city of Columbia

Sheela Amin <sheela.amin@como.gov>

[CityClerk]: University Avenue Fyfer Subdivision replat, Case No.: 187-2021 and 188-2021

1 message

Sharp, Paul R. <SharpP@missouri.edu> Mon, Jul 19, 2021 at 3:15 PM
To: "cityclerk@como.gov" <cityclerk@como.gov>

From: Sharp, Paul R.
Sent: Monday, July 19, 2021 3:09 PM
To: sheela.amin@como.gov <sheela.amin@como.gov>
Subject: University Avenue Fyfer Subdivision replat, Case No.: 187-2021 and 188-2021

Dear City Clerk Amin,

I would like to submit the following email and attachment to the City Council for their upcoming meeting. It concerns the University Avenue Fyfer Subdivision replat, Case No.: 187-2021 and 188-2021. I would be grateful if you would kindly forward these items for me.

Sincerely,

Paul Sharp
1814 Cliff Dr
Columbia, MO 65201

Dear Council Members,

First of all, I would like to thank you for your recent unanimous vote declining the replat request involving the combination of three adjoining lots on University Ave in the historic East Campus Neighborhood (ECN). The resulting combined lot would have allowed the construction of a large building totally out of character and capacity for the ECN. Over my thirty years as a resident of the historic ECN, I have been alarmed by the number of unique historic houses that have been demolished and replaced with structures out of character with the neighborhood. I am pleased that the Council is willing to protect and preserve what remains.

Coming before you now is another request to combine lots (Case No.: 187-2021 and 188-2021), two of the three lots previously considered. I would ask that you again vote to decline the replat request. To understand why this is critical to the protection and preservation of the historic ECN, please see the attached annotated map (EC Adjacent Lots.pdf) of a main part of the East Campus Neighborhood. It is from the City View website (https://gis.gocolumbiamo.com/CityView/), which gives the name and address of the owner(s) of each lot. The adjoining lots on University that are concerned in Case No.: 187-2021 and 188-2021 are outlined in black. Outlined in red are other lots that are adjoining with a common owner (lots having the same owner's name and/or address). These are all potential future combine lot replat requests. As you can see, there are many of them. A Council approval of the University Ave replat request before the Council now would set a precedent with the potential to radically alter the East Campus Neighborhood. Please continue to protect and preserve the historic East Campus Neighborhood.

Sincerely,

Paul Sharp
1814 Cliff Dr
Columbia, MO 65201

EC Adjacent Lots.pdf
1220K

City View City of Columbia Miss Search Address Here

Anthony St
Blair Ct
Mimosa Ct
Lawrence Pl
University Ave
Rosemary Ln
S William St
High St
Wilson Ave
763
Lee St
Ross St
Morningside Dr
Bouchelle Ave

city of Columbia

Sheela Amin <sheela.amin@como.gov>

Letter to City Council concerning replat request, cases 187-2021 and 188=2021

1 message

Ron Haffey <haffeyr4@gmail.com> Sun, Jul 25, 2021 at 11:20 PM
To: sheela.amin@como.gov
Cc: Jan Haffey <haffeyji@gmail.com>

Dear Ms. Amin,

Could you please forward the attached letter and attachment to City Council so they can review before the August 2nd reading?

Thanks so much for your help. Please let me know if you have any questions or if I need to do anything else.

Ron Haffey

2 attachments

Haffey house.jpg
3224K

City Council- replat request.docx
14K

7/25/21

Dear Council,

Re: Requests for replatting lots on University Avenue- Cases 187-2021 and 188-2021

The Haffeys have been privileged to live at 1805 University Avenue for over 35 years. Our home is somewhat unique in that,

It is over 100 years old, probably 110 (it was built without a bank loan, so not recorded),
It was owned for many years by Jesse Wrench, a notable Columbian and University faculty member (The south auditorium of the Memorial Union is named after Dr. Wrench),

Over the years we have extensively refurbished the house. Then, approximately 20 years ago, we made an addition to our house increasing it from 1800 square feet to 2,900 sf. My neighbors would agree we added to the appeal of the property while keeping the house's original architectural style.

Our immediate neighborhood is blessed with stately trees and unique period homes and great neighbors. Though it is a wonderful historic neighborhood it is also a neighborhood at risk from density. Because many of the houses on several of our streets, including University Ave, have been converted from stately single family homes to rental properties with multiple apartments, we have experienced increased noise from weekend and summer night parties, high automobile counts (often restricting drives and clogging narrow streets), and trash and furniture left curbside for days at a time. Though some property owners do a good job of maintenance and trash policing, many do not.

The requested replatting would allow a developer to greatly increase the resident density, substantially change the look and feel of the neighborhood and devalue highly maintained properties, such as ours, that are near these lots.

Recently the Board of the East Campus Neighborhood Association (ECNA) voted unanimously to oppose the re-platting request and we strongly support that decision. Please help us preserve this historic stately neighborhood and the value of our homes by denying the request to replat.

Sincerely,

Ron and Jan Haffey
1805 Universty Ave
Columbia, MO 65201

attachment

July 26, 2021

Sheela Amin, City Clerk
2nd Floor, City Hall
701 E. Broadway
Columbia, Missouri 65201
573-874-7207
Sheela.Amin@como.gov

Re: University Avenue Replat / Fyfer Subdivision Replat
187-2021
188-2021

Dear Ms. Amin,

I am enclosing 6 copies of my letter with attachments for the mayor and each one of the Council members. I would appreciate your having them delivered at the earliest possible time.

