

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, May 14, 2008
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Joe Aistrup
La Barbara J. Wigfall; and, Connie Hamilton.

MEMBERS ABSENT: Calvin Emig

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Chad Bunger, Planner; Anne Antonini, Planning Intern

Consider the MINUTES of the April 9, 2008, Board of Zoning Appeals meeting.

Connie Hamilton moved to approve the March 12, 2008 minutes with corrections. The motion was seconded by La Barbara Wigfall and passed with a vote of 4-0.

Continuation of a PUBLIC HEARING to consider a VARIANCE to not provide sight obscuring screening for portions of the property associated with a new medical office building and existing Building E in the Manhattan Medical Center campus at 1133 College Avenue. (Applicant: Les Mock, WDM Architects, Owner: Manhattan Medical Center – Rick G. Fulton, President).

Hamilton moved to remove the item from the table and continue the public hearing. Joe Aistrup seconded the motion, which passed 4-0.

Chad Bunger provided the Staff Report recommending approval of the Variance, with three (3) conditions.

Hardy opened the public hearing.

David Rintoul, 1124 Woodland Street, expressed his view that the City needs to consider changing its property owner notification procedures for public hearings. Under current City policy, property owners within a two hundred foot boundary of a property for which a Board of Zoning Appeals action is being requested are notified of the public hearing. These same property owners are not, however, notified when an application considered and tabled at a previous meeting is to be reconsidered, unless there is a change to the application which requires it to be advertised to the public. Rintoul expressed that he was upset by the fact that he did not receive notification that the Variance application for 1133 College Avenue was to be removed from the table and reconsidered. Rintoul's stated concerns included that a proposed parking area would be located within view of his rear yard, and that he felt that the Medical Center should provide screening adjacent to

his property to block his view of the parking area. Rintoul also expressed that he would like to go on the record as being opposed to the improvements to the Manhattan Medical Center.

Hamilton stated that the applicant proposed screening that would follow the south property line of the property.

Rintoul stated that the proposed screening would not block his view of the applicant's parking area. He expressed that the applicant's parking lot was already visible to him through the trees between his property and the applicant's property, and that he was concerned that the addition of more parking, without providing screening for his property, would increase his view of the parking lot.

Aistrup asked Bunger is his understanding of the location of the proposed screening was correct.

Bunger verified the location of the proposed screening.

Rintoul expressed that he felt that his property was excluded from the proposed screening.

Bunger provided clarification about the property line for the Manhattan Medical Center on an aerial photograph.

Rintoul expressed that the aerial photograph was out of date, and that many of the trees in the photograph were no longer there.

Applicant Les Mock explained the purpose of the Variance request, and explained the fencing plan for the subject property that would address the intent of the City's screening regulations.

Rintoul asked Mock if he were to continue the screening fence along the area that Rintoul felt would screen his property, if this would be in the front yard setback of Mock's property, and if so, would he need a variance.

Mock stated that he was not familiar with the Variance process.

Bunger provided clarification.

Hamilton asked Chad if providing the fence in the setback would require another public hearing, and to be advertised to the public.

Bunger said that it would.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Hamilton asked Bunger for clarification on the boundaries of the subject property.

Bunger provided clarification on the boundaries of the subject property and on the Zoning Regulation requiring screening between commercial and residential uses.

Aistrup asked Bunger how far the screening fence would be permitted to continue along the western property line.

Bunger provided clarification.

Aistrup asked Bunger if the Board could add a condition of approval to the variance request that the applicant provide additional fencing at a specific point at the subject property.

Bunger said that it the Board could add such a condition, or that they could require vegetative screening.

Hardy expressed support of such a request.

Hamilton asked about the Variance request. She discussed the screening option and the landscape option. She stated that she would like to add a Condition of Approval to the Variance that would address screening at the corner of the subject property, and a Condition of Approval that the Variance would only apply to the current plat for the subject property, and that if the property was to be replatted, another Variance would need to be sought.

Wigfall stated that she appreciated the applicant's attempt to meet the spirit of the screening regulations. She expressed that she would have really liked to see some form of natural or other landscape screening at the subject property.

Hardy concurred.

The Board made the following Findings of Fact for the Variance 1133 College Avenue:

- 1. CONDITIONS UNIQUE TO THE PROPERTY:** The steep, wooded terrain that is dedicated as a drainage easement makes this southern area of the property unique. Because of the natural and land use restrictions, the area cannot be developed and will most likely remain in its natural state. The wooded areas would typically be considered adequate sight obscuring screening to meet the Use Limitations for the C-1, Restricted Business District. However, a majority of the mature trees in the utility easements that run along the property lines were cut back or removed by the utility companies to gain access to the overhead lines. The tree trimming left a relatively large area clear and reduced the screening in some areas. These areas will remained unscreened for a number of years, but based on the uniqueness of the property and this area; installing a six (6) foot tall

privacy fence or additional landscaping would be unnecessary.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse affects are anticipated for the residential properties adjacent to the subject site if the Variance is approved. A majority of the residential properties adjacent to the property and next to the wooded area will be separated by distance and the slope of the land. The closest neighbor to the proposed parking lot west of Building E is 1124 Woodland Street, which will be approximately 70 feet away from the parking lot. This neighbor will be impacted the most because of the property's proximity to the proposed parking lot and the fact that a large area of tree cover was removed from the utility easement and the unnamed, unimproved road right-of-way that adjoins the properties. This tree cover would have most likely provided adequate screening if it was present. To address the impacts on the neighbor, the applicant has proposed a six (6) foot tall solid fence to block light and noise produced by the parking lot. Other properties are 120 to 400 hundred feet away from the new parking lots and should not be impacted by the new parking lot. These lots are downhill from the development area and are adequately screened by the wooded area. Residents in this area may perceive installing the required six (6) foot screening as an adverse effect, because the screening would detract from the wooded open space behind their homes.

3. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: If the strict application of the use limitation was enforced, the applicant would be required to provide sight obscuring screening along all property lines that abut a residential district, including the area in question. Some parts of the area that would be required to be screened are extremely hilly. It is also impractical to strictly enforce the use limitation when the entire area is extremely wooded and the fence would be placed in a drainage easement that restricts the development of the area. Lots furthest from the existing Medical Center campus are 120 to 400 feet away and screened by the slope of the land and the wooded areas. The property that will be most impacted is 1124 Woodland Street, as was described previously. The applicant has taken measures, by installing a six (6) foot tall fence to limit the impact on this adjacent property. Requiring the owner to completely comply with the Zoning Regulations along the remainder property that abuts residential properties would be an unnecessary hardship considering these areas are naturally screened by trees and terrain.

4. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Variance should not have an adverse effect on the public health, safety and welfare of the general public. Not requiring the screening to be installed would maintain the current stormwater run-off capacity that the small, natural drainage channel has. Installing a solid fence along the property lines may impede stormwater run-off, and could cause flooding on adjacent properties because the stormwater cannot enter the drainage channel.

