
**Board of Adjustment
May 11, 2021
Staff Report**

Application Summary –

An appeal of Caleb Colbert (attorney) on behalf of Missouri Farm House Association, Inc. (owners) from the denial of the Community Development Department to permit issuance of a building permit for a new fraternity house that exceeds permissible building area into the required front yard, proposes building encroachments into required front and rear yards, proposes parking and/or paved areas within the required front, side, and rear yards, seeks a reduction in required off-street parking, and proposes placement of a building greater than 30-feet in height closer to an adjoining property line than permitted on property addressed 600 Rollins Street and 802 Richmond Avenue which are not permitted by Sections 29-4.1, 29-4.3, and 29-4.7 of the Unified Development Code. **(This item was tabled at the April 13, 2021 Board of Adjustment meeting).**

Note: this report has been updated and annotated from the report attached to the April 13, 2021 BOA Agenda for this case. This case was requested to be tabled to the May 11 BOA meeting to allow for design revisions. This updated report reflects the revised design materials which were submitted, as revised Exhibits B and C, and new Exhibits F and G, to the Variance Application, which are attached.

Site Characteristics

The subject site is located at the southeast corner of Rollins Street and Richmond Avenue and contains parcels commonly addressed as 600 Rollins Street and 802 Richmond Avenue. It is located within the area adjacent to the University of Missouri Campus commonly known as “Greek Town”. The property is zoned R-MF (multiple family dwelling district). The 0.44-acre property presently includes Lot 36, Lot 40, and parts of Lot 37 and 41 of *La Grange Place*. A one-lot consolidation plat to be known as “La Grange Place Plat 5” is presently under review by the City to facilitate the desired redevelopment of the site.

Presently the site is improved with a fraternity house on the northern parcel and a parking lot on the southern parcel. The intent is to demolish the existing structure and redevelop the site with a larger fraternity house. While the existing fraternity is oriented toward Rollins Street, the design of the proposed new house is oriented to the Richmond Avenue frontage of the property. The site plan submitted by the applicant for the proposed new structure reflects the dimensional composition of the lot following the consolidation platting action. The plat includes the required dedication of 13’ of additional right-of-way (ROW) on Rollins Street, 2.5’ of additional ROW on Richmond Avenue, a 10’ utility easement adjacent each to street frontage, and a 30’ corner truncation at the southeast corner of the Rollins/Richmond intersection. The proposed plat is compliant with all subdivision requirements of the UDC; the applicant is not requesting any adjustments or relief from any *platting* requirement; the variances requested herein are related to *zoning-related* aspects associated with the site’s redevelopment only.

Relief Sought and Purpose

The applicant is seeking approval of multiple variances to permit the structure as depicted in **revised** Exhibit B (Site Plan) and **revise** Exhibit C (Elevations):

1. A variance to permit encroachment of the front porch into the required 25-foot front yard setback required for the R-MF district. The proposed structure, including the front porch on the Richmond

frontage, exceeds the permissible dimensional (6-feet into) and area (60 square feet total) encroachments allowed by Table 4.1-5 of the UDC.

2. A. variance to permit building encroachments into the required front and rear yards as required by Sections 29-4.1(a), and Table 4.1-1. In addition to the porch encroachment as described in (1) above, the proposed structure (including the patio dining structure in the rear) encroaches into the required 25-foot front and rear setbacks of the site (the depth and square footage of the encroachments varies, see site plan for details of each elements' encroachment).
3. A variance to permit the parking and/or paved areas within the required front, side, and rear yards. Specifically, the proposed parking layout is in violation of the provisions of Sections 29-4.3(f)(3)(i), 29-4.3(g)(3)(v)(C), and Table 4.1-5, which generally indicate "no vehicle shall be parked in a required front or side yard except on a permitted driveway..." and "parking spaces for all other uses (beyond one and two family) shall not be located in the required front or side yard side". The nine (9) parking stalls on the site plan are shown encroaching into the required southerly side yard and two (2) of these stalls are also shown as encroaching into the required front yard along the Richmond frontage.
4. A variance from Section 29-4.3 and Table 4.3-1 to permit a reduction in the required off-street parking spaces provided to nine spaces. This is short by 18 required parking stalls (27 would be required to facilitate the desired bed count of 61 after taking into account all permitted parking reduction factors).
5. A variance to permit paving in the required rear yard to exceed the greater of 500 square feet or 30% of the required rear yard area, as shown on the proposed site plat, per Section 29-4.3(f)(1)(v).
6. A variance to permit perpendicular parking-- the proposed parking layout is in violation of Section 29-4.3 (f)(3)(iii) which states that parking of vehicles in a direction perpendicular to the driveway is prohibited, except in the rear yard. As depicted on the site plan, the parking of vehicles will be perpendicular to the driveway in both the front and side yards.
7. A variance from Section 29-4.7(c) to allow the proposed structure to be constructed within 24' of the rear property line as shown on the proposed site plan without stepping down the building or providing additional rear yard setback as is required by the neighborhood protection standards for residential zones.

