

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**CITY OF CREVE COEUR**  
**FEBRUARY 21, 2008**

A regular meeting of the Board of Adjustment of the City of Creve Coeur, Missouri was called to order by Vice Chair Ted Brown at the Creve Coeur Government Center, 300 North New Ballas Road, at 7:00 p.m. on Thursday, February 21, 2008.

Upon a request for Roll Call, the following members responded:

**Mr. Ted Brown, Vice Chair**  
**Mr. John Becker**  
**Mr. Roger Levy**  
**Mr. Ken Balk, Alternate**

Mr. Becker made a motion, seconded by Mr. Levy, to approve the Minutes of a Regular Meeting of January 17, 2008. With no corrections being heard, the Minutes were approved.

Vice Chair Brown outlined the procedures of the Board of Adjustment. He stated that four affirmative votes are required for the granting of a variance.

The Affidavit of Publication was read by Vice Chair Brown and marked as an exhibit.

**Affidavits of Publication**

1. To consider the appeal of Kamp-Noles L.L.C. for the following variance request in Ordinance No. 1903, The Zoning Code, for the property located at 12520 Olive Boulevard. Section 26-93.6(e)(1) *Restaurant and bars (SIC code 58)*. This section requires one parking space per every three seats plus one parking space per every 250 square feet of total building floor area plus one parking space per each eight seats in an outdoor seating area. The applicant is requesting a variance to allow for a maximum of eight parking spaces below the minimum standards.

Vice Chair Brown requested all parties who wished to address the Board be sworn in. Whereupon, all parties to be heard were sworn in by Court Reporter Deborah McLaughlin.

Mr. Michael Hurlbert, City Planner and Economic Development Administrator, gave a brief report on the requested variance. The subject property is addressed as 12520 Olive Boulevard and is located south of Olive boulevard, west of Questover Lane, currently zoned "GC" General Commercial District as is the property to the west; the properties to the south are zoned "AR" Attached Single Family Residential and the property to the east is zoned "MX" Mixed Use District. The property to the north, across Olive Boulevard, is part of the Heritage Shopping Center, a portion of which is in the City of Creve Coeur, and zoned "CB" Core Business District.

Mr. Hurlbert pointed out that the parking variance is being sought in order to accommodate an eating and drinking establishment occupying a tenant space in the building. The site currently provides for 40 parking spaces and, based on the square footage, a total of 39 spaces are required. However, a restaurant is permitted as a conditional use in the "GC" District and requires additional parking based on the number of seats provided. An amendment to the Conditional Use Permit is required by the applicant to increase the seating over what has been previously approved, which is seven and not eight as noted in the Public Notice.

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The City submitted the following exhibits entered into the record:

1. City of Creve Coeur Charter.
2. Code of Ordinances of the City of Creve Coeur.
3. Creve Coeur Comprehensive Plan.
4. The Board of Adjustment application and all attachments thereto.
5. The report by Staff dated February 21, 2008.
6. The collective exhibit of any materials received from the applicant.
7. A collective exhibit of materials offered by the opposition, if there is any.
7. All communications and letters received by the City to this point.

Mr. Steve Noles, Kamp-Noles Development, explained the reason for asking for the variance. He presented a letter from one of his tenants who expressed the desire to have the coffee shop and be short on parking since they feel the site is over-parked anyway. Mr. Balk questioned his "over parked" statement, and Mr. Noles explained that they meet the general parking requirement, pointing out that he has to calculate the parking for the lower level where no one works, as well as 40 percent of the shopping center being occupied by his partner whose business only parks four people. Employee parking is in the rear. Mr. Noles stated that no other municipality has required him to use the retail calculation and the seating inside for any of his Imo Pizza businesses. He said when they received the "MX" zoning approval, Staff recommended approval of the zoning for the coffee house and said they would re-evaluate the parking situation in six months; if no problems exist, they would allow the addition of the outdoor seating, which Mr. Noles said is crucial to his tenant. He referred to the deed restriction on the property which prevents him from having outdoor seating on the south, east, or west, pointing out the outdoor seating is on the north fronting Olive Boulevard. He stated that the neighbors knew there would be outdoor seating for a coffee house, which no one objected to. A brief discussion followed.

