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**CITY OF COLUMBIA**  
**BOARD OF ZONING APPEALS MINUTES**  
**FEBRUARY 12, 2013- 10:00 AM**

**Eau Claire Print Building**  
**3907 Ensor Avenue • N. Main Street and Monticello Road • Columbia, SC**

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**In attendance:** Patricia Durkin, Pat Hubbard, Reggie McKnight, Calhoun McMeekin, and Chuck Salley

**Absent:** Ernest Cromartie, III; Preston Young

**Staff:** Brian Cook, Andrew Livengood, Andrea Wolfe

**I. CALL TO ORDER and DETERMINATION OF QUORUM**

Pat Hubbard, Vice-chair, called the meeting to order at 10:03 AM, and introduced the members of the Board of Zoning Appeals (BOZA). Mr. Hubbard explained the purpose and role of the Board of Zoning Appeals.

Brian Cook, Zoning Administrator, Planning and Development Services Department, reviewed general housekeeping rules and noted changes to the agenda since publication. On the Regular Agenda, Item 6, **3922 W. Beltline Boulevard**, special exception to establish a gasoline service station has been deferred to the March 12<sup>th</sup> meeting; and item 7, 2604 Devine Street, special exception to establish a beer and wine store has been withdrawn by the applicant. Mr. Cook proceeded with review of Consent Agenda items.

**II. CONSENT AGENDA**

**A. OLD BUSINESS**

None.

**B. NEW BUSINESS**

- 1. 13-004-SE      Dist. 3      2507 Devine Street (TMS# 11316-15-12)** Special Exception to establish a residential dwelling unit in a commercial district (Penelope M. Noble)(C-2).
  
- 2. 13-006-SE      Dist. 2      3122 B Beltline Boulevard (TMS# 14004-03-51)** Special Exception to establish a non-emergency medical transportation service (Martin L. Smith, Midlands Transportation Service, LLC)(C-3).

**Motion by Mr. McKnight to approve** Consent Agenda items subject to any exhibits and conditions that may be found within the case summary for that application and to adopt as the findings of the Board, those findings in each case prepared by Staff, also found within each case summary; *seconded by Mr. Salley*.  
**Consent Agenda items approved 5-0.**

**III. REGULAR AGENDA**

**A. OLD BUSINESS**

**3. 12-081-VDist. 3**

**825 and 825 ½ Heidt Street (TMS# 11409-15-03)** Variance to the minimum lot size requirements to reestablish a duplex (Freida S. Hatten Dortch) (RG-1, -DP).

Barry Stanton, attorney for the applicant, was involved late in the process when Ms. Dortch filed her application. An amended application was sent to the Deputy Zoning Administrator requesting an appeal. He stated his belief that the applicant has a lawful non-conforming use and therefore does not need a variance, however as an alternative would like to request a variance.

Mr. Hubbard stated if the applicant wished to appeal, it must be an appeal. There are notice provisions and the property has been noted as a variance. Nothing has been advertised as an appeal.

Mr. Stanton said he wanted the appeal process to be an option for his client, Ms. Dortch because when going through the process for a variance, she was not made aware there could be an appeal. If the Ordinance does not apply or prohibit the request, a variance is not required for something that does not apply.

Mr. Hubbard reminded if there is a lapse of a certain amount of time with a non-conforming use, it is no longer a legal non-conforming use. Mr. Stanton stated he is familiar with provisions in the Ordinance to that effect.

Mr. Cook stated the Board of Zoning Appeals determined the non-conforming status as a duplex was lost in 2008.

Mr. Stanton did not want to waive any right already lost by going forward with the variance and not mentioning the request for appeal. He said they wished to go forward with the request for variance, but wanted to preserve any rights they still had in that regard including any that would have afforded Ms. Dortch's ability to get a timely appeal based on proper notice to her on the basis of which she is prohibited from doing this. Additional papers were submitted on February 8<sup>th</sup> for review by the Board.

He proceeded with review of the criteria for a request for variance.

- 1) *Extraordinary and exceptional conditions pertain to the subject property* because it is an existing use and structure in its present configuration. The structure has separate utilities and no internal stairs. The structure was built as a duplex built in 1930 and to convert into a single family unit would require substantial alteration, and it would be very costly and time consuming. It would change the entire structure which is considered historic.

Mr. Hubbard asked if a contractor had been spoken to or if quotes for reconstruction had been given.

Mr. Stanton said he would let Ms. Dortch speak to that effect and on what she has invested. The property is next to a park area, so she did not feel it is a density issue. Because of the way the house is situated on the lot, it leaves a very large back yard which will allow for some of the yard to be used for parking.

- 2) *These conditions do not generally apply to other properties or duplexes in the area* because there not many other duplexes in the area
- 3) *Because of these conditions, the requirements of the Zoning Ordinance effectively or unreasonably restrict the use of the property* because the property cannot be used. The character of the district is to have two family dwellings. Everyone knows this was a duplex since 1930 and that it was always used that way.
- 4) *Approval of the variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed.* Public good would be better served by having the house repaired and occupied, than having the house demolished, condemned, or vacant.