Variance Analysis –

Summary and Impacts –

The applicant is seeking a variance from the following regulatory requirements of the Unified Development Code:

Dimensional Standards - Section 29-4.1(a), Table 4.1-1 and Section 29-4.1(c), Table 4.1-5

1. Covered front porch encroachment. According to the applicant's correspondence, the proposed covered front porch of the building on the Richmond Avenue frontage exceeds the permitted six (6) foot encroachment into the required 25-foot setback, and is larger than the 60 square feet permitted by the code. The applicant indicates the building design proposes to have an open-air, wraparound porch along the Richmond and Rollins frontages of the building's elevations. The Rollins Street porch is believed to be compliant with the required side-yard setback and is not the subject of any variance requests. The applicant cites the narrow depth of the lot (80' at its narrowest) as a challenging factor to design a setback-compliant building, and they believe a porch limited to 60 square feet would be inconsistent and out of character with the architectural style of the proposed

structure and other Greek houses. They also cite design choices they believe help to integrate the porch structure into the site visually.

2. Front and rear property line encroachment. Given the property is an L-shape largely resulting from the piecemeal historical pattern of lot (re)arrangement common to Greek Town, the rear of the lot is not uniform. The lot is approximately 80' in depth for roughly the northern half extending from the Rollins Street side and then widens out to approximately 117.5' for the southern half of the lot.

As cited in the application, in reviewing design alternatives with City staff, the applicant had desired the Rollins Street frontage to be considered the front for the purposes of setbacks as it would provide a larger building envelope. However, after review of the proposed design and the provisions of the UDC, the building's orientation to the Richmond Avenue frontage necessitates calculation of required setbacks from Richmond Avenue. Together, the impact of meeting the required front and rear yard setbacks is a building envelope between 30' and 64.5' in depth. The depth and dimensions of the encroachments into the required front and rear yards varies based upon building features and the variation in lot depth. The site plan depicts the desired amount of encroachment for each unique building element.

Specifically, in terms of the front setback (blue shading on the **revised** Site Plan, Exhibit B), in addition to the covered front porch running most of the span of the building, the building itself is proposed to encroach into the required 25' front setback by approximately 10'. In terms of the rear setback (green shading on the **revised** Site Plan, Exhibit B), the rear setback encroachment including parts of the patio dining structure and the main structure encroach by roughly 14.2' and 15' in various areas.

The rear property line is shared with the Kappa Delta building and a parking area. This leaves a roughly 10' setback from the rear property line. The applicant has indicated they have worked with the adjacent property owners on the proposed design and they believe the neighbors are in support of the building as shown. A letter of support for the new construction from Gamma Phi Beta Sorority, immediately abutting to the south, is attached as well as several other letter from Greek organizations/surrounding houses. A letter of support from the Kappa Delta House, immediate to the east, was not received at the time of staff report production. Correspondence from the applicant indicates revisions have been made to the design to remove the elevated deck and stairs at the rear property line in response to the Kappa Delta House's request. This design revision is shown in the **revised** Exhibits B and C (site plan and elevations) included as attachments to this report.

