

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, October 8, 2008
7:00 PM

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

MEMBERS ABSENT: None

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

CONSIDER THE MINUTES

Connie Hamilton moved to approve the September 10, 2008 minutes which was seconded by Emig and passed with a vote of 5-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW A REDUCTION TO THE REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TEN (10) FEET FOR A HOUSE AND DECK UNDER CONSTRUCTION AT 3703 BIRCH COURT IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: BETTIE C. MINSHALL)

Anne Antonini presented the Staff Report with a recommendation for approval of the Exception.

Harry Hardy opened the Public Hearing.

With no comments from the public, Hardy closed the Public Hearing and opened the discussion to the Board.

Aistrup expressed his support of the proposed exception, stating that he felt that the applicant should be allowed to rebuild her home. He also expressed that he felt that an investigation needed to be opened on the inspection process in which the initial building permit was issued by Code Services on the applicant's original home and deck.

Hardy agreed with Aistrup and echoed his sentiment that the initial issuance of the building permit had been improper.

Hamilton stated that she supported the proposed Exception and also agreed with Aistrup's comment.

The Board made the following findings of fact for the Exception at 3703 Birch Court:

1. The subject site complies with all applicable regulations, other than that for which an Exception is requested.
2. No negative affects to adjacent properties are anticipated from granting the proposed Exception. Properties to the North, East, South and West are zoned R-1, Single-Family Residential, and consist of single-family homes. The neighborhood is relatively new: most homes were constructed between 2003 and 2005, according to building permit records. Currently the homes are in various stages of construction due to the June 11, 2008 tornado. The subject site and its setback encroachments were part of the established neighborhood prior to that event. The proposed deck is consistent with decks on properties to the east and west of the subject site on Birch Court, and also with decks facing the rear property line of the subject site to the south along Bradford Terrace.

Properties to the north, east, and west on Birch Court will not be impacted by the setback encroachment. The setback encroachments are out of the sight of properties to the north along Birch Court. There should also not be any negative impact on properties to the east or west of the subject site. The property directly west of the subject site, 3707 Birch Court, is approximately twenty (20) feet from the proposed deck, and no negative effects are anticipated on that property from the granting of the requested Exception. The property directly east of the subject site, 3700 Birch Court, is approximately one-hundred (100) feet from the proposed deck, and no negative effects are anticipated on that property either. Rebuilding the house and deck on the subject site will likely have a positive impact on the surrounding neighborhood, as it will help to return it to its character established prior to the June 11 tornado.

Directly south of the subject site is an irregularly-shaped tract of common land that runs the length of Birch Court and terminates at Warner Park. It is owned by the Miller Ranch Homeowners' Association, and is maintained as a walking trail bordered by open space. In email correspondence, Architectural Control Committee chair for the Miller Ranch Homeowners' Association, Lynn Frick, stated, "The Miller Ranch Architectural Control Committee does not object to the rear-yard Exception for 3703 Birch Court and see it as a neutral potential impact on the HOA [Homeowners' Association] property adjacent to 3704 Birch Court since it does not adversely change what was in place prior to the June 2008 tornado in the Miller Ranch area." The impact of the deck's encroachment on the walking path is mitigated by the deck's one and a half (1.5) story elevation, which creates a separation between deck users and walking trail-users.

The tract of land owned by the Homeowners' Association mitigates the effects of the encroachments on the subject site from adjacent properties to the south on Bradford Terrace by providing a barrier of open space between the encroachments and the rear yards of properties on Bradford Terrace.

3. No negative effects are anticipated on public health, safety, morals, order, convenience, prosperity or general welfare by the granting of this Exception. The proposed improvements will not encroach upon any utility or drainage easement.
4. Approval of the requested Exception will allow the applicant to restore her property to its condition prior to the June 11th tornado. The house was built in the rear-yard setback by the developer, and its encroachment was created through no fault of the applicant. At this point, it cannot be determined whether the original building permit was issued in error, as original plans for single-family residential structures are not kept indefinitely. Building Official Brad Claussen explained that it is more likely that the building permit was initially issued based on plans that did not show an encroachment, but due to the odd shape of the lot, and due to how the structure is sited on the lot, the house was built further back than it was shown in the approved building plan. These same factors would have prevented Code Services from catching the violation during the inspection phase of the house's construction.

The applicant is rebuilding her home on top of the existing foundation and basement. The strict application of the Zoning Regulations would require the applicant to demolish, move, and rebuild her existing foundation and basement, and would prevent her from rebuilding her previously existing deck.