The variance is the *minimum necessary* to be in harmony with everything. *Approval of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed* - Ms. Dortch wants to provide additional parking which will be in the back. She will continue using something as a duplex that has been a duplex. It will not hurt the public.

Mr. Hubbard questioned additional criterion – *if the proposal is in harmony with the purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare*. He referred to the provision of the Ordinance that refers to the purpose and intent of non-conforming uses is that they not be encouraged to go on; it is not desired they continue, but to be what zoning is and asked Mr. Stanton to comment on that with intent to the Ordinance.

Mr. Stanton responded it is in the way the criterion is stated within the Zoning Ordinance that the property is largely zoned for two-family residential structures. He feels she is doing the utmost to comply with the Ordinance and meet the spirit and intent of it. Mr. Stanton said with regard to the provision, *“the intent of the Ordinance has to first be balanced with the intent of the Constitution and people’s vested property right. It is a trade-off.”*

Mr. Hubbard stated without having an Executive Session and city attorney present, the Board will not ‘wander’ into questions of constitutionality. He asked Mr. Stanton if he wanted a ruling made by the Board, or if this case needed to be moved to the end of the meeting to allow discussion with the city attorney on constitutionality of the Ordinance.

Mr. Stanton clarified his response that he *did not want a ruling on what is constitutional, but did want recognition that is the whole purpose of a variance which is to avoid the level of unfairness that would lead to that*. With regard to the stated intent of the Ordinance, *that is the people who pass the Ordinance who say here is our intent, we do not want to encourage this*. He does not feel it is encouraging the continuance of a non-conforming use, he feels it is allowing through those that need to be allowed through, especially where they are making an effort to comply to the utmost intent with the spirit of the Ordinance.

Mr. Stanton asked Ms. Dortch some questions regarding the basic aspects of her application.

- 1) A document was submitted on the applicant’s behalf entitled “expected testimony of Freida Dortch” and asked if everything in that document was true to her best belief, information and knowledge. Ms. Dortch stated it was.
- 2) He had explained the history of the house; that it had been in the family for decades and probably built in 1930 as a duplex, asking Ms. Dortch if that was correct. She stated it was.
- 3) He asked if it was true because the way it was configured that it could hardly be turned into a single-family residence without substantially altering the structure at current grade expense and changing the design of the building. She stated that was correct.

Mr. Hubbard asked what efforts had been made to get the expenses for alterations, and what various alternatives were. He referred to a previous case on the other side of King Park where the owners wanted to convert a similar duplex into single-family, and came up with some ‘very creative ways’ to do so. He was puzzled how they found it economically feasible and she does not.

Ms. Dortch stated she had a fire at the back of the house in 2009 which cost \$23,000 to repair. She did some work at the front of the house that cost \$12,000. She has not been able to do interior work or any additional repairs because she was denied entry.

Mr. Livengood said Ms. Dortch came to get permits for a duplex, which could not be issued. Permits could be issued for a single-family residence instead. He could not speak to the inspector issues .

Mr. McMeekin said she was denied a permit for a duplex because non-conforming use of the property was lost. He asked if the property was now insured. Ms. Dortch said it was not, but was insured until the mortgage was paid. It was her brother's responsibility to pay for insurance which he did not do, and she did not find out until the fire occurred. Her brother lived there the entire time after the fire but she cannot prove that he lived there, so she lost non-conforming status.

Ms. Durkin asked who paid the utility bills while the brother lived there. Ms. Dortch stated she paid utility bills off and on while he lived there, but she did not pay insurance. She has old records of water bills, but no utility bills. When her brother had money, he paid the utility bill but he lived there entire time.

Mr. Hubbard stated if only one occupant lived in the duplex, it was not being used as a duplex. He asked if Ms. Dortch spoke to the contractor or got estimates to convert to single-family while doing repairs. Ms. Dortch did speak to the contractor who said it would cost over \$100,000 to convert. She received two estimates. He asked what the \$100,000 would cover. Ms. Dortch said there are two entrances, a living room upstairs and a bedroom downstairs. The house would need to be 'taken apart' to make it a single-family home. Each apartment has its own kitchen and separate utilities.

Mr. Hubbard stated he lives in a home that was a duplex which had interior stairs, but does not feel stairs will cost \$100,000. Ms. Dortch said it was not necessarily the stairs that would cost \$100,000, it would be interior repairs. Interior stairs would need to be added, flooring added, sheetrock, paneling, redo the hardwood floors; there would be labor costs and painting. That is what would cost and it is a financial burden. The house is a duplex which her mother initially rented, they lived upstairs and another family lived downstairs. She grew up there. The house is constantly referred to as a single-family house, it is a duplex already. Because each unit has a separate kitchen, she would need to remove a kitchen to make it single-family residence, which is costly. She paid \$7,000 to have stairs installed on the back of the unit when it burned. She has had all changes approved by the historical society. Ms. Dortch used a certified contractor for repairs already made.

