

MINUTES
BOARD OF ADJUSTMENT
December 12, 2017

MEMBERS PRESENT

Ms. Martha John
Mr. Andy Waters
Ms. Janet Hammen
Mr. Paul Girard
Mr. Tom Hurley

ALTERNATE MEMBERS PRESENT

I.) CALL TO ORDER

MR. ZENNER: I'd like to go ahead and call the December 12th, 2017, Board of Adjustment meeting to order. Normally, your liaison is not the individual calling the meeting to order. This evening, we have a unique situation where our chairman and our vice chairman are both absent. So for the time being, I will be going ahead and taking care of a couple of things.

I'd like to go ahead and call the roll. And we do have our two alternates here today, so I'm going to include them.

Ms. Hammen?

MS. HAMMEN: Here.

MR. ZENNER: Mr. Girard?

MR. GIRARD: Here.

MR. ZENNER: Ms. John?

MS. JOHN: Here.

MR. ZENNER: Mr. Waters?

MR. WATERS: Here.

MR. ZENNER: Mr. Hurley?

MR. HURLEY: Here.

MR. ZENNER: All right. We do have a quorum. And that is inclusive of our alternates.

The next item of business that we will need to take care of is the election of a temporary chair for just this evening's meeting to fill the gap that we have right now per your rules and procedure. Are there any nominations for that position or any volunteers?

MR. WATERS: I would like to nominate Ms. John.

MR. ZENNER: Are there any other nominations? Seeing none, I'll close the nominations. All those in favor of Ms. John chairing the meeting for just this evening, say aye.

(Unanimous voice vote for approval.)

MR. ZENNER: Ms. John, if you'd like to relocate yourself to the center position, I'd greatly appreciate that, and we will take a moment to move the name plaques accordingly. MR. MALICOAT: Let's call the Building Construction Codes Commission to order.

II.) APPROVAL OF AGENDA

TEMPORARY CHAIRMAN JOHN: Okay. So meeting has been called to order. The next order of business is approval of the agenda. Is there a motion to approve?

MS. HAMMEN: I move to approve.

TEMPORARY CHAIRMAN JOHN: Is there any discussion? All in favor, say aye.

(Unanimous voice vote for approval.)

TEMPORARY CHAIRMAN JOHN: Any opposed? The agenda is approved.

III.) APPROVAL OF MINUTES

TEMPORARY CHAIRMAN JOHN: Okay. We have several minutes to approve. We have minutes from both the October and November work sessions to approve. Are there any comments?

MS. HAMMEN: Do you want to do these together?

TEMPORARY CHAIRMAN JOHN: Can we do those together, the two work sessions?

MR. CALDERA: I think we should actually -- oh, the two work sessions? I think we should do them separately, just for purposes of the record.

TEMPORARY CHAIRMAN JOHN: Individually?

MR. CALDERA: Individually; correct. And second for each one.

TEMPORARY CHAIRMAN JOHN: Okay. So?

MS. HAMMEN: I move to approve the October 10th work session.

MR. WATERS: Second.

TEMPORARY CHAIRMAN JOHN: All in favor, say aye.

(Unanimous voice vote for approval.)

TEMPORARY CHAIRMAN JOHN: Any opposed? Okay. Is there a motion to approve the November 14th work session?

MR. WATERS: So moved.

MS. HAMMEN: Second.

TEMPORARY CHAIRMAN JOHN: All in favor, say aye.

(Unanimous voice vote for approval.)

TEMPORARY CHAIRMAN JOHN: Any opposed? Okay. And one more set of minutes, which is the meeting minutes for November 14th.

MS. HAMMEN: I'll move to approve.

TEMPORARY CHAIRMAN JOHN: Is there a second?

MR. WATERS: Second.

TEMPORARY CHAIRMAN JOHN: Any discussion? All in favor, say aye.

(Unanimous voice vote for approval.)

TEMPORARY CHAIRMAN JOHN: Any opposed? Thank you.

IV.) PUBLIC HEARINGS

Case #1953 - A request by LogBoat Brewery for a variance to permit construction within the required 10-foot rear yard setback of IG zoned property which is not permitted per Section 20-2.2, Table 29-2.11 and Section 29-4.1, Table 4.1-3 of the Unified Development Code.

TEMPORARY CHAIRMAN JOHN: Okay. Would the court reporter please swear in the staff?
(Staff sworn.)

TEMPORARY CHAIRMAN JOHN: Okay. So the first hearing we have tonight is Case Number 1953, appeal of LogBoat Brewery requesting that the Board grant a variance to permit construction within the required ten-foot rear yard setback of -- is that 1G or IG --

MR. ZENNER: IG.

TEMPORARY CHAIRMAN JOHN: -- zoned property which is not permitted per Section 29-2.2, Table 29-2.11 and Section 29-4.1, Table 4.1-3 of the Unified Development Code. That real estate being known as or located at 504 Fay Street.

Has a notice been properly advertised?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Has the property been posted with a Notice of Public Hearing?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Have the parties of interest been notified?

MR. ZENNER: Yes.

TEMPORARY CHAIRMAN JOHN: Have there been any inquiries?

MR. ZENNER: Yes, there have. That inquiry was forwarded to you from the Gibbens. It was in support of the requested variances -- the variance in question as well as the accompanying variance that is Case Number 1954. That is all the inquiries we have had.

TEMPORARY CHAIRMAN JOHN: Okay. Thank you. Would the person who made application come forward, state your name and address and be sworn in?

MR. POWELL: I am Justin Gardell Powell, 9550 South Tomlin Hill Road, 65201.
(Witness sworn.)

TEMPORARY CHAIRMAN JOHN: And who are you in relation to LogBoat Brewery?

MR. POWELL: I am the owner of the property, White Oak Investment Properties.

TEMPORARY CHAIRMAN JOHN: Okay. Go.

MR. POWELL: Well, my partners who run LogBoat Running Company have a plan for expansion that the neighbors, the Gibbens, seem to support, and I'm here to support the company. So I'm in favor of it as well.

TEMPORARY CHAIRMAN JOHN: Okay. Is there any questions?

MS. HAMMEN: Is there anyone else that can speak to it?

MR. POWELL: Yes, our architect knows a lot more about this.

TEMPORARY CHAIRMAN JOHN: Would you please state your name and address and be sworn in?

MR. SIMON: John Simon, my offices are 210 Park Avenue, Columbia, Missouri.

(Witness sworn.)

TEMPORARY CHAIRMAN JOHN: Okay. John.

MR. SIMON: The property was zoned M-1 originally when we started down the journey to develop this. It was originally Diggs Meat and Packing Plant, if you're familiar with that historic piece of this property. And the emblem zoning category when we did the original construction, we were allowed to build up to a zero setback with the rear yard and side yard, and then with the change to the IG zoning, there became the need for the rear yard and side yard requirement setback.

As a part of that plan for this property, as their company has grown, they've identified the need to gain some more capacity in their storage and cooler space, and so we would like the approval of the board to get a variance for that setback requirement so that we could do a small expansion of the building for that purpose, and also make this a conforming property because now our building sits within the required setback distances of the IG zoning.

I think the subsequently to this, there is also requests that coincide with it for the variance on the landscaping that would be in the same area. I'd be happy to answer any questions you may have concerning this.

TEMPORARY CHAIRMAN JOHN: Any questions?

MS. HAMMEN: So the building sits within the ten-foot setback itself?

MR. SIMON: It currently does, that's correct, yes. Under emblem zoning, it was allowed to have a zero rear yard setback, so we took advantage of that. As the building approaches the property line, there's certain characteristics that we have to achieve in the construction settings for fire rating, which we have done with the existing building, and those same conditions would apply to this new addition regardless of the zoning. So same safety precautions would be in place with regard to this addition.

MS. HAMMEN: So I know the board has granted several variances in the past.

MR. SIMON: Uh-huh.

MS. HAMMEN: But not on this -- not on this side?

MR. SIMON: This is an unusual circumstance in so much as we were a compliant structure under the original structure, and then with the zoning change, we became a non-compliant structure. And so really what we're trying to do is just continue to finish this project as we had originally started out with the same characterization.

MS. HAMMEN: So the cooler was always planned to be there?

MR. SIMON: Correct, yes. The building already exists to that point right now, so we just want to continue that plane across the rear yard.

MS. HAMMEN: So this is to the east side of the building; right?

MR. SIMON: That's correct. You can see where that -- the very east edge of the building currently is on the property line, down a little bit, right there. That is the east edge and it sits basically very near the property line, a couple foot.

MS. HAMMEN: And where would that cooler go?

MR. SIMON: It's going to in-fill that corner right there to the northeast section of the property is where it's being proposed. I think subsequent to this aerial photograph, there was a silo that was also constructed and permitted in the same location for that rear area. That's also within that same setback, so we kind of started down this path and we're just trying to complete the project.

MS. HAMMEN: So the cooler would go back to the extent of where the building is?

MR. SIMON: That's correct.

MS. HAMMEN: It's an L-shaped cooler?

MR. SIMON: Well, the silo sits in that alcove as he's highlighting, and then the cooler addition would be further to the north, but it would go to the same extent as the existing building. We have a building plan here for you to see.

MS. HAMMEN: And when -- as these variances have come in and plans have come in, has there always been a cooler in the plan and at that location?

MR. SIMON: It's become a function of the growth of the company as much as anything, to be honest with you. I think it's a logical progression to locate it in that position and establish it with the same criteria that the rest of the building is constructed to. Again, the existing structure is already encroaching into that rear yard setback area, so I don't -- and neighbors aren't opposed to it, I don't know if this creates any hardship on anybody. If the zoning hadn't changed, we'd be allowed to construct it in the manner that's being proposed.

MS. HAMMEN: Okay.

TEMPORARY CHAIRMAN JOHN: Are you done?

MS. HAMMEN: Uh-huh.

TEMPORARY CHAIRMAN JOHN: The required -- the new required setback is ten feet; correct?

MR. SIMON: That's correct.

TEMPORARY CHAIRMAN JOHN: And this plan seems to indicate that this goes into that setback by five feet and leaves five feet.

MR. SIMON: Approximately, yes.

TEMPORARY CHAIRMAN JOHN: Okay. I know, it's cockeyed; isn't it?

MR. SIMON: Exactly. So it's very close to that.

TEMPORARY CHAIRMAN JOHN: Okay.

MR. SIMON: Again, this is all kind of predicated on this having been the original building that was renovated for this purpose as well.

TEMPORARY CHAIRMAN JOHN: Right.

MR. SIMON: And it sits perpendicular to this property.

MS. HAMMEN: So I thought something that you said it would encroach eight feet. Mr. Zenner; did it?

MR. ZENNER: I think it just said it would encroach. The indication on the site plan that you're looking at before you is approximately or less than five feet. The existing portion based on what we could determine from our photography in building layer would indicate that the building as it exists today, the constructed portion is roughly two feet or so from the existing north-south property line, which is the rear.

So that's where I believe you have the eight feet and that may be in the screening variance request, which we can talk about in the next case, but that's where the existing portion of the building is. It's within about two feet. So less than five feet is what's listed on the site plan that you had in your packet for the addition was the approximate distance.

So if the two buildings, if the existing construction and proposed cooler expansion and cooler construction are going to be matched, you're going to be roughly probably two feet -- approximately two feet from the rear property line of the lot today as it exists with the existing improvements upon it.

The request is for a zero side yard setback to give a little bit of tolerance. Obviously that's an approximation given the fact that you do have someone on the property line to the side perpendicularly 90 degrees to the property boundary.

MS. HAMMEN: The variance is for a zero property line?

MR. SIMON: That's what the request is.

MR. ZENNER: It is for zero.

TEMPORARY CHAIRMAN JOHN: Which is what it would have had under the previous zoning because they had -- part of it is because it's such a cockeyed property line.

MS. HAMMEN: But it might really be a five-foot or two-foot?

MR. SIMON: There's enough for the construction access, insulation, foundation, those sorts of things. You know, the access between the building and the property line that gives us some construction tolerance is basically it.

MS. HAMMEN: So that means there's five feet or two feet left to the property line?

MR. SIMON: Approximately five feet for the building at issue.

MS. HAMMEN: You have to put it in terms that I can understand.

TEMPORARY CHAIRMAN JOHN: Okay. Are there any other questions for Mr. Simon? Thank you.

MR. SIMON: Thank you.