While the age of Greek Town has impacted its development pattern and lot arrangements, minimum dimensional standards for development lots have existed within the City's zoning (now Unified Development) code since 1935. Dimensional requirements (i.e. front, rear, and side yard setbacks) define the building envelope into which proposed new construction must be contained. Setbacks establish minimum separation standards between structures on adjoining lots such that they do not adversely impact one another and assist in ensuring adequate areas exist for natural light and ventilation. Additionally, setbacks assist in reducing other threats to development such as the spread of fire by creating open spaces between structures.

Setbacks are applicable in all zoning districts throughout the City. Setbacks are most significant when residential zoning abuts commercial, industrial, or office zoning. Under certain conditions setbacks may not apply between structures that share a common lot line. However, in the residential zoning districts standard setbacks apply between similarly zoned parcels regardless if the structure type is the same.

If the two variances described above are granted, the applicant would be afforded the opportunity to build a fraternity house which has a covered front porch larger than that which is otherwise

permitted, in addition to the allowance of portions of the building and building elements to encroach into the required front and rear setbacks as shown on the site plan. In review of Board records and other such similarly situated properties in the Greek Town area, substandard setbacks are not uncommon whether existing prior to dimensional standards or via the result of a successful variance. However, each request is evaluated based upon the unique facts of the case.

In this instance, staff does not disagree with the applicant that the L-shape of the property and the resultant areas which are shallow may present challenges in the form of a reduced building envelope. Additionally, staff does not disagree that the proposed larger and wraparound style-porches are not out of keeping with other Panhellenic structures, and may be aesthetically superior to a smaller porch on a large building. However, staff also notes that this is a newly designed building, so the argument that the lack of regulatory compliance is not due to a self-created hardship is difficult to overlook.

There is opportunity to redesign the proposed structure such that it has a smaller footprint (though likely undesirable by the applicant) such that it would be possibly for it to comply with the code-permitted building footprint for the R-MF zone. Additionally, while part of the encroachment is adjacent to property used as a parking lot that may not benefit as much from a full 25-foot rear yard setback, it is possible in the future it could be redevelop to a residential use which would benefit from a fully-compliant setback.

***Note:** Since the publication of the April 13 meeting agenda, which included reference materials for this request, the applicant has submitted a design sheet to show the elevation and 3D view of a building they believe would meet the full 25' front and rear setbacks. This demonstrative is included with the revised application materials as "Exhibit F" to Variance Application. However, it should be noted this proposed design would still require variances to the parking and parking placement, neighborhood protection stepdown standards, as well as height as the structure shown is approximately 85'10" tall. This structure would far exceed the height of any surrounding structures or structures on campus with the exception of perhaps Jesse Hall. Staff believes the applicant has provided this documentation to support their argument the small nature of the site makes it difficult to design a structure which meets their needs and also meets the setback requirements of the zone.*

Parking and Loading Standards – Section 29-4.3

3. The site plan shows parking and/or paved areas within the required front, side, and rear yards. Specifically, Sections 29-4.3(f)(3)(i), 29-4.3(g)(3)(v)(C), and Table 4.1-5 of the UDC which generally indicate "no vehicle shall be parked in a required front or side yard except on a permitted driveway..." and "parking spaces for all other uses (beyond one and two family) shall not be located in the required front or side yard side". The nine (9) parking stalls on the site plan are shown encroaching into the required southerly side yard and two (2) of these stalls are also shown as encroaching into the required front yard along the Richmond frontage.
4. On the site plan and in their application, the applicant indicates a desire for a 61-bed home. As such, 27 parking spaces are required per the code considering the number of desired occupants after applying the permissible parking space reduction for bike spaces as defined Section 29-4.3(k)(1)(ii). As the site plan shows only nine (9) parking stalls being provided on site, the site is short by 18 required parking stalls per 29-4.3, Table 4.3-1. The applicant has indicated that an additional 18 spaces have been secured off-site, in the private parking lot at 602 Turner Avenue, which is approximately 300' from the site. Staff has not reviewed any formal agreements for this arrangement. The applicant also indicates the property is one block away from a University parking garage, and that parking is permitted along the Richmond Avenue frontage.