Mr. McMeekin questioned the loss of use as a duplex and the maintenance of the unit as a duplex. No one took away Ms. Dortch's right to have a duplex and to have it exist. She had that status and somehow lost it. In his mind, a decision was made by the applicant.

Mr. Hubbard reminded that was not the issue presented today, it a request for a variance only. He said the reason the structure does not comply with zoning is a density problem. There must be 5,000 sq. ft. per unit. to have a duplex there, is a little over 7,500 sq. ft. It seems the request is almost to rezone to the next category which is 7,500. It is a very substantial variance that is being requested. He asked the applicant to stay focused on the criteria for a variance.

Mr. Salley said the Board was interested in Ms. Dortch's experience and the basis of her estimation of why the cost would be that much. She has explained that she has had contractors and has had other relatively minor aspects of the repairs. Based on those repairs and approvals by the historical society, she has determined the substantial costs for renovation would be an economic hardship. Ms. Dortch agreed.

Mr. Salley asked Ms. Dortch if, besides this house, she had any other personal background in the building, repair or renovation industry dealing with contractors or doing any work herself. Ms. Dortch stated she did as she has renovated other houses, gotten contract estimates, and renovated the house she currently lives in.

Mr. Salley referenced the density question and asked where the house is located, what proximity it is to the park, where the proposed parking will be, and why allowing this to be a duplex would not create a density issue in this neighborhood.

Ms. Dortch said it would not be a density problem because the house is one house from the corner of Heidt and Preston Street. There is an empty lot directly across the street and next to the lot is Kings Park. The backyard is open, the park is visible from the yard, and it is a direct path to the park so there is not a density

issue. With the diagram provided last month, four parking spaces can be added in the back yard if parking in the front is an issue; and still leave a substantial backyard area. When one walks out the front door, you walk down a sidewalk straight to a parking area. Each unit has a porch downstairs and upstairs is enclosed. The staircase on the top of the house is on the outside.

Mr. Salley asked why she felt the restriction would be unreasonable.

Ms. Dortch said the restriction is unreasonable because this house is an existing duplex. It was mentioned by one of the Board members that only one person was living in the house; however she failed to say it has been a family home through the years. Her daughter lived in the upstairs while attending Midlands Tech. Other people have lived in the house. She just did not list everyone who lived there. It is important to her and her family to share the house and have a decent living space for everyone. It is important to maintain the history of the house. They are not a burden to anyone or to the neighborhood. They have lived there for over 40 years. Ms. Dortch has complied with everything and kept up the house as well as she can. She now needs to do interior work. It is an expense on her and her family. It is not rental property, it is her family home. She wants to repair a home that was damaged so that her family can continue to live there. She wants to take care of her property. Because it stayed there for so long, it deteriorated.

Mr. Hubbard stated if Ms. Dortch wanted it for a family home, it will be single-family; and she is not asking for it to be a family home but two family units. Ms. Dortch said two separate units in her home. She has children and her brother has children. Her children live upstairs and her brother lives downstairs.

Mr. Hubbard stated that zoning cannot be done individually for her; this is about the land use. If the family wanted to live there, the kitchen can be removed without being very costly. It may be the home she thinks of as her family home. As a duplex, she will have the option to rent out. Even though she may live in one unit and her brother may live in another, a variance cannot be granted on only having the members of her family living there forever.

Ms. Dortch said she “understands that, and continued to state that this is already a duplex”. She continued to say, “with all due respect to the Board, this house is zoned in a duplex zoning area”. She is asking for consideration because she would like to maintain what she already has.

Mr. Stanton stated to Ms. Dortch for clarification that regardless of whether it is used as a family home or used as duplex in some other way, the criteria needs to be addressed in that respect. Why is an unreasonable restriction regardless of using it as a family home, or having the right to rent it out, or the right to even sell it as a duplex.

Mr. Salley asked Ms. Dortch if regardless of the use of the property if this restriction would leave any economically viable way to deal with this property. Does forcing her to change it to a single-family dwelling deprive her of reasonably economically viable use of the property? Ms. Dortch stated it does.

Mr. Stanton repeated discussion regarding the fire and history of the duplex, and the loss of non-conforming status. Mr. Hubbard stated that was not for discussion today, and if the applicant can factual non-conclusory testimony that could be offered in an expedited manner, to do so. Mr. Stanton felt all the criteria for request for a variance had been addressed, and asked that the Board consider approval of the request.

Derek Riley, neighborhood resident, lives across the street from the property. Mr. Riley said the house was basically a squatter house; water and electricity have been “banked” from other residents. The house has been in a state of blight for about three years, but cannot be demolished because it is in a historic protective overlay district which is the only reason the house remains standing today. Mr. Riley is opposed to the variance request, as the neighborhood is dense enough already and increased density will hinder the further improvement of the block.

The testimony was closed for Board discussion.