And thank you for all of your help when I have called you with questions, you are good.

Marvin Tofle

July 26, 2021

The Mayor and Members of the Council
City of Columbia, Missouri
City Hall Building
701 E. Broadway
Columbia, Missouri 65201

Re: University Avenue / Fyfer Subdivision Replat
187-2021
188-2021

Good Morning Mr. Mayor and Members of the Council, I am Marvin Tofle and my Wife and I live at 1805 Cliff Drive, Columbia, Missouri.

I am writing in opposition to the application to replat in Case No. 187-2021 and Case No. 188-2021.

There is a lot of confusion among the public about what standards the Council uses to decide whether to approve or deny an application to replat. After people speak to the City staff they get the distinct impression that when a land owner applies for a replat it is inevitable that the Council will approve it.

I have attached a copy of Section 29.5 (d)(4) of the Subdivision Code. People have told me that the City considers Section 29.5 (d)(4) to be ministerial only. People say that if the applicant meets the technical requirements of the Building Code then the City must approve the application to replat despite the language of Section 29.5(d)(4).

I am a lawyer. I am not your lawyer but I am my own lawyer and so I researched this issue myself to see if this Section is ministerial or if there is some other reason that it is not valid and enforceable and, as I thought all along, it is not ministerial at all. In fact, I found a case that is very instructive and tells us that if a city has a comprehensive zoning ordinance and a procedure like the one you enacted in the Columbia City Ordinance then the process and procedures contained in the Ordinance and, in particular, in Section 29.5 (d)(4) have

been expressly approved by the Missouri Supreme Court in *State ex rel. Ludlow v. Guffey, 306 S.W.2d 552 (Mo. Banc 1957)*. I have attached a copy of the *Guffey* case for your perusal.

As you will see, Section 13 of the zoning ordinance in the *Guffey* case gave the Webster Groves Council powers and discretion similar to those that you have given to yourselves in Section 29.5 (d)(4) and the Webster Groves Council's denial of a "special permit" was upheld as a proper exercise of that Council's power and discretion pursuant to the Webster Groves ordinance.

I hope you will use the power and discretion granted to you in Section 29.5(d)(4) and deny the application.

Thank you for your consideration of this matter, Marvin Tofle

preliminary plat, the subdivider shall apply for and secure approval of a revised preliminary plat from the commission, and then approval of a final plat from council, to complete the resubdivision. At the subdivider's option, the preliminary and final plat documents may be submitted at the same time and may be reviewed and considered for approval by council at the same time.

(3) *Procedure for a minor subdivision.* The subdivider shall apply for and secure approval of a revised final plat from council, to complete the resubdivision.

29.5 (d) (4) *Criteria for approval.* A resubdivision of land shall only be approved by the council if the council determines that:

(i) The resubdivision would not eliminate restrictions on the existing plat upon which neighboring property owners or the city have relied, or, if restrictions are eliminated, the removal of such restrictions is in the best interest of the public;

(ii) Adequate utilities, storm drainage, water, sanitary sewer, electricity, and other infrastructure facilities are provided to meet the needs of the resubdivision, or, there will be no adverse effect on such infrastructure facilities caused by the resubdivision; and

(iii) The replat would not be detrimental to other property in the neighborhood, or, if alleged to be detrimental, the public benefit outweighs the alleged detriment to the property in the neighborhood.

(5) *Administrative plat.*

(i) *Applicability.* The subdivider may file an administrative plat with the director, if the plat meets the following criteria:

(A) The plat does not create, vacate, or change the location and/or size of streets;

(B) The plat does not create any additional residential lot or mixed use lots that will contain residential uses;

(C) The plat does not combine more than two (2) lots;

(D) The plat does not create any lot, when lots are combined, that results in more than one hundred twenty (120) feet of a lot line along any one (1) street;

(E) The plat does not alter any area reserved for public use or any area designated as a common lot; and

(F) The plat does not eliminate any condition imposed by council.

(ii) *Procedure.*

(A) The director may approve the administrative plat if the director determines that the revised lots and application materials, including but not limited to any utility construction documents, easements, and performance guarantees, have been approved and comply with this chapter and all other city ordinances and regulations.

(B) On approval of the administrative plat, the director shall sign the plat and cause it to be recorded with the recorder of deeds.

(C) No occupancy permit shall be issued for property included in the administrative plat unless and until the requirements of this section are met and all required utility work is completed.

(D) In the event the director does not approve the administrative plat, the applicant may then prepare and submit an application for a minor or major resubdivision.

(e) Reserved.

State v. Guffey

Annotate this Case

306 S.W.2d 552 (1957)

STATE of Missouri ex rel. Percy M. LUDLOW, Ann Rice Ludlow, and Continental Oil Company, a Corporation, Respondents, v. William F. GUFFEY, as Mayor of the City of Webster Groves, a Municipal Corporation; William F. Guffey, Ward Ficke, Harold E. Knight, Benjamin E. Thomas, Charles Moran, John H. Carter, and Earl Salveter, as Members of the City Council of the City of Webster Groves, a Municipal Corporation; Frank C. Huntsman, as Building Inspector and Building Commissioner of the City of Webster Groves, a Municipal Corporation; and E. H. Healy, as City Clerk of the City of Webster Groves, a Municipal Corporation, Appellants.

No. 45617.

Supreme Court of Missouri. En Banc

November 12, 1957.

*553 Green, Hennings, Henry & Evans, by J. Porter Henry, Robert D. Evans, St. Louis, for appellants.