Mr. Steven L. Kling, Jr., an attorney with Jenkins and Kling, P.C., represented several adjoining subdivisions, namely, the Trustees of Questover Lane, the Trustees of Questover Crossing Subdivision, the Trustees of the Manors of Questover Subdivision, and Questover Place Community Services Association, Inc., which is the homeowners association for Questover Place. Mr. Kling stated they were aware of the possibility of a coffee shop, but they have issues with the hours of operation and the parking. Mr. Kling said they feel Mr. Noles has a fine development and that a coffee shop could work, but were opposed to some of the issues. He presented several exhibits and referred to the staff's recommendation to the Planning and Zoning Commission that additional seasonal outdoor seating may be approved if, after a period of six months of full operation, it can be shown through a parking study that there is ample parking provided within the shopping center. Mr. Kling addressed the eight criteria that need to be met before granting a variance. He requested denial of this application and introduced his exhibits as part of the record.

Mr. Levy asked if the primary concern of the subdivisions is more into the parking or more into the hours of operation. Mr. Kling responded that, at this time, it is both. He pointed out that the subdivisions are happy with the hours in the Conditional Use Permit, which begin at 6:00 a.m. to 10:30 p.m. Sunday through Thursday, and 6:00 a.m. to 10:00 p.m. on Friday and Saturday. The residents originally asked for earlier closing, but Mr. Kling recalled that Council granted the later closing hours and that Starbucks is now asking for hours beginning at 5:30 a.m. Mr. Levy pointed out that looking at Mr. Kling's exhibit, it seems that every Starbucks in the area opens at 5:30 a.m. Mr. Kling said Starbucks close to residential areas open later.

Mr. Noles pointed out that the residents favored a bank with four drive-thru lanes and a 24-hour ATM, but are worried about parking for Starbucks, which will not have the impact produced by four drive-thru lanes at a bank. Mr. Balk did not feel the issue of the bank should be mentioned at this variance hearing. He suggested that the tenant move in and have the traffic study to prove the parking is sufficient and then

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provide outdoor seating. Mr. Noles said the tenant does not want to make an initial investment on speculation. He said the City asked him to return because the residents want to know why they do not have a Starbucks or coffee shop west of Highway 270. Mr. Noles explained that Starbucks left the City because of the hours, and the other potential tenant does not mind the hours, but insists upon outdoor seating. He added that he felt there would be a lot of “outdoor seating” without chairs.

Mr. Kling stated that Mr. Noles opposed the bank and pointed out that the bank had a 90-foot landscaped buffer between the back of its property and the residential area. Upon a request from Mr. Becker, Mr. Hurlbert gave a brief overview of the parking requirements, followed by a brief discussion. In answer to Mr. Levy, Mr. Hurlbert said there are several shopping centers along Olive Boulevard where restaurants want to come in, but parking is maxed out.

Hearing no further questions, Vice Chair Brown made a motion that the Creve Coeur Board of Adjustment approve the application of Kamp-Noles L.L.C. for the variance requested after having found from the evidence presented that the requested variance arises from all the following circumstances:

- (a) The variance requested arises from a condition which is unique to the property in question and which is not ordinarily found in the same zoning district;
- (b) The variance requested is because of a unique hardship not created by the applicant or the owner of the property;
- (c) The granting of the variance shall not adversely affect adjacent property owners or residents;
- (d) The strict application of the provisions of the Zoning Ordinance, from which a variance is requested, will cause severe practical difficulty or extreme hardship for the property owner represented in the application;
- (e) The variance desired will not adversely affect the public health, safety, order, convenience, or general welfare of the community, and
- (f) Granting the variance desired will not violate the general spirit and intent of this Chapter.