TEMPORARY CHAIRMAN JOHN: Is there anyone else wishing to speak in favor of the application? Anyone wishing to speak in opposition to the application? Okay. Comments of staff?

MR. ZENNER: As has been described, this is a situation that this property has been reclassified from former M-1 zoned property to our current IG zoning district. In the M-1 zoning classification, former

Chapter 29 requirements, there was no rear yard setback between non-residentially zoned property and an industrially zoned property.

The property to the -- will be to the east of this is actually zoned -- was zoned C-1 formally is now zoned MN, which is mixed-use neighborhood with the adoption of the new Unified Development Code. There was a setback established between mixed-use zones and industrial zoning districts such as the IG.

The existing building does encroach within that required ten-foot rear yard setback. The proposed addition would likewise encroach; however, encroach to the same extent as the existing building or approximately the same extent, given how the building is situated on the lot, lot being possibly perpendicular to the property line -- or parallel to the property line.

You know, when you think about it from a hardship perspective, which is what your criteria would require you, this property has been caught in a conversion of our zoning classification and the application of a new required setback that did not previously exist. Therefore, this is not a self-created hardship. This is a hardship created with the conversion of the code. What I would probably chalk up as unintended consequences. The building is trying to be squared up with what exists, so the building footprint is equal, allowing maximization of the industrial parcel.

From staff's perspective, we do not have objection to the requested variance, given the fact that the property is caught within a conversion -- a code conversion. The adjacent property owners, from the letter that has been sent, have no issue with it as stated within the letter, provided that the construction is not extending over onto their property. That would not be permitted per our building code requirements, you can't encroach on your neighbor's land.

Therefore, we would make a recommendation of approval granting this variance given the unique condition that a portion of the building as it exists today is already non-compliant and the proposed construction is to match that level of non-compliance; and furthermore, that the property has been effected by a code revision that was not at the request of the applicant before us, so recommendation of approval from staff would be submitted to you for your consideration.

TEMPORARY CHAIRMAN JOHN: Thank you. Are there any other questions from public? Then I'll close the public hearing. Comments from legal?

MR. CALDERA: A few housekeeping steps here. In order to preserve the record, I would like to admit certain exhibits into evidence. First, I'd like to admit the application for the variance and the denial letter, the expansion plan detail page 1, expansion plan detail page 2, the public hearing advertisement, and the parties of interest notice and list. We'd like to label that City's Exhibit 1, admit it into the record.

TEMPORARY CHAIRMAN JOHN: Thank you. Yes.

(City Exhibit 1 was received into evidence.)

MR. CALDERA: And then secondly, we'd like to admit some ordinances into the record, specifically ordinance -- excuse me, it's within the UDC Section 29-6.1, 29-6.4, and 29-2.1, and we'd like to admit that as City's Exhibit 2.

TEMPORARY CHAIRMAN JOHN: Yes.

(City Exhibit 2 was received into evidence.)

MR. CALDERA: All right. Beyond that, give you my regular spiel, which is I'd like to remind the Board that there are general criteria that the Board is to consider when deciding whether or not to approve a variance or grant a variance. Specifically, there are five general criteria that they should be looking at. They can be found within 29-6.4(b), subsection 2. I'm happy to read those criteria allowed, if the Board would like.

TEMPORARY CHAIRMAN JOHN: Does anybody want to hear the criteria?

MR. WATERS: No, thank you.

MR. CALDERA: The ordinance that includes that is in the record. The criteria by extension is included in the record.

MR. HURLEY: Okay.

TEMPORARY CHAIRMAN JOHN: Are there any comments or discussion from the board?

MS. HAMMEN: I have a question of staff.

TEMPORARY CHAIRMAN JOHN: Go for it.

MS. HAMMEN: So under the preexisting ordinance with the different zoning, was there any screening requirement with a zero lot line requirement?

MR. ZENNER: If I recall correctly, Ms. Hammen, no, there was not. It would have only -- it was not a requirement, given that the zoning district to the east was C-1, even though it is underdeveloped with existing residential development on it, there are two single-family, I believe, rental properties to the east. But the designation -- zoning designation is what would have triggered the landscaping standard.

MS. HAMMEN: And it didn't apply?

MR. ZENNER: That it did not. That will also be a relevant question for Case Number 1954, as it relates to the screening variance that is going to be requested next, so no, to my knowledge, there was not a required landscape screen or buffer between the C-1 -- the former C-1 and the former M-1. Now IG and MN.

MS. HAMMEN: Thank you.

TEMPORARY CHAIRMAN JOHN: Any other discussion or can I have a motion?

MS. HAMMEN: I do have a -- I have one more question. So this variance is for a zero lot line, and if there's the next -- how does the next variance request impinge on this? If there's zero that's granted, is that going to preclude requiring landscaping or screening? Do you think there is?

TEMPORARY CHAIRMAN JOHN: I'm just -- I'm looking at him.

MR. ZENNER: If you -- if you grant a zero -- if you grant the variance as requested by the applicant for a zero rear yard setback, you, in essence, do preclude the ability for the existing code's screening and buffering standards to be met. However, the fact that the proposed construction, unless I am incorrect, of a cooler and the existing construction are a blank wall, that in essence functions as a screening device. I'm not sure what you would gather by having an eight-foot screening device between the mixed-use zoning district to the east and a blank wall of an existing building to the proposed addition.

MS. HAMMEN: And in the new code in the mixed use, does it say that blank wall is an effective screening device?

MR. ZENNER: No, it does not. It would, again, that is the purpose for the Board's hearing request to waive the screening device requirement, acknowledging or reviewing -- reviewing the conditions that exist in this particular area.

The building previously -- the building has existed with the adjacent development to the east for quite some time. Obviously the building's been renovated to accommodate the current use of the LogBoat. That blank wall has functioned as, in essence, a screening device; however, you would look at it for as long as the building has been there, even though there was not a screening requirement.

If there were use areas for the existing building or the former building that may have been outside of that exterior wall, I would suggest that possibly the screening device and a buffer would be necessary. There are no proposed use areas, however, that would be east of the existing wall of the building.

MS. HAMMEN: What's that mean?

MR. ZENNER: If you had a patio area or something else on the east side of this building that maybe would impact the adjacent development. There is nothing that is proposed to be any different than what has existed there since the original building was constructed, and therefore, from the staff's perspective, the application of the screening standard, to screen a blank wall doesn't seem to make much practical or common sense.

MS. HAMMEN: So the staff feels that a mixed-use could be a residential on the east side, then a blank wall is sufficient as opposed to --

TEMPORARY CHAIRMAN JOHN: To a fence.

MS. HAMMEN: -- something else, a fence or landscaping? Is it both that is required?

MR. ZENNER: The survivability of landscaping within a two-foot strip may be extremely difficult to basically survive, especially probably on a shaded side of the building that may not receive sun. A fence would do nothing more than put another blank wall between a blank wall.

Given the characteristics of this particular corridor that the homes to the east front to, that is College Avenue, there is the potential that that particular corridor from Hinkson North toward Business Loop will redevelop over time, and that under-utilized current MN parcel is likely going to be -- likely may convert in the future.

And therefore, given that the property owners of that adjacent lot are not objecting to the requested variance of a zero setback, nor are they requesting -- nor are they objecting to a landscaping variance, Case Number 1954, that would lead staff to believe that the blank wall is more than satisfactory for them at this period of time.

And once redeveloped, the commercial development that would be on the MN property would be no less impacted by that blank wall than the existing residential development. You'd have more consistent development in the area, so that -- to staff's perspective, the buffer really -- the buffer and the screening device are not -- are impractical on this particular instance.

MS. HAMMEN: Does a mural count as screening?

MR. ZENNER: Depends on how you'd like to have that mural. We can't stipulate to anything in content. That's actually illegal, so -- under the federal statutes. Depending on what type of mural you'd like, you may be able to talk with LogBoat.

MS. HAMMEN: There might be room for conversation.

MR. ZENNER: Could be for the neighbors, I'm not sure. Any further questions?

TEMPORARY CHAIRMAN JOHN: Can I have a motion?

MR. WATERS: I make a motion that the board grant a variance to permit construction within the required ten-foot rear yard setback of IG-zoned property.

MR. HURLEY: Second it.

TEMPORARY CHAIRMAN JOHN: Is that clear enough?

MR. CALDERA: Do we need to specify?

MR. ZENNER: We need to specify -- we need to specify the required setback.

MR. CALDERA: So it would be a zero setback?

MR. ZENNER: It would be a zero setback. So if that is what you are wanting, Mr. Waters, please state the motion in that manner.

MR. WATERS: I would move that the board grant a variance that the board permit a zero-foot setback of the IG property.

MR. ZENNER: Along the rear property line of 504 Fay Street.

MR. CALDERA: That will work.

MR. WATERS: That works for me. Can I say that?

TEMPORARY CHAIRMAN JOHN: All right. Do we have a second?

MR. HURLEY: Second.

TEMPORARY CHAIRMAN JOHN: Please call the roll.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Girard?

MR. GIRARD: Yes.

MR. ZENNER: Ms. John?

TEMPORARY CHAIRMAN JOHN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Mr. Hurley?

MR. HURLEY: Yes.

MR. ZENNER: Motion passes 5-0.

TEMPORARY CHAIRMAN JOHN: One down. Okay then.

Case #1954 - A request by LogBoat Brewery, for a variance to waive installation of the required 10-foot buffer strip and 8-foot tall screening device which is required by Section 29-4.4(e), Table 4.4-4 of the Unified Development code between industrially and commercially zoned properties. The subject property is located at 504 Fay Street.

TEMPORARY CHAIRMAN JOHN: So we'll go on to the next case, which is Case Number 1954, LogBoat Brewery requesting that said Board grant variance to waive installation of the required ten-foot buffer strip and eight-foot tall screening device, which is required by Section 29-4.4(e), Table 4.4-4 of the Unified Development Code between industrial and commercially zoned properties. Said real estate being known as or located at 504 Fay Street.

Has the notice been properly advertised?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Has the property been posted with a Notice of Public Hearing?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Has the parties of interest been notified?

MR. ZENNER: Yes, they have.

TEMPORARY CHAIRMAN JOHN: Have there been any inquiries?

MR. ZENNER: One inquiry, from the same adjacent property owners as in Case Number 1953, the Gibbens. They've been given this order requesting variance provided that none of the improvements encroach upon their adjacent land.

TEMPORARY CHAIRMAN JOHN: Okay. Will the person making the application, please come forward, state your name and address -- well, you've probably already been sworn in, but come forward anyway.

MR. POWELL: Justin Gardell Powell, owner of 504 Fay Street.

TEMPORARY CHAIRMAN JOHN: Go ahead. You've already been sworn in, so tell us what you want to say about this one.

MR. POWELL: The exact same project for the cooler expansion, the new variance would be landscaping and screening, requesting variance supported by the neighbors to the east, the Gibbens.

TEMPORARY CHAIRMAN JOHN: Okay.

MR. POWELL: I will let a more capable person answer questions.

TEMPORARY CHAIRMAN JOHN: Okay. John.

MR. SIMON: John Simon, 210 Park Avenue, I'll be happy to answer any questions you have.

TEMPORARY CHAIRMAN JOHN: Does anybody have any questions?

MS. HAMMEN: So are the walls attractive to the owners?

MR. SIMON: I think the overall building is attractive. The cooler is not going to be just another box. We are building an exterior to the outside of the cooler itself. So we are putting up a cooler within a different assembly, so we will try to make it attractive, yes.

MS. HAMMEN: Thank you.

MR. POWELL: And it's got Christmas lights up on it now.

TEMPORARY CHAIRMAN JOHN: Any other questions? Thank you. Is there anyone else wishing to speak in favor of the application? Anyone wishing to speak in opposition? Comments from staff?

MR. ZENNER: How much would you like me to recap from the last case?

TEMPORARY CHAIRMAN JOHN: No, no, just say what you need to say.

MR. ZENNER: Yes, we do have, again, a situation where based upon the adoption of our new Unified Development Code, we have new landscape screening and buffering requirements that became effective after the existing portion of this building has been constructed. Based upon our analysis, the building is roughly within -- the existing building, I should say, is roughly within two feet of the existing property line, in essence, eliminating eight feet of the required buffer.

As we have previously discussed, the building as it exists today is a blank wall facing the existing MN-zoned property, which is to the east. The applicants -- or the adjacent property owners have submitted a letter indicating that they are satisfied with that blank wall as their screening device.