It would not be feasible to require the applicant to relocate the deck outside of the building setback, or to not rebuild the deck. There is no location on the southern façade of the house that the applicant could place the deck that would be outside of the rear-yard setback. The layout of the house does not permit the relocation of the deck on the eastern façade of the house, and if the deck was placed on the eastern or western façade of the house, it would be out of character with the placement of decks in the established neighborhood. Not allowing her to rebuild her deck would prevent her from returning her property to its condition prior to the tornado.

The Exception, if approved, would allow the applicant clear title to her home, and would allow her to rebuild her deck identically to how it was prior to the June 11th tornado.

Emig made a motion to approve an EXCEPTION to reduce the rear yard setback from twenty-five (25) feet to twenty-two (22) feet for a house under construction, and from twenty-five (25) feet to ten (10) feet for a proposed attached deck, at 3703 Birch Court in the R-1, Single-Family Residential District with the following conditions:

1. The deck shall be built as shown in the applicant's site plan.
2. The Exception shall only apply to the existing home and proposed deck as shown on the site plan and described in the application documents.
3. All applicable permits shall be obtained

Hamilton seconded the motion, which PASSED with a vote of 5-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW FOUR (4) FEET OF BUILDING ENCROACHMENT INTO A PLATTED SIDE YARD BUILDING SETBACK FOR AN EXISTING SINGLE-FAMILY DETACHED RESIDENTIAL STRUCTURE AT 1910 PLYMOUTH LANDING RELATED TO A PROPOSED BOUNDARY LINE ADJUSTMENT PLAT IN THE PLYMOUTH LANDING PLANNED UNIT DEVELOPMENT. (APPLICANT: JAMES HARWELL OWNER: CHARLES THOMPSON).

Stephanie Dikeman presented the Staff Report with a recommendation for approval of the Exception.

Hardy opened the Public Hearing.

With no comments from the public, Hardy closed the Public Hearing and opened the discussion to the Board.

Hamilton stated that she supported the requested Exception, and that she felt that the Board of Zoning Appeals Exception process was an appropriate avenue for the applicant to have pursued.

Hardy concurred.

The Board made the following findings of fact for the Exception at 1910 Plymouth Landing:

1. The subject site currently complies with all applicable regulations, other than that for which the Exception is requested for the existing condition.
2. The Exception request should have no harmful effects on adjacent properties. The property located to the north of the subject site is owned by the Plymouth Landing Homeowners' Association and has been dedicated as a Common Area and Drainage Easement. The property owner to the east, 1908 Plymouth Landing, is requesting this exception to ensure a Boundary Line Adjustment Plat can be approved. Properties to the west and south should not be impacted by the Exception, because the encroachment is shielded by the home itself. The current condition of the subject site and its nonconformity has not been an issue, as the house has been in its current condition since 1998 when the home was built.
3. The proposed Exception for the subject site is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare, and no public easements are affected. The encroachment has been a nonconforming condition for over approximately ten (10) years without affecting the public. The approval of the Exception will not create physical changes on the

property, but will allow the subject site to be a conforming lot.

4. The current building setback line platted on the subject site was presumably added to Lot 15, Plymouth Landing Addition, Unit 6, when the Final Plat was approved on July 31, 1995. This building setback line protected the property owner to the east (1908 Plymouth Landing), by ensuring that a future structure would not adversely affect their property. The Boundary Line Adjustment Plat cannot be approved until the Exception is granted. The other option available to the owner is to submit a Final Plat for approval by the Manhattan Urban Area Planning Board.

Aistrup made a motion to approve an EXCEPTION to allow four (4) feet of building encroachment into a platted eighteen (18) foot side yard building setback for an existing single-family detached residential structure proposed at 1910 Plymouth Landing, related to a proposed Boundary Line Adjustment Plat in the Plymouth Landing Planned Unit Development with the following conditions:

1. The Exception shall apply to the existing structure as a single-family detached residential use as outlined in the staff report and shown on the site plan.

Wigfall seconded the motion, which PASSED with a vote of 5-0.

A PUBLIC HEARING TO CONSIDER A REQUEST TO AMEND A CONDITIONAL USE PERMIT TO MODIFY THE SITE PLAN OF THE COLBERT HILLS GOLF COURSE FOR THE CONSTRUCTION OF THE PROPOSED CLUBHOUSE AT 5200 COLBERT HILLS DRIVE IN THE R-S, SINGLE-FAMILY RESIDENTIAL SUBURBAN DISTRICT. (APPLICANT/OWNER: KSU GOLF COURSE MANAGEMENT AND RESEARCH FOUNDATION).

