

MINUTES
BOARD OF ADJUSTMENT MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO

July 10, 2018

BOARD MEMBERS PRESENT

Mr. Philip Clithero
Ms. Janet Hammen
Mr. Paul Girouard
Ms. Martha John
Mr. Peter Norgard

STAFF PRESENT

Ms. Rachel Bacon
Mr. Jack McManus

I. CALL TO ORDER

MR. CLITHERO: Call the July 10, 2018 Board of Adjustment meeting -- will come to order. Will the liaison please call the roll?

II. INTRODUCTIONS

MS. BACON: Yes. Mr. Norgard?

MR. NORGARD: Here.

MS. BACON: Ms. Hammen?

MS. HAMMEN: Here.

MS. BACON: Mr. Clithero?

MR. CLITHERO: Here.

MS. BACON: Ms. John?

MS. JOHN: Here.

MS. BACON: Mr. Girouard?

MR. GIROUARD: Here.

MS. BACON: You have a quorum.

MR. CLITHERO: Thank you.

III. APPROVAL OF AGENDA

MR. CLITHERO: The minutes from -- oh, first we need to approve the agenda. Need a motion and a second.

MS. JOHN: Move to approve.

MR. GIROUARD: Second.

MR. CLITHERO: There has been a motion to approve and a second of the agenda. All those in favor, say aye. Opposed, say nay.

(Unanimous voice vote for approval.)

IV. APPROVAL OF MINUTES

MR. CLITHERO: The March 13, 2018 minutes were distributed to the members of the Board. Are there any corrections or additions to the minutes?

MS. JOHN: I have a couple of small things.

MR. CLITHERO: Okay.

MS. JOHN: First, in the roll call, the transcript has Ms. Hammen responding here for both herself and Mr. Hurley, which I don't really think is what happened.

MS. HAMMEN: Oh, yeah. Thanks.

MS. JOHN: Yeah. I think it should say Mr. Hurley responded for himself. And the second one is on page 10. There is a question asked by a board member who is identified as Mr. John, but I think that meant -- must have been Mr. Clark. His first name is John. Those are the only things I caught, but I was skimming it fairly fast.

MR. CLITHERO: Any other? Okay. Could I have a motion?

MS. JOHN: I move to make those corrections.

MS. HAMMEN: I second that.

MR. CLITHERO: A motion has been made and a second to approve the minutes with the noted exceptions. All those in favor, say aye. Those opposed, say nay.

(Unanimous voice vote for approval.)

MR. CLITHERO: Court reporter, please swear in the staff.

(Staff was sworn.)

MR. CLITHERO: Okay. So we have one case tonight, number 1961. And we have a request to table the item to the August 14, 2018 meeting.

MS. BACON: Mr. Clithero, if I may? On your agenda under option V, election of officers does come before Case 1961.

MR. CLITHERO: What?

MS. BACON: On the -- on the agenda --

MR. CLITHERO: Oh.

MS. BACON: -- item V is election of officers.

MR. CLITHERO: Oh, yeah.

MS. JOHN: Let's do that.

MR. CLITHERO: Okay. Sorry. We'll do that first.

MS. JOHN: Oh, no.

V. SPECIAL ITEMS

A. Election of Officers (i.e. Chairman & Vice Chairman)

MR. CLITHERO: So, any thoughts?

MS. JOHN: What, we need a Chair and a Vice Chair?

MS. BACON: Correct.

MR. CLITHERO: Is that correct? Okay.

MS. JOHN: That's what it says here.

MR. CLITHERO: Okay. Oh, yeah. I'll make a motion we elect Andy Waters Chairman --
Chairperson -- why does that say Chairman?

MS. JOHN: It sounds good to me.

MR. CLITHERO: Would that be a second?

MS. JOHN: That's a second.

MR. CLITHERO: A motion has been made and seconded to elect Andy Waters Chairperson. All
those in favor, say aye.

(Three voice votes for approval)

MR. CLITHERO: All those opposed, say nay.

(Two voice votes opposed)

MR. CLITHERO: Okay. Well, that didn't work.

MS. BACON: Do we have an absentee vote? We could do a roll call as well.

MR. CLITHERO: Okay.

MS. BACON: Mr. Norgard?

MR. NORGARD: May I hear what I'm being asked to do?

MS. BACON: So was that two for or -- I didn't hear exactly what the count was.

MS. JOHN: We can't -- we aren't sure either.

MS. BACON: Okay. So I'm going to do a roll call on your motion and you can say aye or nay.
Does that sound okay?

MR. NORGARD: Correct.

MS. BACON: Okay. Mr. Norgard?

MR. NORGARD: Nay.

MS. BACON: Ms. Hammen?