The addition for a cooler, which was the subject of Case Number 1953, would extend no further than the existing face of the current building that encroaches within the required buffer yard. The cooler could be reduced in its overall size in order to gain compliance within the area to which the expansion is proposed to be built. However, when you think about it from the practical application's perspective, two-thirds of this site, in essence, are currently improved with a non-compliant structure, leaving -- I wouldn't say -- I'd say two-thirds, three-quarters of the property line that's effected is built with the existing building, that would be non-compliant. And really, would serve limited purposes for landscaping or screening to be installed, which is what the requirement is.

You could step the proposed expansion of a cooler back, but you just granted a variance to allow for it to encroach and eliminate that buffer area, so to not approve the accompanying variance here in 1954 would make a real dilemma for the applicant to try to build what you just approved.

The conversion of the property to the east is a likely outcome given the growth of the City of Columbia, and we would look at the existing non-conforming but allowed use within that MN zoning district as the residential structures as being more of a holding classification until a high and more appropriate use is developed. That site could develop, was desired to be developed, at which point you likely would have a commercial business that would be interacting with this while industrially zoned property, operating more as a commercial establishment or what we would refer to under the current code as an artisan industry.

The brewery itself, if it were to have been rezoned today, possibly could be rezoned to a commercial zoning classification, and we would ultimately end up with commercial-to-commercial zoning. But because it is currently zoned industrial, there is no need to rezone it from its current zoning classification for compliance purposes. You end up with an industrial use against this mixed-use zoning

district, but in essence, if the mixed-use zoning district develops as a commercial parcel, you in essence will have very similar uses adjacent to each other, separated by basically a blank wall of the existing building and a blank wall of the new cooler expansion.

While there is not necessarily a hardship that has been -- that was proposed with the variance -- or with the -- with the request, until the cooler expansion was approved, we as a staff do not see practical application of a screening and buffering requirements in this particular instance. Technically speaking, because there is not necessarily a hardship other than the fact that we just approved a variance, we would have to recommend denial.

However, I would caveat that with the fact that from a practical perspective when you look at the existing revisions and you look at the support of the adjacent property owner, if the Board were so inclined to take the information presented, a recommendation of approval of that variance would probably not be unacceptable to staff.

TEMPORARY CHAIRMAN JOHN: Okay. Any discussion -- or comments from legal -- I'll close the public hearing.

MR. CALDERA: Few housekeeping tasks here. First, we'd like to admit certain documents into the record. The application for the variance and the denial -- or excuse me, the application and the denial letter, the public notice, the parties-in-interest notice and lists, and the property site plan, we seek to admit that as City's Exhibit 1.

TEMPORARY CHAIRMAN JOHN: Yes.

(City Exhibit Number 1 was received into evidence.)

MR. CALDERA: All right. And then the second set of documents, there's some ordinances. For this case, we'd like to admit Ordinance 29-6.1, 29-6.4, and 29-4.4 as City's Exhibit 2.

TEMPORARY CHAIRMAN JOHN: Yes.

(City Exhibit Number 2 was received into evidence.)

MR. CALDERA: Lastly, I will do my regular thing. I will remind the Board that under 29-6.4(b), there are five general criteria that the Board is to consider whenever they're deciding on whether to approve or grant a variance. Those are listed out of the ordinances, which has been admitted into the record, and I'm happy to read those general criteria now if the Board would like.

TEMPORARY CHAIRMAN JOHN: Anybody want to hear them?

MR. HURLEY: No.

MR. CALDERA: One last thing, to make sure we have this on the record, because technically, these are both two separate cases. I will state for the record that we previously, immediately before this one, granted a variance to give a zero foot rear setback. So just for purposes of the record.

TEMPORARY CHAIRMAN JOHN: Okay. Thank you.

MS. HAMMEN: I have a question.

TEMPORARY CHAIRMAN JOHN: Yes.

MS. HAMMEN: Thank you. So Mr. Zenner, you made a statement early on in your statement about the existing building and requirement and then the variance request. Were they at odds?

MR. ZENNER: The variance request -- so the existing building is -- encroaches approximately eight feet into the required buffer and there is no screening device.

MS. HAMMEN: Certainly.

MR. ZENNER: The applicant's request is to waive the screening standard along this entire rear setback between the adjacent zoning districts. So the screening standard that now exists in the IG zoning district to the existing condition do not match. The existing improvements to the site could not accommodate that, at least in the area where the existing building is. There would be no application of screening if no expansion of the building were sought. So the non-compliance would have existed in perpetuity and would not have been required to have been addressed.

MS. HAMMEN: Because it was in existence?

MR. ZENNER: Because it was in existence prior to the adoption of the new code. So by acting upon the request in 1953 for a setback variance for the cooler, and the outcome of that, it does, as was requested for clarification, it does to an extent preclude the ability to comply.

However, the idea is looking at the existing condition of the building occupying roughly two-thirds of the property line that was being sought to have the waiver on, again, from a practical perspective, that buffer and that screening device would do very little to change the existing conditions that have been there for quite some time.

Yes, they are in conflict, but again, from a practical application, the -- it doesn't make much sense. Technically, however, as I stated in our -- in rendering the decision in this case, we technically would have to recommend denial of the setback -- or denial of that landscaping variance. However, in the absence -- however, knowing that you've granted a zero yard setback for the cooler, you know, you're limited -- you create a real awkward situation.

Can't build a cooler in zero setback and meet the required zoning -- required screening device. In essence, the end product will be a building -- a fully constructed building that is basically creating a solid wall scenario two feet off of the existing property line in a transitioning area of industrial and commercial development.

MS. HAMMEN: Thank you.

TEMPORARY CHAIRMAN JOHN: Any further discussion or questions?

MR. WATERS: I have one quick question. So right now, the building is legal non-conforming because of the zoning change. If the variance is granted, would it be fully compliant with both -- with regard to the screening and buffer requirement and the setback requirement?

MR. ZENNER: Yes, that would be a correct statement, Mr. Waters. There may be other non-conformities to the site that we're not addressing, but the setback encroachment as well as the screening -- the lack of screening, given the expansion that's proposed, these two variances would comply the building in those respects.

I'm unaware of any other -- any other non-conformities that may exist. There may be a parking nonconformity that's not being sought here, we're not adding useable square footage. So that may or may not be an issue. That may be effected by redevelopment that may come forward or to the -- what would be to the south towards Hinkson, which is also a property that is owned by the applicant, if they were to expand the seating area for the facility. For example, where they currently have the Christmas lights and they do outdoor seating and space during the regular season.

MR. WATERS: Thank you.

TEMPORARY CHAIRMAN JOHN: Okay. Any discussion or do I have a motion?

MR. HURLEY: I'll make a motion to grant a variance to waive installation of the required ten-foot buffer strip and eight-foot tall screening device at 504 Fay Street.

TEMPORARY CHAIRMAN JOHN: Is there a second?

MR. WATERS: Second.

TEMPORARY CHAIRMAN JOHN: Thank you. Liaison, please call the roll.

MR. ZENNER: Mr. Girard?

MR. GIRARD: Yes.

MR. ZENNER: Ms. John?

TEMPORARY CHAIRMAN JOHN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Mr. Hurley?

MR. HURLEY:

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Motion passes 5-0.

MR. CALDERA: We'll take a break in between cases to see if we can address an issue.

(A BREAK WAS HELD.)

Case #1955 - A request Thomas M. Harrison (attorney) on behalf of Anicar, LLC (owner), for a variance to waive installation of the required 8-foot tall screening device along the subject site's north and east property lines as required by Section 20-4.4(e), Table 4.4-4 of the Unified Development Code between commercially and residentially zoned properties. The subject property is located at 912 Old Highway 63 South.

TEMPORARY CHAIRMAN JOHN: Okay. Ready for Case Number 1955. An appeal of Thomas M. Harrison, attorney on behalf of Anicar, LLC from -- let me see, requesting that said Board grant a variance to waive the installation of required eight-foot tall screening device along the subject site's north and east property lines as required by Section 24-4.4(e), Table 4.4-4 of the Unified Development Code between commercially and residentially zoned properties. Said real estate being known as or located at 912 Old Highway 63 South.

Has the property been properly advertised?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Has the property been posted with a Notice of Public Hearing?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Have the parties in interest been notified?

MR. ZENNER: Yes, they have.

TEMPORARY CHAIRMAN JOHN: Have there been any inquires?

MR. ZENNER: Yes, there have. There was an e-mail that was provided to the Board from the Sheehans, which are immediately to the north of this particular property, expressing opposition to the granting of the screening variance.

TEMPORARY CHAIRMAN JOHN: Thank you. Person making application to the Board, please come forward and state your name and address and be sworn in.

MR. HARRISON: Tom Harrison, 1103 East Broadway, Columbia.

(Witness sworn.)

MR. HARRISON: May I distribute some exhibits?

TEMPORARY CHAIRMAN JOHN: Okay.

MR. HARRISON: A packet of exhibits. The property that is at issue here is at 912 Old Highway 63 South. I guess that's an old photo. For years, there was an old gas station and "C" store there, that I think had been closed for about two years before my client had bought it. By the way, in the audience is Mark Timberlake, who is the principle of Anicar, LLC.

A new office building has been constructed there, it's going to be used to house Timberlake Engineering's office. What I've distributed and what I would ask to be admitted are these exhibits, this exhibit pack, pages 1 through 16, I believe it is.

I wanted to draw your attention to just a few pages from the exhibits. The first two pages are letters of support from Shepard Heights Homes Association and the Shepard Boulevard Neighborhood Association. In fact, I would say that the primary reason that the -- this variance has been requested is that the -- while the building -- while the new building was under construction, the neighbors approached Mr. Timberlake and asked him about it, and asked him about waiving this fence requirement and so that, I would suggest, is the primary reason we're here.

The reasons in the two letters from these associations that we've presented here point out -- indicate reasons that I would point out to the Board in support of this request.

We're asking you to waive the fence requirement but not the landscaping requirement. That's the essence of our request. Some of the neighbors have expressed safety concerns. That's set forth in the letters here. That's one of the reasons that we were receptive -- my client was receptive to the request as well.

Included within the exhibits that I've presented are recently taken photos of the new building, just to give the Board some context. There are some Google Earth ground level photos of what was there before, to show you sort of before and after, and then toward the back, on pages 11 through 14, are renderings of sort of with and without the screening. We thought that would be perhaps useful for the Board to see as well.

And then of course also located in the exhibit packet is a site plan and a Letter of Denial from the City Arborist from August of this year. So we'd request that those exhibits be admitted into the record.

The other thing I'd point out is that --

MR. CALDERA: Mr. Harrison, if I can interrupt, do you seek to have these admitted into evidence at this time?

MR. HARRISON: Yes.

MR. CALDERA: Madam Chair?

TEMPORARY CHAIRMAN JOHN: Yes.

MR. HARRISON: Thank you.

(Applicant's Exhibit was received into evidence.)

MR. HARRISON: The -- you can kind of see on the photo on the screen there, off Shepard Boulevard, there's a driveway where people who live back there pull in -- many pull in to access their driveways.

The new building that's there extends farther back than the old building that's shown on that photograph on the screen, and if the -- if the fence -- the screening device is required to be erected there, it will be really, really close to where people back out -- typically tend to back out and back in those parking spaces back there. So I wanted to point that out as well.

Happy to answer any questions, and as I mentioned, Mark Timberlake's here as well to answer questions that I might not be able to answer.

TEMPORARY CHAIRMAN JOHN: Does anybody have any questions for Mr. Harrison?

MR. HURLEY: I do. What is the approximate distance there illustrated on page 5 of the -- I guess the -- what will be green space? Is that just a few feet from the sidewalk?

MR. HARRISON: This is between the edge of the building and the pavement there?

MR. HURLEY: The edge of the sidewalk and the pavement, yes, that very small strip.

MR. HARRISON: We talked about that before. What did you tell me, Mark?

MR. TIMBERLAKE: Six feet.

MR. HARRISON: Six feet.

MR. HURLEY: Okay.

TEMPORARY CHAIRMAN JOHN: Any other questions?

MS. HAMMEN: Six feet from the rear of the building?

MR. HARRISON: To the edge of the -- to the edge of the pavement.

MS. HAMMEN: Which is a street?

TEMPORARY CHAIRMAN JOHN: It's a driveway.

MS. HAMMEN: It's a private driveway?