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW OFF-STREET PARKING ON UNPAVED SURFACE ON A TEMPORARY BASIS AT THE COLBERT HILLS GOLF COURSE. (APPLICANT/OWNER: KSU GOLF COURSE MANAGEMENT AND RESEARCH FOUNDATION.).

(Considered Together)

Aistrup stepped down from the meeting due to a conflict of interest.

Chad Bunger presented the Staff Reports with recommendations for approval of the Conditional Use Amendment and the Variance.

Emig asked Bunger whether the temporary parking surface proposed in the Exception request would be gravel.

Bunger stated that the parking surface would be controlled native grasses.

Hamilton asked Bunger whether the overflow parking would be located in the subject site's storm water retention area.

Bunger stated that the parking surface would be at the edge of the storm water retention area.

Hamilton suggested that a condition be added to the Conditional Use Amendment stipulating that the temporary clubhouse be removed upon construction of the permanent clubhouse.

Bunger stated that would be appropriate.

Hardy opened the Public Hearing. With no one wishing to speak, he closed the Public Hearing and opened the discussion to the Board.

Hamilton expressed her appreciation for the level of detail in the plan. She stated that the staff report addressed her concerns. She reiterated her suggestion that a condition of approval be added to the Conditional Use Amendment.

The Board made the following findings of fact for the Conditional Use Permit at 5200 Colbert Hills Drive:

1. The property currently complies with all applicable regulations. The proposed site plan for the clubhouse is substantially different than the approved site plan, thus requiring the amendment.
2. Minimal adverse impacts on adjacent properties are expected. The entire area surrounding the clubhouse is property associated with Colbert Hills Golf Course and the Grand Mere Development. The new site plan will actually increase the amount of open green space between the proposed off-street parking lot and the homes in the Founders Village at Colbert Hills Planned Unit Development.
3. Domination by use over neighboring properties:
 - a. The proposed clubhouse is a single-story structure located on top of a hill overlooking hole #1 of the golf course. The clubhouse is located approximately 560 feet from the nearest residential property to the south and 480 feet from the residential properties to the north
 - b. The proposed landscaping with the clubhouse complex is deciduous trees and landscaped islands throughout the parking lot and flower beds at the foundation of the new clubhouse. The area to the north of the proposed parking lot will consist of native grasses and is proposed for storm water detention and overflow parking for large events (*A companion Variance has been requested to allow the overflow parking in this unpaved area and the area to the west of the parking lot*). Areas around the clubhouse and within the parking lot will

also consist of manicured lawns.

4. The Zoning Ordinance does not specifically have off-street parking requirements for golf courses and clubhouses. Off-street parking requirement for other golf courses and clubhouses in the City was determined by using the required spaces for private clubs and lodges (Section 7-103(C)(8)). Private clubs and lodges are required to provide at least one (1) parking space for each three (3) persons, based on the maximum design occupancy. The initial maximum design occupancy is 377 people, which would require 126 off-street parking spaces.
 - a. The site plan shows 150 parking spaces, include two handicapped parking spaces; which is adequate for the proposed use.
 - b. The applicant has submitted a companion Variance request to use the open area to the north of the proposed parking lot as overflow parking for the rare occurrence of large events at the golf course or clubhouse.
5. Adequate public utilities are currently in place to serve the proposed clubhouse. The area surrounding the proposed site of the clubhouse has been graded for the temporary clubhouse and parking lot that adequately addresses stormwater runoff. An additional stormwater detention basin is proposed to the north of the new parking lot which will further minimize the impact of stormwater runoff on adjacent properties and the rest of the golf course.
6. The site has adequate access for the clubhouse and golf course. Currently, Colbert Hills Drive ends at the parking lot for the golf course. This local street is adequate to handle the traffic demands created by the golf course and clubhouse. In the future, this local street will continue to the east to connect to Vanesta Drive. The extension of Colbert Hills Drive will occur with the development of Grand Mere, Unit Three, which is in the platting process.

Wigfall made a motion to approve a request to AMEND a CONDITIONAL USE PERMIT to modify the site plan of the Colbert Hills Golf Course for the construction of the proposed clubhouse at 5200 Colbert Hills Drive in the R-S, Single-Family Residential Suburban District, with the following conditions:

1. The Conditional Use shall only apply to the application documents, proposed site plan and building plans.
2. All applicable permits shall be obtained.
3. A Variance to allow parking on unpaved surfaces to the north and west of the proposed parking lot shall be approved.

Hamilton seconded the motion, which PASSED with a vote of 4-0.