5. RELATIONSHIP TO INTENT OF REGULATIONS: The intent of the regulation to install sight obscuring screening along property lines abutting residential district is to limit any adverse impacts from the commercial use. The new fence and screening plan in combination with the existing conditions limit the amount of light and noise cast onto adjacent properties. Even if mature trees along the property lines were removed or trimmed, the intent is met because the terrain, the wooded areas and the distance from the commercial use to the residential properties, minimizes any adverse impacts on adjacent properties.

Hamilton moved that the Board approve a Variance to not provide sight obscuring screening for portions of the property associated with a new medical office building and existing Building E in the Manhattan Medical Center campus, 1133 College Avenue, in the C-1, Restricted Business District, with the following conditions:

1. Sight obscuring vegetative screening of not less than six (6) feet in height shall be provided as shown on the site plan and as described in application documents with the addition of site obscuring vegetative screening no less than six (6) feet in height at the boundary of the subject site and the unnamed public right of way along Buena Vista Avenue.
2. The Variance shall be limited to the area south of existing Building E as currently platted and outlined in the application documents and shown on the applicant's site plan.
3. The sight obscuring screening shall be maintained in good condition.

Wigfall seconded motion which passed unanimously with a vote of 4-0

Request for an extension of a previously approved EXCEPTION to allow for the maximum lot coverage of the property to exceed thirty (30%) percent. The Exception is for a proposed addition to an existing structure. The property is the St. Paul's Episcopal Church located at 601 Poyntz Avenue and is zoned C-1, Restricted Business District (Applicant: Bruce McMillian Architects, Owner: St. Paul's Episcopal Church).

Bunger presented the Staff memorandum with a recommendation for approval of the Extension request.

Hamilton moved that the Board approve an extension of a previously approved Exception to allow for the maximum lot coverage of the property to exceed thirty (30%) percent for a proposed addition to an existing structure at the St. Paul's Episcopal Church located at 601 Poyntz Avenue and is zoned C-1, Restricted Business District.

Aistrup seconded the motion, which passed unanimously, with a vote of 4-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a

reduction of the minimum twenty-five (25) foot front yard setback to nine (9) feet along Pierre Street to construct a proposed privacy fence in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District at 220 South 8th Street. (Applicant/Owner: Heather J. Post).

Bunger provided the Staff Report recommending approval of the Exception, with two (2) conditions.

Hamilton asked Bunger how far a house adjacent to the subject property was set back from the sidewalk.

Bunger stated that he did not know the exact measurement, but that it was within feet of the sidewalk.

Hardy opened the public hearing.

Applicant Jonathan Post explained to the Board why he felt it necessary to construct the proposed fence. He explained that he had consulted with his neighbor about his proposal, and his neighbor supported it.

Hardy commended Post for meeting with his neighbor prior to making the proposed improvement to the subject property.

Bruce Snead thanked the Board for their service to the community and expressed his support of the Exception request.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Hamilton stated that she could support the applicant's request, but expressed that she had reservations. She stated that she disagreed with the staff report's findings that neighborhood properties would not be negatively impacted by the proposed fence. She stated that the front yard setback was in place to maintain a unified, visually consistent line down the street. She said that the visually consistent line had already been broken along the street of the subject property, which mitigated the applicant's request.

Hardy concurred, stating that he had the same concerns with the application that Hamilton had expressed. He stated that the application was within the established character of the neighborhood.

Wigfall stated that she could reluctantly support the request, and that the fence line followed the tree long along the street. She stated that a lack of visual cohesiveness did pose a problem for drivers, but that she could support the applicant's request.

The Board made the following Findings of Fact for the Exception at 220 South 8th Street:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property currently complies with all applicable regulations except for what the Exception is being requested.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject property and surrounding properties are located in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Several properties in the surrounding neighborhood have fence in similar locations in the front yard. A corner lot to the northeast of the subject site at 8th and Houston has a privacy fence set near its front property line along 8th Street.

As the application materials state, the adjacent property owner that will be most impacted by the proposed fence is the neighbor to the west. The applicants have said that this neighbor is in agreement with the placement of the fence. Impacts to other properties in the area should be minimal, the fence will be similar in nature to the existing fence and should not distract from the character of the neighborhood. The proposed fence will be approximately nine feet from the front property line and the sidewalk, which should provided for adequate room and comfort for pedestrians who use the sidewalk. Because of the placement and materials of the proposed fence will not detract from the character of the neighborhood or create an undesirable pedestrian environment and the fact that the applicants have spoke with their adjacent neighbor, minimal impacts are anticipated.

3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exception should not adversely affect the public's health, safety, morals, order, convenience, prosperity, or general welfare. The location and design of the proposed fence will ensure that it does not encroach into the public right-a-way or affect vision clearance along Pierre Street or 8th Street. The proposed fence will also not encroach onto any utility or other easements.
4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** 220 South 8th Street is a corner lot with two, minimum twenty-five (25) foot front yard setbacks. The strict application of the regulation would not allow the applicants to expand the fenced in area southwest of the house. The applicant has proposed the new fence to expand the play area for their family and the children coming to the house for day care. The proposed fence will keep the children safe and from wandering into traffic along Pierre Street, a moderately traveled local, residential street. To require strict application of the regulations is unreasonable and unnecessary when all facts and circumstances are considered.

Hamilton moved that the Board approve an Exception to allow a reduction of the

minimum twenty-five (25) foot front yard setback to nine (9) feet for a proposed fence located at 220 South 8th Street, located in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions:

1. The Exception shall be for the proposed fence, which shall be maintained in good condition.
2. The fence shall be constructed as shown on the site plan and the application documents.

Wigfall seconded motion which passed unanimously with a vote of 4-0

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to five (5) feet along the southern property line on Grandview Terrace to construct a proposed fence in the R, Single-Family Residential District at 2380 Grandview Terrace. (Applicant/Owner: Ken Schmelzle).

Bunger provided the Staff Report recommending approval of the Exception, with two (2) conditions.

Hardy opened the public hearing.

Ken Schmelzle, applicant, explained the site plan for the proposed fence, and stated that properties to the west of the subject property have fences similar to that which he proposes.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Hamilton stated that she had no problem supporting the applicant's request.

Hardy also expressed his support.

The Board made the following Findings of Fact for the Exception at 2380 Grandview Terrace:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property currently complies with all applicable regulations except for what the Exception is being requested.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject property and surrounding properties are located in the R, Single-Family Residential District. Several properties in the surrounding neighborhood have fences in similar locations in the front yards created by the loop of Grandview Terrace. The properties directly to the east and west have wooden fences in a similar location along the north property line. Both of these houses are situated to have

their front doors located to the south, whereas the subject site's front door is to the north. The proposed fence on the 140 foot wide lot will be approximately thirty-seven (37) feet from the east property line and approximately forty-two (42) feet from the west property line. The location of the fence will be far enough from the adjacent properties to not impact the functional front yards of these houses. Because of the location of the proposed fence and the fact the fence will not be out of character with the neighborhood, the Exception request should not have an adverse effect on adjacent properties.

3. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Exception should not adversely affect the public's health, safety, morals, order, convenience, prosperity, or general welfare. The location and design of the proposed fence will ensure that it does not encroach into the public right-of-way or affect vision clearance along Grandview Terrace. There are no sidewalks along Grandview Terrace for the proposed fence to encroach upon.

4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: 2380 Grandview Terrace is a through lot with two, minimum twenty-five (25) foot front yard setbacks. The strict application of the regulation would not allow the applicants to construct the fence in the area south of the house. The applicant has proposed the new fence to provide quiet enjoyment of his yard. The proposed fenced-in area will be accessed from the house by an existing sliding glass, patio door. Currently, this is the only door leading to the south side of the property. An alternative could be to use either side yard areas to the east or west of the existing house as a fenced, private area. However, no exterior doors currently exist that lead to these areas. A door could be installed, but the new door may not functionally work with the interior layout of the house. Based on these facts and circumstances, requiring strict application of the regulations is unreasonable and unnecessary.

Aistrup moved that the Board approve an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to five (5) feet for a proposed fence located at 2380 Grandview Terrace, located in the R, Single-Family Residential District, with the following conditions:

1. The Exception shall be for a proposed fence, which shall be maintained in good condition.
2. The fence shall be constructed as shown on the site plan and the application documents.

Hamilton seconded motion which passed unanimously with a vote of 4-0

A PUBLIC HEARING to consider a request for an EXCEPTION to allow for reduction of the front yard setback from twenty-five (25) feet to five (5) feet along

Brookville West Drive for a proposed fence in the R-1, Single Family Residential District at 424 Brookridge Drive. (Applicant/Owner: Alex Kutz).

Anne Antonini provided the Staff Report recommending approval of the Exception, with three (3) conditions.

Hamilton asked Antonini the proposed fence would be a similar distance to the sidewalk as a fence to the north of the subject property.

Antonini said yes.

Hamilton asked if a fence visible in an aerial photo of the subject property and its immediate neighbors appeared to be in the front yard setback.

Antonini stated that in the photo, it did appear as though the fence in question was within the front yard setback.

Hamilton expressed reservations to supporting the request for the reasons explained by city administration in the staff report.

Wigfall asked if the proposed fence would create a visibility issue for traffic along Brookville West Drive.

Antonini stated that the fence was outside of all vision clearance triangles, and therefore it should not create a visual impediment for traffic.

Harry Hardy opened the public hearing.

Applicant Alex Kutz explained the reasons for his proposal.

John Good, 3021 Brookville Drive, expressed disagreement with the applicant and the Staff Report's contention that the proposed fence would not create a visibility issue. He expressed his concern that the proposed fence may impact the visibility from their driveway, which is to the immediate north of the subject property. He also stated that he is the owner of the fence previously mentioned and that the fence is in compliance with City Standards. He stated that it was a shadow in the aerial photograph that made it appear that the fence was in the setback. He further stated that he was opposed to the applicant's exception request.

Hamilton asked Good if he was opposed to any fence being erected at the subject property.

Good stated that he was not.

Aistrup expressed disagreement with Good's contention that the applicant's request would create a visibility impediment.

Carol Good also expressed concerns that a visibility issue for motorists, pedestrians, and children would be created by the proposed request.

Kutz explained how the proposed fence would address visibility issues.

Hamilton asked Kutz if he might be willing to shave a corner off of the north-west corner of his proposed fence to ensure that it did not create a visibility issue for vehicles that were backing up or pedestrians.

Kutz stated that he was.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Hamilton stated that Good had raised valid concerns, but that the applicant's willingness to modify his site plan should address those concerns and create more safety for motorists and pedestrians.

Wigfall stated her appreciation of the applicant's willingness to modify his site plan to accommodate the concerns of his neighbor.

Aistrup expressed that granting the proposed exception should not negatively impact surrounding property values, and that it was necessary for the applicant to place the fence in his side yard, as the property did not have a functional rear yard.

Hardy agreed with Aistrup about the yard of the subject property. He also expressed agreement with the concerns raised by Vi. He agreed with Aistrup's contention that the applicant did not have a functional rear yard. He stated that he felt that the proposed solution of angling the fence should address the concerns raised by Vi.

Bunger asked if the Board would specify the changes to the design of the proposed fence.

Aistrup suggested that a condition be added to approval of the Exception that the site plan for the fence be modified by removing an extra "vision clearance triangle" from the northwest corner, which would have sides of ten feet measured from the north and west property lines. This would leave the fence having its west side measure thirty-five feet, and its north side measure forty-two feet.

The Board made the following Findings of Fact for the EXCEPTION at Brookville West Drive:

- 1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject property complies with all applicable regulations, other than that for which the Exception is requested.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES: Several other properties within the neighborhood of the subject property have fences similar to what the applicant proposes. The property to the immediate north of the subject property, 3012 Brookville Drive has such a fence. As do at least two (2) other properties on Brookridge Drive and one additional property on Brookville Drive. The proposed fence at the subject property would therefore likely not be perceived as out of character with its surrounding neighborhood.

The fence is proposed for a location that would be outside the vision clearance triangle at the intersection of Brookridge Drive and Brookville West Drive. In residential zoning districts, no wall, sign, vegetation, or obstruction of any kind may be placed within a triangle whose two measured sides are thirty (30) feet along each of the two street rights-of-way that form the intersection. The proposed fence is also outside the ten (10) foot vision clearance triangle created by a driveway on the property immediately north of the subject property.

At the rear of properties along Brookridge Drive there is an unplatted area of approximately ten (10) feet in width that appears to have been intended to serve as a storm water drainage area for homes with frontages along Brookridge Drive and Brookville Drive that share their rear property lines. This area slopes down away from the two streets to form a “v” along the rear property lines of homes along both streets. The convergence of the two slopes contains an approximately one (1) foot wide concrete flume that conveys water east towards the Marlatt Avenue Drainage Area. All fences erected on properties that share this drainage area keep the area clear, and create a consistent visual line at its border. A retaining wall has been erected by the applicant that follows this line, as does his proposed fence.

3. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed fence at the subject property would be outside of any drainage easement, and is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare.

4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The retaining wall and topography at the rear of the subject property make it unfeasible for the applicant to locate a fence within the allowable area of its rear or side yards, because of the unusual situation created by the drainage area. Given the fact that several neighboring properties have similar fences to what the applicant proposes, it would be unreasonable to require the applicant to comply with front yard setback regulations along Brookville Drive West in the R-1, Single-Family Residential District.

Aistrup moved that the Board approve an Exception to the front yard setback regulations

in the R-1, Single-Family Residential District from twenty-five (25) feet to five (5) feet for a proposed fence at 424 Brookridge Drive, with the following conditions:

1. The fence shall be maintained in good condition.
2. The proposed fence shall be built as shown on the site plan submitted by the applicant, as modified by the Board of Zoning Appeals to create a functional vision clearance triangle with sides of ten feet, measured from the north and west property lines. Creating a fence with its west side measuring thirty-five feet, and its north side measuring forty-two feet.
3. Any applicable permits shall be obtained prior to construction.