MR. HARRISON: As far as I understand it.

MR. TIMBERLAKE: Can I talk from here?

MR. CALDERA: Mr. Harrison, actually, we would need him to come up and be sworn in.

MR. ZENNER: I can address the question. Ms. Hammen, there's an approximate five-foot sidewalk off the back of the building. The space between the sidewalk and the driveway that you see on -- in the submitted exhibits is roughly six feet. I measured it from the edge of the driveway to the sidewalk at about seven. Right in that area. So that is the green space.

What is not green at this point, as the building has not been fully completed in construction or landscape, that is the area that, as depicted in the graphics that you have, will be the landscape strip, a roughly six-foot landscape strip between the driveway and the sidewalk that wraps the building.

MS. HAMMEN: On page 13?

MR. ZENNER: That is correct.

TEMPORARY CHAIRMAN JOHN: Any other questions for Mr. Harrison? Thank you.

MR. HARRISON: Thank you.

TEMPORARY CHAIRMAN JOHN: Is there anyone else who wishes to speak in favor of the application? Please state your name and address and be sworn in.

MR. MERMELSTEIN: Hi. Greg Mermelstein, 209 Sappington Drive.

(Witness sworn.)

MR. MERMELSTEIN: My name's Greg Mermelstein. I'm actually president of Shepard Heights Home Association, which is the condominium association that see there. I don't personally live there, but I own one of the units that's behind what was the gas station, but which is now Mr. Timberlake's building there.

Several of our members did approach me as the president of the association to ask if the fence could be waived because what will happen is currently if there's a fence, the people who are in this building down here, particularly, they'll be looking out at kind of a Berlin Wall-type thing, quite honestly.

We've lived with the -- I've owned there since 1994, so I always lived with the gas station kind of looking out to the front, but it was actually kind of pleasant because there was some trees behind it and things like that. So there was green space behind the gas station. Well, this new strip is approximately only about six or seven feet, as you've heard.

I think it would be more attractive than having a Berlin Wall if it had some sort of bushes or small trees or something, you know, in a line there that people could look out on green space. The back of the building Mr. Timberlake has built is actually quite attractive. It's brick, it's not sticking out or anything like that.

It also would make it easier for people to drive out of their driveways if there's not a wall there. Give us a little bit more turning and sight distance.

So for that reason, we did approach Mr. Timberlake and ask if the fence could not happen, and so on behalf of the Board, we are asking that instead of the fence, we have some nice landscaping behind the building. Thank you.

TEMPORARY CHAIRMAN JOHN: Thank you. Any questions for him? Anyone else wishing to speak in favor of the application? Please state your name and address and be sworn in.

MS. WYATT: Sherry Wyatt, 1002 Danforth Drive.

(Witness sworn.)

MS. WYATT: I am the Chair of the Shepard Area Neighbor's Association. We also are very glad to have our new neighbors. Although the previous construction there was a "B" line gas/store that my son worked at before he went -- while he was in college and before he went to the Army, and that was Sterling Wyatt, and he was the town crier there. He found out all the things about the neighborhood working at that little gas station, so we have fond memories of that -- that area there.

And then of course, Sterling went into the Army and then we lost him in Afghanistan, so that little corner represents, to me, a very personal space. I've lived in that neighborhood now 20 years as of Thanksgiving time.

When we found out the new construction was there, again, sent out information about the new building and the neighbors were very concerned about the fencing. I liked Mr. Mermelstein's the Berlin Wall connotation. We love our neighborhood, we love the green and living in the older, established neighborhood.

Our concern was safety issues between a building and that big fenced area, not a lot of light out there, so much more pleasant, more -- much more pleasing to the eye to have green space and the trees. So our neighborhood association was unanimously for the green space and adamantly against the fencing, so we would appreciate your support in that regard. Thank you.

TEMPORARY CHAIRMAN JOHN: Any questions? Okay. Thank you.

MS. WYATT: Thank you.

TEMPORARY CHAIRMAN JOHN: Anyone else wishing to speak in favor of the application? Mr. Timberlake? Please state your name and address.

MR. TIMBERLAKE: Mark Timberlake, 1130 East Walnut, Columbia, Missouri.

(Witness sworn.)

MR. TIMBERLAKE: I don't really have much more to add. I thought that I would come up here and simply make myself available for questions, if you had any.

TEMPORARY CHAIRMAN JOHN: Okay.

MS. HAMMEN: With the fence, were you prepared to do landscaping also? I'm unclear as to whether that was a requirement.

MR. TIMBERLAKE: That's a good question. So the ordinance requires both a landscaping, a certain amount of landscaping, and Pat knows these numbers by heart much more than I do, but there is a certain amount of landscaping that's required at the perimeter of the building. And in addition to that,

there's also a fence that's required. So there's landscaping required and a fence pretty much on the property line.

So the landscaping that we're putting in, if we put the fence in, the neighbors won't be able to see the landscaping that we're putting in. We're not a -- requesting any variance on landscaping at all, we're compliant with everything as far as that goes.

MS. HAMMEN: Did the person opposing writing in opposition contact you and state anything?

MR. TIMBERLAKE: I have not heard -- to be honest with you, I was kind of surprised when I heard there was anyone opposed to it. And I'm not too sure who that person is or what in particular they object to. Maybe they don't know about the landscaping that's going to be there. I'm not sure.

TEMPORARY CHAIRMAN JOHN: Okay. Any other questions? Thank you, Mr. Timberlake.

MR. TIMBERLAKE: Thank you.

TEMPORARY CHAIRMAN JOHN: Anyone else wishing to speak in favor of the application? Anyone wishing to speak in opposition? Mr. Liaison, would you please -- comments of staff?

MR. ZENNER: Comments of staff. Hearing the -- hearing the request this evening and the justification for it as it relates to a safety issue, which is not something that we as a staff are unsympathetic to, the Code does have a requirement as it relates to the screening of commercial uses to residential.

That standard has existed within both our new and our old code. However, the standard has been revised to require now under our new Unified Development Code a screening device, a much more specific screening device under particular scenarios, and this particular project in its redevelopment is required to comply with the new standard.

The plan as submitted were authorized for construction with the screening device shown, as has been discussed this evening. The request came in after the building permit had been issued, as it relates to the development that has occurred on the property at this point.

The ability to be able to install the fence exists, and as you can see, while esthetically the fence may not be considered from a safety perspective, the fence is entirely from a construction plan, that was included, the fence entirely encompasses the property, along its eastern and its northern property line. There is not a break in the fence that would create a potential safety issue of prowlers or somebody hiding behind that fence to then take advantage of a resident living in a residential area immediately adjacent.

It does comply with the requirements of our screening ordinance to ensure that there is separation between commercial or non-residential uses from a residential environment. Mr. Timberlake is correct, the Code -- the new Unified Development Code does clarify that the landscaping that would be required would be on the -- as odd as this may sound, on the property owner's side of the screening device, not on the exterior side of the screening device. That was a relatively lengthy conversation on our Planning & Zoning Commission due to the creation of what would be considered no man's land if the

landscaping were on the outside of the fence, not the inside. I won't go into that because I don't want to bore you.

Nonetheless, the current code requires that the landscape treatment be on the interior within this ten-foot wide buffer, allowing for a particular combination of plant materials to be installed that can be viewed by the newly constructed building screening the residential to the outside of that construction site.

In evaluating the criteria that is within the variance application and granting a variance, there is not a hardship shown here that staff can identify that would allow us to consider a variance to be an appropriate solution to the situation. There are, however, some alternatives, possibly, that the Board can consider.

While there is landscaping required, and as Mr. Timberlake has indicated, that is not something that would be -- that would not be opposed to have landscaping installed, enhancement of that landscaping to suffice, or not having the permanent screening device, which again separation of these incompatible uses is what the Code is designed to address. Current residents there today, while the current residents in the Shepard Neighborhood may not be going anywhere in the future, may not always be there, therefore you may not have the same opinion of having a fence or not having a fence.

This is an office building, so it is not a traditional commercial use either. The zoning does permit commercial use, however, so this building that is now used as an office building potentially at some point in the future could be converted to a retail use, which may have much more objectionable uses that you may not want to be viewing.

There is no access to the back of this building. In my site visit, I raised the question as to why do we have a five-foot sidewalk behind the back of the building that doesn't access any doors? It just is a paved area that extends five feet from the foundation wall occupying an area that could have been green or landscaped.

Combination of berm or fence, and the fence could have been decorative, it could have been something other than just a solid wooden stockade-style fence would have been an acceptable alternative for city arborist in order to meet the requirements of screening.

So there are other alternatives here to just a simple eight-foot tall, stockade-style fence that may be attractive. Again, the concerns as it relates to public safety, the entire perimeter of the property is encompassed, and the only way of being able to get around that is you'd have to walk around the entire property boundary to get back into the residential neighborhood. So safety to us is not -- while I don't discount that as a concern, it is not a concern that I believe is -- is a true concern.

The inability to -- or the ability to place the fence along the property line exists, there is no hardship demographically or otherwise. Landscaping could be substituted to achieve maybe the screening, not 100 percent opaque screening, but we may be able to increase the screening that may be achieved initially upon installation to meet a higher standard.

Typically, our screening when we do landscape screening and only landscape screening, the standard is 80 percent opacity within four growing seasons. If the Board is inclined to grant the variance

to eliminate the fence as the required screening device, the alternative could be to enhance the landscaping such that the 80 percent opacity is achieved at the time of planting. That would be one option.

Your other option would be to divide the variance as there is no hardship from it being installed, or you can grant the variance and require nothing to be done to address its purpose for why the screening device was intended to be installed along the northern and eastern property lines.

Given the fact that I do not and our staff does not find that there is a hardship established here, we are not inclined to recommend approval of the variance as presented. However, the alternatives that I've presented to you this evening may be means by which to mitigate that recommendation, if you so desire.

TEMPORARY CHAIRMAN JOHN: Okay. All right. I'm going to close the public hearing.
Comments from legal?

MR. CALDERA: For purposes of the record, there's certain documents we need to have admitted into the record. So at this time, I seek to have the application and denial letter, the public notice, the parties-in-interest letter and list, the site plan with required screening, the rendering with and without the screening device admitted as City's Exhibit 1.

TEMPORARY CHAIRMAN JOHN: Yes.
(City's Exhibit 1 was received into evidence.)

MR. CALDERA: All right. And also for the record, we'd also like to admit the following ordinances, 29-6.1, 29-6.4, 29-4.4 as City's Exhibit 2.

TEMPORARY CHAIRMAN JOHN: Yes.
(City's Exhibit 2 was received into evidence.)

MR. CALDERA: And lastly, I will remind the Board that under 29-6.4(b), Subsection 2, there are five general criteria that the Board is to factor when deciding on whether or not to grant or approve a variance. I'm happy to read those criteria aloud, if the Board would like.

MS. HAMMEN: Would you give us a synopsis of the five?

MR. CALDERA: A synopsis of the five? The first criteria, and actually, this is a pretty lengthy one, so I actually should read this one aloud. Unfortunately, there's really -- I would omit just the crucial thing.

So the first criteria is that the variance is required to address practical difficulties or unnecessary hardships related to the shape, size, terrain, location, or other factors of the applicant's site. Those difficulties or hardships are not generally applicable to the property in the area and the difficulties or hardships were not created by the actions of the applicant.

The remaining criteria, generally speaking, require you to factor whether or not granting this variance will make the property non-compliant with some other provisions of the UDC, or permit a development that is inconsistent with the comprehensive plan. And lastly, that the variance is the least changed from the requirements of this chapter necessary to relieve the difficulty or hardship.

TEMPORARY CHAIRMAN JOHN: Okay. Okay. Discussion? Comments?

MR. HURLEY: I have a comment. It appears to me the hardship is not a function of the applicant, but rather a means to satisfy the neighborhood, neighborhood association and local residents, with the exception of one. Mr. Timberlake, you stated that you had not -- you're unaware of the one person who spoke in opposition of this, and in looking at the letter that was sent out, the return address is an address in St. Louis, so I do not think they're a full-time resident of that structure, which is worth mentioning.

I believe that in an effort to be a good neighbor, Mr. Timberlake has withdrawn and gone to some cost, whether that be time or monetary, to meet and satisfy the neighbors in an effort to be a good neighbor, and I think that's worth supporting of this body and an important thing to take into consideration.

TEMPORARY CHAIRMAN JOHN: Thank you. Any other comments?