In addition, per Section 26-118.5, an applicant for the area variance or other non-use variances must meet the following criteria:

(a) By reason of exceptional narrowness, shallowness or shape of the specific piece of property or whereby reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually create a hardship to the property in a manner dissimilar to that of other similarly situated property in the zoning district in which it is located,

(b) Granting a variance would not result in the diversion of additional stormwater that would adversely affect adjacent property.

Mr. Levy seconded the motion, with the resultant vote as follow, to-wit:

Mr. Becker – nay  
Mr. Levy – nay

Mr. Balk – nay  
Mr. Brown - aye

Vice Chair Brown announced the variance is denied.

Vice Chair Brown made a motion, seconded by Mr. Becker, that the Board instruct the Planning Staff to prepare Findings of Fact and Conclusion of Law consistent with the opinion of the Board in this matter for execution by the Chairman of this Board and further that this Board shall instruct the Staff to mail the findings to the Applicant and all interested parties immediately upon execution by the Chairman. The motion unanimously carried.

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Mr. Barry Koenemann, alternate member, joined the Board on the dais.

Vice Chair Brown read the second affidavit.

To consider the appeal of Saint Louis Abbey/Priory School for the following variance request in Ordinance No. 1903, the Zoning Code, for the property located at 500 South Mason Road:

Section 26-36.5(c)(4). *Yard and Setback Requirements in "HE" District.* This section states that any tract or site abutting a single-family residential zoning district shall provide a buffer yard of one hundred (100) feet. It also states that pre-existing buildings and other improvements within the buffer may not be expanded within the buffer. The applicant is requesting a variance to allow for an addition to the existing gymnasium which would decrease the existing buffer from 70 feet to 45 feet from the property line.

Mr. Hurlbert gave a brief report on the requested variance. He described the property as a 155 acre site located south of Conway Road and east of Mason Road, which is currently zoned "HE" Higher Education District. This district is designed for the development and maintenance of appropriate facilities for higher education in the City of Creve Coeur and further to encourage the highest quality, site, landscape and architectural design of such higher education facilities while minimizing any potential negative impact of these uses on related activities upon the surrounding neighborhoods and residents. Existing uses on the site include an abbey monastery, a parish church, and a Catholic Junior and Senior High School. The properties to the south and west across Mason Road are in the City of Town and Country; the properties to the north consist of single-family residential neighborhoods and all are zoned "A" Single Family District.

The applicant is proposing a new Site Concept Plan for the campus to be built out over three phases in a ten-year period, which includes most of the Concept Plan projects that were previously approved, as well as some additional development, including the proposed gymnasium building addition. Mr. Hurlbert went on to say that the campus was zoned "HE" Higher Education at the time that it was annexed into the City of Creve Coeur in 1992. As a result, there are several nonconforming buildings and improvements on the site—the north/south drive aisle off Conway Road, a portion of the gymnasium and the adjacent 91-space parking lot, Parish House and access drive near this house all encroach within the 100-foot buffer yard. Mr. Hurlbert read from the Zoning Code that pre-existing buildings and other improvements within this buffer may not be expanded within the buffer. These structures, however, may be expanded where the expansion extends outside the buffer yard. The applicant is requesting to construct a 7,400 square foot addition to the Fitness Center Gymnasium building currently located within the buffer yard, approximately 70 feet from the property line. The addition will encroach an additional 25 feet into the buffer, which requires a variance.

Mr. Hurlbert submitted the following exhibits into evidence:

1. City of Creve Coeur Charter.
2. Code of Ordinances for the City of Creve Coeur.
3. Creve Coeur Comprehensive Plan.
4. The Board of Adjustment application and all attachments thereto.
5. The report by Staff dated October 18, 2007.
6. A collection of exhibits and any materials received from the applicant.
7. A collective exhibit of materials offered by the opposition.
7. All communications and letters received by the City up to this point.

