



# City of Columbia, Missouri

## Meeting Minutes

### Board of Adjustment

---

Tuesday, January 9, 2018

7:00 PM

Regular Meeting

Council Chambers

Columbia City Hall

701 E. Broadway

---

#### I. CALL TO ORDER

MR. CARROZ: The January 9, 2018 Board of Adjustment Meeting will come to order.

Mr. Zenner, would you please call the roll?

MR. ZENNER: Yes. Ms. Hammen?

MS. HAMMEN: Here.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Here.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Here.

MR. ZENNER: Ms. John?

MS. JOHN: Here.

MR. ZENNER: Mr. Waters?

MR. WATERS: Here.

MR. ZENNER: You have a quorum, sir.

MR. CARROZ: Thank you, sir.

**Present:** 5 - Martha John, Janet Hammen, Philip Clithero, Frederick Carroz and Andy Waters

#### II. APPROVAL OF AGENDA

MR. CARROZ: Do I have a motion for approval of the agenda?

MS. JOHN: Actually, I have some corrections -- of the agenda?

MR. CARROZ: Of the agenda.

MS. JOHN: Right. You're right. Never mind.

MR. WATERS: So moved.

MR. CARROZ: Can I have a second?

MR. CLITHERO: Second.

MR. CARROZ: I have a second. All those in favor, say aye.

(Unanimous voice vote for approval.)

MR. CARROZ: All those opposed, say nay. We have an approved agenda.

**Discussion following approval of amended December minutes (added for clarity of meeting order)**

MR. CALDERA: Mr. Chair, I apologize for interrupting, but unless we would like to reshuffle the agenda, the first item is actually a vote on the amended rules.

MR. CARROZ: I am so sorry. I skipped down.

MR. CALDERA: Which we can revise the agenda to put that at the end and let the case go first. That's completely your call.

MR. CARROZ: Any comments from the Board to get the case moving? Anyone oppose?

MR. CLITHERO: Let's move that to the end of the meeting.

MR. CARROZ: All right. So we -- do we need to vote on that?

MR. CALDERA: Yeah. It is highly technical, so I apologize, but --

MR. CARROZ: All those in favor of --

MR. CLITHERO: Okay.

MR. CARROZ: So it's a motion to amend --

MR. CLITHERO: I'll make a motion we amend the agenda --

MR. CARROZ: All right.

MR. CLITHERO: -- to review the Rules of Procedure to the end -- to after the Public Hearing.

MR. CARROZ: Very good. I'll second that.

MR. CALDERA: And then a vote.

MR. CARROZ: All those in favor, say aye. All those opposed, say nay.

(Unanimous voice vote for approval.)

MR. CARROZ: All right. The Special Items have been moved. Okay.

### **III. APPROVAL OF MINUTES**

MR. CARROZ: The December 12, 2017 minutes were distributed to all the members of the Board. Are there any corrections or additions to the minutes?

MS. JOHN: Yes. I have a whole list.

MR. CARROZ: All right.

MS. JOHN: Would you like me to just read them out?

MR. ZENNER: That would be fine, Ms. John.

MR. CARROZ: That would be appropriate.

MS. JOHN: Okay. Page 1, it's just a typo. Mr. Zenner would like to go ahead and

call the roll, and the roll is the wrong kind of roll -- "r-o-l-l" instead of "r-o-l-e".

Page 2, there is stray comment left over from a different Commission meeting at the top of the page right after Mr. Zenner's statement about relocating. Page 4, in Mr. Simon's discussion, there are two spots where he was discussing the previous M-1 zoning, and the transcript says "emblem" zoning instead. I think it should be M-1. This occurs in the first paragraph after being sworn in, and again in his answer to Ms. Hammen's first question.

Page 11, in the opening for Case 19-54, I am quite sure I asked Mr. Zenner, Have the parties of interest been notified, not "has". Page 11, when Mr. Zenner is describing one inquiry on the case, I believe he said something like, They've given support to the requested variance rather than "they've been given this order requesting variance", which really doesn't make any sense.

Page 12, in Mr. Zenner's comments, it's just a typo. It should be affected, not "effected". Page 15, in Case No. 15-4, the vote, Mr. Hurley's answer, which was apparently yes, but his answer is just missing. It's a blank space on the line. Also Page 15, the introduction for the next case, there's just a break in the line.

Page 18, Mr. Mermelstein's comments, I believe he actually said the condominium association that "you" see there. The word "you" I think was left out. That's all.

MR. CARROZ: Very well. Those are noted in the record.

MS. HAMMEN: I have --

MS. JOHN: You have one?

MS. HAMMEN: Yes.

MR. CARROZ: Okay. You have more? Okay.

MS. HAMMEN: Yes. So I'd like to say there are municipal regulations regarding the public health code and the animal density requirement, and they are located in Chapter 5-81, Article IV under Livestock. And this had to do with Case No. --

MS. JOHN: Where's that in the minutes?

MS. HAMMEN: Say what? What's the case number?

MS. JOHN: Where's that in the minutes?

MS. HAMMEN: So in the minutes there are on pages 34, 38, 40 and 43 comments to the effect that -- of misstatements that don't apply to the animal livestock regulations from the health -- from Chapter 5-81, Article IV.

MR. CARROZ: Those are all?

MS. HAMMEN: Yes.

MR. CARROZ: Mr. Caldera, how do you want to accept these changes? In written form from --

MR. CALDERA: Pat, have you been able to track all of those?

MR. ZENNER: The way that we will handle these, just so the public as well as the Board is now fully informed, the motions or -- the motion to approve the minutes from December 12, 2017 would be amended per the comments and the corrections that have been offered by Ms. John and Ms. Hammen. The public record for this meeting, January 9, 2018 will reference these revisions to these minutes. We will physically not modify the minutes that have been submitted for December 8 -- 12, and we will make notation, however, underneath the date of the former meeting that these meetings have been amended and see the January 9, 2018 minutes for such revisions.

That will all be captured at the actual January 9 minutes that are produced by Tiger Court Reporting for us, and that will ensure then that we are not going back in as staff and altering the minutes that have actually officially been submitted and now amended. So your motion when you have this situation in the future would be to adopt the amended minutes as presented. You would need to call for a first and obviously a second, and then vote in the affirmative if that is your desire.

MR. CARROZ: Any other --

MR. CALDERA: I just -- one quick question, Pat, just to make sure that I understand the logistics of it. So you retain the original minutes and then attach a copy of the amended minutes?

MR. ZENNER: No. We have not yet posted these minutes that are being discussed this evening to our website -- to the Granicus website and Legistar website, which is what the public repository is for them. Before they are posted, we will modify the first page of the December minutes to make reference underneath the December date that the meeting was held and that the minutes have been amended per the January 9, 2018 minutes.

MR. CALDERA: Okay. Okay. We can -- okay. So, as Pat said, yeah. So the proper way to handle this is to -- since you have made amendments to the minutes is to have a motion on the minutes as amended, need a second, and then vote on that.

MR.

CARROZ: Do I need -- do we need to offer up Ms. John's and Ms. Hammen's into evidence for any kind of reason?

MS. JOHN: Notes.

MR. CARROZ: The notes?

MR. CALDERA: It's not necessary. If you believe that Pat -- and it's my understanding, Pat, that you've got all of those changes. Right?

MR. ZENNER: They are all captured on television as well as in the minutes.

MR. CALDERA: Yeah. So it's not necessary.

MR. CARROZ: All right. I have --

MR. CLITHERO: I make a motion we accept the amended minutes.

MS. HAMMEN: Second that.

MR. CARROZ: I have a motion and I have a second. All those in favor, say aye. All those who oppose, say nay.

(Unanimous voice vote for approval.)

MR. CARROZ: Hearing none, we have approved amended minutes. Will the court reporter please swear in the staff.

(Staff was sworn.)

MR. CARROZ: Case No. 19-57, A request by Caleb Colbert --

**Discussion regarding Adjustment of Agenda order moved to  
"approval of agenda"**

MR. CARROZ: All right. The Special Items have been moved. Okay. Back to the Public Hearing.

## **V. PUBLIC HEARINGS**

### **Case # 1957**

A request by Caleb Colbert (attorney), on behalf of Delta Tau Delta Association of Columbia, Missouri (owners), to grant variances to structure height, median setback, occupied areas of the required front, side, and rear yards, and screening and landscaping which are not permitted per Sections 29-2.2(a)(3), Table 29.2-4, 29-4.1(a), Table 4.1-1, 29-4.1(b)(1)(i), 29-4.1(c), Table 4.1-5, 29-4.3(f)(1) and (3), 29-4.3(g)(3)(v)(C), 29-4.4(c)(9) of the Unified Development Code in order to allow reconstruction of a fraternity house at 506 Rollins Street.

MR. CARROZ: Has the notice been properly advertised?

MR. ZENNER: Yes, it has.

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

MR. ZENNER: Yes, it has.

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

MR. ZENNER: Yes, they have.

MR. CARROZ: Have there been any inquiries?

MR. ZENNER: No, there have not.

MR. CARROZ: All right.

### **PUBLIC HEARING OPENED**

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

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

(Witness was sworn.)

MR. COLBERT: Members of the Board of Adjustment, thank you for your time and attention this evening. Again, my name is Caleb Colbert, and I'm here on behalf of Delta Tau Delta to ask for your support for several variance requests related to the property at 506 East Rollins.

Before I get too far into the presentation, I want to take a second and introduce the folks that we have here with us this evening. We have John States, Breck Anderson, Cody Darr, Jay Gebhardt, Bob Cunningham, and Sara Clark. We intend this to be sort of a team effort and a group presentation. We are happy to answer any questions that you guys have this evening.

Also, I will take a quick break and introduce all of our exhibits to go ahead and get that out of the way. All right. In your packet you should have Exhibits 1 through 4.

Exhibit 1 is a copy of the relevant provisions of the City Code that we're going to talk about this evening. Exhibit 2 should be a copy of our application to the Board of Adjustment for a variance. Exhibit 3 should be our site plan. Exhibit 4 should be a copy of the presentation that you will see this evening.

And at this time, Mr. Chair, I'd offer those exhibits into evidence.

MR. CARROZ: So noted.

(Applicant Exhibit Numbers 1-4 were received into evidence.)

MR. COLBERT: Also, just a couple more procedural comments before we jump into the meat of our presentation. As you saw in the staff report, we had several variance requests that we're going to discuss this evening. I spoke with Mr. Zenner prior to the hearing, and the way I think that we -- I think we're going to approach this is we're going to do one presentation on all of the variance requests, and then you will vote individually on the variance requests at the end of the presentation. Is that an accurate summary?

MR. ZENNER: That is correct.

MR. COLBERT: Okay. Also, you will see in the staff report that Mr. Zenner numbered our variance requests one through seven. After looking at the staff report, we are agreeable to staff's recommendations on five and seven, so those requests have been withdrawn and we're not going to discuss those this evening.

Okay. With that, we can jump into the substance of our presentation. What you see on your slide is what we propose to build. The variance requests that are discussed tonight are what we believe are necessary in order to build this structure.

As you can see, it's a well-designed, attractive building, very consistent and compatible with existing Greek Town, and it certainly will make Delta Tau -- Delta competitive with other fraternities in the area. The site that we are discussing is located at 506 East Rollins.

Again, this is in Greek Town; it fronts Rollins Street. You have a fraternity to the west of the property; you have a sorority and parking to the south; and you have a sorority to the east of the property as well. I also want to take just a second to give you a little background on Delta Tau Delta.

Delta Tau Delta is one of the oldest fraternities on campus. Their Mizzou chapter was founded in 1905. It's a large chapter. They have 155 members. They are a very well respected fraternity, and I can say that as someone that serves on the housing board for one of their competitors that they always do well as far as academics. A lot of good leaders come out of their fraternity, and I can completely endorse the character and the type of fraternity that they are.

So as you were looking through your staff report, you may have had some questions about why we're going through this process now. And you're probably all familiar with the sprinkler ordinance -- the ordinance that was adopted in 2008 that required Greek houses to install sprinkler systems and meet certain sprinkler requirements. That is what triggered the process to build the structure that we're discussing this evening

. Delta Tau Delta immediately formed volunteer committees to start working on design plans and to start working on the fundraising for the structure in order to come into compliance with the sprinkler ordinance. They received an extension in 2015 in order to continue through this process. Again, over the last several years, Delta Tau Delta has engaged in extensive fundraising, you know, based on the construction plans and the design and the layout and the site plan that we're going to discuss this evening.

You know, one of the things that makes fraternities and sororities unique is they're actually not-for-profit organizations. So on a construction project like this, their primary source of funding is fundraising from their alumni donors. And so it's not as easy as -- you know, if you're going to change a plan, it's not as easy as just a run-of-the-mill apartment complex, something of that nature. Here, this has been a long sustained fundraising effort to build this particular structure -- which that leads me into the variance criteria.

And again, we believe the variance criteria are satisfied as to each of the variance requests that we're going to discuss this evening. I'm just going to run through them once here at the beginning, but then several folks may hit on these as they're talking about the individual variance request.

The first criteria is hardship. We believe we have established the hardship criteria in this case. First, the rebuilding is required in order to comply with the sprinkler ordinance. If we were to comply with the new Unified Development Code, the capacity of the house would be reduced from 66 beds, which is what it is today, to 28 beds under the new code. That is a significant reduction. Those numbers just don't work.

Financially, you can't build a new fraternity house that only has 28 beds. It just does not cash flow in any way, shape or form. Also, I mentioned earlier that the current chapter size is 155 members. You can't provide 28 beds for a 155-member fraternity. Again, the chapter house is designed to be a place where members of the fraternity come together to socialize and spend time together. Twenty-eight beds does not facilitate that sort of interaction.

I hit on this a little bit earlier, but again, the construction budget is what has driven the fundraising goal earlier, but again, the construction budget is what has driven the fundraising goals over the last several years. And the fundraising goals, again, were based on this particular site plan that we're looking at this evening.

So again, back when the sprinkler ordinance was first adopted, Delta Tau Delta looked and they said, okay, we need to come up with a site plan and a layout that, one, meets our housing needs.

We believe what we are looking at this evening meets those needs. Two, we wanted to make sure that what we proposed was consistent with what exists in Greek Town today - - that it is attractive; that it is something that guys are going to want to live in. Again, we believe that proposal -- or we believe this proposal meets that standard.