MS. HAMMEN: I have a question. So Mr. Zenner, is this fence -- the proposed fence that was proposed at the time of the approval of the building plans, is it on the lot line?

MR. ZENNER: To the best I can tell, Ms. Hammen, yes.

MS. HAMMEN: And is that -- so this is zoned, what, commercial, you said?

MR. ZENNER: This is zoned MN, which is mixed-use neighborhood. It is the lowest order commercial zoning district we have within the code comparable to C-1. The condominium complex that surrounds the property to the north and to the east is actually an R-1 PUD, former R-1 PUD that's existed for quite some time. Now just referred to as PD on our zoning map, but restricted to this particular residential configuration per its approved plan.

The uses within the MN zoning district of the subject site actually are inclusive of shop stores and other establishments for retail purposes, office buildings, and the like. Personal service establishments and things of that nature, which may have varying levels of traffic associated with them. They may have varying levels of activity as well.

Obviously, depending on what the use is, as an office, as a professional office, which would be what Mr. Timberlake's business would be classified as within the code, the impact of the property is probably one to be relatively limited. We would consider a very good transitional use between the residential and the Highway 63 corridor, or the Old Highway 63 corridor.

So use-wise, very compatible. However, from the aspect of screening, and what may happen in the future, you never know. The building may be converted to another use, that's more intense, that may have a bigger impact on the adjacent property.

The screening standard really is not designed based on the use of the property. It is more based upon the potential full uses of the property. Worst case scenario to existing condition. So we apply the landscape standard and the screening standard accordingly in all situations the same based on zoning district to zoning district, not based on use to use.

Our old code dealt with -- it was more use based. When we converted to our new development code, we did not convert -- we did not do buffering based on use, we did it based on zoning. So that is

part of where this building is needing to be compliant with current code standards, not our old code standards.

MS. HAMMEN: So the fence on the lot line is in mixed use, because that's a private drive, there's no right-of-way, so it can be right on that lot line?

MR. ZENNER: And the code actually specifies that the screening device is to be located on the property line.

MS. HAMMEN: In this zoning?

MR. ZENNER: In general. So that is how the code is written. The fence is at the property line, the landscaping required per the code is on the inside of the required screening device.

MS. HAMMEN: And the fence also goes to the north around the north side of the building?

MR. ZENNER: Based on the construction plans, that is what was identified and run. What I'm assuming, if you look at the aerial photography I turned off, if you look at where the current Dumpster or where the former Dumpster pad was, and Mark may be able to better define this, I can't recall from the site visit, I believe this Dumpster has been removed, but that Dumpster screening wall probably was right at the adjacent -- at the then property line or in very close proximity to it.

If we go to city view, this is the city view map, which doesn't show the zoning designations of the adjacent property, with the parcel boundary, and I'm going to go to the zoning. So that was the zoning layer, this is the parcel boundary layer. This is the canopy of the old gas station, the gas station building. That property line is here. I would imagine given this aerial, that property line and this back wall of the former screening of the Dumpster are almost coincidental, if not just a little bit -- the property line may be a little bit further to the north. It would encompass the entire, make an "L" around the northern and the eastern side of the property with no gap within it, from a security perspective. So everybody would be having to go back out to the corner and go around the fence.

It's an eight-foot tall fence, and I think what is not necessarily identified, there is grade on this property due to the drainage. If you look at the architectural rendering that's on page 13 of the packet that Mr. Harrison pointed out, the back of the building does have downspout locations that tie into, then as you may be able to see on the construction plan, underground storm drainage that are caught in a series of catch basins that go back to the northeast corner of the building.

So there is some grade change, so even if you had an eight-foot screening device, you're going to have to scale an eight-foot wall, in essence, what's been referred to as the Berlin Wall, after you've gone through the landscaping that would have otherwise been required to be placed in front of that, which will all fall within roughly a six-foot strip.

Now, as a point of comparison, in our former code, we would allow parking to encroach within six feet of the property line. The six-foot landscape strip is what used to exist within our code. We have increased our buffer strip requirements now along rights-of-way and we've increased our buffer requirements on adjacent property lines as well.

There are certain exceptions within the code that would allow you to be able to place particular types of improvements closer, so the six feet that's being retained from the edge of the driveway, basically to the base of the sidewalk that goes around the back of the building, is generally consistent with what the former landscape strip would have been in our former zoning code. So again, that may factor in.

Now, that landscape area would have had to have been improved as well, so you would have still had to have met particular plant requirements in order to landscape that six-foot strip. So the option, I would suggest this for the Board, should you be inclined. The landscape strip that's provided can be landscaped. Mr. Timberlake has indicated that he will landscape it. There is a minimum requirement plant material that must be placed within that, but you also must understand that the landscaping that is there would not achieve an opacity factor that the fence will.

The fence was 100 percent opaque, and it was meant to screen the incompatible use. The landscaping that would have been on the inside of that would have not been at 80 percent opacity. It would have been at a much lesser standard than what the screening device was meant to accomplish.

So if you're wanting a screen of any nature between the two uses, you may need to consider something from a landscape strip perspective. The 80 percent opacity factor I refer to is actually what would have been required in a landscape strip under the old code. So between an incompatible use but we didn't have a screening device, and that would have needed to have been achieved within four growing seasons.

So the new code introduced a larger buffer area under certain circumstances and introduced a screening device. That's one of the major changes between the old Chapter 29 requirements for screening and buffering and now the Unified Development Code requirements. We're trying to create parity. Parity would ensure that you have 80 percent screening between the two properties, which are incompatible by zoning. If you choose to waive the fence.

Or if you choose to do nothing because we're meeting what the neighbors want, the landscaping that's reversed on that side would be required by the code less the fence would be what they'd have to install, and given the fact that we're into the winter season, it will likely be delayed until spring, which is permitted also by the code.

MS. HAMMEN: What is the larger buffer area that's required?

MR. ZENNER: The larger buffer area that's required between the MN and the residential is a minimum of a ten-foot buffer area, so we are four feet short of that. That is right now at this point, that is not -- the arborist would have looked at alternative compliance methods, so the density of the plant material that would have been required to have been spread within that ten-foot area would have been, in essence, would have been spread within the six-foot area, which the arborist has the authority to make that kind of a judgment call.

So while they're not meeting the minimum requirement of the ten-foot buffer, the building is not within the ten-foot area. It is a sidewalk, and that here nor there, it's a non-plantable area, but the arborist does have the authority to make modifications as long as compliance is achieved from a plant material

standard. The arborist does not have the authority to grant waiver of the screening device, and that is why the item is before you.

MS. HAMMEN: So the difference between the ten foot and the six foot that is there because of the sidewalk doesn't require a variance?

MR. ZENNER: The compliance with the plant material standard, which is what the ten-foot area would accomplish, or accommodate, can be met within the six. So no. That would not be something that the arborist would have identified as needing to seek the variance on because compliance-wise, he could have still ensured that compliance with the plant material can be met. The planted area within the six feet versus the ten feet, the six-foot area provides enough space by which to have root establishment and plant survivability. If we were going with something probably less than six feet, I would imagine that that would have also been flagged as an item that would have been the denial. We would have had to have sought probably additional relief based upon further reduction of a requirement.

MR. WATERS: Is there a ten-foot buffer?

MR. ZENNER: At this point, no, there is not, because the fence would have served as that based on the way the screening and buffering standard is written within the code. And that is where we run into the variation between the current UDC requirements for screening and buffering and the former Chapter 29 requirements for landscaping and buffering.

And if you bear with me a moment, if we go down -- or we go up in the levels of screening, the screening intensity varies but not necessarily landscaping. So a Level 1 buffer is going to require a six-foot wide buffer strip. So in essence, we have a Level 1 buffer right now if we were to view it from, I believe, Ms. Hammen, your perspective, it's a Level 1 buffer. Even though the building itself to the property line is in excess of ten feet.

A Level 2 buffer -- or the Level 2 buffer requires a four-foot wide landscape strip and a six-foot tall screening device. Again, that six-foot tall screening device is going to act as the 100 percent opacity if you choose to go with a stockade-style fence. You could achieve the opacity through a combination of conifer evergreens or something else and fencing, so you still could achieve that opacity factor.

And then the Level 3, which is what this property is required to comply with, it requires a ten-foot wide and an eight-foot tall screening device. Again, the ten-foot wide buffer strip, per the arborist's application of the code, can be modified, as long as compliance with the plant material standards, which are specified elsewhere within this particular section, could be met. And the arborist per the plant material requirement could be met, and that's not the question really at this point. They'll put the plant materials within that six-foot area and they will survive.

I am -- as I scan through this, the buffer location, the design and location of the buffer does indicate that it needs to be 80 percent opaque when it is horizontal between one and five feet. So if you're only required to put in landscaping, you would have to have it at 80 percent and that is -- and that's at the time of installation. So -- and that is, again, that is another significant change between the codes.

So when we talk about a required buffer, based on zoning classifications, the new code -- or even the old code -- requires the 80 percent at the time of the planting. The old code required it within four growing seasons.

So if we look at what we have here before us on this variance request, should you decide to waive the opaque screening device, the plant material, if you choose, is what I'm telling you right now is there is -- you're waiving the screening device, which is the opacity side of the buffer.

The plant material requirement, which this does not just require, this buffer does not just require plants, it requires plants plus the buffer, or plus the device. Once you eliminate the device, that doesn't mean that the plant material that is going to be installed has to be at 80 percent opacity.

That's one reason why I keep coming back to if you want the plant material to achieve what the screening device was meant to achieve, you probably need to condition the type of plant material that needs to be installed. If you choose to do nothing, allow the plant material to achieve whatever opacity it will achieve as it grows, the applicant would only be required to plant the minimum plant material sizes at the time of planting.

He's not going to have to plant a larger plant in order to meet the 80 percent right out of the box. It could take four growing seasons for that plant material to achieve the 80 percent, it may take less. It depends on the type of plant material they choose. It could take longer. There is nothing within the code that would dictate that they would have to meet any alternative standard if you waive the screening device standard as the requested variance is asking you to do.

MR. WATERS: So help me understand. With no additional requirement, the screening would have to achieve 80 percent at some point?

MR. ZENNER: It would just by nature. Plants are going to grow, so the type of plant material and the mix we require within that buffer strip is going to eventually fill in and you will ultimately end up with 80 percent opaque -- you'll end up with an opacity of something. Not necessarily -- it may not be 80. It will likely, though, if the right plant materials are chosen, it will. The screening device, again, is what gets the 80 percent opacity right out of the box in this particular scenario.

MS. HAMMEN: Who is -- I know that the planting, there's supervision. Who supervises this into the future?

MR. ZENNER: Mother Nature.

MS. HAMMEN: The city has no say? If they put in -- if someone puts in 85 plants and 64 of them die in three years, what happens?

MR. ZENNER: That actually, Ms. Hammen, is covered within the code. We have particular -- and the city would be monitoring -- we would be going back and monitoring that. There is a standard, and I can't put my finger on it right now. There is a standard within our landscaping provisions that does require adequate irrigation be established in order to have the plants survive. Dead plants do need to be replaced.

There is always the opportunity that over time, if the plants aren't replaced, notice of violation can be issued and compliance would be required at that point. I can tell you from personal -- from an understanding of experience as it relates to the redevelopment of a particular site within the city that was required to have plant material installed during its original construction, ten years prior to the site's redevelopment, that apparently by the landscape crew that they had operating on that particular site just kept mowing down the vegetation, it never matured to its required height. So as the site came in to be redeveloped, the arborist assessed that whatever plant material you're going to put in on that property that should have screened your residential neighbor from your commercial site will achieve ten years' worth of growth. That is how significant we feel landscaping in certain instances needs to be maintained.

We are currently working in other cases that relates to another commercial development that failed to install landscaping and is going through the enforcement process. That's the standard practice.

Our arborist and our inspectors that go out and do building inspection and property inspection do keep an eye on these things; however, with limited resources and staff, keeping up with the city as large as we are with the amount of construction is a daunting task. So if it dies within the first six to twelve months, I can pretty well assure you that we'll be out there taking care of getting it replaced, because that's something that normally is going to be looked at. That's one reason why the code now does not allow for landscaping to be delayed in its installation due to season as well.

MS. HAMMEN: So how could something be installed right now?

MR. ZENNER: It won't be. It is permitted by the code to delay installation. There will likely be a bond placed on the property, issued CO with a bond that is to cover the landscape plant material installation at the appropriate time of the year.

