

THE LAW FIRM OF
HADEN & COLBERT

November 28, 2023

VIA E-MAIL

Mayor and City Council
City of Columbia
701 E. Broadway
Columbia, MO 65201

**Re: Bill B286-23/Planning and Zoning Case #260-2023
Columbia South Real Estate, LLC
Request to Remand to Planning & Zoning**

Dear Mayor and Councilmembers –

This firm represents Columbia South Real Estate, LLC (the “Applicant”) with respect to Planning and Zoning Case No. 260-2023/Council Bill B286-23. I am writing to correct some information and clarify a few issues that were discussed at the October 19, 2023 Planning & Zoning Commission meeting. After you have reviewed this information, if you have additional questions, we would be happy to discuss those questions. Further, if you believe it would be appropriate to remand this matter back to the Planning & Zoning Commission for further consideration, the Applicant would be agreeable to that course of action.

In the way of background, Case #260 – 2023 is a request for a zoning amendment for a residential property located in the Village of Cherry Hill. The property is in a planned zoning district. The proposed zoning amendment is straightforward – it would increase the number of residential units and the gross floor area of the proposed building. The staff report ultimately recommended approval at the Planning & Zoning Commission. However, the written staff report also characterized the request as a request to “convert the use of the building from retail/residential to all residential and [to] increase the number of approved multi-family residential units from 4 to 24.” As such, this created the perception that the zoning request was proposing to convert a mixed-use building to a purely residential building and to add 20 residential units. This is simply incorrect.

Specifically, the zoning plan at issue was amended in 2014. A copy of the 2014 amendment is enclosed as **Exhibit 1**. We believe staff inadvertently overlooked the 2014 amendment in preparing its report. We certainly believe the oversight was unintentional, but even so, the failure to include the 2014 amendment in the staff report had a significant impact on the October 19, 2023 hearing and in the Planning and Zoning Commission’s recommendation. Most importantly, the 2014 amendment eliminated the retail component of the proposed building such that the only permitted use in the building became residential in 2014. In other words, the current request does not represent a change in use at all – for the last ten years, the existing zoning contemplated that the proposed building would be strictly residential. This perceived change in use was probably the largest single topic of discussion and point of contention at the October 19, 2023 Planning and

Zoning Commission hearing. Many Commissioners and speakers from the public expressed concern with the perceived change in use. But, again, there is no change in use here. The existing zoning only allows residential uses and the current request proposes only residential uses.

Similarly, the 2014 zoning amendment increased the density from 4 units to 10 residential units and increased the permitted floor area from 10,000 square feet to 12,500 square feet. However, the staff report incorrectly suggested that the proposed request represented an addition of 20 dwelling units and 10,500 square feet of floor area when in reality the proposal only represents an increase of 14 dwelling units and 8,000 square feet of floor area.¹ Although the density did not receive as much discussion as the change in use issue, this nevertheless fed into the perception that the proposed request represented a significant departure from the current zoning.

To illustrate the impact this omission had on the Applicant's request, consider how staff summarized the report at City Council versus how staff summarized the report at Planning & Zoning²:

Planning and Zoning memo:

A request by Engineering Surveys and Services (agent), on behalf of Columbia South Real Estate, LLC (owner), for approval of a PD Plan amendment **revising the type of uses** and structure size presently permitted on Lot 3B of the Cherry Hill PD Plan. **The proposed revisions include converting the use of the building from retail/residential to all residential** and increasing the number of approved multi-family residential units **from 4 to 24**. The 0.41-acre subject site is located northeast of the intersection of Flagstone Drive and Corona Road. **(Case # 260-2023)**

City Council memo:

Approval of this request would permit the expansion of the approved building on Lot 3B of the Village of Cherry Hill by **8,000 square feet**, **increase the number of dwelling units by 14**, increase building height by 1-foot, and remove 23 of the 29 on-site parking spaces from the subject lot.

As you can see, the request was presented to P&Z as a proposal to eliminate the retail use from the building and convert the uses to residential only. The purported change-in-use is mentioned twice in the introductory paragraph of the staff report. Again, the purported change-in-use dominated the Planning and Zoning hearing. But it is not mentioned at all in the staff memo presented as part of the City Council packet.

Please note that this is not intended to be critical of City staff in any way, shape or form. We're all human and we understand that mistakes happen. But here, the mistake impacted the outcome of the P&Z hearing and influenced P&Z's recommendation. Therefore, as a matter of

¹ Of note, approximately 4,000 square feet of the proposed building will consist entirely of breezeways and hallways which are not part of any particular dwelling unit. As such, the habitable space is an increase from the 2014 amendment of only 6,000 square feet.