Fordyce, Mayne, Hartman, Renard & Stribling, Joseph R. Long, Harold A. Thomas, Jr., St. Louis, for respondents.

COIL, Commissioner.

Mandamus to compel the building commissioner, other city officials, and councilmen of Webster Groves, a municipal corporation, to issue to relators building and occupancy permits required by a city ordinance. After a trial on stipulated facts a peremptory writ was ordered and the officials have appealed.

Percy M. Ludlow and his wife, Ann, owned a lot 122'8"x82'9" at the southeast corner of Lockwood and Jefferson in *554 Webster which they had contracted to sell to relator, Continental Oil Company, a corporation, conditional upon the issuance by Webster of the necessary permits to allow the erection there of a filling station. The question is whether certain sections of Webster's zoning ordinance are valid, or unconstitutional and void as the trial court held.'

Webster's ordinance No. 5728, approved February 23, 1953, is a comprehensive zoning plan enacted pursuant to the statutes delegating a portion of the state police power to city and town legislative bodies, viz., Sections, 89.010-89.140 RSMo 1949, V.A.M.S. The City Council divided Webster into eight districts, lettered from A to E. The three A and the B districts were residential, the C-1, C, and D districts were commercial, and E district was industrial.

Filling stations were not among specifically named uses permissible in any of the eight districts and were specifically excluded from D commercial and E industrial, but were permitted in C and D commercial and E industrial upon issuance of a special permit by the City Council. The corner in question is in C commercial district. Section 9 of the ordinance contains C commercial district regulations. That section provides, "A building or premises may be used only for the following purposes"; then follow 39 numbered specific uses. Following the number 40 is: "For additional use regulations see Section 13." Section 13 provides: "The City Council may, by special permit after public hearing, authorize the location of any of the following buildings or uses in any district from which they are prohibited by this ordinance." Then follow twelve numbered "buildings or uses" including, as number 11, gasoline and oil filling stations, restricted, however, to C and D commercial districts and E industrial district. The ordinance then provides: "Before issuance of any special permit for any of the above buildings or uses, the City Council shall refer the proposed application to the City Plan Commission, which Commission shall be given sixty (60) days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the general welfare. No action shall be taken upon any application for a proposed building or use above referred to until and unless the report of the Plan Commission has been filed; provided, however, that if no report is received from the Plan Commission within sixty (60) days, it shall be assumed that approval of the application has been given by the said Commission."

Thus, under the provisions of ordinance 5728, the erection and operation of a filling station within any of Webster's eight districts were not permitted, except in districts C, D, and E if the City Council granted a special permit therefor in accordance with the procedure set forth in Section 13 above.

On May 11, 1954, relators applied in writing to the Webster City Council for a special permit under Section 13 for the erection of a filling station on the property. The City Council referred the application to the City Plan Commission and, at a special meeting on May 28, 1954, the Commission voted to recommend to the Council that the permit be granted (with some restrictions on the scope of the business to be conducted at the filling station). On July 1, 1954, the City Council again referred the application to the City Plan Commission for further study. On July 16, 1954, the Commission held a public hearing on the application, studied the question until August 3, 1954, and then made its written report to the City Council detailing (as required by Section 13) the effect, in its opinion, of the proposed filling station "upon the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the general welfare." That report also disclosed that the City Plan Commission had received advice *555 from city planning specialists in preparing its report. The Commission recommended to the City Council that relators' application be denied.

The City Council's minutes for August 5, 1954, show that relators' application for a special permit was considered; that the City Plan Commission had held a public hearing, had duly considered the evidence pro and con pertaining

to the application, and had recommended that the special permit be denied; that the City Council had held a public hearing, had duly considered the evidence in support of and opposed to the application, had duly considered the report and recommendation of the City Plan Commission, and thereafter voted 6 to 1 to deny the special permit.

On March 30, 1955, relator Continental Oil Company applied to appellants Huntsman as building commissioner and Healy as city clerk for building and occupancy permits for the erection of and occupancy of a gasoline and oil filling station on the property in question. Plans and specifications which complied in all respects with the Webster building code accompanied that application. The building and occupancy permits were denied on the sole ground that a special permit had not been issued pursuant to the provisions of Section 13 of ordinance 5728.

As we have noted, Webster Groves enacted its zoning ordinance pursuant to the police power delegated to its City Council by Sections 89.020 et seq. RSMo 1949, V.A. M.S. Those sections provided that Webster's Council could zone comprehensively to promote the health, safety, morals, or general welfare of the community and that it could, for those purposes, divide the city into districts and regulate and restrict the location and uses of buildings therein in accordance with a comprehensive zoning plan, "designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements." And the City Council was empowered to and did provide for the manner of enforcement of such boundaries, restrictions, and regulations it had established.

By reason of the foregoing and by reason of the contentions of the parties here, it must be taken as tacitly conceded, for the purposes of this case, that the provisions of the ordinance excluding from Webster Groves all filling stations except by special permit in three of the eight districts bore a natural relation to the purposes for which the comprehensive zoning plan was enacted. That is to say, the Webster Council's determination that in none of the eight districts, except C and D commercial and E industrial, should a filling station be permitted to be built or operated and then only by special permit, was not arbitrary or unreasonable but, on the contrary, constituted a proper part of Webster's comprehensive zoning system and was clearly related to the established purpose to be accomplished by the exercise of Webster's police power.

The questions are whether Section 13 needed to and, if so, whether it did prescribe sufficient standards by which the City Council would determine the basis upon which a special permit for a filling station or otherwise prohibited use would be issued or denied so that its discretion in that respect would be exercised on a uniform basis.