5. The code, per Section 29-4.3(f)(1)(v), does not permit paving in the required rear yard to exceed the greater of 500 square feet or 30% of the required rear yard area. In addition to the parking lot, there are paved features including a retaining wall, concrete dumpster pad, and patio area as shown on the site plan. Though the exact square footage of paved area is not denoted, the applicant has indicated they would like to exceed that which is allowed by the code per the features as allocated on the site plan. This is permissible, though staff notes that without exact numbers shown and requested in terms of square feet, the variance, if granted, will be directly tied to how the features are depicted on the site plan provided that is the basis by which the request is made to be conditioned.
6. The code only permits parking to be in a configuration perpendicular to the driveway in the rear yard. As such, the proposed parking layout with perpendicular parking in the front and side yards is in violation of Section 29-4.3 (f)(3)(iii).

The applicant has provided additional information in their request for the parking as proposed on the site in addition to that which is described above. They note that the existing parking on the site is not compliant with many of the parking requirements of the UDC, and they do not believe the proposed parking is any less compliant in terms of expansion or relocation than what is presently on-site. They state they are overall decreasing the size of the paved area used for parking and driveways.

In reviewing the proposed parking layout, staff does not disagree with the applicant that the footprint of parking and paved areas is generally no more intensive than what is on-site today, though staff notes that redevelopment brings with it the requirement to be fully compliant with all requirements of the UDC. Staff also notes that the L-shape and narrow depth of the lot may present some challenges in providing compliant parking as the areas where the code allots for more parking and perpendicular parking is the rear of a property, where this particular property has a smaller available area.

There are safety benefits to providing on-site parking for their residents and without the proposed variances it is likely that only a few parking spaces would be possible on the site if all parking components of the code were met given the proposed design of the building. However, staff notes that the building is a new design and that a different building design may permit a different scenario in terms of the number of spaces that could be provided on-site in accordance with the code. These same considerations apply in much the same way to the percentage of areas which are paved in the required rear yard.

The prohibition on perpendicular parking in the front and side yard is generally to prevent headlights from directly shining into the windows of adjacent properties. The property to the south has provided a letter of support for the proposed design, and as there are presently parking spots in generally this same orientation and location on the site today and they may be aware of the impact that such parking may have on their property in such a configuration. It should be noted that while the code prescribes a screening device of between four and six feet to screen rear yards used for open parking of automobiles in residential districts (Section 29-4.3(f)(3)(iv)), this does not apply to parking in the side yard.

If the Board desires to approve this and the other related parking variances, they may choose to grant or grant with the condition that a similar screening device that effectively screens the proposed parking in the side yard along the southern property line be installed. The site plan does denote the required landscape buffer between Richmond Avenue and the parking and the required screening for the rear yard parking on the eastern property line per Section 29-4.3(f)(3)(iv).

Staff also appreciates the applicant's desire to secure 18 additional parking spots within the generally desired distance of 1,000 feet away from a site; however, this provision does not mitigate the need to request a variance from the required on-site parking requirements. Additionally, the applicant is asked to provide information on the arrangement in terms of the timeframe and other use clauses of the agreement. Finally, while there is some on-street parking and University garages in the area, there is no guarantee they will be available to those living on this property as the University has its own scheme for assigning parking to garages and the on-street spots are available on a first-come basis in an area renowned for high parking demand.

Neighborhood Protection Standards – Section 29-4.7

7. The proposed structure is subject to the provision of Section 29-4.7(c) of the UDC. Footnote #3 of Table 4.1-1 of the UDC allows an increase in permissible building height up to a maximum of 45-feet in the R-MF district provided each side yard setback is increased to 15-feet. It would appear that placement of the building is further than 15 feet from either side yard and the maximum height of the building is under 45' on all sides. Using the definition of "height, building", as found in Section 29-1.11, the tallest elevations are on the west and south facades of the building at 44'10" in height per the submitted elevations.