² A copy of the staff report to P&Z is attached as Exhibit 2.

fairness, it seems appropriate to remand this back to P&Z for reconsideration in light of the 2014 amendment.

Finally, there was much discussion regarding the restrictive covenants in the Village of Cherry Hill. At the outset, it is worth noting that restrictive covenants are a private contractual matter between the property owners and their respective homeowners' association and are completely independent from City zoning. In any event, the restrictive covenants were discussed at length at the P&Z hearing and the discussion ranged from architectural questions to the use of the association pool. So I wanted to clarify some misconceptions regarding the covenants. First, the Village of Cherry Hill has two separate and independent homeowners' association and each association has its own rules and regulations. One association is known as the "Town Center" and one association is known as the "Neighborhood." Each association is separate from the other. The only source of overlap is a set of master restrictions that apply in both areas. Otherwise, the Town Center has its own rules and architectural review process and the Neighborhood has its own rules and architectural review process. The property at issue is located in the Town Center portion of Cherry Hill. Prior to submitting the proposed request, the Applicant contacted property owners and board members within the Town Center area and received positive feedback on the proposed request. As such, the Applicant had been in direct contact with the applicable homeowners' association before submitting the proposed zoning amendment. Following the Planning & Zoning hearing, the Applicant also reached out to the Neighborhood portion of Cherry Hill to solicit their input. It is my understanding that the Applicant anticipates having formal approval of the proposal from the Town Center association and additional informal feedback from the Neighborhood association in the near future. Thus, remanding this back to Planning & Zoning would allow the Applicant to have those responses in hand before proceeding for a final vote on this matter.

As always, thank you in advance for your time and attention to this request. If we can provide any other information or answer any questions, please just let me know.

Sincerely,



R. Caleb Colbert



City of Columbia

Community Development Department

701 East Broadway, PO Box 6015, Columbia, MO 65205-6015

August 5, 2014

Spencer Haskamp
A Civil Group
spencer@acivilgroup.com
[573-817-1677](tel:573-817-1677)

Dear Mr. Haskamp:

By means of this letter I am approving your request for a minor amendment to the C-P development plan known as "The Village of Cherry Hill C-P Plan". Approved changes are limited to Lot 3B, and are itemized below:

- **Added a walk-out "terrace" floor with four residential units**
- **Replaced the first floor retail use with four residential units**
- **Reduced the number of units on the second floor from four to two**
- **Increased the GFA from 10,000 sq. ft. to 12,500 sq. ft.**

Permits may now be issued by applicable City departments, provided that such improvements are consistent with the revised plan.

If you have any questions, please feel free to call me at (573) 874-7239.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Teddy'.

Tim Teddy
Director, Community Development
ttteddy@gocolumbiamo.com

TTT/sjm

Building & Site Development
(573) 874-7474
Fax (573) 874-7283

Neighborhood Services
(573) 817-5050
Fax (573) 442-0022

Planning & Zoning
(573) 874-7239
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www.gocolumbiamo.com/community_development

AGENDA REPORT PLANNING AND ZONING COMMISSION MEETING October 19, 2023

SUMMARY

A request by Engineering Surveys and Services (agent), on behalf of Columbia South Real Estate, LLC (owner), for approval of a PD Plan amendment revising the type of uses and structure size presently permitted on Lot 3B of the Cherry Hill PD Plan. The proposed revisions include converting the use of the building from retail/residential to all residential and increasing the number of approved multi-family residential units from 4 to 24. The 0.41-acre subject site is located northeast of the intersection of Flagstone Drive and Corona Road. **(Case # 260-2023)**

DISCUSSION

The applicants are seeking approval to expand multi-family use within the originally proposed structure shown on Lot 3B of “The Village of Cherry Hill C-P Plan” which was approved in 1999 and amended in 2013. The current request seeks to expand the planned building southward, replacing the parking area depicted on the southern portion of Lot 3B. on both the 1999 and 2013 plans. The approved 1999 plan showed a two-story building on Lot 3B with a total gross floor area (GFA) of 7,200 square feet. The ground level of the building was intended for retail uses and 4 residential units were proposed for the second story. The 2013 C-P amendment increased the building area to 10,000 square feet; however, maintained the same use distribution between floors.

At this time the applicant seeks another expansion of the building footprint and the addition of a third floor. The proposed changes would add 10,500 square feet in GFA to the structure for a total GFA of 20,500 square feet. Additionally, the applicants are prepared to develop the property with a single-use apartment building to serve a demand for one and two-bedroom residential units in the area. The plan indicates a mix of 12 one-bedroom units and 12 two-bedroom units requiring a total of 47 parking spaces.

