant to those rules which are adopted by ordinance so they know what they have to produce in order to potentially garner support of the Board to table their request. All I want to make sure that we're clear on is we have followed the procedure that we have utilized since I have been here as it relates to tabled items. I was actually a little bit surprised at the dialogue that went on. I don't know why, but, however, if there is an issue that we need to discuss, let's -- that's why we have this on the agenda. And then secondarily, we'll get to the discussion that we were having as it relates to potential amendments that you may want to have a discussion on to be able to deal with that.

MR. CALDERA: Hey, Pat, let me add very briefly. To reiterate what Pat just said, oftentimes when individuals seek a tabling request, assuming they're not abusing it and they're not, you know, tabling it two, three times, oftentimes it's because behind the scenes they're trying to work something out with staff that might alleviate whatever it is that's before you. With that said, as I am your attorney, it is always your decision, okay? So even if somebody does make a request for the first time, if you don't believe it's meritorious, it is on them to be prepared. With that said, that is your authority. Practically speaking, what Pat is saying is true, that usually if they're tabling, it's because they're trying to sort something out behind the scenes that might potentially make your jobs easier.

MR. CLITHERO: So how would we know that?

MR. CALDERA: You probably wouldn't. You could ask them. You could ask them. They -- if you want them to justify their tabling request, totally your prerogative.

MR. CLITHERO: All right.

MS. HAMMEN: And I have a question, too, because -- so we're given no information. You know, tabling means coming forward and yes or no. It's our prerogative. But when we have no information in front of us, what else can we do but say no. And one of the Commissioners last time said, I have nothing here, I can't possibly rule on this. So I see that as a detriment to the Commissioners. And I don't -- it -- it's, as we were told, it's on the dashboard, then why aren't we given it also, and that's -- that is my feeling. And if we're going to be called here and take our time -- and so the letter could say that it's asked to be tabled; here is what they're wanting to table. And, you know, maybe we would come here and read it and find it completely egregious. I have no idea. And probably it wouldn't be, but I think it was not -- I think for

the Commissioners to have come here with no information and not being able to do anything but table it is not -- I just don't think that's so good.

MR. WATERS: I can see where you're coming from on that. On the other hand, it seems like it's completely impractical to do anything but grant a request to table.

MS. HAMMEN: It might be.

MR. WATERS: Because, you know, somebody has come to us voluntarily and said that we are requesting permission to do something, then we're not compelling them. We're not forcing them to come to us and, you know, try to get our approval for something. This is on their own, you know, initiative. And if they want to withdraw that request, then it seems entirely appropriate that we would just say, fine, if you're not comfortable going forward with this, then, you know, come back when you are or don't, you know. We shouldn't force them to make a half-faced argument in a case that they're not fully prepared to defend.

MS. HAMMEN: Perhaps with staff it's -- I'm just saying, I believe we should have been given the information. We came here and -- and had we wanted not to table it, we had no information. Their information didn't change one bit from the last meeting to this, because I got the -- you know, I got their applicant letter and everything. The only thing that I couldn't pull off the website or I didn't see or that actually Rachel sent me was the staff report, which I just think it's a matter of almost courtesy to us that we're given all the information we might need whether we -- it's a courtesy to them and as the attorney last time explained, it probably is something important for us to go and grant them the first tabling. I think it's a courtesy to Commissioners.

MS. JOHN: Perhaps what staff should do in the case of a tabling while -- when, for example, the applicant is working with staff to try and adjust things is to say the applicant has requested to table this because we are working -- and working on this together, or something like that. I can understand not wanting to give us incomplete or inaccurate information, but if you can say, this is the project, we're still working out the details, the applicant would like to table it, maybe that would be enough.

MR. ZENNER: I think that that's a possibility. I would like to, however, refer to Mr. Caldera's comments. The applicant may be wanting to work on something behind the scenes that he doesn't want to share with us.

MS. JOHN: Exactly.

MR. ZENNER: And we have no earthly idea what that may be. So I can't assume to write a -- to write a tabling memo for you that expresses why he wants to table it.

MS. JOHN: Okay.

MR. ZENNER: He has to provide -- well, he has a very low bar that he has to meet, and that's that I request to table.

MS. JOHN: Okay.

MR. ZENNER: I don't need an explanation. Now, I think to Ms. Hammen's point, the application -- materials for that application have been submitted. There is -- as far as for the application, if there is an amended application that is provided after -- as a result of whatever discussion has been done, quite honestly, that becomes a different issue, because we've been processing an application at that point. So, again, providing all of the -- all of the materials that we have, which are avail -- which are available on the dashboard as soon as they're entered -- mind you, if they're available on the dashboard, why aren't they being provided directly to you. And I fully agree that if that is the -- if that's the bar that we want to hold, we can prepare, when a request to table comes forward, we can prepare that tabling memo to include the submitted application materials for you to at least know what the application -- the applicant is seeking. The fact of the matter is the applicant is not prepared to move forward with that application and if, when they are appearing before you, you ask directly, why are you requesting to table, it's at that point that the applicant has one of two choices they may make. They can either tell you honestly why they want to table, or they can create a reason on the fly.