And finally, we were trying to build a project that met with -- met within or got within our fundraising budget. Again, this proposal does that. Changing that -- obviously, City staff has made several recommendations in the staff report that would require changes to our site plan and the layout and the capacity of the house. All of those are very expensive, and that will -- it essentially defeats the purpose of what we -- the process we've gone through over the last five or six years.

We believe we've established -- done what we need to do to satisfy the hardship criteria. Finally, I'd note on that, that obviously as this Board is aware, there are a lot of Board of Adjustment cases that deal with fraternities and sororities. Just in the limited research that I was able to do in the last two years, there has been ten cases. So obviously, you know, if we could go back and rewrite history when we adopted the sprinkler ordinance, we'd probably have some sort of zoning overlay for Greek Town, but as it stands right now, we're trying to put, you know, the R-MF zoning regulations and apply those to properties that are completely different than other multi-family housing.



Criteria B, as noted in the staff report, the fraternity use is a permitted use in this zoning classification. Criteria C, the proposed use is consistent with Columbia Imagined. Again, and as noted in the staff report, we meet that criteria. Criteria D is that the requested variance is the minimum modification of the code necessary to accomplish our purpose. We believe we have met that requirement, and we're going to talk about that as we talk about the individual variance requests.

And finally, as noted in the staff report, what we are asking for this evening is not going to harm the public health, safety, welfare or be injurious to other property. So we've satisfied that criteria as well. And with that, I believe I'm going to be turning it over to Mr. Cunningham to talk a little bit more. And I'll be happy to answer any questions at this time, if you have questions.

MR. CUNNINGHAM: Thank you. Hello.

MR. CARROZ: Please state your name and be sworn in.

MR. CUNNINGHAM: My name is Robert Cunningham.

MR. CARROZ: Address too.

MR. CUNNINGHAM: And 2504 Waterside Drive.

(Witness was sworn.)

MR. CUNNINGHAM: Well, I'm the architect for the Delta Tau Delta house, and -- or my firm is. And when -- when Columbia's fire sprinkler ordinance was put in place, Steve Sapp pledged to the -- that the City would work with the Greek chapters to make the process as painless as possible. And from my experience, they have done exactly that. It's been very smooth up to this point.

We have designed many of the houses that have been built and many of the remodels that have been done. My firm specialized in the design of Greek housing projects, and we work across the country on this type of building. The -- the ordinance spurred construction to upgrade the condition and safety of existing houses, in many cases demolition and construction of new houses.

The results have been very positive for the Greek community and for the City, truly in my judgment, a win-win situation. In addition to the aesthetics and fire safety improvements, the new remodeled chapter houses have provided a boost to City's property tax base and created a few jobs along the way. The slides that I have here are just -- represent the houses that have been built since I moved to Columbia, and these are the new houses that have been built within Greek Town -- and Greek Town being defined by the bounds of Providence, Kentucky, Rollins and Tiger Way.

And these houses have been built in that time -- in that 24 years. This excludes remodels, so -- and we have designed many of these projects in our office. In addition,

the new Lambda Chi house is under construction, and the Phi Kappa Psi house is scheduled for construction next year, along with the Delta Tau Delta house, so none of them could have been built under the new ordinance without the benefit of variances.

We have designed seven of these projects, and in 100 percent of the cases, we have been required to request variances, and all of those variances have been granted. The long-term Chairperson, Rex Campbell has always supported our -- our requests and those of others by describing the benefits of denser development in the City's center. The Greek Town area that I just described is different from fraternity and sorority houses built elsewhere in town and as well as other R-MF zoning property projects.

The Greek Town projects only abut -- or do not abut any type of development that is a lower -- I mean a lower zoning restriction. It only abuts other Greek housing, very large campus buildings, and a smattering of student housing that is primarily in -- in old single-family homes. The scale and density of the area has been appropriately and consistently set by this very Board in the past -- during the past two decades of variances.

Those variances have really established what the houses are, the buildings are, and what the entire area is. It was disappointing to me personally too that the new ordinance did not make provisions to allow consistent Greek Town densities without the need for variances, perhaps as an overlay district as we have found in other college towns where, you know, the appropriate restrictions and density could be established for that particular use in a confined area.

We write the performance for our projects -- the financial performance. The Delta Tau Delta house will not work and will not be built without the benefit of variances that have been commonly granted in the past. I don't believe we are asking for anything that has not been granted repeatedly and consistently in the past.

When designing the Delta Tau Delta house three years ago before anybody anticipated the new zoning ordinance, the -- we based our design on our experience with this -- this Board. The Delta Tau Delta chapter, very strong, excellent alumni support, but the building is worn out, and it has no historical significance, in my judgment. And it is dwarfed by the surrounding -- some of the surrounding neighbors.

Is there a benefit to saving it? Well, our assessment is the answer to that question is no, but, of course, we are interested in your comments. And thank you very much for your consideration of our request. Thank you.

MR. GEBHARDT: Good evening. My name is Jay Gebhardt. Address is 5206 Waterfall Drive, Columbia, Missouri.

(Witness was sworn.)

MR. GEBHARDT: So I'm going to talk a little bit about all the variances, and then my colleague, Cody Darr, is going to come up and hit on several of them, and then I'll be back to wrap things up on this. But -- so the first variance is the building height. We are asking for 49 feet. The zoning code requires 35 feet.

We've -- we're honoring the 25-foot setback, but kind of not. There is an average setback, and we'll get into that also. We're asking for a zero-foot setback on the driveway on the east property line. We have a couple of parking spaces that poke into the median front yard setback, and we're asking for a variance on that.

We've withdrawn number five. And then in the backyard where the parking is, we're -- we've agreed with staff on the 85 percent of the paved area, and we have an option for you on the screening. And then we have withdrawn number seven, which was the dumpster enclosure requirement.

So having said that, I'll move into the building height. Just about all of the fraternities being built now are three stories. And it's kind of an old thought that they have eight-foot ceiling heights. Almost no buildings anymore have eight-foot ceiling heights. Ten feet is common, but we're seeing twelve feet and so on.

So when you start adding the floors up and you put a roof on it, it's very, very difficult, unless you have a flat roof, to meet the 35-foot height. This 49 foot is represented in this drawing, and what we don't have is a picture -- and I hope you drove by today, but there is construction going on to the east -- on the sorority to the east, adding a big parking garage and a tall structure and housing above the garage that looms over the existing building. It's quite tall.

And then Alpha Gamma Sigma next door is a three-story building with a peak roof also. So we feel like this is going to fit into the neighborhood. It's also -- something to be said is campus isn't the same as it used to be. As you drive by, you know, Donnelly Hall was a little two-story flat-top roof dormitory on the corner of Providence and Stadium. Well, that's gone and now there's a three-story with a peak roof, and all the buildings that surround Greek Town are growing.

There's two large parking structures; there's the business center. It's -- it's just changed the character of the neighborhood a little bit. So not only do we fit in with our adjacent neighbors, we feel it's an appropriate height.

The other thing about the height I want to talk about -- so the UDC changed the definition of height. It used to have three-part definition in the old code. The new code has one definition. And so you can't really compare the previous variances that you've granted because that's an apple and this is an orange. And that's something that needs to be kind of thought about.

So now we have to use the average ground plane to the average roof plane, regardless of its relationship to the street curb, which we used to be able to tie it to the curb. That's gone. And so if you have a basement situation, your average ground plane is below the finished floor or the main floor, and then, of course, your average roof plan is pretty self-explanatory.

So the 49 feet seems like a very tall -- you know, 14 feet greater than the 35. But taking into consideration that the definition that we are using is different than what you are accustomed to, and I feel like it does fit into the neighborhood, and it's -- it's something that putting in a flat-top roof just to comply with the code I think would impact the appearance and the aesthetics of the building in a way that would actually be a bigger negative to the neighborhood than what we are proposing.

I think that's about all the things I want to hit on for this. I'm going to move on to the variance number two, and let Cody come up and be sworn in. I just have a question. When I come back, do I need to be resworn?

MR. CLITHERO: No.

MR. GEBHARDT: Okay. Thank you.

MR. CALDERA: You will be -- you will be reminded that you are still under oath.

MR. DARR: I'm Cody Darr with A Civil Group; offices at 3401 Broadway Business Park Court.

(Witness was sworn.)

MR. DARR: All right. Variance number 2 is requested to allow the proposed Delta Tau Delta building to be within the median front yard setback. This image -- I don't know how well you can see it. It's kind of small, so you can't see the text really great, but this shows all the current setbacks for the existing buildings along this portion of -- of Rollins Street. And it also shows how the median setback was -- was calculated, which is 36 feet from the existing right-of-way.

Some of the other ones, I'll just mention because it might be hard to read. The Alpha Gamma Sigma to the west is 29 feet from the existing right-of-way. Kappa Kappa Gamma, which is to our east is -- has an addition under construction that is 43 feet from the existing right-of-way. And Tri-Sigma across the street is 25 feet from the existing right-of-way.

These -- obviously as I'm going through these, these buildings are new, and they are not complying with the median setback. These aren't the only examples in Greek Town. Historically, the City has inconsistently enforced that front yard setback. So as you can see from this, the buildings have been getting closer and closer over the years to that 25-foot R-MF zoning setback requirement.

This shows a more zoomed in of just our lot and how the building is positioned on the lot in relation to the front yard setback. A couple of things I want to point out. First of all, the front porch is set back 25 feet from the existing right-of-way.

If this was a straight R-MF lot without a median setback, this would be an allowed position for the structure. Of course, we do have a median setback in this case. The main structure itself, as you can tell by the -- denoted by the hatching is essentially, all except for a couple of inches -- a few inches, behind the median setback. So that is important to note because the encroachment is pretty much all the porch, which is not an enclosed structure. It's open sided, except for the roof, so it's going to have less visual impact from an observer from the street than if it was a straight plane for the wall of the building.

To help visualize that point of a porch and the setback, I wanted to flip back real quick actually, because we have a picture here of a variance -- of a porch that's within the setback. This is Delta Gamma, and in 2016, they were granted a variance for a porch to be 12 feet within the setback, as you can see there along Providence.

We're asking for 11 feet of our porch to be within the setback, so there is some precedent there. And I think you can see here, it definitely is a different feel than if that was a building structure all within that front setback. I'll go back here to where we were.

And also I want to mention a point that was -- that was brought up in the staff report that I believe that we are meeting the intent of that median front setback. The transition of buildings along the road as you go from west to east, the main building is at the median setback. Alpha Gamma Sigma is closer. Kappa Kappa Gamma is further away. There is a progression there -- a transition that is kind of what the median setback was intended to accommodate.

Variance number three, this is the request to allow the driveway with a zero-foot setback along the east property line. It's circled in red there. One of the main objectives of the fraternity -- Delta Tau Delta through this process has been the ability to provide adequate parking for its members. This may point -- this applies to many of these variances we are requesting today. It's kind of a theme.

The layout we have here accommodates the minimum required parking that's required by the City, and this includes taking into account, which is allowed by the City code, counting bicycle spaces. So we're not just trying to add a ton of parking to -- and pavement just because we're trying to accommodate a lot of vehicles, we just want to have the minimum, and we believe that will accommodate -- be adequate for our members as well as we can.

So one of the things staff report I believe says that they kind of recommend or allude

to is kind of reconfiguring or shifting some of these items in our layout, like the building, or the driveway, or the parking, one way or another in the lot. All these shifts -- I mean, when we took into account this layout, we were -- tried to be very diligent and tried to be the most efficient as we could to get as many parking spaces as we could to meet that minimum, so shifting this will have consequences, and we believe reductions of parking spaces.

So while we might be eliminating one variance, we would then be out of compliance with the parking requirement. So we don't -- that wasn't something that the Delta Tau Delta could afford -- the loss of the parking spaces. We were trying to meet that requirement. Also, given the area and the adjacent property which we developed to the east as a parking lot, we believe this is within the right context and is not -- it is going to have minimal or no impact to the neighbor for this pavement there along the property line.

Variance number 4, parking on the front and side yards, this exhibit shows the parking that's encroaching with the red highlighted area where parking spaces are within the median front yard.

MR. CARROZ: Mr. Darr, can I ask you a question --

MR. DARR: Yeah.

MR. CARROZ: -- on --

MR. DARR: Please.

MR. CARROZ: -- item number three there?

MR. DARR: Yeah.

MR. CARROZ: What is the dimension of that driveway you're speaking to?

MR. DARR: It's -- the parking spaces are eight-feet wide, and the driveway is sixteen-and-a-half feet wide. Now, in practice -- or not in practice, like once the final construction drawings are completed, that driveway might not be right on that property line. It may be a half a foot off depending on how -- for constructability or, you know, working with the neighbors if we're allowed to put forms on their property. We just don't know exactly yet, but right now -- so it might be half a foot with -- inside the property line. Right now, we're asking for what we believe we need, which is all the way to the property line.

MR. CARROZ: Thank you.

MR. DARR: So the parking spaces within the front yard and side yards -- this one is for -- this exhibit is just for the front yard. As you can see in red is where the parking spaces are, so they're just portions of the parking spot that are within the front yard. The one on the left is ten and a half feet within the median front yard, so not a complete vehicle, just a portion of the vehicle.

I'd also note that this portion of the vehicle is still behind the front porch, and I'd also say that the -- no part of the vehicle would be closer than 25 feet from the existing right-of-way, which would be a typical front yard setback. Lastly, while we're talking about encroachments into this front yard, I did receive a copy of the construction plans for Kappa Kappa Gamma to the east, and they have a complete dumpster enclosure well within -- completely within the median front yard setback, and even closer than the 25-foot setback.

So while our -- we might have portions of vehicles closer than the 36-foot front yard, I don't believe that's going to have any impact -- or will have -- if we're allowing dumpsters and stuff in that area, then I don't think the cars are going to be a cause for concern in this area or be a detriment to this area. All right. And this one is for the same variance -- the same variance item, the same section of code, but for the side yard.

This is a new one for the UDC -- no parking within the side yard. The side yard for R-MF is ten feet. We have our parking setback six feet, so there is an encroachment of four feet into that side yard setback. We believe the impact will be minimal because we are providing the six-foot buffer, and again, as with all these things, this layout is designed to accommodate the parking requirements -- the minimum needed to meet the City's requirements and the minimum needed to meet the fraternity's needs.

MS. HAMMEN: Question.

MR. DARR: Yeah.