The Board made the following findings of fact for the Variance at the Colbert Hills Golf Course:

1. The site is an approximately 320 acres, public golf course that is part of the larger Grand Mere Development. The eighteen-hole course, nine-hole practice course, driving range and the proposed clubhouse are unique uses to the community. The golf course is located in the rolling hills of the Flint Hills on the northwestern edge of the City and has been present since 2000. The proposed site plan includes 150 off-street parking spaces, which exceeds the number of required parking spaces – 126, based on the design occupancy of the proposed clubhouse. The proposed parking spaces are provided to serve the daily use of the Colbert Hills Golf Course. However, areas to the north and west of the proposed parking lot will provide areas for overflow parking demand associated with special events at the tournament. These areas are otherwise devoted to controlled native grasses. The area to the north of the new parking lot is designed to detain stormwater runoff.
2. Minimal adverse impacts on adjacent properties are expected by approving the Variance. The approved site plan of the Colbert Hills Golf Course clubhouse complex shows a parking lot with 270 off-street parking spaces. The northeast edge of the approved parking lot shows parking spaces near Colbert Hills Place, and in close proximity to the homes in the Founders Village at Colbert Hills Planned Unit Development.

The proposed parking lot will reduce the number of parking spaces by 120 spaces and limit the amount of impervious surfaces for the parking lot, when compared to the approved plan. The new parking lot will also be over 180 feet away from the homes in the Founders Village at Colbert Hills Planned Unit Development. According to the applicant, the proposed number of parking spaces meets the needs of the golf course for day to day operations. The Variance request is to allow parking in the grass areas to the north and east of the parking lot for occasional annual event that requires additional parking spaces. Although the parking spaces will occur on grass surfaces and be closer to the homes to the north than shown on the site plan. The golf course management can control the placement of the overflow parking through parking attendants.

3. The strict application of the parking regulations requires the applicant to construct a parking lot large enough to handle the parking demand for their largest golfing event. This requirement is an unnecessary hardship, considering that the new parking lot meets the parking requirements of the clubhouse and the day to day operations of the golf course. The overflow parking areas will only be used for the occasional golfing event that exceeds the 150 parking spaces.
4. Minimal impact on the public is expected with respect to the occasional overflow parking for special events.

5. The intent of the regulation is to ensure that off-street parking is on a paved surface. The temporary on-site overflow parking will be adjacent to the new parking lot and driveways. The overflow parking locations will be used for large, special events on a limited basis in an area of the golf course that should not impact adjacent properties. The use of these areas for overflow parking, as proposed, is a reasonable solution for the property given its unique conditions.

Hamilton made a motion to approve a request of a VARIANCE to allow off-street parking on unpaved surface on a temporary basis at the Colbert Hills Golf Course at 5200 Colbert Hills Drive, with the following condition of approval.

1. Overflow parking shall be limited to those areas shown on the applicant's site plan and described in the application materials.

Wigfall seconded the motion, which PASSED with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A CONDITIONAL USE TO ALLOW FOR A PROPOSED HEALTH, FITNESS AND SERVICE CLUB (A CLUBHOUSE AND POOL) FOR THE PROPOSED STONE POINTE APARTMENT COMPLEX. THE FACILITY WILL BE LOCATED IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: MICHAEL HILL, DBA MICHAEL HILL DEVELOPMENT).

A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM NUMBER OF OFF-STREET PARKING SPACES FROM 720 PARKING SPACES TO 537 PARKING SPACES FOR THE PROPOSED STONE POINTE APARTMENT COMPLEX AND A REDUCTION OF THE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK FOR ACCESSORY STRUCTURES TO TWENTY-EIGHT (28) FEET FOR PROPOSED CARPORTS. THE APARTMENT COMPLEX WILL BE LOCATED IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: MICHAEL HILL, DBA MICHAEL HILL DEVELOPMENT).

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW OFF-STREET PARKING FOR THE PROPOSED STONE POINTE APARTMENT COMPLEX IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT, TO BE LOCATED BETWEEN THE FRONT LOT LINE AND A LINE PARALLEL TO THE FRONT LOT LINE DRAWN THROUGH A POINT WHICH IS ON THE SIDE OF

THE PRINCIPAL STRUCTURE FURTHEST FROM THE FRONT LOT LINE, YET STILL FACING THE FRONT LOT LINE. (APPLICANT/OWNER: MICHAEL HILL, DBA MICHAEL HILL DEVELOPMENT).

(Considered Together)

Aistrup rejoined the meeting.

Bunger presented the Staff Report with recommendations for approval of the Conditional Use Permit, Exception, and Variance.

Hardy asked Bunger whether in future situations where the Board was to consider matters that it had previously approved, but the approvals had been allowed to expire, City Staff could provide the previous staff reports in addition to their current staff reports so that the Board could have clarification on any changes between the two reports.