MR. CLITHERO: You can't swear them in before they make that statement?

MR. ZENNER: You probably can, but I don't know -- that doesn't guarantee truth. So I think -- but I can -- we can -- I am more than happy, if that's what you would like moving forward, I'm more than happy to append to a request to table those application materials. I am concerned, however, that if -- and that application material is public anyways the day it comes in, so everybody that's interested in it knows. We have not disclosed at that point our conclusions that we have arrived at, and that is what we want to protect against. We do not want to lay out before the public a recommendation and an analysis that may change as a result of whatever they're working on during the tabling period. That clearly is a very, very

bright line in our minds as City staff. It creates a lot of confusion, and I have seen it happen in the years that I've worked with the Commission. And unfortunately, when you get a tabling letter after we've run the actual reports, it's worse. And fortunately for us, we're generally in coordination with the applicant that they're letting us know before we produce the agenda.

And I will point out, and Mr. Caldera was aware of this, I received a phone call from the representative for Neighborhood Nanny five minutes before I was about ready to hit send. I had the entire agenda prepared, had everything ready to go, and he said, we need to request to table. I said what. So, you know, we accommodated and we basically had to take what we were going -- ready to post, and we pulled the posting based on the request, based on our procedure. I would have been more than happy if I had known that this was going to create as much of a concern and an issue for you all to have just posted the application materials there, and then you could have questioned the applicant, and we'll do that.

MS. HAMMEN: And maybe the difference is that now, under the new rules, a staff report comes and we didn't used to get a staff report, but we did get all the information with a tabling.

MR. ZENNER: With the tabling. Okay. And that -- and I apologize if that was what you were accustomed to. That is something that we can immediately react and respond to, and we will take care of that. Tabling requests generally are a rarity. And so -- with the Board. We don't often have them, as much as I have them with the Planning Commission, but we will make that change effective immediately that you will receive a tabling request with the application materials submitted. The applicant is obligated to show up since we have advertised for that. Now, if we're withdrawing something, obviously, or they're identifying after they've made application that it's not going to make the scheduled hearing, we won't even advertise it and, at that point, you won't even see it. You'll only see it at the point that it's ready to go. So, it's -- the situation is tripped after we've done our advertising, which is required 15 days prior to your meeting. Anything that we catch before that 15-day notice period, we basically would tell you we don't have an item on the agenda, therefore, we're not going to meet, which is good news. After tonight's long meeting, you get to take a hiatus, because we do not have anything for the month of September.

But we want to cover one more item that we had discussed here this evening, and it's how do we approach the issue of recommending potential amendments to the Code. As I pointed out, the amendments process is legislative. It begins with a request to Council, and it begins, then Council will

assign to the Planning and Zoning Commission to do that evaluation. If the Board wants to collect information and we meet possibly in a work session situation an hour before your regularly scheduled meeting to discuss what you have collected as it relates to contemporary construction standards and building heights to fit into the Code, once we have completed that research effort and you have formulated your suggested changes, I will, as your liaison, take that recommended action or recommendation of making a change with that justification and produce, on behalf of the Board, a report for the City Council seeking their assignment to the Planning and Zoning Commission to enact or to begin the process of taking and amending the UDC.

I think after tonight's discussion and issues that we are probably going to encounter again, that we're going to have a need to address this. But I think to Ms. Hammen's point, the scope in which you consider the amendment needs to be given consideration based on the zoning district that you're wanting it to apply to. And the need to be able to justify maybe in a residential zoning district the need to have excessive height really does have to be justified, whereas it's just because that's how big I want the building. Now, I know we've done a lot of cases and we've done one very recently that, based on the building context, in its span of four or five buildings, the height that was being sought was appropriate. And again we got into the same similar discussion about architecturally that building could have been adjusted. But I think the information that Mr. Clithero is proposing that you all collect may refute that we have to always go through that exercise every time. Now, we are going to have to maybe address the issue as it relates to what are the -- maybe what's a maximum height before you need to seek Board, and that may be where we need to make the adjustment. It may be that a 35-foot height limit possibly for fraternity or sorority houses, and it may be that narrow, needs to be extended to 40 feet, and then anything over 40 may require a variance. And then possibly in our pedestrian -- in the M-N zoning district, a 35-foot tall building may be inappropriate, but a 40-foot building may be considered appropriate, given what standard floor height constructions are and what you have for an elevator.