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

MR. DARR: One, two, three -- four. Four spaces.

And variance number five, the paved surface in the front yard, we have agreed with staff and have been able to revise our plan to accommodate the reduction in impervious area in the front yard. With that, I'll let the last couple of slides -- I'll let Jay come back up here.

MR. CALDERA: Mr. Gebhardt?

MR. GEBHARDT: Yes.

MR. CALDERA: You are under oath.

MR. GEBHARDT: Thank you. So variance number six, a paved area in the rear yard, we agreed to the 85 percent -- and let's see here, there's a picture for you. In red, that denotes the rear 25 foot, and that complies with the 85 percent. Part of the way the staff grouped the variances together, they talk about the screening in the rear of this, and I want to give you an option here.

We feel the screening is a detriment. I mean, this neighborhood is different than any other neighborhood. This is a group of fraternities and sororities, and they interact constantly with each other. They walk through each other's parking lots; they visit each other. It is a part and parcel of the neighborhood, and, you know, putting screening up

and fencing up to prohibit that kind of interaction seems like it's missing the intent of this.

So paving to the property line like this and not having screening, I know staff discussed the others -- headlights shining into windows and stuff, and I think in a regular apartment complex that would be a concern, but here we have a parking lot that abuts us on the south, one that's six feet off of us, and they all shine their headlights into ours too. And we're okay with that because we feel like the tradeoff of having that interaction and having that pedestrian access through there is -- is worth the negative -- the small negatives that are perceived.

So on variance number six, we agree with staff on the proposed 85 percent, and if you feel like the screening is required, we will put it up. But if you don't feel like it is required, we would agree that it's not something that's -- in this unique situation, is not required.

MR. WATERS: Mr. Gebhardt?

MR. GEBHARDT: Yes?

MR. WATERS: I have a question. Are there any bedrooms on the ground level of that building in the back?

MR. GEBHARDT: I'm going to have to ask Bob. Just a second. Are there any bedrooms on the back of that building.

MR. CALDERA: Mr. Gebhardt? Yeah.

MR. CUNNINGHAM: What was your question again?

MR. WATERS: Are there any bedrooms --

MR. CALDERA: Just a reminder to the speaker, you are still under oath.

MR. WATERS: Are there any bedrooms on the back of that building on the ground level?

MR. CUNNINGHAM: I'm very sorry, my hearing is terrible.

MR. WATERS: Are there any bedrooms on the back of that building?

MR. CUNNINGHAM: Yes, there are.

MS. JOHN: On the ground level?

MR. WATERS: Ground level?

MR. CUNNINGHAM: No, not on the ground level. On the upper level only.

MR. WATERS: Thank you, sir.

MR. CUNNINGHAM: Thank you.

MR. GEBHARDT: Are there any other --

MS. HAMMEN: Is the screening fencing in landscaping or just one or the other?

MR. GEBHARDT: I believe all that is required is a fence; is that correct, Mr. Zenner?

MR. ZENNER: That is correct. It would be a screening device four to six feet in



height is what is required by the code.

MR. CARROZ: And they're requesting a variance from that? That is what the request is?

MR. ZENNER: As it exists right now, yes, that is the request. The 85 percent is actually calculated -- and correct me if I am incorrect, Mr. Gebhardt. That 85 percent actually was calculated -- it was calculated based upon a two-foot offset from the rear property line.

The drive aisle width is actually -- in the rear parking lot was 25 feet. Minimum per code is 24. Parking stall depth along the southerly property line was at 19 feet per the site plan. Minimum depth of a parking stall is 18. When you talk about the overages, there's a two-foot difference. The calculation of 85 percent came from taking that two feet out of the depth of the parking stall and the extra foot out of the aisle width and moving it to a green strip that would separate the two parcels.

If I heard Mr. Gebhardt correctly, they still want to build the parking directly to the southerly property boundary.

MR. GEBHARDT: I misspoke.

MR. ZENNER: So you would have it offset just with no screening device?

MR. GEBHARDT: That's correct.

MR. ZENNER: Okay. So we would basically be adding, as Mr. Gebhardt indicated to the south of them, the recently constructed parking lot that was part of the Delta Gamma house, which is what their former annex used to be on is compliant with the then code, which was our former zoning code with a six-foot buffer between them. So this additional two foot of green space would be being added to that, and you would end up with eight feet of green space, basically, in an area, as Mr. Gebhardt has described as pretty laden with parking lots that all intersect basically at different locations, so it's that add a level of green.

The decision of the Board as to the screening device and as pointed out in the staff report, my investigation of that area would indicate that -- as is being indicated by the applicant, very little if any screening between these parking lots as for the purpose subscribed.

MS. HAMMEN: So is there landscape screening on the -- on the DG six foot or just its green space and yours would just be green or land with bushes or something else? I mean, not -- is that a requirement?

MR. ZENNER: Under the former code -- and I'd have to look at the landscape plan that was approved, but under the former code if my recollection serves me correctly, Ms. Hammen, there would have been a plant material placement requirement within the green

space that went around it because of its proximity to adjacent residentially zoned. There were a number of variances granted previously by the Board for that parcel, and included within that may have been the screening waivers, which given that it is a sorority parking lot, there have been other variances granted elsewhere through Greek Town as it related to screening waivers given a public safety issue, but I do not have that report in front of me.

MS. HAMMEN: At least it wouldn't be paved is what we're saying for sure.

MR. ZENNER: That's -- yeah. That's exactly the point that we were making with the staff report that it wouldn't be a paved area, and would be potentially closer to compliance.

MS. HAMMEN: And the 85 percent is still a variance? You've agreed with it that it's a variance?

MR. ZENNER: It is required to be a variance given that the maximum amount of area in the required rear yard that could be covered is a maximum of 30 percent or 500-square feet, whichever is greater. And in this particular instance, the 30 percent definitely would be what is being exceeded based on the paving area.

MR. GEBHARDT: And again, I guess Cody alluded to this, but the -- you know, the goal here is to provide the required parking, and that was kind of the guiding design parameter here. We felt given -- you know, we could have met some of these other requirements, but then we would have been asking for a parking variance. And given that this is Greek Town and the amount of, you know, parking that does occur on the existing streets, we felt like at least providing the minimum amount required by City code that that's not the variance we wanted to ask for.

The last variance has been withdrawn. It's for the outside storage screening. There is a dumpster. If we go back to this screening, in the bottom left-hand corner, that will be screened. It's not part of this screening that I'm asking for, but the -- that -- we have decided that we would screen that dumpster.

So having said that, just a lot of requests here, a lot of variances, but they all kind of come under the same theme as Delta Tau Delta has been working on this a long, long time. It goes all the way back to 2008. They've developed plans prior to the Uniform Development Code being conceived, and they've gone through fundraising and had money donated to them based on this concept.

And it -- we are not at the beginning of this process. We are at the tail end of it. We are ready to start construction in May when school ends to demolish the existing building and then start construction. So although in a perfect world you could look at this and say, well, you're tearing the building down and you've got a blank slate, you could start

all over, we started a long time ago, and that -- that's our problem here.

And I just wanted to emphasize that. Yes, some of the things that we are asking for would have required variances under the old ordinance, but they would have been like the building height, which has been -- I think there's been six instances since 2011 in this neighborhood of variances for height. And it's becoming -- it would look out of place if it was 35 feet in compliance.

So having said all of that, I just wanted to ask if you have any questions about this in general -- we've kind of skimmed through these in trying to provide the information to you, but any specifics that we have -- everyone that's involved in this here, and we can answer any questions that you might have. But again, you know, we felt parking was the thing that we wanted to preserve and not ask for a variance of, and that caused a lot of these -- the building setback, the median setback. We've done several projects here on Rollins Street -- my firm has, and we've built to the 25 foot.

So this is something that we felt that staff has worked with us on by allowing the porch to intrude into the median setback, but honor the 25 foot for the porch, which is what we've done, so I will quit talking at you and answer any questions.

MR. CLITHERO: Okay. Just so we raise everything correctly, the number one, you're asking for the 49-foot height?

MR. GEBHARDT: Yes.

MR. CLITHERO: Okay. And a 25-foot yard setback on number two?

MR. GEBHARDT: Yes.

MR. CLITHERO: Okay. Three has a zero setback on the east side? Yeah.

MR. GEBHARDT: And six feet on --

MR. CLITHERO: Allowed parking within the front and side yard setbacks. This is where we probably need to be a little more specific than that.

MR. GEBHARDT: Right.

MR. CARROZ: Can we go back to number three?

MR. CLITHERO: I'm sorry. Yes.

MR. GEBHARDT: Yes.

MR. CARROZ: Is there any way to work with an eight-and-a-half foot encroachment into the setback and leave some sort of green space all along that property line?

MR. GEBHARDT: Yes, there is, but --

MR. CLITHERO: So how much green space would that --

MR. GEBHARDT: So we've got a 16-and-a-half foot -- we basically would be turning that into a one way drive is what to do. But if that's the variance you're willing to grant then --

MR. CARROZ: I just have a problem with building to the property line. It just gets -- it's awfully crowded there anyhow, and I understand that, but it's a constructability issue and other issues that arise from that --

MR. GEBHARDT: Right.

MR. CARROZ: -- that I feel like, you know, you're pushing towards a one-way route anyhow. I don't know really why you haven't went that way with this plan to encourage that. And I don't know if that's something that staff has brought up --

MR. GEBHARDT: They have.

MR. CARROZ: -- is to get a circular motion around the building.

MR. GEBHARDT: They have.

MR. CARROZ: And from my experience -- I'm not an engineer, but you usually don't gain parking from that, but it helps flow.

MR. GEBHARDT: Yeah. If we can get the 66 kids living there and parking there to honor that, yeah, that ---

MR. CARROZ: Sure.

MR. GEBHARDT: It --

MR. CARROZ: I understand that problem too.

MR. GEBHARDT: Yes. So we felt like providing the extra pavement and allowing if the cars do meet there to be able to pass each other was safer. We also felt, you know, from a fire safety issue, getting fire trucks around there, having that extra pavement would be appreciated by the fireman. So that was kind of our reasoning behind that. But again, if -- we're at your mercy to -- if you want --

MR. CARROZ: On the east side property line, that would still allow for a 15-foot drive aisle. Fire trucks are not 15 feet wide. And a fire truck is probably not going to pull down that driveway. Same on the police --

MR. GEBHARDT: As you know we have requirements to have a truck within 150 feet of all points of the building --

MR. CARROZ: Sure.

MR. GEBHARDT: -- and we have to prove that out. And fire lanes are 20 feet by code, so -- but we'll make it work, Mr. Carroz.

MR. CARROZ: Thank you.

MR. GEBHARDT: Uh-huh. I think that wraps up -- yes, I think that wraps up our presentation, so if there's --

MR. CLITHERO: Well, I was still asking about that -- how would we define those parking in the front and side yard?

MR. GEBHARDT: Well, the front yard parking is ten-and-a-half foot maximum

encroachment into the --

MR. CLITHERO: Yeah.

MR. GEBHARDT: -- median front. And the west is at your pleasure of what we can encroach. It's a ten-foot setback is what is required. If you would allow us to encroach on that, we would appreciate that.

MR. CARROZ: You're requesting basically a four?

MR. GEBHARDT: Four. Yes.

MS. HAMMEN: On the east?

MR. CARROZ: On the west.

MS. HAMMEN: Oh, on the west.

MS. JOHN: Ten foot on the west, and less on the east.

MR. GEBHARDT: Correct. It's --

MR. CARROZ: Wait a minute.

MR. GEBHARDT: So --

MR. ZENNER: Let me -- if I may, Jay.

MR. GEBHARDT: Yes. Thank you.

MR. ZENNER: There are -- I would suggest to you there are some things associated with how these variances need to be disposed of. So, Mr. Clithero, I understand what you are asking for, but I think we first need to determine what variances the Board may be interested in granting and the implications of granting those variances as they relate moving from one through seven, obviously skipping over five and seven, which have been withdrawn.

There is no front yard setback variance for the parking that is needed if you approve the 25-foot front yard setback. There is no median setback then defined.

MR. CLITHERO: Okay.

MR. ZENNER: So the front yard setback on the parking goes away. You still however will have to address the issue of side yard setback.

MR. CLITHERO: Got you.

MR. ZENNER: And I think we're going to have to walk through those sequentially so you can see how they all play out together. Part of the way that the staff report -- which is new I think for everybody here this evening -- part of the way the staff report was put together was to -- was through the recommendation component of which will hopefully provide you a little bit of guidance as to if you chose to grant one variance, how it may impact a future variance.

So if -- if you have further questions for Mr. Gebhardt, please continue to ask them --

MR. CLITHERO: No. I'm good.

MR. ZENNER: But I thought I would introduce that fact at this point --

MR. CLITHERO: Okay.

MR. ZENNER: -- because I think that that's --

MR. CLITHERO: I'm good.

MR. ZENNER: -- maybe what helps you.

MS. JOHN: I have one question.

MR. GEBHARDT: Yes?

MS. JOHN: On the variance number one, the building height, staff report indicates that adjustment of the side yard setbacks would permit a taller building, not all the way to 49, but to 45 feet. Is there any possibility of doing that?

MR. GEBHARDT: Not with the building that was designed. It would mean redesigning the building and going back through fundraising to, you know, let those people that have donated significant money that that's not -- we're not going to be able to build the building that we --

MS. JOHN: Uh-huh. Uh-huh.

MR. GEBHARDT: -- showed you.

MR. ZENNER: If I may, Mr. Chairman, to follow up on Ms. John's question. Jay, could you describe why it would require the building to be redesigned? Why you cannot based on the width of this property pick the building up and shift it over the additional five feet? That, I think, may be helpful for the Board to understand what physical constraint does this property have as the building is currently designed that says that you cannot move the building over and accommodate 15 feet on both sides.

MR. GEBHARDT: Yes. It's --

MR. ZENNER: You're 27.1 feet on the east and you're ten feet right now with the portico on the west.

MR. GEBHARDT: It's been the desire of the fraternity from the very beginning to provide the parking for the 66 beds. They have 66 beds in their existing facility. They are asking for 66 beds in this. By shifting the building over, we could not configure a way to get the parking without a variance.

And so that is the main reason why we did that is moving that over caused a ripple effect in the parking and not being able to make that work the way that they desired for it to work. That's not to say that we have a -- you know, we could look at a plan that is in compliance with that with this building on there, but we would be back here asking for variances of another flavor.