Bunger said that City Staff could provide those reports in the future and provided clarification on the difference between what the applicants had proposed in their previously approved requests, and what they were currently proposing.

Emig asked Bunger whether the parking figures provided in the Findings of Fact included the proposed carports.

Bunger stated that they did.

Hardy opened the Public Hearing.

Applicant Mike Hill provided additional information on the requests.

Evan Palmer, who is an adjacent property owner to the subject site, spoke in opposition to the request. He expressed concern about the possibility that a reduction in the number of required parking spaces could cause an increase in the amount of on-street parking on the streets surrounding the subject site. He also expressed his opposition to the applicant's intention to develop the subject site into apartment complexes.

Hardy told Palmer that he appreciated his comments, and commended him for approaching the applicant to discuss his concerns. He commended the applicant for being a good neighbor and communicating his intentions to surrounding property owners.

Hamilton stated that the Exception request does not address on-street parking, and that if on-street parking becomes a problem in the future, surrounding property owners can ask City Hall to restrict parking along the affected streets.

With no one else wishing to speak, Hardy closed the Public Hearing and opened the discussion to the Board.

Hamilton stated that she supports the applicant's requests, and felt that they did not present a significant change to what had been approved previously.

Wigfall concurred with Hamilton.

Hardy also concurred, and commended the applicant for meeting with surrounding property owners.

The Board made the following findings of fact for the Conditional Use at the proposed Stone Pointe Apartment Complex:

1. The proposed clubhouse/pool complies with all regulations, except a Conditional Use Permit must be approved.
2. Minimal impact is expected on adjacent properties. To the north and south is the proposed apartment complex. To the west is N. Scenic Drive. The proposed clubhouse/pool will be separated from the duplex development to the east by a public street. The proposed swimming pool will be required to have minimum four (4) foot tall fence surrounding the swimming pool with a self-locking gate to conform to Building Code requirements for safety purposes.
3. DOMINATION BY USE OVER NEIGHBORING PROPERTIES: (SITE PLAN)
 - a. The one-story clubhouse and pool are part of the proposed Stone Pointe apartment complex, which will serve the tenants of the apartment complex. Its location and the nature of the improvements will not dominate the neighborhood.
 - b. Landscaping and screening are not required, although the pool must be enclosed by fence, subject to building code requirements.
4. The Manhattan Zoning Regulations do not specifically address parking requirements for the proposed clubhouse and swimming pool. National standards requirements vary from 1 to 4 spaces for every 200 square feet of pool surface area. The proposed swimming pool may be approximately 25 feet in width by 40 feet in length, or 1,000 square feet in surface area, which would typically result in 5 to 20 potential required parking spaces. The applicant has made provisions for 17 parking spaces on Lot 4. Given the fact that the swimming pool is designed for use by residents and guests of the apartment complex, many of whom will walk to the pool, and the availability of off-street parking associated with the apartment complex, the off-street parking spaces provided should be a reasonable number.

5. Adequate provision for drainage and public facilities were considered with the approval of the Preliminary Plat and Final Plat of the Stone Pointe Addition. No additional public improvements are needed to serve the proposed use.
6. Vehicular access is from Highland Ridge Drive and is adequate. A sidewalk is required and provided along the neighborhood streets. Pedestrian access is otherwise through parking lot aisles.

Emig made a motion to approve a request of a **CONDITIONAL USE PERMIT** for the installation of a swimming pool and clubhouse on Lot 4, Stone Pointe Addition, with the following conditions:

1. The applicant shall obtain all necessary building permits prior to construction of the swimming pool and clubhouse.
2. The conditional use shall apply to the proposed site plan.

Wigfall seconded the motion, which **PASSED** with a vote of 5-0.

The Board made the following findings of fact for the Exception at the proposed Stone Pointe Apartment Complex:

1. The site otherwise complies with all applicable regulations other than those addressed through this application and the concurrent requests for a Variance related to location of off-street parking and a Conditional Use Permit for a clubhouse/pool.
2. No adverse impacts on adjacent property owners are expected. The number of parking spaces provided should be more than adequate to handle the parking demand and tenant market and there is no reason to expect that residents will be forced to use adjacent neighborhoods for parking. The reduced setback for the carports is greater than the 25 foot front yard setback and the structures are behind the proposed apartment building facades.
3. Negative impacts on the public are not expected. There is no reason to expect that the number of parking spaces provided will be insufficient to handle the parking demand. The off-street parking requirements of the Zoning Regulations are largely intended to address the parking situation inherent in apartment complexes that are occupied predominately by students. Apartment complexes occupied by students normally have at least one car per occupant and therefore require a higher number of parking spaces per dwelling to account for guests and other visitors. Apartment complexes targeted to a different demographic, as is the case with this proposed apartment complex, generally do not require as many parking spaces per dwelling unit to meet the parking demand. Similar reductions have been approved in the Pebblebrook apartment complex and Highland Meadows apartment complex, both of which are in the general neighborhood of the site.