TEMPORARY CHAIRMAN JOHN: Any further questions or comments from the board? Can I have a motion?

MR. WATERS: I move that the Board grant the variance delay installation that required eight-foot tall screening device along the subject's north and east property lines. The subject site being 912 Old Highway 63 South.

TEMPORARY CHAIRMAN JOHN: Okay. Is there a second?

MR. HURLEY: Do we want to add --

MR. WATERS: I'm making the motion without that requirement because I think the vegetation will achieve that over time, and this is not an unattractive building. I think it's more unattractive to require the screening device, so I think the -- you know, the variance, I'm okay with the variance. And -- and I don't think we need the additional language, but if somebody wants to amend the motion, that's something we can consider.

MR. ZENNER: I believe procedurally, you'll have to take action on the motion that has been made, which is a motion to approve the variance as requested. If the motion fails due to a lack of a second, an alternate can be made.

MS. HAMMEN: After a second, we can't make a motion to add to it?

TEMPORARY CHAIRMAN JOHN: We have to vote on the motion after a second.

MS. HAMMEN: We can't add a friendly amendment, and then vote on the amendment?

TEMPORARY CHAIRMAN JOHN: We haven't had a second yet.

MR. CALDERA: I think from a parliamentary standpoint, yes, you could do that. But for purposes of clarity, just to make it nice and clean, it's probably best to go ahead and address that motion first, second it if anyone wants to, vote on it, yea or nay, and then just have a second motion -- assuming it doesn't pass, have a second motion with a condition, unless.

TEMPORARY CHAIRMAN JOHN: Unless the first one passes.

MR. CALDERA: Unless the first one passes. So basically, what would be before you is a variance with allowing the screening and that's it.

TEMPORARY CHAIRMAN JOHN: Is there a second?

MR. CALDERA: Okay. So if there's no second, then I think we can go ahead and set that motion aside. If there's another motion.

TEMPORARY CHAIRMAN JOHN: Is there another motion?

MR. WATERS: Well, I would make a motion, then, that we grant the variance to waive the installation of the required eight-foot tall screening device along the subject site's north and east property lines and require that the landscape buffer achieve 80 percent opacity within four years.

MR. HURLEY: I'll second that motion.

MS. HAMMEN: Do we have discussion? I'd like to oppose that. We could require it at the time of installation --

TEMPORARY CHAIRMAN JOHN: We could.

MS. HAMMEN: -- on the north and east side.

TEMPORARY CHAIRMAN JOHN: We could, but that's not --

MS. HAMMEN: I am making a statement.

TEMPORARY CHAIRMAN JOHN: All right.

MS. HAMMEN: Thank you.

TEMPORARY CHAIRMAN JOHN: We have a second for the motion within 80 percent opacity within four years.

MR. CALDERA: That's as you understand it, Pat?

MR. ZENNER: That's as I understand it.

TEMPORARY CHAIRMAN JOHN: Okay. Would you call the roll, please?

MR. WATERS: Do we have a second on that?

TEMPORARY CHAIRMAN JOHN: Yes, we do.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: No.

MR. ZENNER: Mr. Girard?

MR. GIRARD: Yes.

MR. ZENNER: Ms. John?

TEMPORARY CHAIRMAN JOHN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Mr. Hurley?

MR. HURLEY: Yes.

MR. ZENNER: Motion passes four votes in favor, one vote against.

TEMPORARY CHAIRMAN JOHN: Thank you.

Case #1956 - A request by H.A. "Skip" Walther (attorney) on behalf of Gary and Tina Mills (co-owners), to grant a variance to permit construction of a 28'x26'horse bard (an accessory structure) forward of the principal dwelling located at 1514 Mills Drive which is not permitted per Section 29-3.3(ii)(2)(iii)(A) of the Unified Development Code. The subject property is located at 1514 Mills Drive.

TEMPORARY CHAIRMAN JOHN: Okay. One more case. Case Number 1956, appeal of H.A. "Skip" Walther, attorney on behalf of Gary and Tina Mills, co-owners requesting that said board grant permission to construct a horse barn, an accessory structure forward of the principal dwelling on the subject real estate, which is not permitted per Section 29-3.3(ii)(2)(iii)(A) of the Unified Development Code. Said real estate being known as or located at 1514 Mills Drive.

Has the notice been properly advertised?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Has the property been posted with a notice of public hearing?

MR. ZENNER: Yes, it has.

TEMPORARY CHAIRMAN JOHN: Have the parties in interest been notified?

MR. ZENNER: Yes, there have.

TEMPORARY CHAIRMAN JOHN: Have there been any inquiries?

MR. ZENNER: There have. I believe we have representatives that made those inquiries here in the audience today to make comments to the Board.

TEMPORARY CHAIRMAN JOHN: Okay. The person making the application to the Board please come forward, state your name and address and be sworn in.

MR. WALTHER: Skip Walther, 700 Cherry Street, Columbia.

(Witness sworn.)

MR. WALTHER: I'm Skip Walther, I'm an attorney. I represent Gary and Tina Mills and the trust that they have. The revocable trust that they have owns the real estate in question. It's about two and three-quarters of an acre of agriculturally zoned real estate in the middle of Columbia, Missouri, which is kind of odd.

They've got, as you can see on the overhead, there is a large lake that takes up a good chunk of the 2.75-acre tract. But just to the north of the lake, you can see on the photo, is the house, right there,

where Gary and Tina live, and the driveway, you can see where -- Pat's showing you the arrow, that's their 75-foot driveway, the house is about 75 foot off of Mills Drive.

There's a little apron that is just past the 25, you can barely see it, right there, there's a little asphalt apron and we propose to put the horse barn there. Now, the horse barn is a permitted use in this zoning district. So the question of whether we have a horse barn or not isn't before us tonight, but what is before us is where we locate the horse barn.

The zoning ordinance, which is 29.33, says that you cannot have an accessory structure forward of the principal structure, and in our proposal or request for variance, obviously it would be. The horse barn we're proposing, the location would be just over 25 feet from Mills Drive. That is -- that honors the setback of the building line. So the only variance would be, this ordinance says you can't put an accessory structure forward of the principal structure and obviously the personal structure is the house.

We could put the barn to the south and to the west of the house in one or two areas. You can't -- you might be able to imagine it. There are drainage areas that run down to the lake from Mills Drive, and you really -- it's a bad idea to put a horse barn there. Horses have hooves. Their hooves need to be -- I'm sorry, but they need to be dry, and when you have a barn, you have something called a dry lot, or an exercise paddock is another term for it.

You need to have an area next to the horse barn where the horses can -- can move around when they're not inside the barn. But the area needs to be dry. And so you cannot, as a practical matter, put it in any of the drainage areas.

There are a couple of areas to the south and to the west of the house that are not in drainage areas, and so we wouldn't have that problem, but they're about 300 feet from Mills Drive. We extended the existing driveway to the west and then to the south, they'd be about a 300-foot swath of asphalt that we would have to build, creates an impervious surface, don't think that's a good idea.

It's also farther -- it's farther away from the house, which presents a security issue for the horses. It is farther away from Mills Drive, which presents a potential issue for the fire department. They obviously, if they want to bring their fire equipment to a fire, they want it to be as close to the public street as possible.

And so the practical difficulties of putting a structure to the south and to the west of the house are that it's going to create a huge driveway and -- and it puts the horses at some distance from the house, or the barn at some distance from the house.

Now, this is agriculturally zoned, but it's in the middle of Columbia, and the horse is going to be pastured, they're going to be visible from time to time, people will see them. We don't want people to think that they can steal the horses, and if the barn is -- is relatively far away from the house, we are concerned about the risk for the horse's safety.

And so putting the barn relatively close to the house, we think eliminates the safety concern, or at least reduces the safety concern, and so that's why we would request that the barn itself be just off where that apron is to the -- to the north of the house and to the south of the drive about 25 feet.

The -- I have given you in your packet a picture of a barn that we expect this barn to look substantially like the picture that we've shown you. I've got colored pictures. I don't know if you've got colored pictures in your packet or not.

MR. HURLEY: We do.

MR. WALTHER: Very good. That's what we propose to build, or something substantially similar to that. So it's going to be an attractive structure. But even without regard to the attractiveness of it, Mills Drive, if you've been down that road, there are a bunch of eastern red cedars and deciduous trees and shrubs along that drive. It's difficult to see the Mills' house. I think it's going to be difficult to see the barn, but if they see the barn, it's going to be an attractive barn like that.

So we think that there are practical difficulties and necessary hardships not caused by us due to the topography configuration of our lot, and we would ask that you grant our variance for the ordinance that says that you can't put an accessory structure forward of the principal residence or principal structure.

So I'd like to ask you to take notice of 29.33, which is the ordinance in question, our application, the exhibits attached to it, the denial letter, and the parties-of-interest document. I'd be happy to answer any questions.

TEMPORARY CHAIRMAN JOHN: Any questions?

MR. GIRARD: Where is the horse pasture at?

MR. WALTHER: The horse pasture is going to be on a separate lot east and south of this particular property.

MR. GIRARD: To the east and to the south?

MR. WALTHER: Actually, it's going to be -- and so the lot backs up to Forum Boulevard, and there's going to be -- obviously that whole area will be fenced, but that's, again, the horses are going to be visible from several different points of view, or the horse is going to be visible from several points of view.

MS. HAMMEN: Can you show us? Do you have a diagram to show us where that pasture will be in relation to the house?

MR. WALTHER: Yes, if you can go back to the -- your -- Ms. Hammen, are you familiar with Mills Drive?

MS. HAMMEN: I'm not sure.

MR. WALTHER: Okay. Well, if you're driving south on Forum and you go past that barbecue place, Dickey's, I think it is. There's a kind of a hill on the right, and it's -- go past Forum Shopping Center, Dickey's, there's kind of a hill to the right.

MS. HAMMEN: Yes, yes, and I know the pond, too, okay.

MR. WALTHER: And there's a pond back there, yes, that's correct.

MR. CALDERA: We're not seeing it.

MR. ZENNER: This is the parcel. This is an occupied developed structure, so again, let me go back to the aerial -- to our aerial photography that we have. That's the subject site.

MR. WALTHER: Yeah, and so you can see the pasture to the southeast.

MR. ZENNER: This parcel here?

MR. WALTHER: No, it's going to be just north of there.

MR. ZENNER: Oh, it's this parcel here.

MR. WALTHER: Yeah.

MR. ZENNER: Which is actually, and this is -- the Mills' property as well.

MR. WALTHER: That's it.

MR. ZENNER: And it is agricultural. Is that parcel a question?

MR. WALTHER: It's a separate parcel.

MR. ZENNER: And that's a 3.53-acre parcel of ground, which would again be in accordance with our requirements for the zoning district, an applicable zoning district by which to handle or have the care of livestock or other animals. So that is a consistent zoning classification of the subject site for the actual -- actual request at hand, which is here.

Let me get back out of zoning. I just wanted to show you that this is all agriculturally zoned land, and then if we go back to your aerial photography per our zoning layer, this is the subject site, paddock would be located in this general area.

MR. WALTHER: Right.

MR. ZENNER: At the end of the driveway, pastureland will be this larger parcel here.

MR. WALTHER: Correct. That's going to be fenced. And again, the concern that we have is that people driving up Forum Boulevard is going to see the horse. I mean, it is going to be visible, and we're not out of the country. We're just concerned. We want the barn to be as close to the house as we can get it for the safety of the animal and for the health of the animal.

MR. GIRARD: So why is it not located in the open area near 1512 Mills immediately to the east to where you're proposing there is an open spot?

MR. WALTHER: For that reason. My clients live at 1514.

MR. GIRARD: Yeah, they'll be maintaining the horses on this neighbor's property?

TEMPORARY CHAIRMAN JOHN: They own both pieces of property.

MR. WALTHER: I'm sorry?

TEMPORARY CHAIRMAN JOHN: They own both the pieces of property, but they live in 1514.

MR. GIRARD: Right, but yet they'll be having the animals on this adjacent piece of property. So wouldn't it naturally seem that the barn should be located on the same property where the animals are pastured?

MR. WALTHER: Well, once again, it's a security issue for us. If the barn is located relatively distant from the house, the concern that we have is that it's more susceptible to break-ins, more susceptible to people trespassing.