MR. CARROZ: For less parking?

MR. GEBHARDT: Yes.

MS. HAMMEN: Question. So the requirement is not actually for 66 parking spaces; is that correct?

MR. GEBHARDT: Well, it's -- you have to provide one parking space for every two beds.

MS. HAMMEN: Yes.

MR. GEBHARDT: So it's for 33 parking spaces.

MS. HAMMEN: And how many parking spaces are there?

MR. GEBHARDT: We have 29 vehicle spaces --

MS. HAMMEN: Uh-huh.

MR. GEBHARDT: -- and four bicycle spaces to get the 33.

MR. ZENNER: And, Jay, what is the current parking on the site today?

MR. CALDERA: Hey, Pat, I just want to make sure that everybody knows, you can refer questions and suggest certain things for the Board to inquire about, but I would discourage you guys from just going back and forth. Okay?

MR. GEBHARDT: I would have to ask Cody that -- to answer that question.

MS. HAMMEN: Oh, I would like to know that answer.

MR. GEBHARDT: Yes. Cody, do you know --

MR. CALDERA: The speaker is reminded that he is still under oath.

MR. DARR: I'm trying to think. Right now, there is -- in 1988, there was a Board of Adjustment hearing for this property and existing layout for screening encroachment into the front yard and for parking. I believe there was 32 spaces required at that time. I'm not sure what that exactly was, but they only provided -- they were asking to provide 23, I think. So a nine space reduction from what was required.

So the layout that was done then in 19-- subsequently after the variance was granted for the reduction in parking showed a layout that showed parking configuration that met the requirements -- the zoning requirements for parking, and with the 23 spaces. So there's that.

Then there is what is actually there now and the way they park now, which is double stacked. It doesn't meet the City's parking requirements. But they have -- obviously, parking more vehicles there now than that 23 spaces that was shown on the original layout. So I didn't know exactly where you were -- which part, but -- so there's two answers, I guess -- twenty-three or what is actually how they are parking double stacked.

MS. HAMMEN: Well, so on the height question, and I am -- so I am confused about this "would permit a 45-foot tall structure by right". What does that mean?

MR. CALDERA: Ms. Hammen, are you referring to the -- to the staff report?

MS. HAMMEN: Variance one.

MS. JOHN: Staff report, yes.

MR. CALDERA: But within the staff report?

MS. HAMMEN: The staff report, yes.

MR. CALDERA: Pat?

MR. ZENNER: The R-MF zoning district has got a variable setback -- a variable height standard based upon setbacks. It's a philosophy that existed in the standard that was carried forward from the former R-3 zoning district, which is what existed on the property before March of 2017. And, in essence, basically by increasing your side yard setbacks, you were granted an additional ten feet in height.

So it's a regulatory tool by allowing variances for height to be avoided at particular times or to allow variety, in essence, within the multi-family zoning district in building height if you are willing to provide an additional amount of side yard setback. The -- so that's -- that's what it means by right. You're allowed -- if you provide the additional setback, you are given by right without necessary request of any variance to go from the maximum height that is otherwise applied to all other R-3 zoned properties up an additional ten feet.

MS. HAMMEN: Do I understand that if this building would be situated somewhat differently on the lot, it would meet that 45 foot and have a 15 foot side yard?

MR. GEBHARDT: That's correct. And -- but our average ground plane to our average roof plane -- correct me if I'm wrong -- is about 48 feet in, so we've asked for 49 because we haven't done the final plans on this, and we haven't set all the elevations or the grading around. And because the definition of height is defined now, we have to calculate that average ground plane, and we haven't -- we don't have that information yet, so we've asked for an extra additional foot on that.

So if we were to slide it over to 15 feet, we would have the right to go to 45 feet, and we would just be asking for a four-foot variance to this. But I ask you, is that additional five foot, given that this is Greek Town and what is next to us on either side, does that really change the equation that much? It doesn't for us.

We felt like losing those parking spaces -- those three parking spaces on the side wasn't -- was more important to keep those then it was to slide the building over five feet just so we could have 45 feet and just ask for a four foot variance. I mean, the building is still the same height.

MS. HAMMEN: So, Mr. Zenner, is there a way to make up those lost spaces?

MR. ZENNER: I'm not an engineer either; however, I play one five days a week generally by reviewing site plans, and my evaluation of the site plan as conveyed in the staff report would indicate that there are options associated with shifting the building,



reducing drive aisle widths, and, yes, there would still be the need to ask for a height variance. It would be minimized.

There would be a new need to ask for an encroachment into a side yard setback at that point on the east, and you would still be -- in order to retain the parking spaces on the east side of the building. So the location of the parking spaces that are on the west side of the building are -- would be shifted over potentially, but the Board, at your discretion, you could leave -- the six foot green space strip that's between the west building and the proposed site, leave those parking spaces where they are, grant that variance as is requested.

You could potentially eliminate the variance on the west, but have to replace that by a half foot or a one-and-a-half foot variance on the east.

MS. HAMMEN: Which would take it to five and a half feet -- five or five and a half --

MR. ZENNER: You would end up with something that to Mr. Carroz's point, you do not gain at that juncture. You still do not gain any green space on the east side of the building between the driveway location and the adjacent parking lot that's part of the sorority. So there's a little bit of -- and again, because I'm not an engineer; I'm not working with a scaled site plan that I could move the building around on, there is some variability there.

Obviously, there is, I believe, enough room widthwise on this site to shift the building and to then address the parking issues to ensure that none of the parking spaces are reduced. My desire was to not reduce the required parking either. As I was looking at the site plan and crafting your report, it was not to reduce the required parking, it was to modify the setbacks associated with allowing that required parking to exist by minimizing possibly other pinches within the site itself.

A lot of it is predicated on its one-way circulation system on the sides and a two-way circulation system because you have 90 degree parking on the rear. So you -- you vary the side driveway widths, we took pavement out of the front setback, which is why variance number five has been removed, so you're narrowing your driveway approaches down. Likewise, you can narrow down the driveway extensions as they come back into the site to the rear parking lot and potentially gain space.

That's my professional opinion, not being an engineer. And I'm not working with a scaled site plan, but I do believe based on the dimensions that I had in front of me that there is capability of being able to do it.

MR. GEBHARDT: With that said, we're still up here -- going to be basically requesting almost the same variances.

MR. ZENNER: It would probably be the same spectrum of variances, but it would be varying levels of distance and depth. And again, with the criteria that Mr. Colbert went

over as he introduced this case, had we created -- are we requesting variances that are the minimum necessary in order to grant relief? So as we went into this project, from a staff prospective, we were looking at, well, what was the minimum relief necessary if you were to get compliance.

I -- as the staff report reads, you cannot if you are favorable to this project and its replacement here in this site, you cannot grant -- you cannot not grant variances in order to allow it to be constructed. There is physically no way to do it. You either have to shrink the building in order to pull stuff out or you're going to have to grant a minimal amount of a variance in order to allow it to be constructed as is proposed.

MR. GEBHARDT: If I may, I think you're -- what you're struggling with can be reduced down to should the tail wag the dog. And so what I mean by that is we have regulations and we can -- we can redesign and reshift and do things and comply with the -- so we have a -- we have minimized the height request, but as an engineer, I look at this and say, you know, these are 18 to 21 year olds. Is it safer? Is it a better plan?

You know, sometimes you just have to stop, go back, and go what's better? You know, what's better for the people that live there? What's better for the people that use this? What's better for the people that have to service this with food and fire and emergency situations? So we believe that this is what's best. We could go away from that plan and do something to keep you from having to set a precedent of a 14-foot height variance rather than a four-foot height variance, but, to me, that's -- that's wrong-minded in the sense that we should be trying to do what's best for the people that live here and in the surrounding areas. And we believe this is what that is. Thank you.

MR. CARROZ: Anyone else wishing to speak in favor of the application? Anyone wishing to speak in opposition? Seeing none. Comments of staff? Do we have them already?

MR. ZENNER: I think you have many of them, and I don't know what more I can add other than to answer any questions that you may have of the recommendations. I think we have -- we have heard the testimony, we have heard the fact that the building is in a unique environment, and there are options associated with granting variances to permit its construction that may be less than what had been sought. The decision, however, obviously is left to the Board. Precedents on variances that have previously been granted are interesting pieces of information; however, they do not set precedent as to how you need to act in regards to this. Unfortunately, there has been a new code that has been adopted since many of these previous variances have been granted for other fraternities and sororities.

We do have provisions now that are being applied, and I can't speak to the past

errors in application of median setback or other standards that may have been brought up this evening; we, however, have reviewed this project based on its merits as it has been submitted to the Board as is required by the variance process and have offered our recommendations as to possible outcomes for you to consider.

So if you have questions of those outcomes and need additional clarification, I'm more than happy to try to provide that for you.

MR. CARROZ: Thank you. Any additional comments from the person making the application?

MR. COLBERT: I'll make one really brief comment. As you're going through these individual variances, look at that building. And what is wrong with that building? What is wrong with that particular proposal? That is what we're going to build, and the variances we have asked for tonight are what we need to -- in order to build that particular building. Thank you.

MR. CARROZ: Close the public hearing.

**PUBLIC HEARING CLOSED**

MR. CARROZ: Comments of legal?

MR. CALDERA: A few housekeeping measures, and then I'll follow up with comments. So first thing, the applicant has already kindly admitted many of our exhibits, so we're not going to go ahead and duplicate any of those efforts. However, we do want to add for the record a few additional documents, including the staff report to the Board of Adjustment, the public hearing advertisement, the parties in interest notice, and the parties in interest list. And we would submit those as City Exhibit 1.

**(City Exhibit 1 was received into evidence.)**

MR. CARROZ: So noted.

MR. CALDERA: Thank you. So as City staff has already stated, I do want to remind the Board of a few things. One, the previous variances granted to other properties do not establish a precedent. You do not establish precedent. Okay? So you must judge this on its own merits.

Along those lines, there have been a variety of standards that have been thrown out by the applicant. I would remind the Board that there are five criteria that you are to consider when deciding on each of these variances, and they are spelled out within the ordinance. At this time, I'm happy to read those aloud if you would like.

MR. CARROZ: I don't need them read aloud.

MR. CALDERA: Okay. And then, lastly, just a general principle. Generally speaking, Boards of Adjustments -- and this is true throughout the state and throughout the country -- they are generally -- it is generally recommended that you grant variances

sparingly. Okay? Because there is a purpose to the code and the way that it is written.

With that said, in terms of how we should handle this, I believe Pat mentioned this at the beginning, but I strongly recommend that we go through each variance one by one. And if the Board believes that they will need to solicit more comments or anything like that, we can handle it as we -- as we go along. But it is my understanding that each variance could potentially affect your analysis of the next one. So that's how I recommend proceeding.

MR. CARROZ: Thank you. So, Mr. Zenner, we are going to handle this through the staff report outline; is that correct.

MR. ZENNER: That is correct, sir.

MR. CARROZ: And we're going to call it Item 1, a variance to maximum building height; is that suitable?

MR. ZENNER: That will be fine. I can give you a short title if I need to, but I think you'll go along and probably figure it out.

MR. CARROZ: Okay. And they are requesting a 14 foot variance in total.  
Comments from the Board?

MS. HAMMEN: It was commented that the sorority to the east is much high-- taller than this with the addition, I guess, and so is that from staff's perspective or is that -- I guess there is a building permit and it was -- do you know about that? And also, it was commented that it's apples and oranges comparing height now to the previous code. Would you comment on both of those, please?

MR. ZENNER: And I will remind you of what Mr. Caldera had indicated. Variances granted from previous or other adjoining properties are not setting precedent. In 2016, the sorority that is to the east of the subject site was granted a height variance for construction to a maximum building height of 43 feet. So that is a variance in which they are working within per their building permit that has been issued.

This particular location, if you all have been out there, does have great differential from the intersection of Providence and Fifth or Fifth and Rollins. Going from west to east, it is increasing in elevation; therefore, this particular structure where the portico is does have a basement level on it, so there is a depression between it and the -- and the construction immediately to the west. So, yes, there's going to be a height variation between the buildings as you move from west to east, east being higher.

So there is going to be an impression or an appearance possibly of much taller structures as you move up the hill, not unlike what Mr. Darr had pointed out with the front median setback, which is the next variance, but it's apropos here to make the statement. You've got -- based on the heights of the buildings, they're going up as you move west to

east. As you move west to east on the median setback, it trickles in, so the corner to the west is far out, and then all of the buildings that are further to the east step back.

So there's a relationship between how those buildings exist heightwise, because of the topography and then basically they're set back based upon when they were constructed or reconstructed. So to the second point, Ms. Hammen, that, yes, we're comparing height at this point apples to oranges. The prior code did -- as Mr. Gebhardt indicated, had three different ways of measuring building height.

The new Unified Development Code attempted in most people's minds to simplify how we measured height. However, it does have some different applications and does have different challenges as was pointed out. It is from average grade plane, which would affect a building that has a basement because that grade plane is going to be lower; whereas, the prior code would have allowed you to measure from the lowest curb elevation or -- I apologize, the highest curb elevation to determine height.

So in this particular site's instance, the highest curb elevation would have been on the east side of the property, and you would have been measuring the height from the east corner -- the northeast corner of this property and going 35 feet up, which on the west-hand side of the property then would have appeared to have been much higher than 35 feet because you would have had an exposed lower level and upper levels.

A good example of how the former code actually addressed height, the structure that is immediately to the west, you have the Senior Annex that is on Rollins; you have a parking structure; and then catty-corner through the site, you have the main house for the fraternity. That is all one parcel of land, so the highest curb elevation is actually, if I recall correctly, on Burnam, and therefore, when we were measuring height for the building permitting process, it was measured off of Burnam, and did affect floor heights most likely as it related to the construction that's on Rollins.

That's how the old code worked, but that's not how we are working now. Is it ideal? I'd have to confer with our building and site development staff. I do know it has created some challenges, and how we are going to address that through the Planning and Zoning Commission and through City Council as part of an amendments process is yet to have been discussed.

So we have to consider this variance based upon the height requirements that are currently in place, which are going to measure from the lowest level, then to the median plane of the roof. Now, we used to -- measurement on the roofline is always -- has been and still is to the middle of the roof. So flat roofs obviously, you're measuring it to the parapet height. On a pitched roof, you would be measuring basically to the middle of the roof line or combination of eaves, if I recall correctly is how it is written.