Current tenancy is generally one person per bedroom when occupied by unmarried persons. An example of this trend is reflected in the parking requirements of the M-FRO, Multi-Family Redevelopment Overlay District west of KSU campus, in which one parking space is required per bedroom.

In addition, a benefit of reducing the amount of parking required is the fact that more of the development that would otherwise be paved will be maintained as green space.

Floodway along Wildcat Creek, which is to the north of apartment buildings on the north side of Highland Ridge Drive, could be utilized for parking, but the Floodway is intended to convey flood waters. The Floodway will be preserved as a part of the proposed site plan.

Reduced front yard setback of the accessory carports are not in a utility or other public easement. The carport on Lot 8 is outside of a stream bank setback from Wildcat Creek.

The strict application of the regulations would require the applicant to provide many more parking spaces than what is realistically needed, likely requiring the applicant to create parking areas within the apartment complex that are maintained as open green space.

4. The carports are beyond the 25 foot setback at a proposed 28 foot setback and to the side of nearby apartment buildings. Although the structures on Lot 2 and Lot 3 could be located along the N. Scenic Drive yard, there does not appear to be any adverse impact created by the structure, which forms a part of a complex and the request is reasonable. The carport on Lot 8 cannot be located to the rear of the building due to the stream bank setback.

Emig made a motion to approve an EXCEPTION to allow for a reduction of the minimum required number of off-street parking spaces for a proposed multiple-family complex on Lots 1-11 in the Stone Pointe Addition, from a total of 720 off-street parking spaces based on two-bedroom units, to 537 off-street parking spaces; and, a reduction of the minimum 60 foot front yard setback to 28 feet for a proposed accessory carport on Lots 2, 3 and 8, with the following conditions:

1. The Exceptions shall be limited to the proposed site plan and number of dwelling units and bedrooms per dwelling unit, and carport locations set out in the application documents.
2. A minimum of 537 off-street parking spaces shall be provided.
3. A companion Variance for the proposed off-street shall be approved.

Wigfall seconded the motion, which PASSED with a vote of 5-0.

The Board made the following findings of fact for the Variance at the proposed Stone Pointe Apartment Complex:

1. A large portion of the northern parts of Lots 5, 6, 8, 9 and 11 are located within the Floodway portion of the 100 Year Flood Plain, which is an unbuildable area; however parking areas are a permitted use allowed in the Floodway. Wildcat Creek is immediately north of the lots and is a natural limitation on space available for parking. While parking is allowed in the Floodway, subject to local and state flood plain regulations, it is discouraged so as to maintain the Floodway flow of flood waters free of obstructions. Floodway areas are proposed to be maintained as open space and drainage easement. By maintaining this open area, less land is available and the site is more restricted in how the parking areas are arranged in relation to the apartment buildings. In addition, the flood plain is being used for a siltation basin to control storm water run-off into Wildcat Creek, as required by the State of Kansas, and to comply with the Clean Water Act.

The location of parking on Lots 1, 2, and 3 is a function of the street patterns restricting the depth between N. Scenic Drive and Stone Pointe Drive.

2. Minimal adverse impact is anticipated to adjacent properties. Front yards are maintained as open space along Stone Pointe Drive and Highland Ridge Drive.
3. Strict application of the Regulations would require the applicant to redesign the site layout of the proposed apartment complex, likely forcing the applicant to add fill to a portion of Floodway in order to develop areas within the 100-Year Flood Plain and redesign a siltation basin. In addition, the property has been Final Platted and development of duplexes is beginning to the east of Lots 1, 2, and 3.
4. No adverse impact to the public is expected with the Variance request. Realistically, the only parking area associated with this request that may have an impact on the public is the permitted parking areas adjacent to N. Scenic Drive, which would visually impact the area.
5. The intent of the off-street parking regulations is to reduce the visual impact of large parking areas to passers-by and adjacent residential uses. The proposed site plan meets the spirit and intent of the regulations. All parking is behind the minimum front yard setback. The apartment buildings are located so that they face the fronting street and the parking areas are to the side and rear of the buildings, although not technically the furthest point on the facade. This type of development pattern is generally consistent with the intent of the regulations.

Buildings could be constructed with flat facades and no relief so that the literal requirement is met; however, to provide buildings with relief and varying façade depths, the regulation imposes a standard which is generally unreasonable.