Ms. Durkin voiced concerns with parking, and the potential for six cars behind the unit which would create noise, lights, and fumes. Parking on the street, which looks fairly narrow, for up to six cars would be a detriment. She feels the money already spent to keep this as a duplex would be have been better spent in the establishment of a single-family home if Ms. Dortch wants to have her family continue to live there because there is no guarantee down the road that the property will not be rented out.

Mr. Hubbard does not feel there are extraordinary and exceptional conditions for this case. It is an area that was developed well before zoning was adopted in Columbia, thus there are a lot of non-conforming uses in terms of density and other requirements throughout the area. By granting this area RG-1, City Council obviously desired a drop in density in this area, while also allowing some duplexes and similar things. Many other properties in the area have kept their non-conforming status or if lost, have managed to obtain another type of use that satisfies the statute. He does not feel it effectively prohibits, it may not provide as much return as one could get with a duplex, but would get a reasonable return in value. It is not the minimum necessary. This is an area that has been 'pulling itself up' and keeping this duplex would not enhance the area.

Mr. McMeekin echoed Ms. Durkin and Mr. Hubbard's comments and does not feel the variance should be approved.

Mr. Salley asked staff if the house is considered condemned and not habitable; and asked if a stairwell is required for a two-story single-family home.

David Hatcher, City Housing Official, stated as far as property maintenance concerns, it is mostly exterior violations that need to be brought up to code. He does not feel it is unfeasible to occupy the structure but has not been inside, and does not know what needs to be done to bring it up to single-family residence. The homeowner has been made aware of these issues. There has been an open case on this property since 2004. Several improvements have been made on the property but there are still several property maintenance issues on the exterior that need to be done to bring it up to code. Mr. Hatcher is not sure what has been done on the inside. There has not been a point of notice at this time that the property has been completely brought up to code during this time.

Michael Goodlet, Housing Inspector, added that an interior stairwell is required for a two-story single-family home.

**Motion by Mr. McMeekin to deny** the variance for **825 and 825 ½ Heidt** to the minimum lot size requirements to reestablish a duplex.

There are not any extraordinary and exceptional conditions that pertain to the subject property; there are no unreasonable restrictions for the use of the property.

It is his opinion that approval of the variance would be a detriment to the adjacent property and the public good.

He referenced to the testimony given by Mr. Riley with regard to the character of the district.

To allow this variance is not in harmony with the intent and purpose of the Zoning Ordinance.

It is injurious to the neighborhood and detrimental to the public welfare.

*Motion seconded by Ms. Durkin. Request denied 5-0.*

## **B. NEW BUSINESS**

**4. 13-003-SE      Dist. 2      1206 Heidt Street (TMS# 11410-02-17)** Special Exception to expand a religious organization (Willie Williams, First Nazareth Baptist Church)(RG-2, -DP).

Willie Williams, representing First Nazareth Church, said the church already has a PUD. This property is located between the childcare center and the parking lot of the church. Plans are to use the property as office for training and other benefits for the church. This property is not part of the original PUD.

Mr. Hubbard reviewed the criteria for special exception with Mr. Williams:

*Impact of the proposed use upon traffic in the area* – no impact.

*Impact of the proposal upon vehicular and pedestrian traffic* – none. All ingress/egress will be through the church parking lot.

*Impact on aesthetic character of the environs* – there will be no change, only improvement

*Impact in terms of orientation and spacing of improvements or buildings* – none, will be an improvement

*Adverse impact on public interest* – in his opinion, it should not have any affect as nothing will be changed and it is for a religious activity.

*Any changes in the exterior of the building* – no changes to the exterior; some interior rewiring to be done

Mr. Cook stated that any changes or additions to the exterior (stairwell, railings, handicapped accessible ramp, etc.) will need to be reviewed by the Design Development Review Commission and/or D/DRC staff.

Dr. William Rutherford, member of the Historic Waverly Neighborhood Improvement and Protection Association, spoke on behalf of the Association. Dr. Rutherford stated they are against the now changing use of the property as the property is a residential structure. Once it is used as office, it may become a commercial piece property. He questioned if this would cause the zoning code to change from residential to commercial. The church has purchased a great deal of property in the Waverly neighborhood, and the church has is changing the historic nature of the neighborhood. The church has presented to this Board and the Planning Commission to have the zoning code changed from residential to a C-3, unrestricted commercial use, which can mean a lot of things. It is felt if the zoning it changed, it may be sold to someone in the future who will change the use of the property to a less desirable use.

Mr. Salley said that is not the case in this situation. Mr. Hubbard asked staff to respond to the applicant's request and clarify how the zoning code works.

Mr. Cook said a religious organization with a special exception can basically go into all of the residential districts. It will not change the zoning of the property; zoning will remain as is which is still residential. If a zoning change is to be made, the request will present to Planning Commission and City Council, the neighborhood must be informed, and posting must be done. This particular request is to use the existing residential structure for the use of the church for offices or for meeting space. It will not change the zoning of the property. This meeting does not have authority to do that.