MS. HAMMEN: Nay.

MS. BACON: Mr. Clithero?

MR. CLITHERO: Aye.

MS. BACON: Ms. John?

MS. JOHN: Aye.

MS. BACON: Mr. Girouard?

MR. GIROUARD: Aye.

MS. BACON: So that would be a motion that was successful.

MS. HAMMEN: So on this it -- you only need a majority? On this type --

MS. BACON: You only need a majority vote. Correct. You do not need a super majority.

MR. CLITHERO: Okay.

MS. BACON: So the next item would be election of a Vice Chairman.

MR. CLITHERO: Okay.

MS. JOHN: I think we should reelect you as Vice Chair, Phil. Is there anybody else who wants to volunteer?

MS. HAMMEN: I'll second that motion.

MS. JOHN: Okay.

MR. CLITHERO: Okay. So a motion has been made and seconded to elect Mr. Clithero as Vice Chairperson. All those in favor, say aye. All those opposed, say nay.

(Unanimous voice vote for approval.)

MR. CLITHERO: Okay. We're good?

MS. BACON: The motion will pass.

MR. CLITHERO: Okay. Now on to the public hearing.

VI. PUBLIC HEARINGS

Case # 1961

A request by Caleb Colbert (attorney), on behalf of Bobbie Jo Brown and Patrick Enterprises, LLC (owners), to grant a variance to permit 5 parking spaces to be located within the required front yard setback and permit more than 30% of the required front yard to be paved on property addressed as 402 and 404 McBaine Avenue which is not permitted per Sections 29-4.3(a)(3)(ii) and 29-4.3(f)(1)(v) of the Unified Development Code. (A request to table this item to the August 14, 2018 meeting has been received)

MR. CLITHERO: Do I hear any discussion on that request?

MS. HAMMEN: Yes. I move we do not table this motion. We did not get -- (inaudible).

THE COURT REPORTER: I can't hear her.

MS. HAMMEN: I move we do not table the motion.

MR. NORGARD: Second.

MR. CLITHERO: A motion has been made and seconded to not table -- no, wait a minute. I believe that we are supposed to make the motion in the affirmative; is that correct?

MS. BACON: It's much more --

MR. CLITHERO: Since we don't --

MS. BACON: -- ideal that way. Yes.

MR. CLITHERO: Since we don't --

MS. BACON: And also, if you could --

MR. CLITHERO: -- have an attorney here tonight.

MS. BACON: You could also reference the case number. That would also be helpful in the motion.

MR. CLITHERO: Sorry?

MS. JOHN: Reference the case number.

MS. BACON: To reference the case number in the motion.

MS. JOHN: It's a little hard to see how to make it in the affirmative though.

MR. MCMANUS: Perhaps what you would want to do is move to hold the hearing as scheduled.

MS. JOHN: Thank you. That's what I was trying to figure out.

MS. HAMMEN: I move to hold the hearing for case number 1961 as scheduled.

MR. NORGARD: Second.

MR. CLITHERO: Okay. A motion has been made and seconded to hold the public hearing as scheduled. Do I hear any discussion?

MS. HAMMEN: I didn't feel we had adequate information as to why it was being tabled or we did not have any information on the case, which I've never seen before. And I really questioned why that was presented that way, but I didn't think we had adequate information as to why it was tabled -- being asked to table.

MS. JOHN: They don't give generally give us much information about why they're tabling, but it may have been because they wanted to get more information together.

MS. HAMMEN: Well --

MS. JOHN: I'm just guessing, of course, but --

MS. HAMMEN: Yeah. I guess that could be. Usually, we have the application letter, the site plan. We have --

MS. JOHN: Yeah. We --

MS. HAMMEN: -- everything --

MS. JOHN: -- have -- we have a bunch of stuff.

MS. HAMMEN: -- in front of us.

MS. JOHN: Right.

MS. HAMMEN: And --

MS. JOHN: And since they didn't get that together in time, maybe they requested to table so they could do that. I don't know. I'm guessing.

MR. CLITHERO: I guess that would be a good reason to table it since we --

MS. HAMMEN: Except they do have it because I requested of the -- of staff to be given that information when I saw that we were not given it. And I was given information on the -- on the application.

MR. CLITHERO: I would feel very uncomfortable in having this public hearing tonight, personally.

MS. BACON: The applicant is available this evening, if you would like to call him up to answer any questions you have.

MR. CLITHERO: Yes. Come ahead.

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

MS. HAMMEN: We do that before we act on the motion?

MS. JOHN: We're --

MR. CLITHERO: Yes.

MS. JOHN: We're asking --

MS. BACON: You can.

MS. JOHN: -- him questions --

MS. BACON: Yes.