First, then, did Section 13 need to prescribe standards or, otherwise stated, was Webster's City Council acting in a legislative or an administrative capacity when it acted on an application for a special permit? Appellants cite cases from other jurisdictions which make the necessity for the inclusion in an ordinance of standards and guides for the body empowered to issue or *556 deny a special permit, depend upon whether the dispensing power is retained in the City Counsel, or whether that power is delegated to a body other than the City Council. See: Green Point Sav. Bank v. Board of Zoning Appeals, 281 N.Y. 534, 24 N.E.2d 319; Larkin Co. v. Schwab, 242 N.Y. 330, 151 N.E. 637; Small v. Moss, 279 N.Y. 288, 18 N.E.2d 281; Kramer v. Mayor and City Council of Baltimore, 166 Md. 324, 171 A. 70; Marquis v. City of Waterloo, 210 Iowa 439, 228 N.W. 870. In the abovecited cases and others, the theory seems to be that no standards or guides need be set forth in an ordinance which provides that the issuance or denial of a permit remains in the legislative body, at least, in those cases where the matter of permission is one affecting the safety of persons and property. However, while the element of safety of persons and property seems to have been a consideration in the above-cited cases, some of them, at least, dealt only with the right to locate and operate a gasoline service station as in the instant case. So that safety of persons and property was no more involved in those cases than in the instant case, and, of course, safety of persons and property is always involved in the operation of an establishment wherein flammable liquids are stored or dispensed. The essential holding of those cases, for our purposes, is that if the ordinance in question provides that a special permit for a filling station shall be issued or denied by the City Council, i. e., by the legislative body, there need be no standards in the

ordinance for the guidance of the dispensing power. It has been said that the reason for that conclusion is because the legislative body had, in the first instance, the power and discretion to have determined the conditions, if any, under which filling stations would be permitted in certain districts, and that the legislative body simply retained that power and discretion which it always had.

Relators contend that our cases make clear that the Missouri rule is to the contrary. Appellants, conceding that there is language in our cases which, standing alone, supports relators, say the expressions in such cases were obiter, because, in each instance, the court was dealing with an ordinance which had in fact delegated the power to grant or refuse a permit to an administrative body. See, for example, State ex rel. Triangle Fuel Co. v. Caulfield, 355 Mo. 330, 196 S.W.2d 296, where, at page 297, the court recognized as applicable (to a situation in which the dispensing power had been delegated to an administrative officer) the rule set forth in 43 C.J., § 258, p. 256, which contained the language: "But the grant or refusal of such permit cannot be left to arbitrary discretion, either of the council or governing body, or of some municipal board or official." (Present writer's italics.) See, also, 62 C.J.S., Municipal Corporations, §§ 166, 167. But relators say that, in any event, the decision fact is that under Section 13 the City Council acted and acts in an administrative rather than in a legislative capacity, so that, if true, further discussion of what might be the law as to a power retained by a legislative body is useless.

It is our view that relators are correct in their contention that the City Council acted and acts administratively when it enforces legislatively enacted Section 13 of the ordinance. True, the City Council had the power and the discretion to prescribe in the ordinance the exact conditions under which a special permit would be issued or denied for a particular location or use in a particular district. But the Council did not exercise that power and discretion. On the contrary, it chose to delegate a discretionary enforcement power. (Section 13 provides that the City Council may authorize, etc. That power is permissive and thus implies a right to exercise discretion. State ex rel. Mackey v. Hyde, 315 Mo. 681, 691, 286 S.W. 363, 366 [4, 5].) The Council's legislative power and discretion was exhausted when it decided to provide in the ordinance for the delegation of the discretionary power to enforce the Council's regulation. The fact that the delegator and the recipient was the same *557 body is not determinative of the capacity in which the recipient acted. That is to say, the fact that the Webster City Council was generally a legislative body does not determine that it could not or did not act administratively when it was engaged in the enforcement (an administrative function) rather than in the enactment (a legislative function) of a zoning regulation. See: State ex rel. Manion v. Dawson, 284 Mo. 490, 506, 225 S.W. 97, 100.

Relators cite and rely upon several Missouri cases which announce the rule applicable to the delegation of legislative discretionary power to an administrative body. That rule and its exceptions are accurately stated in Lux v. Milwaukee Mechanics' Ins. Co., 322 Mo. 342, 15 S.W.2d 343, at page 345: "The general rule is that any ordinance which attempts to clothe an administrative officer with arbitrary discretion, without a definite standard or rule for his guidance, is an unwarranted attempt to delegate legislative functions to such officer, and for that reason is unconstitutional. * * * The exceptions to the general rule are in situations and circumstances where necessity would require the vesting of discretion in the officer charged with the enforcement of an ordinance, as where it would be either impracticable or impossible to fix a definite rule or standard, or where the discretion vested in the officer relates to the enforcement of a police regulation requiring prompt exercise of judgment."

We think the instant case comes within neither of the above-stated exceptions as such. (As will appear, we later discuss the impracticability of fixing a more definite standard, but in our view that consideration is a factor indicating compliance with the general rule rather than a necessity for an exception.) The question is whether Section 13 of the ordinance does prescribe a sufficient standard, i.e., a uniform rule of action to govern the City Council in the exercise of its administrative discretion to determine when and under what circumstances to grant or deny a special permit for a filling station or whether the ordinance confers on the Council an unlimited, uncontrolled, and arbitrary discretion to grant or refuse a special permit.