Zilkie asked for clarification on the proposed vision clearance triangle.

The Board provided clarification.

Wigfall seconded motion which passed unanimously with a vote of 4-0

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum eight (8) foot side yard setback to four (4) feet on the east property line to construct an extension of the roof overhang for an existing two-family dwelling that is being converted to a single-family dwelling in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District at 924 and 926 Bertrand Street. (Applicant: Dan Knight Owner: Rosaliea Trezza).

Bunger provided the Staff Report recommending approval of the Exception, with two (2) conditions.

Hardy opened the public hearing.

Applicant Dan Knight explained the reasons for the Exception request. He expressed that he had thought that he also needed an Exception for a garage in his rear yard.

Bunger provided clarification on accessory structure setback requirements.

Aistrup expressed that the improvements proposed to the subject property would make a great addition to the neighborhood.

Hardy agreed.

Wigfall stated that she felt that the proposed improvements would allow the subject property to meet the spirit of the Traditional Neighborhood Overlay District.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

The Board made the following Findings of Fact for the Exception at 924 and 926 Bertrand Street:

- 1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** In 1939, when the structure was built, the two-family dwellings were permitted in the “A” Residence District and the building was allowed to be constructed six (6) feet from the side property line. The property is presumed to be a legally nonconforming use and improvement, but no official Opinion of Legal Nonconforming Use application or conclusion has been made. Other than for what the Exception is being requested, the property complies with all applicable regulations.
- 2. PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and adjacent properties to the north, east and south are in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. To the west of the subject site are zoned R-1/TNO and R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. Converting the two-family dwelling to a single-family dwelling will bring the use into conformity with the current Zoning District designation for the property.

The older ward districts have properties that do not meet the current Zoning Ordinance and regulations, but are legally nonconforming uses and improvements because of the date of construction. The existing building foundation and exterior walls have been a part of the neighborhood character since 1939 and are not proposed to be move closer to the east side lot line. Creating a two-story residential building on the property will be in character with the neighborhood. A two-story residential building is located directly east of the subject site. Removing the exterior doors for from the sides of the house should positively affect the adjacent property. By removing these doors and creating a front entrance that faces the street, the house will match the character of the neighborhood and reduce the light and noise emitted from the house into the narrow side yards.

The one (1) foot eave overhang on the new roof will encroach further into the side yard setback. The new roof line does meet the minimum TNO Building Design Standards. The roof eave overhangs that encroach into the side yard setback should visually cause minimal adverse impacts on the adjacent property to the east because of its minimal width and the fact that the eave overhangs will begin approximately eighteen (18) feet from the foundation. Based on this circumstances and facts, minimal adverse effects are anticipated on adjacent properties.

- 3. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exception should not adversely affect the public’s health, safety,

morals, order, convenience, prosperity, or general welfare. The proposed structure does not encroach into any utility easements.

4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the side yard setback regulations would not allow the construction of the second-story addition or the roof eave overhangs to the existing structure. Although the existing structure, located approximately six (6) feet from the side yard, is considered to be legally nonconforming improvement, constructing the second-floor addition and roof eave overhangs as proposed will void any legal nonconforming status. The owner could relocate the encroaching wall and foundation behind the required minimum eight (8) foot setback to construct the proposed second-floor addition. This may be unreasonable considering that the structure has been at its currently location since 1939. The new addition and roof eave overhangs will meet the character of the established residential neighborhood, conform to the Traditional Neighborhood Overlay District's Building Design Standards and should have minimal adverse impact to adjacent properties. When all facts and circumstances are considered, strictly applying the regulations would be unreasonable.

Aistrup moved that the Board approve an Exception to allow a reduction of the minimum eight (8) foot side yard setback to four (4) feet on the east property line to construct a second-story addition and extend the roof overhang for an existing two-family dwelling that is being converted to a single-family dwelling in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions:

1. The addition shall be constructed according to the application and site plan documents.
2. All applicable permits shall be obtained.

Hamilton seconded motion which passed unanimously with a vote of 4-0

A PUBLIC HEARING to consider a request for a CONDITIONAL USE to allow for a proposed car wash in the C-2, Neighborhood Shopping District at the Blue Hills Shopping Center, 2301 Tuttle Creek Boulevard. (Applicant: Joe McGraw, Owner: Mark Samarra, S & S Development).

Bunger provided the Staff Report recommending approval of the Conditional Use Permit, with three (3) conditions.

Aistrup asked for clarification on the applicant's proposed traffic circulation pattern.

Bunger provided clarification.

Hardy opened the public hearing.

Applicant Joe McGraw thanked the Board for their service, and explained that the car wash was a joint venture between his client and Dara's Fast Lane.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Hamilton stated that she appreciated the attention given in the staff report to the impact on the Meadowlark Retirement Community, which is immediately north of the subject property. She asked if a condition of approval could be added that the site plans be reconciled to indicate the proposed landscaping and parking lot configuration at the subject property.

Hardy concurred.

Wigfall stated that she appreciated the fact that the applicant and Dara's Fast Lane are cooperating and approaching the car wash as a joint venture.

The Board made the following Findings of Fact for the Conditional Use at 2301 Tuttle Creek Boulevard:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed automatic car wash and the subject site comply with all size requirements, bulk regulations and performance standards, except those requiring the Conditional Use.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:**

NORTH: The Dollar General Store, located in the C-2, Neighborhood Shopping District and the Meadowlark Hills Retirement Community, zoned Residential PUD. A travel easement on the Dollar General Store property (Lot 1, Blue Hills Shopping Center Addition, Unit 3) will be used to provide internal access for the customers of the car wash and other tenants of the Blue Hill Shopping Center. Meadowlark Hills Retirement Community is in the process of constructing new two-family homes in the vicinity of the subject site. These homes will be approximately 400 feet away from the northwest corner of the proposed car wash.

SOUTH: Kimball Avenue, a four (4) lane arterial in a 120 foot road right-of-way, properties zoned C-5, Highway Service Commercial District, which include a package liquor store, a self-serve car wash and manufacture home management office, and properties zoned R, Single-Family Residential District, which include single-family homes and a church.

EAST: Tuttle Creek Boulevard, a four (4) arterial located in a 210 foot road right-of-way and single-family homes in the R-1, Single-Family Residential District.

WEST: Meadowlark Hills Retirement Community zoned Residential PUD.

The proposed automatic car wash should not adversely affect adjacent properties. The existing neighborhood is a mix of residential and commercial uses. The proposed use will be consistent with the commercial uses in the area. A self-service car/truck wash is present on the south side of Kimball Avenue. Both the residential districts are separated by a four (4) lane arterial and steep grades that will minimize the impacts from the car wash. The residential neighborhood to the southeast of the subject site is further separated from the proposed car wash by the existing shopping center. Residents of the Meadowlark Hills Community should not be impacted by the proposed development. The closest two-family dwelling at Meadowlark Hills is approximately 400 feet to the north of the new structure and is separated by a steep slope. The potential exists that customers of the proposed car wash may exit the site to the north using a paved road in a travel easement on the Meadowlark Hills Retirement Community development. The privately maintained road intersects with Meadowlark Valley Place, a privately maintained road, which then intersects with Tuttle Creek Boulevard. This is an established road that customers from the Blue Hills Shopping Center have utilized as an alternative to the main entrance to the development. The increase in traffic caused by the new car wash should not be large enough to cause a negative impact to the residents of the Meadowlark Hills Retirement Community or to the level of service of the Meadowlark Valley Place and Tuttle Creek Boulevard intersection.