So I -- I think Mr. Gebhardt pointed it out aptly. You can reduce by moving the building in and reducing fourteen feet to four feet; however, at the end of the day, you're still going to have a 49-foot tall building. So how you choose height may impact how you address everything else because if you choose to move the building in and situate it, that has an impact as it relates to parking and setback variances that all are tied together at that point then.

MS. HAMMEN: On number two, the median front yard setback --

MR. CARROZ: Wait. We're not -- we're not --

MS. HAMMEN: No. No. This is related --

MR. CARROZ: But we're not -- we're not on number two. We're doing them one at a time.

MS. HAMMEN: -- to the rear of the property to shift the front building corners out of the required setback. Does that have any bearing on --

MR. ZENNER: On height? No. It would not have it on height. It still -- in essence, you would be dealing with height being independent of the shift of a building. The shift of a building, if you shifted it laterally east to west -- or west to east I should say because that would be the way that the building would need to move -- it would need to move east -- will do nothing to change the encroachment of the front pilasters that are on the front of the building behind the porch. You would still have to shift the building back.

And again, variance number two becomes moot if you approve a lesser front yard setback. So when we get to that, I'll explain in greater detail how that occurs.

MR. WATERS: I have a follow-up question to what you were just discussing. I know we're dealing with apples and oranges here, but if you wanted to turn the apple next door into an orange, has anyone tried to do that? In other words, what is the building height as calculated under the new code if applied to the building next door that appears taller?

MR. ZENNER: I don't have that information, Mr. Waters. I'm not sure if Mr. Gebhardt has run a calculation based on that. I do not believe that site has -- I believe that site is probably flatter than the subject site; and therefore, where the grade plane is, it may be from grade up to the top of the building and may not have an impact.

MR. WATERS: Well, maybe that's not helpful, but it sounds like that next door parcel has the benefit of different curb heights. It might -- Mr. Gebhardt, if you want to answer that question, be my guest.

MR. CALDERA: Mr. Gebhardt, remind you that you're still under oath.

MR. GEBHARDT: I'm under oath. So the building next door, as Pat indicated has a curb that rises to the east, and they had a variance for a 43 foot, I believe, measured from the highest curb. You go up 43 feet to an elevation, and they couldn't -- they couldn't

pierce that elevation with a roof.

If you measured it under today's definition of height and took the average ground plane, I had the site plan -- I don't know the actual how it was graded, but off the site plan, it would be about a 46 foot height instead of 43. So it was about three foot difference in that.

MR. WATERS: Okay. And I know that -- thank you.

MR. GEBHARDT: But it's really -- it's really important that you understand the way that it was measured and built, that building next door, if you were to look at it, it's the elevation of the top of that roof is at or a little higher than the top of our peak of our roof. And that's where I come at you and say it fits in with what's going on there. If you look at pure elevations, you know. So I hope that helps and does not confuse you.

MR. WATERS: No, it does help. Thank you.

MR. GEBHARDT: Thank you.

MR. WATERS: You know, in my view, I do think that it is important to look at this building in the context of the other structures around. And while they don't -- they don't set a precedent necessarily, what we've done in the past, they do have a bearing on, you know, what's maybe acceptable in this case.

MS. HAMMEN: Is there somewhere in the staff report that says that this towers over other buildings?

MR. CARROZ: That's not for staff to comment on.

MR. CALDERA: Ms. Hammen, I would say that --

MR. ZENNER: That is a statement.

MR. CALDERA: Yeah. Yeah. Generally -- generally speaking, staff is focusing just on the measurements on this particular property. Again, as per the criteria, we're not looking at the other properties because we're looking at the uniqueness of this one and whether or not it experiences hardships.

MR. CARROZ: Any other thoughts, comments? Mr. Clithero?

MR. CLITHERO: Well, it just seems to me that this is a perfectly valid request for height needed -- we haven't talked about -- you know, we've talked about this in the past, but the necessity for a taller building to accommodate HVAC, more structure, sprinkler systems, you just can't do it in 35 feet. You just can't.

MR. CARROZ: Is that a motion?

MR. CLITHERO: I have a motion to grant the request for the 49-foot height.

MS. JOHN: Second.

MR. CARROZ: Is that properly worded?

MR. CALDERA: If you can work with that, I think it's fine. That is exactly what the

applicant requested, if I'm not mistaken. Correct?

MR. CARROZ: It is.

MR. CALDERA: Absolutely. So we'll need to do a roll call vote on that one -- particular one before moving on.

MR. CARROZ: I have a motion and I have a second. Mr. Zenner, would you please call the roll.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: No.

MR. ZENNER: Motion passes 4-1.

MR. CARROZ: Item number two, an 11-foot variance to the median front yard setback. Any people have any thoughts on that?

MS. HAMMEN: Well, Mr. Zenner, I have a question about why the median -- it seemed like in other situations, we have applied a 25-foot setback, and why is the median applied here or has it always been and it's just not -- I've just missed it?

MR. ZENNER: That's a real good question, Ms. Hammen. And I think as Mr. Gebhardt pointed out, or it may have been Mr. Darr, the median setback, I believe the way that time has passed, it has not been consistently applied in all locations. And Greek Town is no different than some of our other locations where we have had median setback requirements come up through the permitting process.

I cannot explain to you why median setback was not applied to the property to the west, which would have set the building likely greater than 29 feet back from the right-of-way; however, again, we have an apples and an oranges situation here. A lot of tangerines got created when we adopted the UDC.

The prior code required median setback to be measured off of the entire block length between intersecting streets, so the former median setback would have been based upon two structures that I believe exist where the single -- well, the two structures now are on the corner of Providence and Rollins. I do not know what those setbacks were at that time. You have the existing Delta Tau Delta home, which was set out at a -- had a 14



-foot variance to the median setback granted to it, which at the time was 56  
-and-some-change feet back from Rollins.

And then, of course, before the addition for the sorority on the west, you had a building that was setback even further. So how that calculation and how the 29 feet got established on the corner, I do not have an answer for. The only think I can tell you is now under the new UDC, the way we measure median setback is based upon the adjacent developed parcels.

MR. CLITHERO: Say that again?

MR. ZENNER: The adjacent developed parcels.

MR. CLITHERO: Okay.

MR. ZENNER: So if you have a gap like we would be creating here with the removal of this existing structure, you would look to the left, you would look to the right. You would determine what the setbacks were of those two structures, figure out the difference, take the middle of that and add it to the minimum -- to the lowest setback that existed for the two structures that are on either side.

So in this particular instance, you would have added what the difference -- the mid-point was of the difference between the two adjacent structures that are developed and added it -- it was added to the 29 feet. That's how we come to 36. You didn't add it to the 43, which is on the other side. The 43, basically, was the outlier in -- in the calculation between 29 to determine what the setback is for the subject property.

If they were both 29 feet, there would be no difference. You would set the Delta Tau house at 29 feet. If they were both 25 feet, you would set them at 25. Why we have 29 feet on the corner, again, I can't explain that to you, but you would think through the platting of that property when we replatted it, we would have platted it at a 25-foot setback, and at some point, there had to have been some calculation unbeknownst to me -- I don't know -- that determined a 29 -foot setback.

It's an odd setback, you know. It doesn't match up with anything we've got in our code. So right now what you have is you have this building that has a median setback of 36 feet. Initially as this project came in -- and I don't want to get too far into the weeds with the Board -- we've got multiple things that are -- that will have to happen with this parcel following this hearing.

The property, because it is two platted lots right now that have a building that is constructed over the property line, is required to be consolidated through our new Unified Development Code as well. We no longer allow buildings to be built across property lines. When you have to replat property, all of the existing setbacks that may have been established through some other means, if there was a plat notation that defined a

setback, they'd go away.

Minimum setback by code for the R-MF zoning district is 25 feet. And there was a question asked by the applicants team as it related to is it median setback or is it minimum setback for the R-MF district, which would have been 25, which is where the porch is proposed to not go forward of. In reviewing the code and in reviewing the intent of median setback, it was to maintain the integrity of developed neighborhoods. And, as such, the conclusion and the ruling that was made was that the median setback would apply; hence, the reason for this variance.

I believe, as Mr. Darr pointed out, the main body of this structure actually complies with the median setback, with the exception of the pilasters that are on either side of the main building façade, which encroaches roughly less than a foot. As stated in the staff report and as you can probably see on the site plan, there is space to which the building can be shifted to the south -- a green space on the rear of the lot that has some room for a little bit of adjustment.

Should you choose to not approve the setback variance, two things are -- two things will have to happen. One, the building would need to be slid back in order to remove the pilasters out of the required median setback. Second, the roof on the porch would need to be removed, or alternatively, the porch roof -- the covered area of the porch could be reduced to 60 feet -- 60-square feet, which is an allowed encroachment per the code and allowed to encroach six feet forward of the median setback, which means you would have the roof area of the front porch would be no greater than -- it would be 30 feet from the right-of-way line, in essence, five feet greater than what the minimum R-MF zoning setback is.

What the applicant is proposing is to have the front porch set behind the 25-foot R-MF required setback greater than 60 square feet covered, main building basically entirely behind the median setback. There is -- if I recall correctly, it is a 10-foot deep -- 10- to 12-foot deep porch or porch area that is proposed. You know, I think there's examples of where we have two-story, which this is going to be a soaring two-story covered porch area mass of the building, characteristics of the area, as pointed out in the staff report. The mass of the building is actually going to meet the criteria, and that is where we point out in our report -- it definitely meets the intent; however, because the porch has got greater than 60-square feet under a roof, the recommendation is denial because you can eliminate the variance through eliminating the coverage that exceeds the maximum allowed, and you could reduce the size of the porch as well.

However, again, as the applicant has pointed out, that has an impact to the overall design of the building and its general usability. Staff report points out what can occur to

minimize the amount of the variance necessary. We propose that to Board as an option if you so choose.

Again, so the key points here are if you deny the setback variance to the 25-feet -- minimum of 25, the porch needs to come off in order for the porch to be able to project into the setback. The porch will need to be shortened because it can't extend as far -- well, the porch can't extend as far as it currently does without having a roof on it. That's - - that's not the issue.

If you put a roof on that porch, that porch cannot extend more than 60 -- or you can't encroach more than six feet into the required front, and the required front then, if you deny the variance, is at the median, which is 36 feet. So if I haven't confused you enough because I've almost confused myself, ask me.

MS. HAMMEN: In the staff report it says sufficient space exists to the rear of the property to shift the front building corners out of the required setback. What does that mean?

MR. ZENNER: It means you pick the building up, in essence, and you move it to the south --

MS. HAMMEN: Yes.

MR. ZENNER: -- half a foot.

MS. HAMMEN: And then you lose parking?

MR. ZENNER: No. You -- based on the way that site plan again -- I only play engineer every once in a while. Again, it would appear as though the way that this building is located on the property, that the building itself and the back deck would not encroach into the required parking. So you lose no parking. And if I -- you should have a site plan in front of you or in the packet that was provided.

MS. HAMMEN: So can I ask Mr. Gebhardt his reaction to that?

MR. GEBHARDT: Yeah. Pat I think I have a drawing, I guess.

MR. CALDERA: I would just remind you --

MR. GEBHARDT: And, yes, I understand I'm under oath.

MR. ZENNER: I think I have it here, Jay. What I want to do is I want to show you the -- so if we look at the drawing, the red outline represents the existing building that's on site, and then the hatched outline, which is here represents the new buildings. So your actual physical building is here. This is -- the area that is right back in here is a back porch. This is grass that is between here and here. The area of encroachment that I'm referring to on the corners of the building are here and here. They extend forward of the 36-foot median setback, which is this line here. If the building is slid back just that minimal amount of space, it is going to still fall within the green area here. It does not affect any of the surrounding parking at that point. So that is -- that is what I was

referring to is moving the building -- sliding the building back.

MS. HAMMEN: But the front porch still goes more than six feet into the --

MR. CLITHERO: That's correct.

MR. ZENNER: That would be correct.

MR. CLITHERO: Still have to have --

MS. JOHN: A variance for that.

MR. CLITHERO: -- a variance that would be six inches less than what it is now.

MR. ZENNER: Well, and again, what I'm trying to -- what I'm trying to explain to you is that if you deny the 25-foot front setback request, the roof on the porch needs to go away. You would then probably have to grant a variance for greater than six feet encroachment into the required front setback if you want to leave the deck the same -- the actual uncovered deck the same or you would be granting basically -- well, no, you wouldn't be granting any -- at that point, you would have to be granting a different variance.

And it's - it's incorporated basically in the setback variance for the front encroachment, but it would fall under a different category because it's an area -- it's a covered area that is encroaching into the front yard at that point.

MR. CARROZ: If you --

MR. GEBHARDT: At that point they would have to come back --

MR. ZENNER: Well, that particular variance -- because that variance has not been advertised for. Now if you grant the variance, the 25-foot front yard setback, you're going to establish through that action that the new front yard setback for this particular property is 25 feet, which is consistent with the general R-MF requirement. You, in essence, at this location would be saying median setback per Board order does not apply to 506 Rollins given the existing developed condition from Providence over to the other side of the sorority.

At that point, the corners of the building and their encroachment into the median setback are irrelevant because you would no longer have a median setback requirement. And the porch encroachment is irrelevant because it is now compliant with the new setback. It isn't -- it is not encroaching into the required front, which would then have been established as 25 feet. Does that all make sense?

MR. CARROZ: But if we change that 11 foot to a 11-and-a half, does that push it back far enough to do what we need it to do? I'm just asking a question.

MR. ZENNER: No. That's actually going to increase the level of nonconformity because right now -- I mean, median setback -- and I guess that's the question that you need to discuss amongst yourselves how important in this particular instance is retaining

the median setback versus retaining the minimum required front yard setback of the zoning district. From a practical prospective, again, the physical mass of this building sits at the median setback, which from all intents and purposes if you say that the median setback isn't important to have as a regulatory standard, from the intent of where the building set, it meets the intent. It meets the intent of having the street frontage basically maintained by having a step back of the building facades.

MR. CARROZ: The rule of thumb.

MR. ZENNER: Yeah. The rule of thumb. However, you would have the porch -- the porch then though would be compliant with the zoning setback as well. In essence, you know, said in another way, your front yard setback right now on the property to the west is 29 feet. The front yard that you would establish on this particular property if you grant the variance would be 25.