A reasonable construction of the provisions of Section 13, heretofore set forth in full, together with the reasonable intendments and implications therein, justify stating the provisions of the section thusly: No filling station shall hereafter be erected or operated in the City of Webster Groves except in C, D, or E districts, if the City Council in

its discretion so authorizes in accordance with this procedure:

1. One desiring to build or operate a filling station in a C, D, or E district shall apply to City Council for a special permit to so do.

2. The City Council shall refer that application to the City Plan Commission. The City Plan Commission will report to the Council on such application with respect to the effect of such proposed use upon the character of the neighborhood, traffic conditions, public utility facilities, and upon other matters pertaining to the general welfare of the community.

3. The City Council shall not act upon the application for a special permit until after receipt of such report from the City Plan Commission, provided that, if no report has been received within 60 days, it shall be understood that the Commission's finding and opinion is that the proposed use would have no adverse or deleterious effect in the respects noted.

4. The City Council shall, prior to acting, hold a public hearing on the application.

5. The City Council shall thereafter, upon the facts and other information thus before it, determine therefrom whether the granting of the permit will or will not promote the health, safety, morals, or general welfare of the people of Webster Groves in accordance with and in the accomplishment of the comprehensive zoning *558 plan embodied in the ordinance of which this Section 13 is a part, and upon an affirmative finding grant and upon a negative finding deny the permit.

In considering the foregoing, it is important to point out that the "City Plan Commission" referred to in Section 13 is specifically provided for by Section 89.070 RSMo 1949, V.A.M.S., as the body which, if in existence, may take the place of the zoning commission, which latter body or its substitute the City Council had to appoint in order to avail itself of the powers conferred by Sections 89.010-89.140 heretofore referred to. We mention that fact to demonstrate that the "City Plan Commission" is not some body set up independently and arbitrarily by the City of Webster Groves but, on the contrary, is an essential part of the comprehensive zoning system permitted by the enabling acts.

Relators have cited several Missouri cases which generally support their present position, viz., City of St. Louis v. Russell, 116 Mo. 248, 22 S.W. 470, 20 L.R.A. 721; City of St. Louis v. Polar Wave Ice & Fuel Co., 317 Mo. 907, 296 S.W. 993, 54 A.L. R. 1082; Hays v. City of Poplar Bluff, 263 Mo. 516, 173 S.W. 676, L.R.A.1915D, 595; State ex rel. Triangle Fuel Co. v. Caulfield, supra; Fairmont Inv. Co. v. Woermann, 357 Mo. 625, 210 S.W.2d 26. None of them, however, except the Fairmont Inv. Co. case, had to do with the validity of sections of an ordinance which were parts of a comprehensive zoning plan enacted pursuant to the delegation of police power contained in the enabling statutes, Sections 89.010-89.140, RSMo 1949, V.A.M.S. We have no doubt that the same general rule as stated in Lux v. Milwaukee Mechanics' Ins. Co., supra, should apply, irrespective of whether the case involved a comprehensive zoning ordinance. We also are of the view, however, that the determination of what may constitute a sufficient standard within an ordinance, must be affected to some extent by the fact that a particular ordinance section is an integral part of a comprehensive zoning ordinance (and here, concededly a proper part thereof) in which the total ordinance (of which Section 13 is a part) sets forth in general terms a uniform procedure for the Council to follow in exercising its discretion.

The apparent difficulty involved in readily suggesting a more definite and precise standard than is provided in Section 13 by the procedure there prescribed is persuasive to the view we are constrained to take that the general standards therein are sufficient. We think it would be impracticable to set forth a completely comprehensive standard insuring uniform discretionary action by the City Council. We think the procedure prescribed by Section 13, reasonably interpreted, is sufficient to provide against the exercise of arbitrary and uncontrolled discretion by the City Council. (We are not here concerned with the review of administrative action.) Section 13 prescribes a procedure for determining, and requires the City Council to determine, whether the location and use of a filling

station in C commercial would or would not promote the "health, safety, morals or general welfare of the community" by determining specifically whether such location and use would or would not adversely affect "the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the general welfare"; it requires that such determination be made upon evidence and facts adduced before it (a quasi-judicial function) and requires the Council to thereafter exercise its discretion based upon such finding. We conclude, therefore, and so hold, that the legislative discretion so delegated to the Council is sufficiently circumscribed to require that discretion to be reasonably, not arbitrarily, exercised.

In reaching the conclusion above stated, we are of the view that our case of Fairmont Inv. Co. v. Woermann, supra, is not to the contrary. Because that case involved a comprehensive zoning ordinance and bears a similarity to instant case in some of its aspects, we have singled it out for comment. It was there held that Subsection *559 5 of Section 16 of a zoning ordinance of the City of St. Louis, which gave the Board of Adjustment power "`to vary or modify the application of any of the regulations or provisions of this ordinance where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance so that the spirit of the ordinance shall be observed * * * and public safety and welfare secured and substantial justice done,'" did not thereby contain a "uniform rule, or test or set of standards which satisfy the demands of the law"; that is to say, to satisfy the uniform holding of the courts "that proper restrictions upon the exercise of a police power are that such power be reasonably exercised, that it be certain, that it have uniformity of application in accordance with some standard contained within the ordinance itself, placed there by the legislative body of the municipality." 210 S.W.2d 29, 31 [6, 7]. There the legislative power and discretion granted to the Board of Adjustment were not circumscribed so as to reasonably provide against the exercise of arbitrary discretion. In the instant case, as we have held, the contrary is true.