MS. HAMMEN: All right.

MS. JOHN: -- about this.

MS. BACON: Yeah.

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

(Witness was sworn.)

MR. COLBERT: Again, I am the attorney for the applicant in this case. It was my understanding that Mr. Zenner and Mr. Caldera prepared the staff report, but they weren't able to be here this evening, so in my mind it made sense to table this to when they were able to attend the hearing and talk about it. My understanding is the staff report was not published in -- with the agenda, so I don't have that information available.

Obviously, my client is not here to speak on her behalf this evening, and she would plan to attend to explain the history of the -- her project and why she is asking for the variance. So respectfully, without any member of the public being here to oppose this, we would ask that this be tabled to the August meeting. But I would be happy to answer any questions. Thank you.

MR. CLITHERO: Any more --

MS. HAMMEN: Can I -- I would like to ask staff -- so have cases been presented before when Mr. Zenner is not in attendance and have there been substitute attorneys that have attended in the past?

MS. BACON: Yes, to my knowledge. So on Thursday we had Planning and Zoning Commission, and I was in attendance for that.

MS. HAMMEN: Is there a reason why this is a special case because Mr. Zenner is not in attendance and we don't have a substitute attorney, which we've had in the past? Why --

MR. MCMANUS: You actually do have -- I'm sorry, you do have --

MS. HAMMEN: Oh, you are?

MR. MCMANUS: -- a substitute attorney.

MS. HAMMEN: Oh, I'm sorry. I -- you --

MR. MCMANUS: My name is Jack McManus. I'm with the City attorney office.

MS. HAMMEN: Oh, you weren't sworn in.

MR. MCMANUS: Sorry I didn't -- I should have introduced myself.

MS. HAMMEN: And you -- yeah, and be sworn in. Yes.

MR. CLITHERO: We don't usually swear in the attorney.

MS. HAMMEN: Oh, we don't? Okay.

MR. CLITHERO: We trust them for some reason. I don't know why.

MS. BACON: It has been past practice to extend the courtesy of a tabling to applicants by request. We don't require them to give us a reason; they often do, but it is the purview of the Board either way to either grant a tabling or not. We do ask that it be to a date certain. In this case it has been to a

date certain; it is going to be the August 14th meeting.

And the reason for that is because we send public notification via letter and via newspaper advertising -- advertising the hearing. And that was done for tonight's meeting, so that is the reason for the date certain on the tabling request.

MR. NORGDARD: And will they be required to -- or will you be required to resubmit that date to the public?

MS. BACON: So the way that it works because it is a date certain, we advertise it via this meeting, and so then also on the agenda as it goes out, it will be advertised in that way.

MS. HAMMEN: I just find it highly irregular that we were not given any information except tabling, and I find that disturbing, and that the reason for tabling is because Mr. Zenner is not here.

MS. JOHN: Because he, as I understood him to say, that he and one other person who is also not here were the people who prepared the report, and he wanted somebody who prepared the report to be here to answer questions about it. That's what I understood Mr. Colbert to say.

MS. HAMMEN: And it does seem that other times there have been substitute people, whether it is Mr. Teddy --

MR. CLITHERO: Well, there's not tonight.

MS. HAMMEN: I just -- okay. And that was my concern about this that this seems highly irregular.

MS. JOHN: And very regular to me. I'm sorry.

MR. CLITHERO: In my, whatever, 15 years of being here, it's not irregular at all. It is just not -- it's not irregular. Nobody is trying to -- I mean, we're still going to have the public hearing next month. Nobody is trying to fool you in any way.

MS. HAMMEN: I'm not saying they are.

MR. CLITHERO: Well --

MS. HAMMEN: I -- don't put words --

MR. CLITHERO: -- it certainly sounds like you are.

MS. HAMMEN: -- in my mouth.

MS. JOHN: Right.

MR. CLITHERO: And so --

MR. NORGDARD: May I ask --

MR. CLITHERO: -- is it three to two or four to one on this?

MR. NORGDARD: May I ask what the repercussion of tabling this or not tabling this issue is? If we were to vote to not table it and to proceed, would we be making decisions with no information I guess is the question?

MS. JOHN: I --

MR. GIROUARD: I don't think we can make a decision in that case because there is no formal plan submitted to us for us to look at, so --

MS. HAMMEN: May I ask Mr. Colbert a question? You came here tonight --

MR. COLBERT: Yes, ma'am.

MS. HAMMEN: -- anticipating it would be tabled, but understanding it might not be; is that correct?

MR. COLBERT: That's correct. But, historically, the request for tabling, that courtesy has been extended on the first request, and this is our first request. I attended out of respect, to be honest, that I felt like I should be here at least to hear the request for tabling and answer questions.