Section 29-4.7(c) of the UDC further regulates the height of buildings in the R-MF district. This section requires a "step down" or "increased setback" for new structures, greater than 30-feet in height and not used for single or two-family purposes. Structures must be "stepped down" to a maximum of 24-feet in height when located within 25-feet of an adjoining property line or setback an additional 10-feet beyond the regular setbacks of the district to reduce their perceived height. This structure exceeds 30-feet in height without the required additional rear yard setback (which would be the standard 25' setback plus 10' for a total of 35'). As described above, the relative encroachments of various building element extend into the required rear-yard setback per the site plan.

However, there are some portions of the rear of the structure that appear to partially meet this standard, at least in terms of height though not setbacks (see the eastern façade elevation). The rear portion of the building that contains the patio dining area is under 24-feet in height where it is located within 25-feet of the rear yard setback; however, as described above the patio dining structure also encroaches into the 25' rear yard setback. It is shown as 10' from the rear property line (a proposed retaining wall is also shown; its height is not dimensioned on the site plan). It further appears that the remaining portion of the building to the north of the L-shape extension containing the dining structure is greater than 24-feet in height, but it is not setback the required additional 10-feet from the required 25-foot rear yard setback.

The applicant indicates that they attempted to meet the desired effect of the stepdown requirement at the "wide" portion of the lot, but that the "skinny" portion of the lot is not wide enough to meet the requirements given its narrow depth in that area.

If the variance here is granted, the applicant would be afforded the opportunity to build a building which does not meet either alternative provision permitted by the code to effectuate compliance with the neighborhood protection standards. Rather, the applicant is requesting a significantly reduced setback from the R-MF district's required standard 25-foot rear yard.

Once again, staff notes this is a newly designed building so the argument that the lack of regulatory compliance is not due to a self-created hardship is difficult to overlook. There is opportunity to redesign the proposed structure such that it has a smaller footprint and is shorter in height (though

likely undesirable by the applicant) such that it would be possibly for it to comply with the neighborhood protection standards.

Compliance with Variance Criteria -

Staff has reviewed the “General Criteria” for the approval of a variance as articulated in Section 29-6.4(d)(3)(i) of the UDC. In relation to these criteria, staff finds that:

1. The subject property is located within an area populated with similar Panhellenic properties on a variety of lot sizes. The 0.44-acre property is not out of scale with other fraternity house properties, though in the analysis it is noted that the odd rear shape/narrow depth of the property provides some challenges in that there is not a uniform rear lot line nor a large building envelope. The existing parking issues in the area do not provide many off-street or nearby alternative parking options. However, as the applicant plans to raze the site and build a newly designed building, this fact challenges assertions that difficulties or hardships are not of the applicant’s making, though at some point site viability is diminished if a building is designed with a smaller footprint with greater constraints.
2. Approval of the requested variances would not result in permitting the construction of a building not otherwise allowed in the R-MF (Multiple-family Dwelling) district or modify a standard contained with the definition of “Dormitory/Fraternity/Sorority”; however, would grant a privilege to this applicant not similarly granted to any other lot within Greek Town without similar variances being granted.
3. Approval of the requested variances would not result in permitting development inconsistent with the Comprehensive Plan. The subject site is located within a “Residential” district and the proposed use is consistent with that designation.
4. The proposed variances are the least change, aside from redesigning the proposed construction, to accommodate the desired fraternity house. A rezoning to a PD (Planned District) could be requested to reduce setbacks; however, given it is for a very narrow purpose may not garner staff or Planning Commission support.
5. Approval of the variances are unlikely to have a negative public safety impact. There are likely safety benefits to having as many residents of the house on-site versus off-site alternatives, especially given the challenging parking situation in the immediate area. Should the existing parking areas abutting this property redevelop in the future, the reduced rear yard and side yard setbacks may have negative consequences on the enjoyment of the neighboring properties in terms of separation and buffering.

Recommendation Action –

While staff can appreciate the issues created by the UDC as it relates to the redevelopment of subject property and understands that many of the variances requested are consistent with past actions associated with similarly used parcels, it does not find that compelling evidence has been presented illustrating that the variances are not due to self-created hardships. Staff believes an alternative design for the desired construction may potentially reduce the need for the requested variances, in part, but not fully.

Should the Board find that compelling evidence has been presented to justify the requests approval of the variances, as presented, may be considered.