There would be a four foot -- four feet encroachment forward of the building to the west, which ostensibly because the encroachment basically is encumbered by an open-air porch isn't really a -- while it is a building encroachment technically, it is not from our perspective as a staff as significant as a physical building because the mass is not there. The mass is further back.

MR. WATERS: I, for one, think that's a good compromise, and I don't think we're gaining anything by requiring the median setback to apply. So I would like to offer a motion that we grant a variance to establish the front yard setback at 25 feet.

MR. CLITHERO: Second that.

MR. CARROZ: A motion --

MR. CALDERA: So I would actually advise since we are granting a variance from the median setback, that we frame the motion to that effect as opposed to dealing with the front yard setback.

MR. WATERS: So the motion would be to grant a variance to not require the median setback to apply?

MR. CALDERA: That's my understanding of what they are requesting. Right?

MR. ZENNER: Well, it would be -- I think what you would want to clarify that though, Mr. Waters, it would be an 11-foot --

MR. CLITHERO: Yeah.

MR. ZENNER: It would be an 11-foot variance to the median setback such that the property setback shall be 25 -- no less than 25 feet. That would be the motion.

MR. CALDERA: That would work. That would work.

MR. WATERS: So the variance would be to grant -- it would be granting an 11-foot variance to the median setback so that a 25-foot front yard setback would apply.

MR. ZENNER: Correct.

MR. CLITHERO: I second that motion.

MR. CARROZ: I have a motion and I have a second. Mr. Zenner, please call the roll.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: No.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Motion passes 4-1.

MS. JOHN: Number three.

MR. CARROZ: Item three, a variance to permit a zero-foot side yard setback for driveway from the property lines on the east and west sides of the subject property.

Comments from the Board? Questions?

MS. HAMMEN: So if -- how would this -- so denial would incur -- thinking about a one-way around in the drive? I'm trying to figure out what -- how to get a one-way around with more parking.

MR. CARROZ: I'm not sure that could even be achieved given the width criteria of the lot. We would still be here with a variance of some type.

MR. CLITHERO: Uh-huh.

MS. JOHN: Get the full -- full yard setback.

MR. CALDERA: But just to clarify, Ms. Hammen, was your question what happens if we just deny the variance request as is, could you still achieve the one way or is your question --

MS. HAMMEN: And the required parking.

MR. CALDERA: And the required parking. Okay.

MR. CARROZ: It is my understanding that the required parking would not be met.

MS. HAMMEN: Uh-huh.

MR. CARROZ: And the one way would be probably non-doable.

MR. CALDERA: I will remind the Board to please speak into the microphone, so that way we can hear --

MS. HAMMEN: Mr. Zenner, do you concur?

MR. ZENNER: This is a slightly convoluted -- it's going to be a convoluted answer to -- I don't know.

(Multiple people talking simultaneously).

MR. ZENNER: The way that the standard that -- I'm just going to be upfront with you. I just -- you know, I'm not an engineer. I'll get my abacus out later. So what we have here, under the standard that this originates from, the standard basically indicates that you either need to maintain a minimum ten-foot side yard setback or -- there is an or in this standard -- or you are setting your driveway location a distance equivalent to the -- to the radius that comes off of the adjacent property line.

So where the driveway exits to Rollins, there is -- there would generally be a radius. And what is shown on the design plans is a triangular flare that comes out. The standard in the code was developed given the design that you would typically see with a rounded driveway approach coming back out of a commercial-style development. So this particular standard applies not only to multi-family development, it applies to commercial office and industrial as well.

So the way that the variability of the standard is, is why I can't give you an answer as to if you choose to say no, what you would be telling the applicant is they either have to meet the minimum ten-foot setback or they come in and they show us what the driveway radius is where the driveway meets the public street -- Rollins. And that basically then is carried back across the property from front to rear, wherever the driveway abuts that adjacent property line.

If you look at the drawings that have been submitted and you look at the driveway approach that is on the west side of the property and look at where the green space is -- the six-foot green space, that six-foot green space apparently, I believe, matches up with what the angled driveway approach is as you come off of the parcel and tie into Rollins. If you look at the distance between where the tip of the triangle would end and the property line extended, that space is basically the width of the green space that's there on the west property line. That's six feet.

You will notice on the east side, however, the driveway tapers in slightly, and I'd have to ask Mr. Gebhardt to respond to that, and I believe that may have something to do with possibly what's happening with the parcel to the east and its driveway location going into the parking lot that is immediately abutting the east property line. If you were to take the radius point though and the little green strip that appears in the very northern -- northwest corner -- or northeast corner of the site, that green strip would theoretically, if you denied the variance, be what the minimum offset between the east property line and the driveway location would be.

Now, what does that amount to? If I'm looking at the drawing, and looking at the drawing I have which was submitted, and granted, it's -- the driveway approach and the throat of the driveway has been reduced, it would appear as though the driveway width on the east side of the subject site is at 20-and-a-half feet. And the -- so that's 20-and-a-half feet from the very eastern edge of the driveway. It expands out, however, as you get past where the 25-foot front setback is located to the property line.

In the width of the driveway then -- or the width of the parking area, the paved area, which is inclusive of both the parking stalls and the drive aisle, probably goes from roughly 20-and-a-half feet at the street upwards possibly of 16 feet plus eight-and-a-half, which would be 20-- what would that be -- 24 and -a half?

MS. JOHN: Twenty-four and a half.

MR. ZENNER: If I'm doing my math right. So you're 24-and-a-half feet from the face of the building to the rear of the building, and that's the distance you have. So if you offset the driveway from the east property line by denying -- by requiring -- by denying the variance, requiring the driveway to be offset from the property line, whatever the radius is, which is this minimal amount of area, you potentially are going to end up with 20-and-a-half feet of pavement. It's a rough approximation. Again, I'm not looking at the site plan.

You require -- we require a minimum eight-foot parking stall on parallel parking, and then that would leave you the difference between the 20 and a half minus eight would give you 12-and-a-half feet, if I'm correct or is that -- that would be 12-and-a-half feet, if I'm correct. So that would be your drive aisle width, and that may be, I believe, Mr. Carroz, what you were going at, so -- earlier in a question as we were going through testimony.

A 12-foot wide drive aisle on one-way traffic is permitted; however, as has been stated by the applicant, we are dealing with, you know, college-age students, and circulating around their -- their buddies' cars may not be the safest in a 12-foot wide drive aisle. That would be considered minimal for one way. That would also be considered, if you think about it, in a residential setting roughly the width of a driveway in some instances.

Now, of course, if you've got a two-car garage, you're going to have a 20-, maybe 22-foot wide drive as you are approaching your garage, but in this particular environment if you look around it, which I did through aerial photography as I prepared the staff report, most of the driveways that access the fraternities and sororities in this particular location that are one way are 12 feet. The driveway that is -- that goes into the parking structure to the west -- for the fraternity that is to the west, that driveway is roughly 18 feet wide as it comes in because that driveway serves two-way traffic because that it is the only way



in and out of the lower level of the parking structure that is behind the building that are there on Rollins.

And that 18 feet would be considered appropriate. I think the issue of fire access was something else that was also brought up. I would tell you that the fire service, as we talk with them about other buildings, they will not be getting off of Rollins behind this building to service it.

There is a parking lot to the rear that they would have unfretted access to, especially if there is no screening device placed between the parking lot to the south of them and the rear of this particular parcel that they potentially could pull into, and if they had to deploy a hose line, they may be able to. But again, Mr. Gebhardt is correct, all points of this building need to be within 150 feet of hose length, so the fire department will have to work that out with them.

So from a technical perspective, if we basically take this 20-and-a-half feet and you subtract out the -- you subtract the 20 -- 20-and-a-half feet of driveway with -- and again, this is not -- you haven't moved the building because we granted the height variance. So 20-and-a-half minus the eight feet -- if I could do my calculations correctly -- take the eight feet out, that does give you a 12-foot wide drive aisle and potentially some type of green strip between the adjacent lot. Technically, yes, it could happen.

What happens on the west side of the building then because that's part of what this variance goes with? Well, given the fact that you have granted the height variance, the building isn't going to move anymore. So you're not going to shift the building over.

So if you did reduce the drive aisle, which will have an impact with the portico design because right now where the portico is proposed, the driveway goes completely under the portico, and that portico probably extends -- it extends to the minimum side yard setback line of ten feet, and I would suggest, and I don't have a dimension line out, but I would suggest to you that the drive aisle width is potentially 16 feet -- 16-and-a-half feet. So again, if you reduced the driveway width four feet, right now your parking stalls on the west side of the property are four feet into the side yard setback -- the required side yard, which is ten feet.

You potentially could pull the parking spaces out of the side yard, but it's -- at the same time, sacrificing driveway width, and then potentially sacrificing the driveway width that is under the portico of the drive through to get to the rear parking area, which currently right now is completely paved at a 16-and-a-half foot width. From a circulatory perspective from circulation on the site and the impacts that reducing the driveways that are coming on the east and the west sides of the building, how that plays off of what impacts the rear parking lot, the rear parking area -- basically you would still be able to

circulate in the rear parking area.

But as you look at the outside edges of the parking stalls that are on the outside edges, if you start to reduce the driveway widths, meaning you're scrunching the building, you're pulling everything in towards the building, the ability to make the radiuses around the outside parking spaces against the building, what would be on the north side of the rear parking area become possibly compromised, which means you may end up losing -- you could end up losing two parking spaces to the rear because of the way that you have to be able to make the radius to come around to be able to get to the smaller driveways on either side.

The back driveway aisle with this being proposed to be monkeyed with, given the fact that it is 90 degree parking and we require that compliance-wise, you need to have a 24-foot-wide driveway aisle between the parking ends so you can back out of those 90 degree stalls. Anything is possible, but I think as Mr. Gebhardt has pointed out, by reducing the variance impacts, there's a pushing and a pull effect here, and if parking is prominent importance, which as a -- as a regulator and an observer of the parking problems that we have within Greek Town, optimizing the parking that is on this site is probably appropriate as desirable, just from parking management in general.

However, compliance with the code is the other animal that we have to as a regulator balance here, and are there ways of being able to do this? Yes. Would it allow for compliance? I believe it would. But would you be requesting a variance for a number of required parking spaces? That is distinctly possible.

And if you have to request -- if that is what happens as a result of site redesign, that would actually require the applicant to come forward with another variance because that has not been advertised where there is no advertised variance dealing with a reduction of required parking because this particular plan is fully compliant. But the question is, and I think it was aptly presented by the applicant, is the context warranting the alternative that staff has presented to you? Parking lot developed and being redeveloped in essence on the east; green space on the west, which actually abuts sidewalk that provides circulation around the existing fraternity house.

So there is probably a four- to five-foot wide concrete sidewalk on the other side of that six-foot green strip, so we're not immediately abutting, for all practical purposes, a building. There is offset; there is separation. In observation of the green space, and I think to Ms. Hammen's point that was made earlier, is there any landscaping that is proposed here? This particular site plan that has been submitted, I don't believe was submitted with any intention of potentially meeting our landscaping or screening standards.

I would imagine that there will be some type of screening or some type of green landscaping that needs to be put in other than grass between the building to the west and the parking area that is being proposed -- the parking area and the drive aisle. At this point this plan is just asking you for the dimensional variations. It is not asking you for a landscaping waiver.

I would go under the impression and the assumption that as the development plan is submitted for actual physical permitting and construction of this building, there will be a landscape -- a planted landscape strip along the western side of the property, which is where it should be given that the eastern side of the property actually abuts a developed parking lot, and you wouldn't normally screen parking lot to parking lot. And that would be a decision in an application that we would have to look at from our landscape regulations with our arborist as to how that would impact.

Though, if you look at the site plan, there is potentially the ability to reduce the eastern side driveway and get some variation or some green strip there. What value that provides is something that you have to determine.

MR. CARROZ: Everybody's questions answered? I cannot support the zero setback on the east side, but I would support a one-and-a-half setback to give a little bit of buffer on the east side property line. It is about as much as is practical given driveway widths.

MR. CLITHERO: What would you think that would be -- why would you do that?

MR. CARROZ: Constructability, for one, and to give it a little bit more buffer between those properties.

MR. CLITHERO: So what's going to provide that -- that's going to provide a buffer?

MR. CARROZ: A little bit.

MR. CLITHERO: I bet I could jump that with my bicycle.

MR. CARROZ: Maybe.

MS. JOHN: I like -- I kind of like the "alternatively, if the Board finds" sentence at the end of the discussion of variance number three in the staff report.

MS. HAMMEN: So the foot-and-a-half variance that -- (inaudible).

MR. CALDERA: Ms. Hammen? Ms. Hammen?

MS. HAMMEN: Oh, so the foot-and-a-half variance that you suggest would be for green space?

MR. CARROZ: Yeah.

MS. HAMMEN: Maybe a compromise between the two.

MR. CLITHERO: That would reduce -- so do you think you would still --

MR. CARROZ: Still have a --

MS. JOHN: You would still have 15 feet of driving lane.

MR. CARROZ: You would have 16-and-a-half foot of drive lane.

MS. JOHN: No.

MR. WATERS: Fifteen.

MR. CARROZ: Fifteen?

MS. JOHN: Fifteen.

MR. WATERS: It would be fifteen.

MS. JOHN: Because you've got 16-and-a-half if you go all the way to the property line.

MR. CARROZ: That's right. I did my math wrong, but, yes.

MR. ZENNER: Mr. Chairman?

MR. CARROZ: Yeah.

MR. ZENNER: If I -- if I may? Let me point one practical aspect out. In a former code -- in the former code, the minimum green space area that we required, minimum offset for landscape strip planting was a minimum of six feet. I make that as a statement of fact, not as a suggestion. And that distance happens to correspond to the survivability of plant material that may be placed.

So a foot-and-a-half green space strip, our arborist would conclude is not -- is not a plantable area. The other thing that we have to think about here, and I failed to recall in the analysis component, there is no landscape screening requirement between these parcels. They are R-MF to R-MF, so there is no neighborhood protection standards that apply.

So the separations that are being proposed here in the green space world aren't going to need to be treated. You're not going to have to put plant material in them because plant material or a screening device isn't required per code. So even if we create a green space on the east side of the property, as has been suggested, it will likely be a green strip of land when it is planted. It may not exist that way after they move in.