While relators, in their brief, assign five reasons for the invalidity and unconstitutionality of the pertinent sections of the ordinance, what we have said herein has effectively disposed of all of the assigned reasons. It follows that the judgment is reversed and the case remanded with directions to discharge the alternative writ of mandamus.

PER CURIAM.

The foregoing opinion by COIL, C., is adopted as the opinion of the court en banc.

All concur, except EAGER, J., not sitting.

document for the City Council

1 message

raeona nichols <raeona_n@yahoo.com> Mon, Jul 26, 2021 at 2:25 PM
To: "Sheela.Amin@como.gov" <Sheela.Amin@como.gov>

Ms. Amin:
I have a new word processing program, and I can't find the letter I wrote to members of the City Council to attached it. I don't know what to do, so I am going to copy it onto this email. I will also put a hard copy in the mail to you this afternoon. Please distribute to all members of the City Council. Thank you! Raeona Nichols

July 25, 2021

Letter in Reference to University Avenue Fyfer Subdivision Replat

Case #: 187-2021

Case #: 188-2021

Members of the City Council:

I am writing this letter to oppose the replat the University Avenue lots, in the 1600 block. I live a couple of blocks from this site, and I was disturbed when I read about the proposed replat, which would allow the building of a large apartment complex.

I purchased my house on Morningside nearly 20 years ago. It was the second house I purchased in Columbia. The first house in which I lived was in a neighborhood that was considered a safe bet in terms of reputation and stability. There was also little diversity, and while it was OK, I felt uncomfortable living there.

When circumstances in my life changed and I started looking for another house, I really wanted to move to the East Campus Neighborhood. I was drawn to what appeared to be a stronger reflection of the history of Columbia. I liked the appearance of the neighborhood, the older homes and the mix of people. There was diversity here, and the neighbors were rumored to be accepting of others.

I was also told it would be very difficult to find a house for sale in East Campus, and I was happy to find one. I have enjoyed living here, and while there is a great deal of transition in the student population, it has always felt to me like the homeowners provided stability and supported the character of the neighborhood.

I want to be clear my street has several rental properties, some of which are rented primarily to students and others which tend to house families and adults who are not traditional college-age. Again, I like living among different kinds of people and feel like the mixture of home owners and people renting makes it feel like a less insulated environment.

But it also seems that this important balance of people and the historic appearance of our neighborhood could change significantly if the city allows new apartment buildings erected to replace older homes. Newer, large apartment buildings marketed to the student population would threaten the balance of East Campus and deter people like me who want to buy a house and live in a historic, diverse neighborhood.

Another issue for me is overcrowding and overwhelming the infrastructure that supports the homes on University Avenue, and the adjoining streets. Trash, traffic, parking and all of the aspects of infrastructure would be challenged by allowing a new higher level of density. I am sometimes concerned the infrastructure of the neighborhood is already challenged, and the idea of increasing the population on that block by a large complex seems unwise, at the least.

If this replat is approved, allowing for the building of a larger structure, isn't it possible it will open the door for other proposed replats? What would stop investors buying up older houses, tearing them down, and putting in apartment buildings? Would our neighborhood even be recognizable?

I am hoping you will consider these factors when making a decision about this proposed replat. I don't want our neighborhood to lose its distinctive character.

Sincerely,

Raeona Nichols

700 Morningside Dr.

city of Columbia

Sheela Amin <sheela.amin@como.gov>

East Campus Neighborhood Case No.: 187-2021 and Case No.: 188-2021

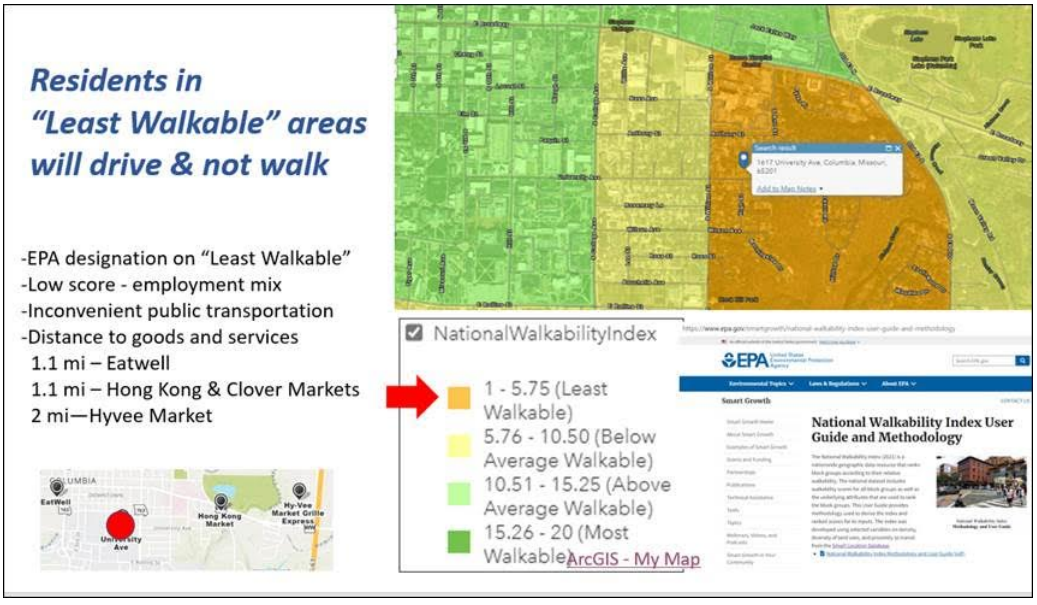
1 message

Tofle, Ruth B. <TofleR@missouri.edu> Mon, Jul 26, 2021 at 2:48 PM
To: "Sheela.amin@como.gov" <Sheela.amin@como.gov>

Dear Columbia Missouri Council Members,

The basis for my *opposition* to replat in the East Campus Neighborhood is based on two issues identified in U.S. Environmental Protection Agency (EPA) documentation.