If we're out in the country, I think it would be a different issue, but we're not. We're in the middle of Columbia, and it's a -- I mean, we thought about that, and it's just a concern of ours. We -- I

understand your point, but the safety issue, we don't want to -- we don't want to have somebody steal the horse or do something untoward to the horse. And we feel like if it's closer to the house, we maximize our ability to provide for the security of the horse.

MR. GIRARD: Right, so the other parcel, is this currently leased to a tenant?

MR. WALTHER: Yes.

MR. GIRARD: So there's no agreement, say, the house is close to that house, so they can watch the horse?

MR. WALTHER: No, no.

MR. GIRARD: I'm just trying to understand your approach as far as safety.

MR. WALTHER: Yeah, my -- yeah, my clients intend to maintain their horse and they're not going to have somebody else do it.

MR. GIRARD: Okay.

MR. WATERS: Why is the apron there now? Is that a turnout or --

MR. WALTHER: It's a turnout, yeah. It's for me when I drive there. They don't want me backing out. Yeah.

MR. WATERS: And there's an existing outbuilding on the lot. It's a shed, it looks like.

MR. WALTHER: I don't think so. Is there an outbuilding back there? Do you have an outbuilding?

MR. G. MILLS: Yes.

MR. WALTER: Yes. I guess it's a non-conforming structure.

MR. WATERS: I agree that it's well screened. I was driving by to check it out.

MR. WALTHER: It's always been hard to see through. Any other questions? Thank you.

TEMPORARY CHAIRMAN JOHN: Is there anyone else wishing to speak in favor of the application? Is there anyone wishing to speak in opposition to the application?

MS. TRENDLE: I just have a question.

MR. CALDERA: Ma'am, you need to be at the podium.

MS. TRENDLE: Do I need to be sworn in and all of that?

MR. CALDERA: Yes.

MR. TRENDLE: Oh. I'm Carol Trendle, I live at 1701 Marylee Court.

(Witness sworn.)

MS. TRENDLE: I did not realize that it was agriculturally zoned, and what is the limit on how many farm animals you can have? Is it one acre per animal? Do you know?

MR. ZENNER: We do not have in the city code, the City of Columbia does not have an animal population density limit. That would be probably something that would need to be investigated with state statutes as it relates to the amount of grazing area necessary for the type of animal that is actually being cared for on that property. There are particular statutes that -- statutes or regulatory standards that exist

for what is considered the minimum amount of area of grazing that is not part of the city's development requirements.

MS. TRENDLE: Oh, okay. I thought it was an acre per animal.

MR. ZENNER: No. Minimum lot area within the agricultural zoning district for a single-family structure is two and a half acres. Once you have that, you have the ability to raise or care for animals.

MS. TRENDLE: Okay.

MR. ZENNER: Farm animals, at least.

MS. TRENDLE: My concern was the safety of the road. You know, it's a very narrow road, there's no shoulder, there's no sidewalk, there's cyclists on the lot. We have connection to a trail, kids are getting on and off the school buses, and it's a very sharp turn. We have lots of traffic and a couple speed bumps because you have traffic issues, and then there's another large subdivision going down the -- nearby, so we do have lots of traffic issues, but I don't know how the placement of the barn would affect that, though. Like I said, I did not know it was agriculturally zoned. So thank you.

TEMPORARY CHAIRMAN JOHN: Okay. Thank you. Anyone else wish to go speak? I guess we're still --

MS. CAREY: Wait a minute. I think we're confused.

TEMPORARY CHAIRMAN JOHN: Okay. State your name.

MS. CAREY: Hi. My name is Lola Carey. My address is 1610 Marylee Court.

(Witness sworn.)

MS. CAREY: Can I ask them some questions, just information?

MR. CALDERA: Ma'am, any comments or questions need to be directed to the Board.

MS. CAREY: Okay. I came here with my neighbors to probably oppose this. But I think as a group, we'd rather see it on the east side than on the west side because it will impact our properties more. You have to be notified if you're within 185 feet of the proposed change, but since it is zoned agricultural and they are going to build the barn one place or the other, it sounds like, we really don't want to see it on the west side. Our properties probably are not 100 feet from where that would be, and I can't imagine that we would want a horse barn that close to our properties. So I don't know if I have just spoken in favor or opposed.

MR. HURLEY: I have one question. If the applicant were to build a structure to the east side of the existing home -- excuse me, the west side of the existing home, there would be no variance or no action needed by this body. Is that accurate? Because it would be -- it would meet the requirements to be behind the home, the primary structure?

MR. CALDERA: I believe that's correct, so long as it's built behind the primary structure.

MR. HURLEY: So if they had built the structure where Mr. Walther had originally said was another option, from what Ms. Carey said, and correct me if I'm mistaken, you find the variance being -- that may or may not be granted by this Board to be more palatable going in that northeast section of the pull-out as opposed to the southwest portion. Is that accurate?

MR. McNEIL: Yes.

MS. CAREY: Yes.

MR. HURLEY: I don't know if you have to be sworn in to say yes or not.

MS. CAREY: I'm answering for them.

MR. HURLEY: Of the two, the one that the variance is required seems to be better for you than the one where the variance would not be required if you're going to build it anyway.

MS. CAREY: We're not thrilled. When we purchased our property, which is very close to the Mills' property, they owned all of the property where we have built, there were no animals in the vicinity, and I don't think we ever expected living in the center of Columbia that it would ever be an issue, so having researched well before we bought our properties, I just don't think we ever thought that this could happen.

MR. WATERS: Can I ask what your objection is to having a horse barn in that location? Is it -- I mean, is it sight or is it --

MS. CAREY: It's probably smell. You know, when the stalls get mucked, where's that going to go? How's it going to smell on an August day? That's -- I don't know that, and the sight. I mean, you know, horses grazing are beautiful, but the other things that come with it maybe not be what we were expecting. Anything else?

TEMPORARY CHAIRMAN JOHN: Thank you. Anyone else wishing to speak?

MR. McNEIL: I'm Brian McNeil. My address is 1608 Marylee Court.

(Witness sworn.)

MR. McNEIL: I can address the part about our objection to having it over on the west side. I was an editor of an equestrian magazine for a number of years. I've been in many, many horse barns. They have three things in common: Smelly, dusty, and dirty. So all of them.

So I would not want that. That would literally be in our backyard. So I mean, there is no more than -- our backyards are no more than about 50 feet, so it would be right on the other side of that. So I guess in that case, I am in favor of the variance so that this would be built. You know, no matter how pretty they are, they still are smelly, dirty, and dusty. So I would be more in favor of having it on the east side.

TEMPORARY CHAIRMAN JOHN: Thank you. Anyone else wishing to speak? Okay. Mr. Zenner?

MR. ZENNER: Well, it's interesting what information was presented at the public hearing this evening. We were all initially approaching this this evening I think in the same vein that the adjacent property owners were, that there wasn't an intent to have pasturing associated with this on an adjacent lot owned by the property owners, but not necessarily occupied by them.

As Mr. Walther's pointed out, there may be environmentally related topographical issues here that are located on the western side of the property that would potentially preclude the structure to be located

in a location that would otherwise be acceptable for when the horses are let out, and is -- and ultimately would be obviously less convenient to the pastoral land that they're desiring to pasture the horses within.

I will not disagree with the fact that topographical area of the western portion of the subject site where the horse barn is desired to be placed may not be suitable. However, it does not necessarily preclude the opportunity that an area may be able to be improved such that it is dry ground. I'm not sure what our drainage weight is within this particular area, but I could be fairly certain that based on this aerial photography and what does appear that the area of drainage does occur in this location, and if we turn on another layer of our map, which deals with the natural features, you'll see that that probably is about right with the topo and the grades.

And the house here does not seem to have a significant amount of fall, and the location of the structure behind the front face of the home would potentially be an alternative. While not as convenient as being located on the eastern side of the property and not addressing possibly the neighboring property owners' concerns of being closer to their home, which that home is sitting down here south of the lake.

Just so we have this for contextual purposes, this is the house that's on the lot that was split out of the larger Mills' tract that's been built. This is the adjacent neighborhood.

MR. HURLEY: Is the adjacent house, is that address off of Mills Drive?

MR. ZENNER: It is.

MR. HURLEY: Just so I'm understanding, nobody here tonight is speaking as a representative of that address; is that correct?

MR. ZENNER: 1516 Mills Drive, are any of you here representing them?

MR. HURLEY: Everybody seems to be from the cul-de-sac area.

MR. CALDERA: Let the record reflect that no one responded.

MR. ZENNER: So Marylee Court is what we're referring to. Well, if in fact this paddock, which is 18x30 is placed in this general location, which yes is further away from the driveway, may require some type of improvement, it is still going to be on the driveway a location may be compliant to the property line here, which is on the other side of the driveway from house that is at 1516. You are looking at almost 200 feet.

To the homes that are down here, diagonally of course we have them across the lake, to the homes that are off of the court that is to the west of this particular property.

Locationally, I can completely, as a staff member, again, from a very practical perspective, understand the desirability of placing the structure here and being able to potentially walk the horses here in order to get them into pastureland area itself. While there may be a very compelling argument that it is more conducive to this location as it is high ground, you do not have to contend with drainage, you had not have to consider extension for any type of paved surface here, but I guess I would ask the applicant or applicants' agent, if the horse is going to be walked over to the pasture from this location, what's the difference of walking them from the paddock back over to this location?

Is there a requirement that we have a driveway that leads back to the structure? It would be no different than an outbuilding such as this structure being inaccessible by the fire department via a driveway or paved surface.

The code specifically stipulates that accessory structures are not located forward of principal structure. That is to protect generally the integrity of the residential environment or the environment in which other structures are built. We don't allow generally sheds in the front yard. I think it was Mr. Waters who pointed out the shed that is here is an illegal non-conforming use that existed at a time when we did not have this accessory structure standard.

The horse obviously is located on this particular property, and I am relieved to hear that we will have pasture somewhere for these animals to graze. That was another significant concern that staff had, though that we cannot, because of the way that the code is written, limit the ability for the Mills to place horses at an unlimited number, on their 2.3-acre, or their 2.76-acre parcel, even though a third of the property is occupied by a lake. That is not -- we don't make in the code an exception that says that it has to be two and a half acres of grazeable land.

However, when you look at the definition in staff's opinion of an agricultural use and you look at grazing and you look at the uses that would go along with that for agricultural purposes, one would think that they would all occur within the same parcel. I believe that was Mr. Girard's point. Staff generally sees that that is a good connection.

We do not believe that there is, other than the hardship I believe that Mr. Walther has pointed out that we may have a drainage issue that does not allow this paddock to be built on the west side of the parcel, south of the building face is really compelling as to having met the requirements.

It may be worthwhile to ask if, in fact, the applicant has horses that are stabled somewhere else that needs to be stabled on this particular property. If there are none, why are we approving an accessory use for something that doesn't exist as a need? I would further suggest if the owners own the property, and I do not disagree either with the contention that safety and security is something that needs to be met, but again, that's not a criteria of variance for encroachment of an accessory structure forward. That is a decision that needs to be made that may be addressed at another means.

The horse paddock should be on the property in which it gives -- where the grazing will be. That would be more consistent with the definition of agricultural use. And definitely address the issue of the adjacent property owners by placing the paddock as far away from the adjacent residential development as possible.

If any of you are familiar with this general area, there is significant grade here. This property is pedestaled at the top of the existent Forum Boulevard, so it is properly fenced. Yes, those horses may be visible, but it still is not going to be an easy road to hoe to be able to try to take a horse from this property, especially if there are security devices in place by which to eliminate the ability to do so.

Staff does not find the hardship criteria variance process has been fully met and therefore cannot support the request to have the paddock placed on 1514 Mills Drive, and given the information presented

here this evening with testimony, the location of that paddock would be permitted on 1514 without variance and would be far more appropriate to be located on the area where it would also be the pastoral land to support the grazing of those animals within paddock.

MS. HAMMEN: Do you mean 1512?

MR. ZENNER: I'm sorry, 1512 would be more appropriate of a location to paddock and the grazing area. It is actually a significant larger possible. It is not nearly as encumbered by a lake or other obstacles that don't provide sufficient land mass to ensure that those animals have adequate grazing. If the board is inclined to approve the requested variance, it would be recommended that conditions be placed upon the total number of horses that may be stabled within this particular location, unless -- I'm seeing Mr. Caldera indicate that that's not a possibility because it is not a conditional-use.