The specific regulation requiring the Variance was created in the mid-1980's as a result of paved parking being placed in front of apartment buildings in the older grid street patterned portion, or Ward Districts, of the City. The regulation in that part of the City was to preserve front yards along primarily rectangular lots and grid street patterns. The proposed development is consistent with modern development patterns versus street patterns created in the late 1800's.

Emig made a motion to approve a VARIANCE of the location requirement of off-street parking in the Stone Pointe Addition for Lots 1-3 and 5, 6, 8, 9 and 11, associated with a proposed apartment complex, with the following conditions:

1. The Variance shall be according to the proposed site plan shown in the application documents and shall be limited to those lots on the proposed site plan.
2. The Variance shall be approved concurrently with the application for an Exception.

Hamilton seconded the motion, which PASSED with a vote of 5-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A CONDITIONAL USE TO ALLOW FOR THE CONSTRUCTION OF A 100-FOOT TALL MONOPOLE CELLULAR PHONE TOWER AND ACCESSORY STRUCTURES AT THE CICO WATER TANK, 2288 LONDONDERY DRIVE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: AT & T MOBILITY / AGENT: TELECOM REALTY CONSULTANTS, LLC OWNER: CITY OF MANHATTAN).

A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW A REDUCTION OF THE REQUIRED SETBACK OF A PROPOSED CELLULAR PHONE TOWER AT THE CICO WATER TANK, 2288 LONDONDERY DRIVE FROM 104 FEET TO FOUR (4) FEET. (APPLICANT: AT & T MOBILITY / AGENT: TELECOM REALTY CONSULTANTS, LLC OWNER: CITY OF MANHATTAN).

(Considered Together)

Bunger presented the Staff Report with recommendations for approval of the Conditional Use and Exception.

Hamilton stated that she appreciated the work City Staff had put into the staff report, and the memo from the Director of Public Works. She also suggested that a condition of approval be added, specifying that all applicable permits be obtained, including those specified by the City Engineer.

Hardy opened the Public Hearing.

Curtis Holland, attorney for the applicant, provided further information the requests. He explained to the Board why the applicant felt that it was necessary to erect a cellular tower in the area of the subject site.

Applicant Garth Abcock, a telecommunications manager for T-Mobile, spoke to the request and provided the Board with information regarding the design of the proposed tower. Emig asked Abcock for clarification on an example that Abcock had provided to illustrate the strength of the proposed tower.

Abcock provided clarification.

Emig asked Abcock if in his entire career he had ever heard of a tower failing.

Abcock stated that he had not and provided additional information.

Emig asked about the specifications of the proposed tower's Class 3 classification.

Abcock stated that an engineer present could provide the Board with that information.

Applicant Duane Houg, telecommunications engineer, provided the Board with information on the proposed tower's Class 3 specifications.

Emig asked Houg how long he had been in telecommunications, and whether he had ever seen a tower fail during his career.

Houg provided information on tower failures he had observed, but stated that those failures had occurred before engineering and regulatory advances had been made which would prevent a similar event from occurring today. He also provided the Board with information on Class 3 Telecommunication Poles' strengths in comparison to standard, Class 2 telecommunication tower.

Emig referenced Manhattan's recent tornado and asked Houg whether a Class 3 telecommunication tower would be able to weather a similar catastrophic event.

Houg told the Board that applicants had chosen the Class 3 tower because its design would allow it to withstand a similar catastrophic event.

Emig asked Houg about the statistical probability of the tower failing.

Houg provided that information.

Hamilton asked Hough about the types of towers he had observed or heard about failing.

Houg provided that information, and explained that those failures had occurred prior to technological advances and new regulations that prevent similar failures today.

Hamilton stated that she had read in the Staff Report that most telecommunications towers were designed with a weak link, but that the Class 3 tower was not. She asked Houg for clarification on this.

Houg provided clarification.

Emig asked Houg what would happen if the proposed tower failed on the subject site.

Houg provided that information, stating that a severe and unusual event would be required to cause the tower to fail, and that any damage to surrounding structures and properties caused by the tower's failure would be secondary to the damage those structures and properties suffered by the event that caused the tower to fail.

Emig asked Houg for clarification on the dimensions of the tower.

Houg provided clarification.

Hamilton asked Houg about the average distance he had observed between towers and any surrounding structures.

Houg provided additional information.

Hamilton reiterated, and asked Houg how close towers normally were to adjacent properties, and whether the distance between the proposed tower and surrounding improvements was common or uncommon.

Houg stated that the proposed distance described in the requests was not uncommon.