Dr. Rutherford voiced concerns that this may be the beginning of a series of changes.

Mr. Hubbard said he unsure of what plans they have for the future. The neighborhood still has the historic overlay which limits the church use of the building. If they would want to demolish the building or substantially change it, the church would need to present to the D/DRC. The bottom line is there is no zoning change, church use only, and any major exterior changes will require D/DRC review and approval.

Dr. Rutherford thanked the Board and said that is the type of information he was looking for.

Sylvie Deseo, neighborhood resident, is opposed to the request. Ms. Deseo said the church owns many lots that are already zoned commercial and can have a new building built that will be designed for office and training spaces. Converting residential into office space does not seem optimal. In addition, the church owns residential properties across the street from the property presented today which they have boarded up and are not taken care of, and then demolished. She voiced concerns with the church and said the church is not very

neighborly, and not had any conversations with residents. She is concerned with future zoning change if the building is used as an office for a long time. They want to live as residents in a neighborhood.

Mr. McMeekin asked Ms. Deseo if it is her testimony that the church owns other property and has a history of removing structures around it.

Ms. Deseo confirmed and referred to the map and pointed out church property with houses where several have been boarded up because they are not being used. That is not good for the neighborhood. She said the neighborhood has a long history of not being a good neighborhood and has improved tremendously over years.

Mr. Hubbard said many Board members are personally sympathetic toward the point of view but the BoZA is constrained by what is being presented and requested today.

Ms. Deseo understood and felt the proposal will not adversely affect traffic and parking because there will not be any additional cars; however there is the possibility it will adversely affect the public interest.

John Sherer, director of cultural resources for Historic Columbia, is opposed to the request. He gave a history of the Waverly Neighborhood and renowned African Americans, referred to the demolition of the historic Elmore store, and said the church has little to no appreciation of historic Waverly. Historic Columbia Foundation encourages the Board deny the church's request.

Mr. Hubbard reminded Mr. Sherer that the Board is constrained the criteria for special exception. Mr. Sherer understood saying there are a couple of things such as the aesthetics which must be reviewed by the D/DRC. He commented most on *no adversity to public interest*.

Mr. Hubbard sympathized and said the house being reviewed is landlocked on three sides by institutional development. It could be used as a residence, but there are some difficulties to that. Mr. Sherer said there are residential options. There are individuals who represent the church who live in close proximity.

Mr. Salley added that Mr. Sherer failed to mention in his neighborhood history that the church has been a cornerstone in that community since 1877.

Mr. Sherer said it is "*A little church with a big heart*" and it is hoped that it will continue to be a part of this community for a long time. Responding to Mr. McMeekin's question regarding the demolition of the Elmore Store, Mr. Sherer said it came out of a historic district that fronts Gervais Street and Gervais Street was not part of the included zone. He feels with greater oversight and looking at all of the historic assets within neighborhoods, it could be prevented in the future. That was one building that did not benefit from either local landmark designation or fall within the historic district. It was a very important civil rights site.

Mr. Williams said the City of Columbia went to Dr. Scott, the church's pastor requesting help in the blighted area of Waverly. The church purchased 'bad' houses in the area and torn them down. The area between Oak and Heidt Streets is commercially zoned. It had a building on the property that had been empty for five years. The church bought the property and requested a demolition permit by Ms. Moore. Six months prior, the historic society made a request for a marker to be placed but the property no longer belonged to Elmore.

Mr. Hubbard said that is not being dealt with today, he questioned the testimony made by a neighborhood resident that "the church does not even talk to the neighborhood".

Mr. Williams said "*it is not to their liking that we don't do everything the neighborhood wants us to do*". He said they have agreed to some things with the neighborhood but "*cannot stop what vision that God has given our pastor in developing our activities*". They will be very happy to continue to do what they can, but have a

mission to fulfill, and his job is to implement his mission as received. There is dialogue but not necessarily agreement.

Doris Hildebrand, Historic Waverly Community president was sworn in to speak. Ms. Hildebrand said the church does not talk to the community. She was unaware of the historic sign request for the Elmore Store, and feels that someone in the community should have known about it. The neighborhood has struggled to keep the community historic. Ms. Hildebrand feels communication must be made between the church and the community, “*no communication is not good*”. They do not want the community broken up into different pieces.

Pastor Scott was sworn in and said the church made a ‘*gentleman’s agreement*’ with the neighborhood. He grew up in the area and the neighborhood is very important to him. The church has spoken with the neighborhood regarding certain things but does not feel they need to talk to them about every minor thing. They have adhered to the agreement made a long time ago.

Testimony closed for Board discussion:

Mr. McMeekin said the church bought the property before a use was defined. If special exception is not approved, they still have the property anyway. Of his concern is the neighborhood opposition.

Mr. Hubbard said the question is if the intended use of the property would be of detriment to the neighborhood. Reviewing the criteria for special exception, he does not see any grounds for denying the request. The building must be used for church uses only.