So the question is, is what's the maintenance issue associated with that long term, and how does it affect the rest of the character of the neighborhood? Is there value added at that point? And again, we have an adjacent parking lot that is developed, has existed, is being improved as a part of the reconstruction of the sorority to the east.

This improvement of pavement here does nothing to probably impact the enjoyment of that adjacent property; and therefore, it is a matter of how will this green area be used if one is required, and if not larger that may accommodate something, is it necessary is really the bigger question.

MS. JOHN: I have a question. Based on the site plan that we have in front of us,

there looks like there's a bout a six-foot strip of green on the west side, but the request for variance asks for zero on both sides.

MR. ZENNER: And that is -- that is an excellent observation, Ms. John, and I think when I interpreted what was provided to us, that, in fact, is what I interpreted. Given the site plan says this, really you're not asking for on the west side a zero setback. Now, if you - if as presented here and is being considered, if you grant zero on the west -- if you grant zero both sides, you basically -- the green strip that is on the plan in front of you may or may not exist post-construction.

If you want to assure that the green strip that is on the west side of the property is retained through construction, it would probably require that you make the motion, if you are inclined to approve the variance, that a four-foot variance be granted on the west side of the property for encroachment, meaning you'll have six feet left of the ten, and then a zero yard -- I'm sorry -- six foot --

MR. CALDERA: Hey, Pat, before we get too far down that thought, Mr. Chair, it may be a good idea to confirm with the applicant what exact variance request they are making.

MR. ZENNER: I'll need to pull the application.

MR. GEBHARDT: Thank you. And I am still under oath.

MR. CALDERA: You are still under oath.

MR. GEBHARDT: So on variance number four, on the west side --

MS. JOHN: Number three.

MS. HAMMEN: We're on number three.

MR. GEBHARDT: Number three, I'm sorry. We're asking for a zero foot here on the east side.

MS. JOHN: On the east side.

MR. GEBHARDT: Yes.

MS. JOHN: But only on the east side?

MR. GEBHARDT: But only on the east side. On the west side --

MR. CLITHERO: That's variance four.

MR. GEBHART: -- we're asking for --

MS. JOHN: Because it shows it as six feet.

MR. GEBHARDT: Yes.

MR. ZENNER: It would be a four-foot variance on the -- on the west. Correct? Yeah.

MR. GEBHARDT: So we're asking to encroach four feet. It would be a six-foot buffer.

MS. JOHN: Okay.

MR. GEBHARDT: I think that's what is confusing.

MR. CALDERA: So for purposes of the staff report and to make sure we're all clear, within the staff report, variance number three, we are just to focus on the denial -- or excuse me -- on the zero-foot setback along the east property line?

MR. ZENNER: It should be four on the west.

MR. CALDERA: So that --

MR. GEBHARDT: I think -- I think in the staff report, the west side was overlooked; is that correct -- or wasn't considered?

MR. ZENNER: Again, the way that the application was submitted -- and let me read you -- well, actually, if you look in the packet -- in the staff packet -- if you look at the third variance that's on the first page, Table 4.1-5, it says, Driveway setback side property line equals zero. And it does refer to the east driveway.

It was specifically in the comments column. It does not address the setback requirement in the west driveway. So, yes, as an omission on my part, we should have been more -- you were asking for an encroachment, and we should have clarified more clearly that the encroachment -- that the variance they needed on the west was a four-foot setback variance.

MS. JOHN: So the setback on the west would be six feet --

MR. ZENNER: Yes.

MS. JOHN: -- instead of ten?

MR. ZENNER: That is correct.

MS. JOHN: And on the east would be zero. Okay.

MR. ZENNER: In order to accommodate what is on the submitted site plan. In either case, the staff report, if corrected, would have read -- would read -- variance number three would have read, Denial of four-foot setback along west property line and denial of the zero-foot along the east for the stated reasons that the driveway widths could have been reduced to have pulled the actual -- pulled the west property at least out of the setback.

MS. JOHN: It's -- it's a six-foot setback. It's four-feet encroachment?

MR. ZENNER: Yes.

MS. JOHN: Okay.

MR. ZENNER: It's --

MS. JOHN: We've got to get that straight.

MR. ZENNER: Well, it's a four -- Ms. John, it's a four-foot encroachment into the required setback on the west.

MS. JOHN: Right. But you --

MR. ZENNER: Meaning you'll have a --

MS. JOHN: -- you said --

MR. ZENNER: -- six-foot --

MS. JOHN: -- you said --

MR. ZENNER: -- setback.

MS. JOHN: -- you said four-foot setback, and that confused me.

MR. ZENNER: Yeah. I'm sorry.

MS. HAMMEN: -- (inaudible) -- require a ten-foot setback. Right?

MR. ZENNER: Correct.

MS. JOHN: Right. It's a four-foot encroachment into the required ten feet, so we're --  
we would be asking for a six-foot setback.

MR. ZENNER: That would be correct.

MS. JOHN: Okay.

MR. ZENNER: You're asking to establish a six-foot side yard setback on the west --

MS. JOHN: And a zero --

MR. ZENNER: -- and a zero --

MS. JOHN: -- on the east.

MR. ZENNER: -- on the east.

MR. GEBHARDT: I'm under oath. I -- just for a point of clarification, not to confuse  
anyone. You're absolutely correct what you just said. On the east side, it's the  
driveway.

MR. ZENNER: Driveway, not the parking.

MR. GEBHARDT: On the left side, it's the parking spaces.

MS. JOHN: Yeah.

MR. GEBHARDT: Okay. We're talking about pavement -- edge of pavement.

MS. JOHN: Edge of pavement. Yeah.

MR. GEBHARDT: I want to make sure with Mr. Caldera that we can actually talk  
about and rule on the west side if it was not advertised correctly?

MR. CALDERA: I believe that --

MS. JOHN: I don't think that's an advertisement.

MR. CALDERA: In one of your -- you seek variance --

MR. COLBERT: Because we're looking at --

MR. CALDERA: Mr. Colbert? Approach the mic. You are also reminded you are  
under oath.

MR. COLBERT: I'm still under oath. That is correct.

MR. CLITHERO: This does go away at midnight. Then you'll have to --

MR. COLBERT: As a lawyer, you should probably swear me in every time just to be extra careful. So variance three is just the driveway setback. Variance four is the parking setback. So it was advertised --

MS. JOHN: At the front --

MR. COLBERT: -- correctly. Pardon?

MS. JOHN: At the front?

MR. COLBERT: Yeah. The front and the side yard.

MR. ZENNER: It's correct.

MR. COLBERT: So the driveway --

MS. JOHN: I see.

MR. COLBERT: -- if you look at the site plan which is in your packet, there is no driveway that's actually shown within the -- the side yard setback on the west side.

MR. ZENNER: On the west.

MR. COLBERT: So we're good with the driveway on the west side. We're not good with the parking on the west side.

MS. JOHN: Well, yeah.

MR. COLBERT: Does that --

MS. JOHN: The driveway -- the driveway actually extends out the front past the parking, but that's not -- that's neither here or there.

MR. CALDERA: Mr. Colbert, just to make sure that we've got this clear -- clarified for the record, the request -- the variance that you guys requested for the -- I believe it's the east side of the property --

MS. JOHN: Uh-huh.

MR. CALDERA: You're asking for variance from section 29-4.1(c) table 4.1-5. Right?

MR. COLBERT: Run that by me one more time?

MR. CALDERA: I'm going to be very suggestive --

MS. JOHN: Driveway --

MR. CALDERA: -- with this question.

MS. JOHN: Driveway setback from adjoining --

(Multiple people talking simultaneously).

MR. CALDERA: And then for purposes of the west side, and, Pat, correct me if I'm wrong, you are seeking a variance from Section 29-4.3 (f)(1) and (3) -- well, actually, a few provisions within 29-4.3, because I think it was advertised as broadly.

MR. COLBERT: Yes, that's correct.

MR. CALDERA: So, yes, Mr. Chair, we could address both of those.



MR. CARROZ: I think we're clear now.

MS. JOHN: Maybe.

MR. ZENNER: I apologize for that. That was a staff error that the driveway location, which is variance number three, is only applicable to the east side of the property. So that is -- that is correct. So you could strike, actually, the first recommendation of denial because there is no variance for driveway encroachment on the west.

MR. CARROZ: Okay.

MS. JOHN: Okay. So I will move that we allow variance number three as requested, which is to say zero setback on the east side for the driveway.

MR. CARROZ: I'll second that. Mr. Zenner, will you please call the roll?

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes, sir. Yes.

MR. ZENNER: Thank you. Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Motion passes 5-0.

MS. JOHN: Now, number four.

MR. CARROZ: I apologize, Mr. Zenner. I thought you were rebuttaling something to me.

MR. ZENNER: It's getting late, you know.

MS. JOHN: Yeah, it is.

MR. ZENNER: That's why our pumpkins are all going to expire here soon.

MR. CARROZ: Item number four. A variance to permit parking in the required front and side yard setbacks adjacent to access driveway servicing the site.

MS. JOHN: Question?

MR. CARROZ: Yes, ma'am.

MS. JOHN: Since we have the front yard setback now 25 feet, does that make that part of this moot?

MR. CARROZ: I think it might.

MR. CLITHERO: Front yard part.

MR. ZENNER: That is correct. The front yard variance now is not a requirement

because the front yard setback has been set at 25 feet.

MS. JOHN: Okay. So now all of this -- all that is required on this one is the side yard setback?

MR. ZENNER: Side yard setback on the west side only. The east side parking is not in a side yard setback.

MS. JOHN: Okay.

MR. CARROZ: So Item number four, for the record, the parking variance is no longer required. And --

MS. JOHN: I -- well, the front yard is no longer required.

MR. CARROZ: Front yard. Excuse me.

MS. JOHN: But the side yard is.

MR. CARROZ: But the side yard parking variance is --

MR. ZENNER: So the relevant section of the staff recommendation is the second paragraph. The first paragraph and third paragraph in variance number four is no longer relevant.

MR. CALDERA: And any motion I would recommend that you specify that the first one is no longer necessary -- the front yard is no longer necessary, so your motion will apply to the side yard.

MR. ZENNER: And for further clarification, that front yard setback variance would apply -- would have applied to both the east and the west sides of the property. So -- just so we're all clear, you had encroachments on both sides of the building into the front --

MS. JOHN: Yes.

MR. ZENNER: -- so all of that goes away.

MS. JOHN: Correct.

MR. CARROZ: Questions or comments from the Board? I'm not entirely sure I know how to word this.

MS. JOHN: I --

MR. CALDERA: We'll figure it out together.

MS. JOHN: I'm going to move that we approve the four-foot encroachment, resulting in a six-foot setback for the parking on the west side of the building.

MR. CALDERA: And not --

MS. JOHN: And the front yard setbacks are no longer an issue.

MR. CALDERA: That will work.

MR. CLITHERO: Second it.

MR. CARROZ: I have a motion and I have a second for approval. Mr. Zenner, will you please call the roll.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Motion passes 5-0. Variance number five was withdrawn.

MS. JOHN: Number five.

MR. CLITHERO: Do we need to state that for the record?

MR. CALDERA: I believe the applicant already testified that that --

MR. CARROZ: Okay.

MR. CALDERA: -- has been withdrawn.

MR. CARROZ: Fantastic. Item number six, a variance to permit more than 500 square feet or 30 percent of the required rear yard to be improved with a paved driveway or outdoor parking area, and a waiver of required screening.

MS. HAMMEN: Is that -- I'm confused -- they agreed to the 85 percent?

MR. CARROZ: Can we --

MS. JOHN: It says 85 on here.

MR. CLITHERO: So let's request --

MR. CARROZ: Jay, would you come back and visit that just for two minutes or less?

MR. GEBHARDT: I'm under oath.

MR. CLITHERO: You're still under --

MR. GEBHARDT: Yes. So in the staff report, they recommended the 85 percent, and that's -- we could agree to that. We gave you the option on the screening. We can either do it or not depending on what you would like to see.

MS. JOHN: Yeah. Okay. So this includes both the percentage and the screening?

MR. GEBHARDT: Right. It's two things in one.

MS. JOHN: Right.

MR. CARROZ: So to achieve the 85 percent, what's different about this site plan or is there anything different visually that I'm looking at?

MR. GEBHARDT: No.

MR. CARROZ: Okay. I just wanted to --

MS. HAMMEN: So the variance asked for 90 percent?

MR. GEBHARDT: We did originally ask for 90 percent. Staff came back and -- and recommended 85 percent, and we agreed with staff that we could do that.

MS. HAMMEN: So do we need to include that in our motion?

MR. CLITHERO: Yes.

MR. CALDERA: Yes. Because he testified --

MR. CLITHERO: Because it's still a variance.

MR. ZENNER: And you are still -- so -- and the other aspect of the variance that does need to be included is the screening, which if -- if waived, would result in no four- to six-foot screening device being installed. If not waived, though you -- if you granted the 85 percent coverage and did not waive the screening, the screening standard -- the screening would be required at the time of permitting and need to be shown on the plan.

If you choose to waive it, you need to make that as part of your motion to approve 85 percent coverage in the rear yard -- required rear yard and waiver of the screening device because that will take care of both aspects here. Parking in the rear yard is -- is where the screening comes from.

MR. CARROZ: So if we read that first line of your staff report, does that get the job done?

MR. ZENNER: Are you trying the 84 percent? The first line of the staff report which -

-

MR. CARROZ: Number six?

MR. ZENNER: Of number six.

MR. CLITHERO: We'd allow them to do 100 percent.

(Multiple people talking simultaneously).

MS. HAMMEN: If we move to grant a variance of 85 percent rear yard paving, and a -

-

MR. CLITHERO: And no screening.

MS. HAMMEN: -- waiver of the screening --

MR. CLITHERO: That was a good motion. I second that.

MS. HAMMEN: Thank you.

MR. CLITHERO: You're welcome.

MR. CALDERA: Ms. Hammen, just to make sure I got that for the record, so you were making a motion there?

MS. HAMMEN: Yeah.

MR. CALDERA: Okay. And to repeat for the record -- that was quick. That's the quickest I've ever seen. So when you -- what you are granting is -- granting a variance to

permit 85 percent; is that right?

MS. HAMMEN: Paved area.

MR. CALDERA: Paved area in the back, and to waive the land -- the screening requirements?