3. DOMINATION BY USE OVER NEIGHBORING PROPERTIES: The proposed automatic car wash is a one-story, 1,260 square foot structure. The surrounding area is a mixture of commercial and residential uses. The proposed car wash is consistent the existing commercial uses in the C-2 and C-5 Districts and are adequately separated from residential neighborhoods in the area by the four (4) lane arterials, sight distance and topography.

4. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS: The subject property is a 488 foot by 456 foot (approximately 4.42 acres) irregular shaped lot that meets the minimum lot size requirements and bulk regulations of the C-2, Neighborhood Shopping District. The proposed automatic car wash will only occupy 1,260 square feet of the total site, with the existing shopping center and convenience store on the remainder of the property. The proposed structure will measure forty-two (42) feet in length. The car wash will have an approximate 110 foot long curved driveway leading to the southern entrance of the building. The customers will purchase their car wash at a kiosk near the beginning of the curved driveway. The car wash structure is proposed to

have a rounded roof, similar to the Bubble Wash on Fort Riley Boulevard, near Scenic Drive. The structure will be eighteen (18) feet tall.

The structure will be set back twenty-five (25) feet from the front property line, two hundred thirty-five (235) feet from the south side property line, and one hundred eighty-one (181) feet from the north property line and four hundred and thirteen (413) feet from the west property line. The existing shopping center occupies the western portion of the lot, with a separation distance of one hundred eighty (180) feet from the western wall of the car wash and the front façade of the shopping center. The convenience store under construction is located to the south of the structure and will have a separation distance of fifty (50) feet. Including the car wash, the subject site will have a lot coverage of twenty-four percent (24%) with approximately seventy (70%) percent of the site being paved and the remainder six percent (6%) dedicated to landscaping.

- 5. LANDSCAPING AND SCREENING:** The C-2, Neighborhood Shopping District, does not have minimum landscape requirements. The Off-Street Parking requirements of the Zoning Regulations require that

“all uses in all districts, except for residential structures containing no more than two (2) dwelling units, shall be landscaped open space within the perimeter of the parking area or areas in the minimum of five percent (5%) of the paved area used for parking including driveways. Landscaping shall be so located that no parking space is more than seventy (70) feet from a portion of the landscaped open space required by this section. One tree of at least two and one half (2 1/2) caliper in size shall be provided within each 5,000 square feet, or any fraction thereof exceeding 2,500 square feet, of parking area.” (Section 7-102(E)(2)).

The site plan exceeds the minimum requirement with approximately 12,000 square feet of landscape open space or six (6) percent. Fourteen small ornamental trees are proposed in landscape islands throughout the parking lot to meeting the required tree count and distance to landscape open space requirements. Screening is not required and is not proposed for this site. If the proposed vacuum area is constructed in the landscaped open area as shown, the percent of landscape open area will still exceed the minimum required by the Off-Street Parking requirements.

- 6. ADEQUATE PROVISION OF PARKING AND LOADING:** The Off-Street Parking requirements of the Zoning Regulations require that car washes that are attendant-operated provide at least three (3) parking spaces for each twenty (20) linear feet. The proposed structure is forty-one (41) feet long, which would therefore require six (6) off-street parking spaces. The site will have adequate off-street parking available for the combined uses. 201 off-street parking stalls are required for the shopping center and the convenience store is required to have fourteen (14) off-street parking stalls, for a total of 221 spaces. The proposed site plan provides for 223 off-street parking spaces. The site also has an adequate area

to allow for the stacking of vehicles, with approximately 100 feet from the payment kiosk to the entrance of the car wash. This stacking area will be able to accommodate approximate four (4) vehicles.

7. ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES: Adequate sanitary sewer and water service is readily available to this site. A majority of the site, including the area surrounding the proposed car wash slopes toward the east to a stormwater inlet to allow stormwater run-off to flow to an open ditch located along Tuttle Creek Boulevard.

8. ADEQUATE PROVISION OF ACCESS: Kimball Avenue, which fronts the site along the south property and provides access to the property, is classified as an arterial street. The applicant has proposed to use the existing curb cut for the shopping center to provide access to the car wash. Internal parking lot aisle will be used as access to the structure. A 110 foot curved driveway will direct customers to the entrance of the car wash. The customers will exit the structure and use a travel easement dedicated with the Final Plat of Blue Hills Shopping Center Addition, Unit 3, to maneuver through the parking lot to the Kimball Avenue access point. Customers of the proposed car wash and the existing shopping center can also use a paved road leading to the north onto the Meadowlark Hills Retirement Community property to gain access onto Tuttle Creek Boulevard. This paved road is privately maintained and located in a travel easement dedicated in the Final Plat of Meadowlark Hills Retirement Community PUD, Unit 4. The current level of service for Kimball Avenue is adequate for the amount of traffic generated by the proposed use. Traffic that will use the paved road that leads into the Meadowlark Hills Retirement Community may negatively impact the residents living in the development. However, this roadway is established and has been used by customers of the Blue Hills Shopping Center to gain access to Tuttle Creek Boulevard. If the amount of traffic from the development leads to complaints, the City's Public Works Department may be required to address the issues.

Aistrup moved that the Board approve a Conditional Use to allow for a proposed car wash in the C-2, Neighborhood Shopping District, located at the Blue Hills Shopping Center, with the following conditions:

1. The car wash shall be constructed according to the site plan and accompanying application documents.
2. A building permit shall be obtained.
3. The site plan shall be reconciled to show proposed parking and landscaping.
4. An amendment to the Conditional Use Permit shall be approved prior to constructing the vacuum area in a location other than where it is proposed.

Wigfall seconded motion which passed unanimously with a vote of 4-0

A PUBLIC HEARING to consider a request for a CONDITIONAL USE to allow

for an existing fraternity house in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District at 1814 Fairchild Avenue. (Applicant: Michael Carson - Bowman, Bowman, Novick Owner: Lambda Chi Building Association).

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction in the required number of off-street parking spaces from 19 parking spaces to 2 parking spaces, all associated with an existing fraternity house at 1814 Fairchild Avenue. (Applicant: Michael Carson - Bowman, Bowman, Novick Owner: Lambda Chi Building Association).

(Considered Together)

Bunger provided the Staff Report recommending approval of the Exception and the Conditional Use Permit, with two (2) conditions for the Exception, and five (5) conditions for the Conditional Use Permit.

Aistrup asked Bunger who owned an accessory structure visible in several photos.

Bunger stated that the structure was a former garage located on the subject property.

Aistrup asked Bunger about adjacent land uses, and whether there were any adjacent alleyways. He asked Bunger if some of the rear yard could be paved to create additional parking spaces.