**Motion by Mr. Salley to approve** the request for special exception for **1206 Heidt Street** to expand a religious organization. The applicant has proven it will not have an impact on traffic, it will have no impact on vehicular or pedestrian safety, the proposed use in terms of noise/lights/fumes/or obstruction of air flow will not impact the area, the proposal will not impact the aesthetic character of the environs to include the possible need for screening from view there will be no impact in terms of orientation and spacing of improvements or buildings, and it does not adversely affect the public interest; *seconded by Mr. McKnight*. **Special Exception granted 5-0.**

*Brief recess at 11:48 AM; meeting resumed at 11:56 AM*

**5. 13-005-SE      Dist. 1      4913 N. Main Street (TMS# 11604-03-12)** Special Exception to establish drinking establishment (Ravinder Thiara) (MX-1, -NC).

David Sidens, local attorney, was available to assist the applicants Ravinder and Heidi Thiara.

Heidi Thiara, property owner, said they initially purchased the property to open a convenience store. Once the property was updated, they decided it would be better investment as a restaurant and sports bar because there are so many convenience stores in the area already.

Mr. Hubbard asked if there were any additional criteria besides the regular criteria for special exception that needed to be considered.

Mr. Livengood said there four additional criteria that must be considered. These are:

1. Spacing requirements. Lots used as drinking places shall not be located closer than 400 feet to any other lot used as a drinking place and shall not be closer than 600 feet to any lot which contains a school or place of worship.
2. Hours of operation. The hours of operation shall be subject to approval by the board of zoning appeals when such establishment is located adjacent to a residential zone.

3. Parking requirements. Off-street parking requirements shall be 12 per each 1,000 square feet of gross floor area. In the North Columbia overlay, parking is reduced by 20%.
4. Ingress and egress. Adequate ingress and egress shall be provided.

These provisions have met staff approval but are subject to the Board's discretion.

Mr. Hubbard reviewed the criteria for special exception with the applicant.

*Impact of the proposal upon traffic* – there will be no impact on traffic because this is already in a commercially zoned area. Ms. Thiara added that they have already applied for a retail and liquor license because it would have been a convenience store. There is plenty of parking for the building.

*Impact on vehicular and pedestrian safety* – none, there is plenty of room around the building and it is already commercially zoned.

*Impact of proposal in terms of noise/lights/fumes/or obstruction of air flow* – no impact because it will be all indoor.

*Impact of proposal on aesthetic character of the environs* - no changes on outside at all, just some indoor changes.

*Will the proposal adversely affect the public interest?* People will enjoy it because it will be a fun place. Economically it will benefit because they will provide jobs. Hours of operation have not yet been decided.

*Ingress and egress* – Ravinder Thiara said there are 50 parking spaces on the left side of the building, and he will employ someone to handle traffic and parking. There should be no problems with people turning into the property or exiting the property.

*Impact of proposal in terms of orientation / spacing* - none

Testimony closed for Board discussion.

Mr. Salley questioned the four requirements set for drinking establishments asking if the requirements were met, did not have to be met, or if the Board needed to require any needed to be met specifically. He asked if there were residential houses across the street.

Mr. Livengood said as with any motion, criteria needs to be addressed and these are just additional criteria. They have been reviewed as best as possible by staff and appear to be met. The criteria says residential district and it is not a residential district.

**Motion by Mr. McKnight to approve** the request for special exception for **4913 N. Main Street** to establish drinking establishment. There is no adverse impact of the proposal upon traffic, no adverse impact upon vehicular and pedestrian safety, the proposal does not adversely impact in terms of noise/lights/fumes or obstruction of air flow upon adjoining properties, the proposal will not impact the aesthetic character of the environs.

**Mr. McMeekin asked that the motion be amended** to include that the four provisions required for a drinking establishment - Spacing requirements, Hours of operation, Parking requirements, and Ingress and egress are also met.

**Mr. McKnight acknowledged and noted the amendment to his motion; seconded by Mr. Salley. Request granted 5-0.**

6. 13-007-SE Dist. 2 3922 W. Beltline Boulevard (TMS# 1609-08-02) Special Exception to establish a gas station (Krunal Parmar, Jay Hanuman LLC)(C-3). **Deferred**

7. 13-008-SE Dist. 3 2604 Devine Street Unit A (TMS# 11316-11-02) Special Exception (C-2) Fine retail store (Andrew Johnson, Johnson's Products LLC)(C-2). **Withdrawn**

8. 13-009-VDist. 2 **Block Bounded by Whaley, Wayne, and Heyward Streets (TMS# 08913-16-05)** Variance to height and parking requirements for an apartment complex (Gary W. Morris, Haynesworth Sinkler Boyd, P.A.)(M-1, -PD (MX-1 pending)).

Gary Morris of the Haynesworth Sinkler Boyd law firm; Scott Garvin of Garvin Design Group; and Daniel Rothchild, principal for the project, presented. Individuals from the neighborhood were present to speak.