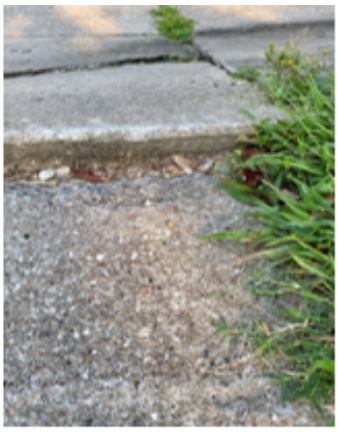
1. **Residents in "Least Walkable" areas will drive and not walk**. The EPA gives a "Least Walkability" score designation for these lots. This area has a low score of employment mix, inconvenient public transportation, and distance to goods and services.



Increasing density will *not* be "smart growth" is least-walkable neighborhoods. A large increase in residents will mean a large increase in cars, traffic, and parking as in the outer fringes of the city that cannot be accommodated. I took the below photo at 7:20 a.m. This *one house at 1611 University Avenue has **seven** parked cars*—which is not unusual.

Speaking on “least walkability” as a pedestrian-user, there is constant litter of glass shards and beer containers, steep hills, unlevel and weedy sidewalks, and no sidewalks in some areas. Resident safety is already jeopardized by the number of cars and unruly behaviors.





The replat would lead to over-taxing the infrastructure by:

- Increasing cars, traffic, need for parking, solid waste and energy use
- Decreasing walkability even more.
- Declining safety and livability even more.

2. **Preserving historic properties is energy efficient**. It takes many more years to recover the energy lost in demolishing existing historic properties than in rehabilitation.

The US Dept of Interior National Register identifies the East Campus Neighborhood as a Historic District noting its historic houses and historic brick street.

Many homeowners in the neighborhood reside here because of its historic value and do not want historic homes or the brick street destroyed.

The replat proposal will set a “tear down precedent” detrimental to the neighborhood leading to:

- Declining property values
- Destruction of our historical, brand-named University Avenue honoring the educational institution that made this city
- Declining livability

I oppose the replat. I endorse the over-arching importance of architectural compatibility to preserve the special character of the East Campus historic neighborhood.

Thankyou,

East Campus Resident, LEED Accredited Professional,

Professor Emerita, MU Architectural Studies

city of Columbia

Sheela Amin <sheela.amin@como.gov>

Fyler Subdivision Replat Request

1 message

Smith, Terry <tsmith@ccis.edu> Tue, Jul 27, 2021 at 11:20 AM
To: "Sheela.Amin@como.gov" <Sheela.Amin@como.gov>

Dear Members of the Columbia City Council and Mayor Treese,

Jane and I have lived at 1712 Cliff Dr. in East Campus since 1996. As you know East Campus is a neighborhood of personal residences and older homes converted to apartments.

The University Ave. Fyler Subdivision Replat Cases 187-2021 and 187-2022 propose to create a 100-foot lot. A lot this size is totally inconsistent with the character of the neighborhood and presents a tipping point that would change the neighborhood permanently.

- It will overwhelm local infrastructure – streets (especially the brick portion of University Ave. between College and William), traffic, parking, utilities, trash, law enforcement, etc.
- It will not be consistent with size, style, density, architecture, etc. of East Campus.
- “Affordable” housing is not being proposed.

We urge you to not approve the replat request. Please protect our neighborhood.

Sincerely,

Terry And Jane Smith

1712 Cliff Dr.

city of Columbia

Sheela Amin <sheela.amin@como.gov>

[CityClerk]: Letter_replat_7_21.pdf

1 message

Mehr, David R. <mehrd@health.missouri.edu> Tue, Jul 27, 2021 at 8:56 PM
To: "sheela.amin@como.gov" <sheela.amin@como.gov>
Cc: "cityclerk@como.gov" <cityclerk@como.gov>

Dear Ms. Amin;

Please add this letter to the Council packet for next week's meeting. If that is for some reason not possible, please let me know.

Best regards,

David Mehr

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117K

David R. Mehr
714 Ingleside Dr.
Columbia, MO 65201

July 27, 2021

Columbia City Council
Columbia, Missouri

Re: Proposed replat of 1611-1617 University (Cases 187-2021 and 188-2021)

Dear Council members:

I am writing as president of the East Campus Neighborhood Association (ECNA) to indicate our Neighborhood Association's opposition to the proposed replat of 1611-1617 University Avenue. As you know, the Council voted to deny the prior replat request for the same properties. The ECNA Board met again on July 14 to discuss the current replat request and voted 6-0 (one member was absent) to oppose this request. The Board members feel strongly that the replat is not in the interests of preserving the character and livability of the neighborhood. We have several speakers who will amplify this point at the upcoming meeting.

As I may not be able to attend the meeting due to clinical responsibilities, I wanted to also communicate that we would again request that Kathy Love be given the additional time (5 minutes instead of 3) to speak on behalf of the ECNA.

Best regards,

David R. Mehr
President, East Campus Neighborhood Association

RECEIVED JUL 27 2021

July 27, 2021

Mayor Treece and Members of the City Council:

I write today in regard to Case No. 187-3031 and Case No. 188-2021, the replat of property on University Avenue.