Bunger explained why it would not be a feasible option.

Aistrup asked Bunger if the accessory structure was a legal structure.

Bunger provided clarification.

Wigfall asked Bunger if City Administration had information on how the driveway at the subject property was utilized.

Bunger provided clarification.

Hamilton asked Bunger how long the subject property had been occupied by nineteen people.

Bunger stated that the number of residents at the subject property was easily determined to be nonconforming, and that exact figures were not obtained. He stated that evidence indicated that the number had fluctuated between fourteen and nineteen individuals throughout its existence as a fraternity house.

Hardy opened the public hearing.

Applicant Michael Carson explained that improvements were being made to the subject site to improve safety and create a better living environment for its residents.

Hamilton asked Carson how long the property had had nineteen residents.

Carson stated that the subject property had experienced a fluctuating number of residents, and that the current population is nineteen.

Hamilton asked if nineteen people could safely live at the subject property.

Carson stated that assessments had not been made as to whether the current number of occupants can safely reside at the subject property in its current condition. He stated that after the improvements were made, the property would only house sixteen individuals, and substantial safety upgrades would be made.

Jeff Stolper, Fraternity President, further explained the reasons for the improvements to the subject property. He also outlined for the board the Fraternity's efforts to inform and involve the neighborhood in its improvement efforts.

Hamilton asked Stolper how long renovations to the subject property would take.

Stolper replied that they would take three or four months.

Hardy expressed his appreciation of the efforts the Fraternity had undertaken to inform its neighbors of the proposed improvements.

Hamilton asked Stolper how many neighbors had attended the neighborhood meeting held by the fraternity to explain their proposed improvements and address any concerns that surrounding property owners might have.

Stolper said that six or seven neighbors attended the public meeting.

Tim Lindemuth, representative of the Eugene Field Neighborhood Association, expressed his support of the proposed Exception. He stated that he appreciated the fact that the fraternity had not sacrificed the green space at the subject property to create additional parking. He stated that preserving green space was important to the Neighborhood Association. He stated that fraternity has always maintained the property in a manner consistent with the established neighborhood, and that the parking situation at the subject property was part of the established neighborhood, and that surrounding property owners are not bothered by it. He stated that the Neighborhood Association was in support of the applicant's request.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Aistrup commended the fraternity for the proposed improvements to the subject property, and for informing and involving its neighbors. He stated that he could support the proposed Exception because the neighbors support it and because of the green space it would allow the applicants to maintain. He asked Bunger for clarification on the maximum number of occupants in the Exception request.

Bunger provided clarification.

Hamilton concurred with Aistrup. She asked if maximum number of residents at the subject property be set at sixteen instead of nineteen as stated in the staff report.

Hardy asked if granting the exception for sixteen occupants instead of nineteen occupants would pose a problem for the applicant.

Stolper stated that it would not.

Hardy expressed his support of the proposed Exception.

The Board made the following Findings of Fact for the Exception at 1814 Fairchild Avenue:

- 1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** City Administration issued an Opinion of Nonconformity that the Fraternity at 1814 Fairchild Avenue is not a legal nonconforming use because of lack of off-street parking provided on the property. The result is that the Fraternity would need to be granted a Conditional Use to continue and an Exception for the number of off-street parking to comply with the current Zoning Ordinance.

The Opinion of Nonconforming Use review process determined that the location of the existing building in relationship to the east property line complied with the 1954 Zoning Ordinance, when the building addition was constructed. The existing detached garage is located approximately two (2) feet from both the west and north property line. The garage was built at approximately the same time as the existing house and met the Zoning Regulations at that time. No information could be found regarding the date that the storage structure attached to the detached garage was constructed. The structure does not meet the required minimum three (3) foot side yard setback for accessory structure. An Exception should be sought to give the property a clear title. However this storage structure does not directly impact the current Exception request. Other than these issues, the property complies with all applicable regulations.

- 2. PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site, the adjacent properties to the east and properties to the north along Anderson Avenue are located in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. Properties

located to the south of the subject site are in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The neighborhood includes a mix of owner-occupied, single-family homes, single-family and two-family rental units and several fraternities and sororities in the immediate area. The property and its current use has been in existence since 1974 and has had limited off-street parking since that time. The proposed Exception and building renovation will not alter the parking situation for the property or the neighborhood. Currently, the occupants of the “Annex house” use the two (2) available parking spaces on the property, the eighteen (18) parking stalls located at the main house directly to the east of the site or on-street parking throughout the neighborhood. Due to the number of fraternities, sororities and rental properties in the neighborhood, on-street parking is extremely congested. Although the Lambda Chi Fraternity has contributed to the parking congestion, other uses in the area also impact the on-street parking. Based on the fact that the Exception request is to address the existing situation and no changes are proposed with the current use or the parking situation; adjacent properties should not be adversely impacted.

3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The Exception addresses existing condition; no changes are proposed for the existing use or the required off-street parking. Granting the Exception to reduce the required number of off-street should not adversely affect the public’s health, safety, morals, order, convenience, prosperity, or general welfare.
4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The subject site has been the Lambda Chi Fraternity “Annex” since 1974. Since that time, the use and the improvements on the property have not changed. The Exception request is to help bring the property into conformance with the current Zoning Ordinance so that interior renovations can be made and fire safety systems can be installed. The 50 foot by 135 foot interior lot does not have adequate space to locate an additional seventeen (17) parking spaces that would meet the design standards of the Parking or TNO Regulations. Requiring the owner’s to reduce the number of occupants or discontinue the use would be unreasonable considering the lack of off-street parking has been present for over thirty (30) years.

The Board made the following Findings of Fact for the Conditional Use at 1814 Fairchild Avenue:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** City Administration issued an Opinion of Nonconformity that the Fraternity at 1814 Fairchild Avenue is not a legal nonconforming use because of lack of off-street parking provided on the property. The result is that the Fraternity would need to be granted a Conditional Use to continue and an Exception for the number of off-

street parking to comply with the current Zoning Ordinance.

The Opinion of Nonconforming Process determined that the location of the existing building in relationship to the east property line complied with the 1954 Zoning Ordinance, when the building addition was constructed. The existing detached garage is located approximately two (2) feet from both the west and north property line. The garage was built at approximately the same time as the existing house and met the Zoning Regulations at that time. No information could be found regarding the date that the storage structure attached to the detached garage was constructed. The structure does not meet the required minimum three (3) foot side yard setback for accessory structure. An Exception should be sought to give the property a clear title. However this storage structure does not directly impact the current Conditional Use request. Other than these issues, the property complies with all applicable regulations.