The applicant previously presented to the Planning Commission for rezoning to MX-1. The proposed project is a four-story apartment complex, with some store front. The site plan presented to the Planning Commission and was approved with staff recommendations to be met. The developer is seeking a variance on the height of 9', and for parking of 258 spaces instead of 344. From the beginning, meetings have been held by the developer with the neighborhood and input has been received from the neighborhood to get a structure that is liked by both.

Scott Garvin of the Garvin Design Group is the architect for the project. Garvin Design Group was also the architects for the renovation of Olympia and Granby Mills as well as 701 Whaley in the neighborhood. A number of meetings were held with the neighborhood who had a lot of input into the design. One of the main priorities of the neighborhood was to protect the park at the corner of Whaley and Olympia which anchored the neighborhood and Mill Village, and to maintain the view corridor from that corner. The developer has committed to leaving the park alone which has limited some of the buildable area. The initial scheme ran parallel to Olympia along Heyward and was a much more efficient design from the standpoint of the layout which allowed for more parking spaces to be developed on site, but would have blocked the view corridor.

The result of shifting the building caused it to be built on the slope instead of parallel to it. The change in grade from Heyward to Whaley Street is about 11'. It is desired to maintain level floor plates for each of the four floors and locate retail on Whaley. Setting the elevation at Whaley to allow ingress and egress for pedestrians and carrying that elevation all the way around necessitated the need for a variance. The height at Whaley is under 50', and the extreme height at Heyward is 59'; so the average is about 55'. There is one main entrance into the facility at the center facing out toward the parking lot, and the height at that point is about 54'.

The third request of the neighbors goes back to a study done before the Mills were renovated, to provide retail in Olympia that was Olympia-oriented retail. That is a component of the project that was included and actually necessitated the need for a variance for parking. The retail will be located on Whaley for pedestrian access to the retail. There is an existing curbcut as one enters the site off of Whaley Street for parking to access the retail.

There will be 158 one-bedroom units and 24 two-bedroom units for a total of 206 beds. The one bed-room units are predominant and comprise over 90% of the units. The request for a variance is based on the fact that the developer feels that 1.75 cars per unit for a one-bedroom unit is excessive. Conversations were held with city staff, and if this project was zoned as a private or public dormitory, one parking space per bed would be required for a total of 206 parking spaces when there are 258 on-site.

There are two reasons this was not requested: 1) the proposed project is within 600' of a RD-2 zoning, Olympia and Granby Mill, and 2) MX-1 zoning is being requested to provide retail for the neighbors. 6,500 sq. ft. is allocated for retail with three bays proposed; a coffee shop, sandwich shop. There is no tenant at this time.

Mr. Garvin addressed the criteria for a variance saying there will be no impact on traffic; it will actually be less because of the reduction in parking, the elimination of curbcuts on Heyward and Whaley. This will be an improvement on safety because with retail, students and residents will be encouraged to walk back and forth to retail instead of driving their cars elsewhere. The developer has provided new sidewalks all the way around the site which is improved safety. Overall, it is felt the aesthetics have been improved with the development.

To focus on the main criteria, the 1.75 parking for a single bedroom unit is excessive. From a city standpoint, they are aware the Ordinance will be changed in the future, but it is unknown when; and that is the reason for the request for variance.

Mr. Salley commented that “*this is how development should occur and is case study for doing it the right way*”.

Bob Guild of the Granby Mill Village Neighborhood Association spoke in support of both variances, for the height of the project and for parking. Mr. Guild thanked the developers for working very closely with the neighborhood and asking for input. They gave up buildable space and parking to honor the neighborhood requests. It is felt the proposed parking will serve adequately for the retail and residents of the new apartment project. The neighborhood is very excited about having neighborhood retail. He applauded the developers for a good design and very cooperative commitment to working with the neighborhood.

Ryan Nevius, executive director of Sustainable Midlands, Granby resident and member on the Granby Board, said this is a great sustainable use of the property and spoke in support of the project. From the Rocky Branch Watershed Alliance point of view, the fact the green space has been retained and the fact the developer is using low impact development and retaining the water underground is an exciting opportunity for them to have a display in the Rocky Branch neighborhood where good development can be used and low impact development can be celebrated. The developer worked with all the surrounding neighborhoods which was greatly appreciated. She feels having retail for students will cut down on in and out traffic. It is a great design and asset to promoting connectivity and walkability to the city.

Testimony closed for Board discussion. Mr. Hubbard and Mr. McKnight agreed with Mr. Salley’s earlier comments regarding the proposed project.

**Motion by Mr. Hubbard to approve** the request for variance for the **Block Bounded by Whaley, Wayne, and Heyward Streets** to height and parking requirements for an apartment complex. Testimony indicates there are extraordinary and exceptional conditions that do not generally apply, this is the minimum that would allow reasonable development and otherwise, would unreasonably restrict use of the property and force bad things to have to happen, it would not be of substantial detriment, and it will be in harmony with the public interest and improve the area, and it is the minimum necessary; *seconded by Mr. Salley*. **Request granted 5-0.**

*Mr. McMeekin left at this time.*

**9. 13-010-SE      Dist. 1      4498 Broad River Road (TMS# 06300-01-01)** Special Exception to erect a wireless communications facility (Mike Feigenbaum, PTA-FLA, Inc., dba Cleartalk)(C-1).