Vice Chair Brown requested all parties who wished to address the Board be sworn in. Whereupon, all parties to be heard were sworn in by Court Reporter Deborah McLaughlin.

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Father Gregory Mormon, Prior of the Abbey of Saint Mary and Saint Louis, called on the Architect, Kevin Kerwin, to explain the details of the variance request. Father Mormon stated his hope is that the requested variance will be both an improvement to the appearance of the building and its function and will have no adverse effect on any of their neighbors or other considerations that would be of concern in terms of traffic flow etc.

Mr. Kevin Kerwin, with HKW Architects, felt the variance requested this evening does present a hardship to the operation of the school. They believe that the solutions provided would create a measure of safety and accessibility that currently is not available at the school. He pointed out the unique condition of the location of the building being pre-existing to the "HE" zoning. The building is close to the property line, with a number of existing conditions. Mr. Kerwin described the building as being 50 years old, with good "bones", but did not feel it is as aesthetically appealing as it could be; the adjacent neighbor is fairly remote about 380 feet from the property line. He offered a solution to improve safety for pedestrians and vehicles within this buffer zone and pointed out that there would be no increase in traffic or need to provide for any additional stormwater drainage.

The proposal is for about 4,500 square feet of exercise facility, 2,400 square feet of which would be within the 100-foot buffer. Mr. Kerwin stated they also are proposing to replace the present entrance and explained how they plan to revamp the front entrance in order to provide accessible facilities for the public. He pointed out that the current entrance encroaches on the 100 foot buffer. Diagrams of the site were presented.

Mr. Kerwin referred to a letter from Mrs. Straub, the closest neighbor, which confirms their approval of the proposed plans.

After a thorough discussion and careful consideration of the evidence presented, a motion was made by Vice Chair Brown that the Creve Coeur Board of Adjustment approve the application of Saint Louis Abbey / Priory School for the variance requested after having found from the evidence presented that the requested variance arises from all the following circumstances:

- (a) The variance requested arises from a condition which is unique to the property in question and which is not ordinarily found in the same zoning district;
- (b) The variance requested is because of a unique hardship not created by the applicant nor the owner of the property;
- (c) The granting of the variance shall not adversely affect adjacent property owners or residents;
- (d) The strict application of the provisions of the Zoning Ordinance, from which a variance is requested, will cause severe practical difficulty or extreme hardship for the property owner represented in the application;
- (e) The variance desired will not adversely affect the public health, safety, order, convenience, or general welfare of the community, and
- (f) Granting the variance desired will not violate the general spirit and intent of this Chapter.

In addition, per Section 26-118.5, an applicant for the area variance or other non-use variances must meet the following criteria:

- (a) By reason of exceptional narrowness, shallowness or shape of the specific piece of property or whereby reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually create a hardship to the property in a manner dissimilar to that of other similarly situated property in the zoning district in which it is located,

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(b) Granting a variance would not result in the diversion of additional stormwater that would adversely affect adjacent property.

Mr. Levy seconded the motion, with the resultant vote as follows:

Mr. Becker – aye		Mr. Levy – aye
Mr. Koenemann – aye	Vice Chair – aye	Mr. Balk – aye

Vice Chair Brown announced the variance is granted.

Vice Chair Brown made a motion, seconded by Mr. Koenemann, that the Board instruct the Planning Staff to prepare Findings of Fact and Conclusion of Law consistent with the opinion of the Board in this matter for execution by the Chairman of this Board and further that this Board shall instruct the Staff to mail the findings to the Applicant and all interested parties immediately upon execution by the Chairman. All members voiced approval.

There being no further business to come before the Board, upon motion being made and duly seconded, Vice Chair Brown declared the meeting of the Board of Adjustment adjourned at 8:40 p.m.

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*Ted Brown, Vice Chairman*

Attest:

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*Pat Rosenblatt, Secretary*