I think that that's -- I can back you on that. I think that's an appropriate action. The process, however, is as we sit as a Board, because you guys are reviewing these things and they become frustrating, you make a recommendation, we'll process the memo and a report for Council to direct the Planning Commission to deal with it. The Planning Commission makes recommendation to Council.

Council either approves or denies it. And that approval or a denial is going to be based upon probably a significant amount of public engagement. But as I guarantee you, the public won't be happy if we're going to be increasing fraternity and sorority heights that could be butting up against their residential property by whatever height. Now, for commercial buildings, may be a little bit different story, given context.

And again I think it's context is what we're going to have to consider as part of our discussion maybe, as well as the practical construction techniques. And that's really what the basis and I think the entire justification for an amendment should be driven by. It's the construction techniques utilized today in contemporary construction don't meet -- not necessarily an arbitrary number. Thirty-five feet is not arbitrary. It does have a basis. But it may be incompatible with the current technology. And that I think is where really the rubber hits the road. And the Planning Commission and the Council, given that type of justification and documentation, has something to then sink their teeth into in order to be able to have a meaningful discussion about.

MR. WATERS: Well, I think that's the right approach. I think, you know, clearly there's a process that we have to go through, and that it generates a lot of public debate and discussion before it -- you know, the Code potentially gets changed is -- is as it should be. You know, but that will be --

MR. ZENNER: But that will not happen at this level.

MR. WATERS: I know.

MR. ZENNER: I think that that's -- as long as you all understand, we'll take that -- that public discussion occurs in the venue that makes -- that has the ability to make recommendations for amendment, that being the Commission. They'll hold the public hearings, and based on working with the Commission and working on other Code amendments, their perspective is very much publicly driven. Before they make a recommendation, they want vetting, and I think that was probably what you would all like as well. So that public process occurs at the Commission, and then probably gets further ratcheted up possibly when it gets to Council, which ultimately has that authority to approve.

MR. WATERS: What I might suggest as an -- as an initial step would be just to, you know, going forward, allow the Board to, you know, kind of ask you to keep a list of, you know, these issues as they come up. And I -- as I understand it, you're already doing that, that you have a -- you have kind of a list of Code issues that have come up in various cases that we have -- that we have discussed. So, you know, I

think the Board should be aware of that and, you know, as these things happen, you know, make a note to say, okay, this is one of these issues that we need to put on that list for further discussion. And then make it a point of visiting that list on a regular basis probably, and going through and saying, okay, here the -- here's our list. Which ones of these things that we think are priorities and -- and how do we want to -- how do we want to tackle it. I think we would probably have to do that in a work session kind of setting, you know, rather than a regular meeting, because, you know, here we are at 10:30, and we're just now starting to talk about this. I think it's too -- I think we ought to pick this back up at a -- at a later date. You know, maybe place it on a future agenda or set a work session --

MS. JOHN: Set a work session.

MR. WATER: -- to talk about nothing but this. But, you know, that way, we have kind of a -- a process for going through to, you know, add on the fly, say, okay, here's one of those issues, let's put it on the list. And then go back in a thoughtful way on a regular basis and, you know, consider that list and figure out how we want to go forward -- which -- which issues we want to present to Council as ones that are really in need of a change and you're addressing.

MR. CLITHERO: So right now, immediately, our concern is the height, right?

MR. WATERS: Yes. And I'd say, you know, so here we are. You know, somebody should say, Pat, will you please put that on your list.

MR. CLITHERO: All right. So -- well, okay. So it's probably already on his list, but we -- what are we going to do? We're not having a meeting in September, correct?

MR. WATERS: Well, unless we want to set one.

MS. HAMMEN: Unless we want to have a work session.

MR. CLITHERO: Well, we could either have a work session in September instead of this meeting, or we could have a work session prior to our October meeting, assuming we would have an October meeting.

MR. WATERS: I would rather have a meeting in September.

MR. CLITHERO: Well, then let's have a meeting in September. So between now and then, everybody can gather some information on construction techniques, zoning.

MS. HAMMEN: And think about zoning.

MR. WATERS: Well, I don't know if we need to get that into the weeds. I think what we really need to do is -- is think back and identify the issues that we --

MR. CLITHERO: Let's work on the one issue that we know we have, and we can go back and find other issues.

MS. HAMMEN: Greek Town.

MR. WATERS: Well, okay.

MR. CLITHERO: But the one issue that we agreed to talk about was the height issue, correct?

MS. HAMMEN: And Greek Town is a huge area that it has come up numerous times.

MR. WATERS: Well, I was thinking broader than that. I was thinking of, you know, let's have an initial meeting to say, okay. here's the whole list, and then maybe at that point we could say -- well, at the top of this list needs to be 35-foot --

MR. CLITHERO: We made an agreement tonight and I'm intending to stand by that agreement.