Applicant proposes to construct a 160’ tower within a 1,600 sq. ft. compound. The proposed location is within the Harbison State Forest adjacent to a City of Columbia water tower, but not on City of Columbia property. The subject and surrounding parcels are zoned C-1 which allows for a new monopole communication tower as a permitted use provided it is a minimum of 300’ from a single-family residential or general residential district, and a minimum of 50’ from public ROW.

In addition to the standard criteria for special exception, the BoZA must apply additional standards for a cellular tower.

Mr. Cook visited the site and it meets the separation from the residential district and the ROW, and also meets the 1,000' separation from another cell communication tower, which is one of the requirements.

Mike Feigenbaum, development manager for PTA-FLA, Inc. dba Cleartalk Wireless, is a proponent for the company.

Tom Persons, owner of Cleartalk and South Carolina resident, provided a brief history of Cleartalk which has been in SC for over four years. Cleartalk is in the cell phone business. It is an employee-owned business with the call center at N. Main Street and Elmwood. He commended staff for their assistance with this request.

Mr. Feigenbaum reviewed the criteria for special exception, and the additional criteria for a monopole:

*Impact of the proposal upon traffic* – none, this is an unmanned facility that will only have monthly maintenance visits.

*Impact of proposal upon vehicular and pedestrian traffic* – none, only monthly maintenance visits

*Impact in terms of noise/lights/fumes/or obstruction of air flow upon adjoining property* – this tower is below the FAA threshold for lighting a tower, no strobe or flashing light on top. The towers emit no noise or impediment of air flow.

*Impact of proposal on aesthetic character of the environs* – the equipment for the towers is screened with a wooden privacy fence. This particular tower is in a wooded area and only the top of the tower will be visible from the tree line.

*Impact of proposal in terms of orientation and spacing of improvements or buildings* – none, adjacent to a city water tank facility.

It will not adversely affect public interest. It is felt it will benefit public interest because cellular communication has become very important over the last ten years. It will benefit mobile 911 and the ability to communicate with work and similar things. Cleartalk is working closely with the City of Columbia to offer some space on the facility for some sort of deployment of the national first responder network that is mandated that needs to be on the air in the next couple of years.

*The proposed wireless facility will not endanger the safety of residents, employees, or travelers, including but not limited to the likelihood of the failure of such structure* because these structures are engineered specifically for the environment in which they are built. The towers are manufactured in the US. As part of the process to apply for a building permit, signed and sealed engineering will be submitted that show the tower is in compliance with Revision G of the structural code that is currently in effect. That takes into account factors like earth, wind probability, and things of that nature. The foundations for these things are also engineered by the state of SC and a registered professional engineer.

There are 54 sites in the Columbia area that are on the market; 48 are co-location. This tower is designed for four carriers, and others will be allowed to relocate. *The nearest tower to this one is 3,600' away.*

Mr. Cook asked if the Board should be inclined to grant the special exception, staff asks that any other requirements of §17-283 code or ordinances related to specific landscaping, illumination, signage, abandonment, requirement to obtain permits, color of the tower, and fall zone, and any other requirements of that section be considered as well. Mr. Feigenbaum agreed to comply.

Mr. Cook added that should be noted that the communication tower be located outside of the existing compound for the City of Columbia water tank facility, basically the 600' area the applicants are

looking to build be outside the fenced area of what is currently existing onsite. *Mr. Feigenbaum said they plan to be immediately adjacent to that site.*

Testimony closed for Board discussion.

**Motion by Mr. Hubbard to approve** the request for special exception for **4498 Broad River Road** to erect a wireless communications facility as the testimony has indicated there is little, if any impact, on traffic, or vehicular or pedestrian safety; noise/lights/fumes/or air flow will not be affected negatively; the aesthetic character, given the fact of this location, will be very minimal; the orientation and spacing will not be a problem; it will not adversely affect the public interest; in addition, the structure itself will not endanger safety, nor will it detract from aesthetics. It will not be within 1,000' of another tower. They had thought of not co-locating but that will not work; and they are willing to co-locate with others.

In addition, as part of the motion as agreed upon by the applicant, it will be located outside the fence compound of the City of Columbia, and they will be complying with all the other requirements in the Ordinance concerning this tower. *Motion seconded by Mr. Salley. Request granted 4-0*

#### **IV. OTHER BUSINESS**

##### **Approve February 12, 2013 Minutes**

Motion to approve the February 12, 2013 minutes by Mr. Salley, seconded by Mr. McKnight. Minutes approved 4-0.

**There being no further business, motion to adjourn at 12:42 p.m. by Mr. Hubbard.**

Respectfully submitted by Andrea Wolfe  
Sr. Admin. Secretary  
Planning and Development Services Department  
City of Columbia