I agree with the comments that we don't have any plans or exhibits, and since this is a Quasi-judicial hearing, we don't have that information available with us this evening.

MS. HAMMEN: Don't you wish you had brought it now?

MR. COLBERT: Well, absolutely. Of course. And I'll certainly be more detailed in any future requests to table. But again, we are asking for the courtesy of tabling to a date certain in August. I'd be happy to answer any other questions. Thank you.

MR. MCMANUS: Let me add a little bit. The Board certainly does have discretion in terms of how it addresses a situation like this. On the other hand, if it puts the applicant in a position where they are unprepared to go forward on something that would be customarily granted, particularly since it is the first request, there would be a question of whether or not this is an abuse of discretion not to grant somebody the opportunity to return at a later date. Where there's no prejudice to the City, that doesn't really harm anything.

I can understand there may be some frustration to come in here expecting to hear a case for the Board to make a decision on. Perhaps if we did not have that, we might have postponed the entire meeting. There were some other things to deal with -- this election of the officers, but it -- it would put -- how it would be handled by the applicant, I can't tell you whether they would simply withdraw the application and refile or -- I'm not familiar with what that -- how that -- I don't deal enough with this Board to know what the process would be on that, but I do have a concern that if you were to vote in favor of going forward with the hearing as has been moved, and in the end failed to give the variance, that the record might be one that would be subject to challenge if it went up on appeal.

So you might keep that in mind as you think about whether or not to go forward with the hearing at this time. Many different things might happen, but -- and I can't predict with certainty what would happen if there were an appeal, but that would be a concern.

MS. HAMMEN: And I guess -- seems to me that staff failed to give us the information that we could look at even and, you know, maybe the information would have been so whatever, that we would have wanted to not table it and move forward. But we weren't given that, and I -- I think that's where --

MS. BACON: May I speak to that for a moment?

MS. HAMMEN: Yes. Thank you.

MS. BACON: So the -- the materials I provided you, the application and the demonstrative, were on the City website as soon as the application was filed. So that is standard practice on the dashboard feature that the City does offer. So that's available to the public once an application has been formally filed. In terms of the staff report, once a request for the first time to table has been received, there's an

understanding that things may change in the interim period.

So a republishing of the staff report to be up-to-date with all of the most current information is common because typically the reason that is given to us, if there is one -- and we don't require one for the request for tabling is more information or a chance to alter the plan in some way that is meaningful. And as Mr. McManus mentioned, it is typically a courtesy that has historically been through the process extended to applicants.

So I've worked with the city off and on for ten years, and I have not been in a situation where a tabling has not been granted, at least on the first time. Now, you do certainly, as Mr. McManus said, have the purview to request to have the hearing as advertised this evening. That would then under the bylaws of the Board give the applicant an opportunity either to present their case or to withdraw their case and then resubmit at a later time. So that's the procedural aspect that goes into all of these considerations.

MS. JOHN: Do we need to vote on the motion? Are we ready to do that?

MR. GIROUARD: I'd say yes.

MR. CLITHERO: Okay. Should we do a roll call vote?

MS. BACON: I think that a roll call would be very appropriate.

MR. CLITHERO: And is this a four to one or three to two?

MS. BACON: This would be a majority vote, so three to two.

MR. CLITHERO: Okay. All right. Would you please call the roll?

MS. BACON: I will. Okay. Mr. Norgard?

MR. NORGARD: I vote --

MS. BACON: So the motion --

MR. CLITHERO: Give us the motion.

MS. BACON: -- was to hold the public hearing as -- as advertised. So an aye vote would be to hold the public hearing.

MR. NORGARD: Nay.

MS. BACON: Ms. Hammen?

MS. HAMMEN: Nay.

MS. BACON: Mr. Clithero?

MR. CLITHERO: No.

MS. BACON: Ms. John?

MS. JOHN: No.

MS. BACON: Mr. Girouard?

MR. GIROUARD: Nay.

MR. CLITHERO: All right. Your request has been granted. All right. Any other business before the Board?

MS. JOHN: So we have -- so we have gone ahead and tabled the --

MR. CLITHERO: Correct.

MS. JOHN: -- issue? Okay. Good.

MR. CLITHERO: Anything else?

MS. JOHN: Public comments?

VII. PUBLIC COMMENTS

MS. JOHN: There is no public to comment.

MR. CLITHERO: Okay.

MS. JOHN: How about staff comments?

VIII. STAFF COMMENTS

(There were no staff comments.)

IX. ADJOURNMENT

MR. CLITHERO: Well, I say we adjourn the meeting.

MS. JOHN: That sounds like a good idea.

(Off the record.)

(The meeting adjourned at 7:20 p.m.)