2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site, the adjacent properties to the east and properties to the north along Anderson Avenue are located in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. Properties located to the south of the subject site are in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The abutting property to the east (505 Denison Avenue) is the main Lambda Chi Fraternity house and parking lot. The neighborhood includes a mix of owner-occupied, single-family homes, single-family and two-family rental units and several fraternities and sororities in the immediate area. The current use on the property has been in existence since 1974. The proposed Conditional use and building renovation will not alter the exterior of the house or the site layout. Based on the fact that the Conditional Use request is to address the existing situation and no changes are proposed with the current use; adjacent properties should not be adversely impacted.
3. **DOMINATION BY USE OVER NEIGHBORING PROPERTIES: (SITE PLAN)** The Lambda Chi Fraternity “Annex House” has been located at 1814 Fairchild Avenue since 1974. Since that time, the two-story “Annex House” has not seen any major alterations or renovations. The only modifications or alterations being proposed are to completely renovate the interior of the house to improve living conditions and address life safety concerns by installing a fire sprinkler system and fire alarms. According to the application materials, new windows may be installed if funds are left in the construction budget. Other than interior renovations, the Fraternity has not proposed any exterior changes to the use or site layout of the fraternity house. As such, the use of the fraternity house does not dominate over the uses of neighboring properties.
4. **LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** No physical changes are proposed for the exterior of the existing house or the property. The two-story structure is approximately twenty-eight (28) feet high to

the highest point of the roof and is located approximately twenty-six (26) feet back from the front property line along Fairchild Avenue. The structure is approximately eleven (11) feet from the west property line and five (5) feet from the east property line and sixty-one (61) feet from the rear property line. The portion of the existing house that is located five (5) feet from the east property line was determined to be a legally nonconforming improvement based on the Zoning Ordinance in 1954. The size of the house and its location on the property are similar to those located in the adjacent area.

5. **LANDSCAPING AND SCREENING:** The site is currently landscaped with several large mature trees, shrubs, and grasses. No additional landscaping is proposed at this time.

6. **ADEQUATE PROVISION OF PARKING AND LOADING:** The provision of parking and loading is not adequate. Currently, the occupants of the “Annex house” use the two (2) available parking spaces on the property, the eighteen (18) parking stalls located at the main house directly to the east of the site or on-street parking throughout the neighborhood. The Zoning Ordinance requires that at least one (1) off-street parking space be provided for each occupant up to twenty (20) occupants. Currently, there are 19 occupants in the fraternity annex house. The applicant has submitted a companion Exception request to reduce the number of required off-street parking spaces from nineteen (19) to two (2) to meet the current parking situation.

Due to the number of fraternities, sororities and rental properties in the neighborhood, on-street parking is extremely congested. Although the Lambda Chi Fraternity has contributed to the parking congestion, other uses in the area also impact the on-street parking. The Conditional Use request for the Lambda Chi Fraternity Annex is for the existing conditions which have been present in the neighborhood since 1974. Denying the Conditional Use request will most-likely not improve the on-street parking conditions.

7. **ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Storm water drainage flows to the south towards the Fairchild Avenue and existing utilities are serving the property. Adequate drainage and public utilities are provided for the existing use.

8. **ADEQUATE PROVISION OF ACCESS:** The fraternity house is currently accessed from a curb cut located on Fairchild Avenue, which leads to the rear of the lot to a detached garage via an eight (8) foot wide driveway. The existing access is adequate for the property, and it shall remain the same.

Aistrup moved that the Board approve an Exception to allow a reduction in the required number of off-street parking spaces from 19 parking spaces to 2 parking spaces, all associated with an existing fraternity house located at 1814 Fairchild Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay

District and University Overlay District, with the following conditions:

1. The Exception shall be limited to the proposed off-street parking as outlined in the application documents and shown on the applicant's site plan.
2. A Conditional Use Permit to allow for an existing fraternity at the property shall be granted.

Wigfall seconded motion which passed unanimously with a vote of 4-0.

Aistrup moved that the Board approve a Conditional Use to allow for the existing Lambda Chi Fraternity at 1814 Fairchild Avenue, most commonly known as the Lambda Chi Annex House, in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District with the following conditions:

1. The Conditional Use Permit shall be limited to the Lambda Chi Fraternity at 1814 Fairchild Avenue as outlined in the application documents and shown on the applicant's site plan.
2. No more than sixteen (16) occupants may reside in the Lambda Chi Fraternity at 1814 Fairchild Avenue.
3. All necessary building permits shall be obtained prior to construction of the proposed interior renovations.
4. The Lambda Chi Fraternity at 1814 Fairchild Avenue shall conform to all Fire, Building and Life Safety Codes.
5. The Exception to reduce the required number of off-street parking shall be approved prior to approving the Conditional Use request.

Wigfall seconded motion which passed unanimously with a vote of 4-0

A PUBLIC HEARING to consider a request for an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow a reduction of the minimum fifty (50) foot front yard setback to nine (9) feet along Kretschmer Drive for the construction of an off-street loading space associated with a new warehouse and showroom in the I-2, Industrial Park District at 1120 Kretschmer Drive. (Applicant: Jeff Hancock – Sloan, Meier, Hancock Owner: Leith Winsor, Western Extralite).

A PUBLIC HEARING to consider a request for a VARIANCE to reduce the required twenty (20) foot landscape area to three (3) feet along Kretschmer Drive for a new warehouse and showroom located in the I-2, Industrial Park District at 1120 Kretschmer Drive. (Applicant: Jeff Hancock – Sloan, Meier, Hancock Owner: Leith Winsor, Western Extralite).

(Considered Together)

Bunger provided the Staff Reports recommending approval of the Exception and the Variance, each with four (4) conditions.

Hardy opened the public hearing.

Brett Ballou of Schultz Construction provided additional information regarding the Exception and Variance requests.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Aistrup stated that given the fact that the business had been asked to relocate, and the lot was unusual in shape, the Exception and Variance requests were eminently reasonable.

Hardy concurred.

Hamilton concurred.

The Board made the following Findings of Fact for the Exception at 1120 Kretschmer Drive:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property currently complies with all applicable regulations except for what the Exception is being requested.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties to the north, west and south are located in the I-2, Industrial Park District. Properties to the east are located in the C-5, Highway Service Commercial District. The properties that gain access onto Kretschmer Drive are manufacturing or warehouse uses and have similar truck loading docks on their property. These businesses have sufficient lot size and to place their loading docks outside of the required front yard setback. Because of the irregular shape of the subject site created by the Union Pacific Rail Road Easement and the relatively smaller lot size compared to adjacent properties, the proposed building and the loading dock are located closer to the front property line.

The site design of the subject site allows delivery trucks to enter the north driveway and loop through the front parking lot to allow the truck to back into the loading dock. This site design will prevent trucks blocking traffic along Kretschmer Drive while backing into the loading dock. According to the application materials, all deliveries to the business will occur during the night time hours, which should reduce adverse impacts to the adjacent properties. Although both the location of building and loading dock are not in character of the industrial area, the Exception, if granted, should not negatively impact adjacent properties or the vehicle traffic along Kretschmer Drive.

- 3. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The Exception should not affect the public health, safety or general welfare. The proposed driveway, parking and loading dock configuration will allow delivery trucks to access the loading area without interfering with the traffic along Kretschmer Drive. The proposed loading dock will not impact utility easements and is not within any roadway vision triangles.
- 4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the Parking Regulations would require that the loading dock be constructed outside of the minimum fifty (50) foot front yard setback required for buildings that are wider than 100 feet. To comply with the Parking Regulations, the loading dock would need to be relocated to the rear of the building or the proposed building would need to be moved back or redesigned.