MR. CALDERA: Partially, as well as I don't know the full breadth of the state statutes that regulate that, so I am reluctant for us to step in in place of state statutes.

MR. ZENNER: So with that advice being given, we strike that from the record as an alternative. Given that there is not an alternative that may be able to be applied to this particular request, we would stand by the recommendation of staff that it does not meet the criteria for the granting of a variance or waiver of a requirement, that accessory structure be placed behind the structure on the property, and therefore we would recommend disapproval.

TEMPORARY CHAIRMAN JOHN: Comments from legal?

MR. CALDERA: Thank you, Madam Chair. At the risk of duplicating some of Mr. Walther's requests earlier, I need to admit some documents into evidence. First we seek to admit the application, denial letter, public notice, parties-in-interest letter, parties-in-interest list, the Mills' Estates Plat 2, and the horse barn diagram that was previously provided by the applicant. The city would actually seek to admit all of that as City's Exhibit 1.

TEMPORARY CHAIRMAN JOHN: Yes.

(City's Exhibit 1 was received into evidence.)

MR. CALDERA: And then the second set of exhibits, we need to admit some ordinances, 29-6.1, 29-6.4, 29-3.3, we seek to admit that as City's Exhibit 2.

TEMPORARY CHAIRMAN JOHN: Yes.

(City's Exhibit 2 was received into evidence.)

MR. CALDERA: Thank you. And then finally, I will remind the Board that had under 29-6.4(b), subsection two, there are five criteria that the board may -- must factor before granting or approving a variance request. I am happy to read those criteria allowed if the Board wishes.

TEMPORARY CHAIRMAN JOHN: Anybody? Okay. Thank you. Board members, comments or discussion? Or a motion?

MS. HAMMEN: So Mr. Zenner, isn't there a chicken ordinance and is chicken classified as livestock? And it doesn't apply to any other livestock?

MR. ZENNER: That's a very good question, Ms. Hammen. I don't know the answer. The code requirements for chickens actually fall under the public health provisions. Chickens are allowed actually in residential zoning districts under those provisions. We would not generally allow chickens if we did not have that unique set of standards in a residential zoning district, so what I would tell you is chickens are not considered livestock, given the fact that they're regulated by a different section in the municipal code. Livestock being cattle, pigs, horses, other --

TEMPORARY CHAIRMAN JOHN: Goats.

MR. ZENNER: -- goats, and things of that nature, would fall under the grazing -- broader grazing characteristic of what our agricultural definition is. And therefore, because the code -- the municipal code, as I understand it, does not regulate those types of farm animals specifically. We have requirements within the municipal code that do deal with the total number of pets one may have, such as dogs or cats. You may have a pot-bellied pig as a pet. We would probably regulate that the same way as a dog or a cat. But four pot-bellied pigs may be different.

It still would not necessarily be classified probably as an agricultural use in that sense. So we fall under agricultural at the two and a half acres in the Ag zoning district. It is the only classification within the city code and the zoning code that will allow you to have the grazing of those types of animals, farm animals.

There are, again, I think as we've discussed this evening, the pastoral land requirements for those types of farm animals are likely regulated at the state level as to what is acceptable or not. And again, we don't necessarily get into that. I know we've come across issues where we have pet density requirements for kennels and things of that nature in other research that we have done, and instead of adopting standards within the city of Columbia that specifically specify those types of criteria, we have relied and cross-referenced the state statute in accordance to that. The health code may have particular standards that would require some type of compliance with the state statute or some type of verification of that, but I am unaware of that as well.

So at the point that we're at right now, two and a half acres is the minimum by which you can raise, care, or handle livestock and other farm-related animals. You're allowed to graze them in that zoning classification when you meet that minimum standard.

Associated with that and within the definition, embedded into the definition of agriculture are barns, silos, and everything that would go to a general agricultural use. So as Mr. Walther pointed out today, the standards that we're really referring to are not the definition of Ag, or the fact that the parcel doesn't meet it. It has everything to do with the use-specific standards that are within our zoning code, and that deals with the fact that you can't put an accessory structure, a barn, i.e., forward of a principal structure on a property.

So if you choose to grant that variance on 1514 Mills, you're in essence allowing the accessory structure forward. You're not violating any other code provision. If you deny, it the ability for the applicant to seek an alternative location on 1512, for example, which is where the pastureland would be, as long as

it is set behind the building, which would be south of the driveway that you see here, it would be considered allowed without variance and without any additional need other than a building permit to be able to construct the actual facility.

MS. HAMMEN: One more question. In the application, it says applicants intend to keep a horse. Is that -- so is that just a one-stall barn?

MR. WALTHER: One stall, one horse. And we're happy to consent to a restriction for one horse, even though it may be something you can't do, if we consent to it, I don't think there's a problem at all. I want to emphasize the practical difficulty of using the pasture to the east because of the security issue that we believe is important. Thank you.

MR. HURLEY: Mr. Zenner, at 1513 Mills, the structure to the east, the same is true if the applicant were to build in the southwest corner of the current structure at 1514. Is that accurate?

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

MR. HURLEY: Are we at board discussion at this point of the agenda?

TEMPORARY CHAIRMAN JOHN: Yeah.

MR. HURLEY: Okay. I'm inclined to support it based primarily the testimony of the neighbors. I believe the granting of the variance of putting the structure forward of the primary existing structure preserves what neighbors believe their neighborhood is or was regardless of the zoning. And perhaps that's not appropriate, but I believe that that is the best way to mitigate this issue.

I find it unlikely that the applicant would build on the adjacent property they own to the east, and most likely without a variance being approved, they would build to the southwest of the current location, thus not requiring any variance, which is fine, but upsetting neighbors as well. And I think it's important to maintain the integrity of the neighborhood within that area, based on the testimony this evening.

TEMPORARY CHAIRMAN JOHN: Do you want to make a motion to that effect?

MR. HURLEY: Unless there's other comment.

MR. GIRARD: Well, my comment is that the hardship -- the hardship standard is not a want. It has to be based on the land itself, so I just wanted to say that.

TEMPORARY CHAIRMAN JOHN: Okay. Other discussion, comments?

MR. HURLEY: In answer to Mr. Girard, perhaps viewing this from a different lens, in that the applicant is applying on behalf of the entire neighborhood might be an appropriate way to view that as well. The hardship may not be theirs, and the variance that they are asking for, they are doing so in an effort to appease neighbors. I see it from both sides and I'm not trying to argue for one of the other.

MR. GIRARD: I respect it.

MR. HURLEY: I just think it's worth mentioning that point.

TEMPORARY CHAIRMAN JOHN: Any additional comments?

MR. HURLEY: I will make a motion to grant a variance for the construction of a 28x36 horse barn accessory structure for the principal dwelling located at 1514 Mills Drive.

TEMPORARY CHAIRMAN JOHN: Is there a second?

MR. WATERS: Second.

TEMPORARY CHAIRMAN JOHN: Mr. Zenner?

MR. ZENNER: Ms. John?

TEMPORARY CHAIRMAN JOHN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

TEMPORARY CHAIRMAN JOHN: Mr. Hurley?

MR. HURLEY: Yes.

TEMPORARY CHAIRMAN JOHN: Mr. Girard?

MR. GIRARD: No.

TEMPORARY CHAIRMAN JOHN: Ms. Hammen?

MS. HAMMEN: No.

MR. ZENNER: Motion is denied, vote of 3-2.

V.) PUBLIC COMMENTS

TEMPORARY CHAIRMAN JOHN: We have a space for public comments next. Are there any? Staff comments? Board comments?

MR. YOUNG: I'd like to ask a question or comment.

MR. CALDERA: We usually preserve this space for comment, and it absolutely is time for comment, refer to public comments.

MR. YOUNG: It's a comment on that type thing.

MR. CALDERA: It can basically be, unless you want to condition it on time or anything like that, it can be on essentially what they want.

TEMPORARY CHAIRMAN JOHN: I'm sorry, what?

MR. CALDERA: So if you want to say you've got a minute to talk about whatever you want to talk about, you can do that. And I would recommend that we establish those parameters now before they start speaking.

TEMPORARY CHAIRMAN JOHN: All right.

MR. CALDERA: How much time would you like to give them?

TEMPORARY CHAIRMAN JOHN: A minute, two minutes?

MR. CALDERA: All right. Let's go two minutes, public comment, whatever you'd like.

MR. YOUNG: I'm Darren Young, I'm at 1710 Marylee Court. Just to -- a simple question to clarify our last motion there. If the party resubmitted their request as a request to appease the neighborhood, the -- we have a neighborhood association, and I would think that that may be within the variance requirements, as opposed to it's not a hardship for them, but I -- it just looked to me like they could resubmit that to try to appease the neighbors and it might meet the requirements by the conditions that you had touched on. I just wanted to know if I could get an answer to that, if that's possible.

MR. CALDERA: That is something that after this, you may contact the city staff and they may address that with you, but for purposes right now, we're just sticking to comments towards the Board. Thank you.

MR. YOUNG: Thank you.

MS. McNEIL: Julie McNeil, 1608 Marylee Court. I'd just like to say that it sounds like it is a hardship to them to build on the west side because of the drainage and the lay of the land, so I think one of the criteria was did they request a waiver also because of hardship, and I think that building it on that side is somewhat of a hardship for them because of the lay of the land and the drainage, so that's something to consider if that's one of the criteria.

TEMPORARY CHAIRMAN JOHN: Thank you.

MS. TRENDLE: I'm Carol Trendle, and according to staff, I guess one of my other concerns is with the barn, if the barn's so close to our homes, who's to say the next person can't raise 30 hogs, or -- I mean, there's no restriction, seriously. I mean, if they can have all the livestock that they want according to what the state regulations are, and that's one of my concerns also is trying to get the barn on the other side.

MR. T. MILLS: Tanner Mills.

MR. CALDERA: Just state your address and then you can go ahead and talk to us.

MR. T. MILLS: 600 Arbor Drive. I'm wondering if this became more of an issue of a structure in front of the primary building or if it became a question of a horse barn versus a garage. I think a lot of the arguments against were due to the fact that it was called a horse barn, but if it was a three-car garage, would that have made a difference?

MS. TRENDLE: That wouldn't have made a difference.

MR. T. MILLS: We were asking about a building in front of the house, and it turned into a horse barn. You can answer that.

MR. CALDERA: Ma'am, did you have comments as well?

MS. MILLS: I do. I came in wanting one horse.

MR. CALDERA: I'm sorry to interrupt, but --

MS. MILLS: Tina Mills, 1514 Mills Drive. I came in wanting one horse for our agricultural land that has been there for forever. One small barn, we wanted to the west of the house because to the east of the house there is so much drainage from all of the properties coming around, you can't put a horse barn in there. I mean, excuse me, yes, my right hand, my left hand. We can't put a barn on the west side. You just can't do it.

And because of our neighbors, we took into all of that consideration. We wanted the barn at the turnaround because of safety. Safety for the horse. I would be going -- this is -- this would have been my horse. I would have been going to that barn multiple, multiple times a day, checking on the horse. The dogs, I have a couple dogs, they would be watching after the horse.

Mr. Zenner said -- made comment about people not being able to -- I do believe it was -- not getting to the horse up in the pasture to the east side. What?

MR. CALDERA: I was simply saying one more minute.

MS. MILLS: Oh, okay. People can get anywhere they want to. Be it a fence, whatever. I can't see the horse at nighttime. I can see the horse all during the day. You guys know, people can do anything they want to during the night times. You can only do so much and our dogs can only protect so much also.

I don't know what I can do now. We did not want to hardship anybody, but for us, it would be a very big hardship to put the barn on the east side -- I mean west side. Yes. Thank you again.

MS. CAREY: I think we came to agree with that.

MS. MILLS: But I just can't understand why I couldn't have gotten a variance for the barn on the east side of the house. I couldn't --

MR. CALDERA: Thank you.

MS. MILLS: Thank you.

MR. CALDERA: Thank you.

VI.) STAFF COMMENTS

(No comments were made.)

VII.) BOARD COMMENTS

(No comments were made.)

VIII.) NEXT MEETING DATE – January 9, 2018

MR. CALDERA: Chairman John?

TEMPORARY CHAIRMAN JOHN: Okay. Next meeting is January 9th.

IX.) ADJOURNMENT

TEMPORARY CHAIRMAN JOHN: We're adjourned.

(Off the record at 9:33 p.m.)