MR. WATERS: And I would appreciate that.

MR. CLITHERO: And if we want to have a general discussion about other items that we need to talk about, I'm fine with that. We need to focus on the one thing we promised we'd do, okay?

MR. WATERS: And that's fine. I just -- it seemed like putting the cart before the horse, but I'm okay with -- with tackling just that one issue. But I do think we -- we don't want to lose sight of the fact that, you know, we need to keep track of these things as we go along, and this is a process potentially for -- for keeping track of them, and then coming back and addressing them systematically.

MR. CLITHERO: Part of the agenda for that next meeting can be to talk about what those other items might be. We have to be careful about how we do this in the next month, correct?

MR. CALDERA: He's correct. He anticipated my Sunshine spiel. So if you will be gathering information that you guys intend to rely upon or discuss at the next meeting, remember, gather them for yourselves. If it is something that you do want to disseminate to your colleagues, don't just e-mail everybody, send it to Pat. Pat will send it to everyone, all right? There's Sunshine reasons for this. I'm trying to make sure that we don't violate the Sunshine law.

With that said, if I could have just a quick point of privilege. I wanted to commend the Chair on a very well run meeting. It was very well done. You guys had some very contentious stuff to deal with

today, and you handled it professionally. There was a little spat at one point, but, overall, you guys handled it very well, and I'm -- I was happy to see that. I did want to also state that Ms. Hammen was correct on appeals. If someone appeals a Board of Adjustment decision, it is -- they have 30 days from the date that that decision is signed by the Chair, and filed with our office, they're on the clock, okay? So that's it.

MR. WATERS: Okay. Any more discussion about that issue? I mean, do we have to go through the rest of the agenda? I mean, I'm supposed to ask for public comment from --

MR. CALDERA: No public comment; no public left.

MS. HAMMEN: Is this going to be a work session or an advertised meeting that we're having?

MR. WATERS: The audience we have --

MR. ZENNER: It will be an advertised work session.

MR. CALDERA: Work session. We'll publish it as -- we'll publish it the exact same way as we do now, but it will say work session on there.

MS. HAMMEN: Will we sit up here? Will it be televised?

MS. JOHN: We usually meet in one of the other rooms.

MR. CALDERA: Do you want to do it in one of the other rooms?

MS. JOHN: Yeah.

MR. ZENNER: Yeah. I will -- I will see where in the inn we can go. Sometimes it's difficult.

MR. WATERS: That's awkward.

MR. ZENNER: If we want to hold it at seven o'clock, what I'd like to know is, do you want a seven o'clock meeting? Do you want a six p.m. meeting?

MS. JOHN: Seven.

MR. WATERS: Can we do it at six? Oh, sorry.

MR. ZENNER: We can do it at your regularly scheduled meeting.

MS. JOHN: It's hard enough to meet -- to get here at seven for me.

MR. WATERS: That's fine. I'm okay with seven. Let's stick with the plan.

MR. ZENNER: Okay. So we will do a seven o'clock work session for your September meeting date instead of -- in lieu of a regular meeting, since we do not have any case items. On that agenda, we

are going to have two items, one that will discuss the issue of height restrictions, the height limits as established by the Unified Development Code. The second will be to give consideration to other issues that have historically or typically come before the Board that may be the basis for beginning a running list of future amendments or future discussion topics that we may need to address. So those will be the two items on the agenda. Since we have to specify for the purposes of Sunshine what they are, those will be your two items. They're broad enough to allow for great latitude in discussion. I would imagine we're going to try to keep that meeting to maybe about an hour and a half.

MR. WATERS: Good luck.

MR. ZENNER: So we will hopefully -- I have a former Planning Commission Chairman that told me, you know, you can only absorb as much as your rear end can handle, so that's generally about an hour and a half. Sorry, tonight we have exceeded that. But that is the agenda. That is all that we have to really offer this evening. Again, I do appreciate your patience tonight with the discussion that we had. And again, if we can be of any further assistance in making sure that you guys feel prepared, I am available, Jose is available to hear those comments or issues that we need to maybe consider incorporating.

Work sessions are typically not something that we generally will do with you. I think that they are warranted and we may want to make this more of a maybe quarterly practice of doing work sessions, so we can have an opportunity to discuss topics that may need to be addressed, as well as potentially allow the opportunity for education and some additional dialogue amongst the Board members when we are not having to render decisions on cases before you. There is great value possibly in doing that to make you even more effective than you currently are. So with that, thank you again for this evening, and we will look forward to seeing you in September.

MR. WATERS: Thank you. Is there a motion to adjourn?

MR. CLITHERO: Motion to --

MR. NORGARD: I make a motion that we adjourn.

MS. HAMMEN: Second. Oh, yes. Okay.

(The meeting adjourned at 10:25 p.m.)