Based on the proposed site plan, the loading dock could be relocated to the rear of the building. However, off-street parking spaces would need to be moved or eliminated to construct the loading dock and to create adequate driving lanes for the large delivery trucks. The proposed site plan shows twenty-eight (28) off-street parking spaces, which is the minimum required for the warehouse and retail showroom uses. One-third (1/3) of these parking spaces are located in the required front yard, which is permitted if adequate landscaping is provided (Section 4-302(E)(1)). Eliminating parking spaces at the rear of the building would cause the proposed site plan to not conform with the Parking Regulations because of the number of off-street parking spaces provided and that more than one-third (1/3) of the total number of off-street parking spaces would be in the required front yard.

Due to the irregular shape of the lot caused by the Union Pacific Rail Road Easement, the building can not be moved to the east without limiting access to the parking spaces at the rear of the building or encroaching into the rail road easement. The proposed building could be redesigned or decreased in size to accommodate the loading dock. However, the owners feel that this is an unreasonable alternative because a smaller building and subsequent smaller warehouse space would not be adequate for the existing business and future business expansion. Based on these facts and circumstances, requiring the loading dock to be re-located to strictly apply to the Parking Regulations would be unreasonable.

The Board made the following Findings of Fact for the Variance at 1120 Kretschmer Drive:

1. CONDITIONS UNIQUE TO THE PROPERTY: The irregular shape of the subject site is the unique condition of the property. The curved rear lot line is created by the presence of a Union Pacific Rail Road Easement. Only one curved rear lot similar to the subject site can be found in the City, which is the property directly to the north. The irregular lot line limits the area that can be developed to the north and east when compared to a typical, rectangular shaped lot found in other areas of the Industrial Park. The configuration of the site requires the building to be located further to the west, closer to the front property line. The curved rear lot line also forces a number of off-street parking spaces and the loading dock to be located at the front of the building, in the front yard setback. The resulting location of the building and parking spaces only leaves approximately three (3) feet to use as landscaped area. If the lot's configuration was rectangular in shape, the lot would have adequate space to move the building to the northeast, which would allow the installation of the required earth berm and landscaping. The impact of the curved rear lot line is further exaggerated by the presence of the 100 foot wide Kretschmer Drive Right-of-Way (ROW); seventy (70) feet of which is on the subject property's side of the road's center line. The typical width of a public ROW for local streets is sixty (60) feet. The vision for Kretschmer Drive was for it to be built as a boulevard with a center median, which would require the wider ROW. This roadway design has been abandoned. Furthermore, the existing road was not built down the center of the ROW; rather it was offset to the west, causing a larger ROW along the subject site property line.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding property to the north, west and south are located in the I-2, Industrial Park District. Properties to the east are located in the C-5, Highway Service Commercial District. Several properties in the area do not have the required earth berm and landscape area. The owner has proposed to install the required landscaping in the Kretschmer Drive ROW, which will meet the intent of the Zoning Regulations and visually screen the new development, which should have a positive impact on the surrounding area.

Currently, an open drainage ditch runs along the front property line in the Right-of-Way. This open ditch visually delineates where the public ROW ends and the subject property begins. The owner is in the process of enclosing the open drainage ditch along Kretschmer Drive with a corrugated metal pipe. When the ditch is enclosed, the front yard area will look much larger than it actually is which will give the appearance that the required landscaping and screening is on the property and not in the public ROW. These factors will reduce any adverse impacts on adjacent properties if the Variance is granted.

3. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The applicant has stated that a hardship would be created for the owner if the landscape requirement was strictly applied. Because of the irregular shaped lot, few options are available to construct the desired building

that meets the needs of the business and comply with the Zoning Ordinance. The owner could reduce the size of the building to provide enough space to install the twenty (20) foot landscape area, but the building would not meet the current or future needs of the business. The other option for the owner would be to find another site in the City to build the desired building. However, as the applicant has stated in the application documents, the owner has entered into an agreement with the City to relocate their business currently at 221 Colorado Street. Moving the business to this location will allow the City to precede with the South Redevelopment plans. Although finding a different site may be a viable option, the time required to purchase the land and construct the building may interfere with the agreed upon timeline with the City and may possibly interfere with the timeline of the South Redevelopment project. Considering these issues and the fact that the required landscaping will be provided off of the property in the Kretschmer Drive ROW, granting the Variance should not impact the public compared to the hardship to the property owner as stated in the application materials.

4. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The Exception should not affect the public health, safety or general welfare. Both the City Engineer and City Forrester have reviewed the proposed landscaping plan and have determined that it will not affect public health or safety. (See attached memorandum from the City Engineer).

5. **RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the Use Limitation to provide a landscaped area of twenty (20) feet on all sides abutting a street on the private property is to provide adequate screening of the industrial development and insure that sufficient green space is present to visually improve the built environment of the industrial park. As stated above, the owner proposes to install the required earth berm and landscaping in the Kretschmer Drive ROW. The wide ROW provides adequate space for the installation of the landscape area without impacting traffic along the roadway or impacting adjacent properties. Although installing the landscaping off of the subject site and in the public ROW is a unique proposal, the City Engineer and City Forrester have approved the proposal without exception. The proposed improvements meet the intent of the screening and landscape requirements of the Use Limitation in the I-2 District due to the unique conditions of the property and the hardship to the owner.

Aistrup moved that the Board approve an Exception to allow a reduction of the minimum fifty (50) foot front yard setback to nine (9) feet along Kretschmer Drive for the construction of an off-street loading space associated with a new warehouse and showroom in the I-2, Industrial Park District for the property located at 1120 Kretschmer Drive, with the following conditions:

1. The Exception shall be limited to the proposed loading dock as outlined in the application documents and shown on the applicant's site plan.
2. The proposed development shall be constructed as shown on the applicant's site

- plan and application documents.
3. All applicable permits shall be obtained.
 4. The Variance reduce the required twenty (20) foot landscape area to three (3) feet along Kretschmer Drive shall be granted.

Hamilton seconded motion which passed unanimously with a vote of 4-0

Aistrup moved that the Board approve a Variance to reduce the required twenty (20) foot landscape area to three (3) feet along Kretschmer Drive for a new warehouse and showroom located at 1120 Kretschmer Drive in the I-2, Industrial Park District with the following conditions:

1. The Variance shall be limited to the proposed landscaped area as outlined in the application documents and shown on the applicant's site plan.
2. The landscaping shall be installed as outlined as shown on the landscaping plan.
3. The landscaping shall be maintained in good condition by the owner.
4. An Exception to reduce the minimum fifty (50) foot front yard setback to nine (9) feet along Kretschmer Drive shall be approved.

Wigfall seconded motion which passed unanimously with a vote of 4-0

Wigfall thanked the applicant for his patience for sitting through a long meeting prior to his public hearing.

ADJOURNED.

Respectfully Submitted,

Anne Antonini