MR. CLITHERO: Correct.

MR. CALDERA: All right. And we have a second as well.

MR. CLITHERO: That's the way I heard it.

MR. CALDERA: Okay.

MR. CARROZ: I have a motion and I have a second. Mr. Zenner, would you please call the roll.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Motion passes 5-1. Variance number seven was withdrawn.

MR. CALDERA: I believe you said -- five -- it's 5-0.

MS. JOHN: 5-0.

MR. ZENNER: 5-0.

MR. CALDERA: We didn't add an extra member last minute.

MS. JOHN: Yeah. I wondered where that was.

MR. ZENNER: Thank you. That concludes -- that concludes the variances associated with --

MR. CALDERA: But we are not done. We are not done for the Board.

MR. ZENNER: I know. So don't pack up yet.

(Multiple people talking simultaneously)

MR. CLITHERO: Hey, Jay, you're no longer under oath, so when you get out there, you can say whatever you want to.

MR. ZENNER: All right. Is the Board ready to move on?

MR. CARROZ: We are ready to move to special items.

**Variance #1 - Motion to grant the request for the 49-foot height (Clithero/John).  
Voting Yes: Waters, John, Carroz, Clithero. Voting No. Hammen**

**Variance #2 - Grant an 11-foot variance to the median setback so that a 25-foot front yard setback would apply to the subject property. (Waters/Clithero). Voting Yes: John, Carroz, Clithero, Waters. Voting No: Hammen**

**Variance # 3- Allow variance number three as requested, which is to say zero setback on the east side for the driveway. (John/Carroz) Voting Yes: Carroz, Clithero, Hammen, Waters, John. Voting No: None**

**Variance #4 - Approve the four-foot encroachment, resulting in a six-foot setback for the parking on the west side of the building. (John/Clithero) Voting Yes: Clithero, Hammen, Carroz, John, Waters. Voting No: None**

**Variance # 5 was withdrawn by applicant**

**Variance #6 - Grant a variance to permit 85 percent of the rear yard to be paved and waiver of landscape screening. (Hammen/Clithero) Voting Yes: Clithero, Hammen, Carroz, John, Waters. Voting No: None**

**Variance # 7 was withdrawn by applicant**

#### **IV. SPECIAL ITEMS**

##### **A. Amended Board of Adjustment Rules of Procedure**

MR. ZENNER: Okay. You have placed before you on the agenda, and you had included in your packet the rules of procedure for the Board of Adjustment. If you recall, we started this activity back in October, I believe, of this past year, to revise your Board rules in order to conform them more generally to the procedures and the requirements of the newly adopted Unified Development Code, as well as to clean up certain aspects within the Board rules that were previously adopted.

As we have talked in work session about this, under the new Unified Development Code requirements, the Board rules are no longer just adopted by the Board as a motion. They are required to be approved by the Board -- recommended by the Board to City Council, and City Council ultimately will approve these rules of procedure by ordinance. So what we are here tonight to discuss or to receive is a recommendation from the Board members present at our work sessions on their recommendation for the adoption of these rules of procedure.

Following this evening's meeting, should the Board make a recommendation to approve, we will submit an appropriate Counsel report to be presented to the City Council at its March 5th -- March 5th, the earliest meeting we would have it at for introduction as an ordinance, and then final approval on March --- I'm sorry, February 5th, and then approval on February 19th, which would be their second meeting of the year -- or in March -- or February. The code or the rules that have been presented to you here are actually the clean version of the last edited copy that we had in November that Mr. Caldera had

worked on and that we had presented back to you.

The only reason we did not act on these last month was due to the lack of having two of our regular Board members present. So there have been no changes from the last version that was sent to you or was agreed upon. If you have any questions or any changes that you need to make, Mr. Caldera may be able to better answer those, given that this is a document of his creation at this point now, and we can include these into an edited version that could then be forwarded to City Council should the Board desire us to go ahead and do that. If there are no changes to the document, a motion is in order to be made for a recommendation of approval and forwarding.

MR. CALDERA: And, Mr. Chair, I recommend that we do this as a roll call vote.

MR. ZENNER: Okay.

MR. CARROZ: Thank you, sir. I have no additions or corrections. Anyone else have any comment?

MR. CALDERA: I think Ms. Hammen does.

MS. HAMMEN: I have a question. So this conflict of interest clause has to do with financial?

MR. CALDERA: Correct. It actually reflects the state law --

MS. HAMMEN: Yes.

MR. CALDERA: -- as it is spelled out primarily in Chapter 105.

MR. WATERS: I have some really quick comments. There are three commas that I don't think need to be in this document. So if you will permit me, I will show you exactly where those are, and maybe we can get rid of those.

MR. CARROZ: Please do so.

MR. CALDERA: Absolutely.

MR. WATERS: Page 2, under Time of Election, there's a comma between "or" and "when" in the third line.

MR. CALDERA: Okay.

MR. WATERS: I think that can go away.

MR. CALDERA: "Any one of the elected officers has ceased to be a member of the Board or when" -- okay. Got you.

MR. WATERS: Temporary Chair in the same page, next paragraph. The comma between "Chair" and "without".

MR. CALDERA: Okay.

MS. JOHN: Oh, yeah.

MR. WATERS: Second line -- at the end of the second line.

MR. CALDERA: Okay.

MR. WATERS: Quickly, on page 4, there's a -- in the third paragraph, it -- there's a list of three bullet points that don't have bullet points in front of them. I would like to see bullet points there or that as one paragraph.

MS. JOHN: Bullets of some sort.

MR. WATERS: Yeah.

MR. CALDERA: Okay.

MR. WATERS: And then on page 5, Parties in Interest paragraph, toward the bottom, the comma between "tract" with a closed parentheses, and "and".

MR. CALDERA: Okay.

MR. WATERS: And that's it.

MR. CALDERA: Then any motion to approve should approve it as amended, similar to the agenda.

MR. WATERS: I would make a motion to approve --

MR. CLITHERO: Recommend.

MR. WATERS: -- recommend that this revised, edited version --

MS. JOHN: Amended.

MR. WATERS: -- amended --

MR. CLITHERO: Amended.

MR. WATERS: -- version of the Rules of Procedure be approved by Council.

MS. JOHN: Second.

MR. CLITHERO: Second. Third.

MS. JOHN: Fourth. Fifth.

MR. CARROZ: I have a motion and a second to approve the amended --

MS. JOHN: Rules --

MR. CARROZ: -- rules.

MS. JOHN: And send them to the Council.

MR. CARROZ: And send them to Council.

MR. CALDERA: Just to clarify for the record, technically, the motion is "a motion to recommend that the City Council approve the rules as amended".

MR. CARROZ: Okay. That's it.

MS. JOHN: Whatever he said.

MR. CARROZ: Mr. Zenner, will you please call the roll.

MR. CLITHERO: It's Andy's turn.

MS. JOHN: It's Andy's turn.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes.



MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: A recommendation to forward the amended Rules of Procedure to City Council for approval will be submitted.

MR. CALDERA: From a housekeeping standpoint, Pat, will you be able to take care of those clerical things --

MR. ZENNER: Sure.

MR. CALDERA: -- or do you want me to -- okay.

MR. ZENNER: As long as the law department generates the ordinance. It's a team effort here. Just remember that, folks. That is all we have from a staff perspective in the way of general business.

**A motion to recommend that the City Council approve the rules as amended**

**Yes:** 5 - John, Hammen, Clithero, Carroz and Waters

## VI. COMMENTS OF THE PUBLIC

MR. CARROZ: So any comments of the public? Seeing none.

MS. JOHN: I don't see any.

## VII. COMMENTS OF STAFF

MR. CALDERA: I will add that that was a very confusing case with a lot of moving pieces, and I want to commend the Board. You guys handled that very well. It was very well organized, thoughtful questions -- great questions. I honestly thought it would have been -- it was going to be a nightmare, but you guys were actually just methodically working your way through it, so kudos.

MR. CARROZ: I want to thank Pat for doing the staff report in such a manner that --

MS. JOHN: That we could do that. Yeah.

MR. CARROZ: -- it was easy to follow:

MR. ZENNER: Was the staff report -- just out of curiosity, is the staff report generally what you all were expecting as a -- an illustration of options that are available to the Board, impacts and implications associated with the variances here? Is it something that you saw useful --

MR. CLITHERO: Uh-huh.

MS. JOHN: Yes.

MR. ZENNER: -- as part of your deliberation?

MR. CARROZ: Definitely.

MR. CLITHERO: You know -- but it brought up one thought in my mind. And when I read those initially when they first came out, I thought, why didn't staff and these guys have a conversation about some of this stuff and get it taken care of? Well, then all of the sudden, they did.

But then some of this stuff I heard tonight, I thought, gee, you should be having this conversation before it comes to the Board of Adjustment instead of trying to redesign a project in front of the Board of Adjustment. I mean, I feel like it should have -- it should be dealt with at the staff level to where there's not really much room for discussion here. It's, here it is, guys.

MS. JOHN: Those guys --

MR. CLITHERO: Either you like it or you don't.

MS. JOHN: We -- we -- this is the way building is designed; this is kind of how it has to work. There's not a whole lot of choices here.

MS. HAMMEN: So once they come at this stage, you know, we're going to ask them to take off a two-story porch? I mean, that's --

MR. CLITHERO: Yeah.

MS. HAMMEN: That is -- and I don't know at what step -- do they come to staff with this already done?

MR. ZENNER: Often what we see, unfortunately, is an applicant completing their work and then relying on what has been previously done. What I would suggest is that to avoid scenarios such as this, as difficult as this may sound to do, it's easier probably to say than it is to actually act on. The variances, themselves, given the options that existed in order to modify that site plan to prove to us that they didn't need the variance or that they did truly need it, denial of variances needs to occur.

That, or the Board had at its discretion this evening, and correct me if I'm wrong, Mr. Caldera. If you felt that you needed to continue this hearing with direction to the applicant to have gone back and redesigned the site plan to address the recommendations that were made in staff -- by staff through the report to prove, in fact, that their hardship did exist, that would have been an option. And it would have in -- from my perspective as, again, an administrator of the code, would have sent a very clear message to those that are wanting to come in because of the status quo that has existed that we better not do that because we may not get what we originally bargained for.

MR. CALDERA: So, Pat, let me get back on that very quickly.

MR. ZENNER: Yeah.

MR. CALDERA: And I don't want to go too far since we didn't like notice up a discussion of our processes. Whenever an application submits a project, it's their project. Right?

And we do notify them of the standards. It's our code. And so when they submit it and it is not compliant with our code, we -- we -- it's my understanding, Pat, that we just - - we tell them, Look, this doesn't comply for this very reason. One --

MR. CLITHERO: But there had to be a discussion or those two things wouldn't have gone away.

MR. CALDERA: There was, yeah.

MR. ZENNER: Mr. Clithero, you're correct. There was. They realized that there was no reason they needed to argue those points.

MR. CALDERA: So actually one of the things that we are going to start doing, correct me if I'm wrong, Pat, is that we're going to start releasing these staff reports with enough time before the hearing that -- that we will -- one, we want to give the other side an opportunity to see what it is that the City staff is saying so that way they can be prepared to inform you guys.

But, two, to see if we can last minute hopefully resolve some of those discrepancies. Otherwise, they come here, and obviously, they have the right to try to convince you guys. So this is all trying to better perfect this -- the process.

MR. CARROZ: All right. Well, I think we've had comments of staff.

## **VIII. COMMENTS OF THE BOARD**

MR. CARROZ: Any more comments from the Board? I think we've probably commented enough already.

MS. JOHN: We've covered it all.

## **IX. NEXT MEETING DATE - February 13, 2018 @ 7 pm (tentative)**

MR. CARROZ: The next meeting date, Pat, is the February 13 -- we -- do we have anything on the agenda yet?

MR. ZENNER: No. That submission deadline is actually the 16th of January.

MR. CARROZ: Okay.

MR. ZENNER: So we will -- we will know if we have a meeting -- the new deadlines, just for your knowledge and for the public are posted online. They are now as I have pointed out I believe to you previously, they match up with our Planning and Zoning Commission application deadlines, which allows our staff adequate time in which to prepare reports like you received this evening and do the proper advertising and noticing

that are now required by the UDC, which is actually longer than what previously existed in your old Board rules.

MR. CALDERA: Pat, just to make sure, for anybody who happens to be watching, because they recommended the new rules for City Council's approval, that would have changed those deadline -- submission dates. Applicants right now could still submit under the current deadline. Correct?

MR. ZENNER: The Board adopted in November the 2018 calendar.

MS. JOHN: Calendar.

MR. CALDERA: Okay.

MR. ZENNER: And because the UDC specifically calls out the variance procedure and advertising, which is a minimum of 15 days, we have to have the adopted calendar in play. So the calendar was adopted, was posted prior to the end of the -- of calendar year 2018. This application, actually, that we heard this evening, was the last application of 2017. It came in on the day prior to your December meeting. So we were -- we were needing to make sure that the -- the agenda items for February were properly advertised or properly posted so they could be submitted. We'll get that -- we'll know if we have any on the 16th of January, and that will then come forward to you on the 13th of February. But we're operating under --

MR. CALDERA: The new deadlines --

MR. ZENNER: -- the new calendar --

MR. CALDERA: -- because the Board adopted --

MR. ZENNER: --- which the new deadlines which were adopted by the -- by the Board in November, and we're operating under the new advertising guidelines or requirements of the UDC that was adopted in April of 17.

MR. CARROZ: Okay. And there will be -- if there is no case, that will be published somehow --

MR. ZENNER: Yes.

MR. CARROZ: And we will --

MR. ZENNER: You will be notified of no case, and we will cancel the meeting.

MR. CARROZ: The public will be notified, obviously.

MR. ZENNER: Yes. We will post the cancellation to the City's website for the meeting notice.

MR. CARROZ: Okay. All right.

## **X. ADJOURNMENT**

MR. CARROZ: Motion to adjourn?

MS. JOHN: So moved.

MR. CLITHERO: Second.

MR. CARROZ: All right. Meeting adjourned.

(Off the record.)

(The meeting adjourned at 9:39 p.m.)

**Motion to adjourn**

Members of the public may attend any open meeting. For requests for accommodations related to disability, please call 573-874-7214. In order to assist staff in making the appropriate arrangements for your accommodation, please make your request as far in advance of the posted meeting date as possible.