The proposed building expansion will encumber the area at the south end of Lot 3B, originally intended for parking. A proposed dumpster location, at the northeast corner of the building, would also require the removal of 1 parking space. These modifications will lead to a net loss of 23 parking spaces on Lot 3B. However; planned zoning allows flexibility in the provision of on-site parking and parking was intended to be minimized in the Cherry Hill development. In fact, the original C-P district established a parking maximum to limit impervious areas and promote walkability in the development.

The overall Cherry Hill development design scheme intended parking to be shared collectively across the entire site encouraging users to experience the area on foot. Initial parking provision also anticipated more retail and office users in the numerous tenant spaces. However, as the development of Cherry Hill has built-out there has been a reduction in the number of retail/office spaces with their conversion to residential uses. This conversion has resulted in the overall parking demands being reduced and an excess of parking being left behind. Given the desired “shared” nature of parking initially envisioned for the overall Cherry Hill development, the proposed reduction in on-site parking for the applicant’s future use is not view as problematic given excess parking exists.

The applicants have indicated that the 8 stalls provided across Corona Road on the south end of Lot 2C would be utilized for residents of the proposed apartments in addition to the 6 on-street spaces planned for the east side of Corona Road, located near the front of the building. Together with one accessible stall and 8 bicycle spaces, these provisions amount to a total of 23 parking spaces allocated to the project. The revised development plan also includes the provision of a crosswalk with a curb ‘bump-out’ near the southeast corner of Lot 3B, in an effort to improve pedestrian safety where

EXHIBIT 2

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Village of Cherry Hill, Lot 3B
Major PD Plan Revision

residents are expected to cross Corona Road when accessing their off-site parking spaces. Additional consideration was also given to sight distance when determining the location of the crossing.

The proposed building expansion would also require the relocation of existing utilities across the southern end of the parcel which will be completed at the expense of the developer. These relocations are illustrated on the PD plan. An existing utility easement in this area is also noted as a proposed easement vacation. This easement vacation will require separate approval by City Council prior to the issuance of building permits.

Staff has reviewed this request and believes the expansion of the residential use is appropriate given the surrounding land use context. The removal of potential retail uses from the lot reduces overall parking demand for the subject site although the expanded apartment building will likely maintain a significant demand for parking. While this demand will be present it will be especially high during evening and overnight hours when residents are home and not during the normal operating hours of the business located to the north and west of the proposed new construction. The UDC promotes the use of shared parking facilities especially when the peaks of the uses are opposing each other as is the case in this instance. Staff finds that the proposed arrangement to address the proposed construction's parking impact is consistent with the UDC's underlying intent and the minimization of excessive parking as envisioned in the original Cherry Hill C-P plan approval.

The proposed revisions have been reviewed by internal staff and external agencies and found to comply with the provisions of the UDC. No revision to the site's Statement of Intent are being sought as the proposed development is permissible per its original approval. Staff supports approval of the revision.

RECOMMENDATION

Approve the proposed major amendment to Lot 3B of The Village of Cherry Hill PD Plan, pursuant to minor technical corrections.

ATTACHMENTS

- Locator Maps
- PD Plan
- Approved C-P Plan (2013)
- Approved C-P Plan (1999)

SITE CHARACTERISTICS

Area (acres)	0.41 acres
Topography	Gently sloping SW
Vegetation/Landscaping	Graded, turf
Watershed/Drainage	Perche Creek
Existing structures	7 parking spaces on north end of parcel

EXHIBIT 2

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Village of Cherry Hill, Lot 3B
Major PD Plan Revision

HISTORY

Annexation date	1969
Zoning District	PD
Land Use Plan designation	Commercial District
Previous Subdivision/Legal Lot Status	Lot 3B, The Village of Cherry Hill

UTILITIES & SERVICES

All utilities and services are provided by the City of Columbia.

ACCESS

Corona Road	
Location	West side of parcel
Major Roadway Plan	N/A
CIP projects	None
Sidewalk	None installed, construction required

PARKS & RECREATION

Neighborhood Parks	Dublin Park
Trails Plan	Scott's Branch Trail
Bicycle/Pedestrian Plan	N/A

PUBLIC NOTIFICATION

All property owners within 200 feet and City-recognized neighborhood associations within 1,000 feet of the boundaries of the subject property were notified via public information postcards on September 13th of the pending action. Property owner letters were sent, and an ad was placed in the Columbia Daily Tribune on October 3rd, advertising the public hearing relating to the permanent zoning of the property.

Notified neighborhood association(s)	Village of Cherry Hill, West Pointe
Correspondence received	None

Report prepared by Rusty Palmer

Approved by Patrick Zenner