I own and live at 1863 Cliff Drive in the East Campus Neighborhood. My house, like that of several in the neighborhood, is on the city's list of Notable Historic Buildings.

East Campus is a unique neighborhood with both historical and cultural value to Columbia and its citizens and has been so since it was incorporated into the city in 1860. Its tree-lined streets and the classic architecture of its structures and long association with the University of Missouri make it stand out among Columbia's neighborhoods.

The 1994 Final Report of a Survey of the East Campus Neighborhood documents how the area saw its major development in the 1890s and early 1900s, with large homes built on predominately 50-foot wide lots. Among these, "University Avenue, with its wide brick paved street lined with mature gum trees, is by far the most picturesque of all the streets of the neighborhood."

Although the neighborhood has always had rental properties, that survey notes that most of these were small, with four to six units in the apartment buildings. This allowed the neighborhood to serve the student population well while retaining its "quaint" atmosphere.

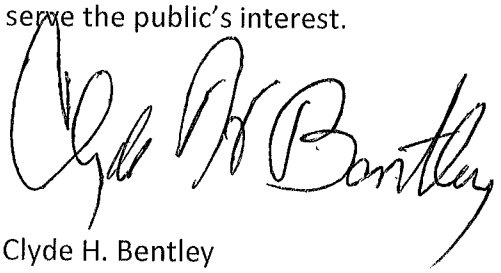
And that is the issue here. The history of narrow lots – whether single-family or apartment – has served the East Campus Neighborhood, the city and the landlords well for more than a century. What makes East Campus attractive to students and families alike is not a similarity to the massive apartment complexes in other portions of the city, but its marked difference. It retains the atmosphere of "home" and an emotional comfort level to both residents and people driving through, making it a memorable asset to Columbia.

The key factor here is scale. There are no overwhelming edifices on University Avenue. It still retains the "nice neighborhood" feeling that could very well lend itself to the owner-occupied gentrification that is sweeping similar neighborhoods across the nation.

The request for consolidation of lots in East Campus is just another symptom of the "demolition by dereliction" by landlords who see no value in the rich history and unique cultural value of East Campus. Other cities, such as Knoxville, TN, have vigorously addressed this with ordinances to retain what heritage remains in their historical neighborhoods.

Physical history is unfortunately fleeting. Once a structure is demolished, it is no more than a memory. Once a neighborhood is changed, it never has the same values and appeal that made is special. Once a city gives up its history, it has forever lost its soul.

I ask you to deny the proposed replat and require the developer to work within the framework of the historical dimensions of East Campus. Those dimensions have worked well through several lifetimes of Columbia citizens. There is no reason to believe they cannot continue to serve the public's interest.



Clyde H. Bentley
1863 Cliff Drive
Columbia, MO 65201

July 27, 2021

Mayor Treece and Members of the City Council:

As a homeowner and resident of the East Campus Neighborhood, I oppose the current proposals for replat, identified as Fyfer's Subdivision Plat No. 2 (Case #187-2021) and Plat No. 3 (Case 188-2021)

I have carefully studied the Staff memo dated July 19, 2021 and the Conceptual Site Layout and Elevations provided by the developers.

There are three issues with the proposed replats that I believe create a detriment to our East Campus neighborhood. These are scale, architectural consistency and precedent.

Scale

The new proposed lot width is ~ 100 feet for two lots. This is not consistent with the historical nature of this property, which had 70-foot-wide lots. The buildings on these lots have existed as rental properties, each accommodating small groups of students, and contributed to the historic character of the neighborhood.

The proposed development is for two large buildings, each with 28 students for a total of 56 bedrooms. This is a significant increase in density of residents, and – although technically allowed by code – it creates a detriment to the neighborhood. Also from a scale perspective, the proposed development proposes buildings that are 45x164 feet in size – nearly 7500 square feet – and it's two stories tall. Compared to the majority of other properties in the neighborhood, this is 3-4 times the size of the typical building.

Architectural Consistency

One of the key architectural features of the East Campus neighborhood is that the buildings- with very few exceptions – look like homes. The proposed construction is clearly a set of apartments – which is NOT consistent with a historical neighborhood. They do not have an orientation to the front of the property (although they may have a single property with a forward facing "door") and the style is modern/contemporary – clearly out of sync with the rest of the University Avenue houses. I note that the developer did provide elevations of street-facing, white colonial buildings, but there was no indication of how those would be sited on the lot, so it is not possible for me to evaluate how they would impact the neighborhood.

Precedent

Allowing the combining of lots to create large building sites and the demolition of historic homes in the East Campus neighborhood are an incentive to developers to create a Brookstone-type neighborhood out of a historic one. As has been previously noted, there are many adjoining properties in the neighborhood that have the same owner – and it is reasonable to assume that they too would decide to merge/demolish and build apartments such as these.

The East Campus Historic Neighborhood is at a tipping point. It can continue to provide moderately priced housing for students and others in homes with lawns and green space, or it can become an extended block of large apartment units. It could remain a neighborhood that is desirable for people other than students, or it can become a neighborhood that is not conducive for families and owner-occupied residences.

The neighborhood and its proximity to the campuses and town provides great assets for those who want to walk and bicycle, who want to preserve older properties, and for those who like living in a neighborhood with a mix of populations.

But a decision now, to allow the merging of lots and the building of large-scale apartments, will turn the tide...and it is likely that it will trigger more mergers and more demolition until there is no history left in this historic neighborhood.

Please vote no on these replat proposals.

Cecile G. Bentley
1863 Cliff Dr.
Columbia, MO. 65201