Holland provided additional information on the frequency with which telecommunications towers are located on city properties in other cities, and that this is a common practice. He stated that other cities require telecommunications towers to be on city property.

Hardy asked Holland if cities had stricter safety requirements for telecommunications towers than private property owners.

Holland stated that his company always insured its telecommunications towers and indemnified its landlords. He said that some cities own the actual telecommunications towers and rent them to cellular phone companies. He stated that the agreement signed by his company and the City of Manhattan would address safety.

Emig asked Holland about the typical rental rates that cellular phone companies pay to cities for use of their towers.

Holland provided clarification on what is typical, but stated that rental rates depended largely on cities' property values. He also showed the Board a photograph of a tower that had survived the Greensburg tornado.

Bunger spoke to the City's discussions with the applicant as a property owner, and the long meetings that it had had with the applicant to discuss its safety concerns.

Adjacent property owner Aaron Gall spoke in opposition to the applicant's requests. He stated that the tower would be conspicuous and disagreed with the City Staff's finding that the number of towers present on the subject site would remain neutral following the addition of the proposed tower. He stated that the proposed tower was much larger and more noticeable than what it would replace. He further stated that the tower would decrease property values. He expressed concern that future cellular demands would necessitate additional towers on the subject site, and with the precedent that would be established by allowing the requested Exception. He stated that the tower would be an eyesore that would likely decrease his property values for aesthetic reasons, as well as for perceived health reasons. He asked the applicant about the proposed tower's range and whether the applicant could redesign the tower for compatibility with the residential neighborhood. He echoed Emig's and the Board's tornado safety concerns.

Aistrup asked Gall for clarification on his contention that the new tower will decrease property values in light of the fact that there already was a telecommunications tower and a water tower on the subject site, and both of those things were in keeping with the character of the proposed tower.

Gall stated that the accessory buildings that would be built to serve the proposed tower would cause the character of the subject site to become more industrial, and would detrimentally impact the character of the surrounding residential neighborhood.

Hardy stated that Gall would have a stronger argument if the site was blank, and did not already have the existing telecommunications tower and water tower.

Gall stated that it was a slippery slope.

Aistrup agreed with Gall's intention that it was a slippery slope, stating that cellphone towers tend to cluster in response to increased demand over time.

Hardy concurred.

Gall expressed disagreement with the applicant's claims regarding insufficient cellular telephone coverage in the area of the proposed telecommunications tower, and reiterated his argument about the precedent that would be established by approving the Exception.

Holland responded to Gall's concerns regarding property values, stating that thousands of studies had been conducted on the impacts of telecommunications towers on surrounding

property values, and that they had all shown no negative impact. He explained that the range of the tower would depend on variables such as its surrounding topography, and density of surrounding foliage. He also stated that approving this telecommunications tower does not automatically approve all future telecommunication tower proposals. He disagreed with Gall's contention that the subject site would see more telecommunications towers over time, explaining that there was a limited number of telecommunications' licenses available, and that due to the number of cellular telephone providers in the area, it was unlikely that future towers would be erected on the subject site.

Gall told Holland that his appraiser had disagreed with the results of the studies conducted on property values.

With no one else wishing to speak, Hardy closed the Public Hearing and opened the discussion to the Board.

Emig stated that this was the third application for a Conditional Use Permit for a telecommunications tower that he had seen in his time on the Board of Zoning Appeals. He stated that hearings for telecommunications towers were generally contentious, and generally necessitated long staff reports. He commended staff for preparing a very thorough staff report, and expressed that his concerns about safety had been satisfied. He further stated that the proposal was a win-win for the City and the telecommunications provider: the provider would get coverage and the City would gain a source of revenue.

Aistrup expressed his support for the request, and stated that Gall's complaints would have resonated more strongly if there were not already large structures present on the subject site. He stated that requiring the applicant to find an alternate site would only transfer Gall's complaints to another neighborhood, and would not solve them.

Wigfall expressed her support for the request. She stated that she understands Gall's aesthetic concerns, but that those concerns are mitigated by the fact that the residential neighborhood is largely undeveloped land.

Hardy expressed his appreciation for the City's and the Applicant's thoroughness in preparing for the Hearing. He stated that he also appreciated Gall's concerns, but that telecommunications towers are a fact of life, and that it is not uncommon for them to be in residential areas. He stated that he was glad that the applicant made the decision to erect a Class 3 tower. He also stated that he did not expect the tower to detrimentally affect surrounding property values.

Hamilton stated that she could support the applicant's requests. She expressed concern about the proximity of the proposed telecommunication tower to the water tower. She stated that she wanted to add a condition of approval that required the specifications mentioned in the memo submitted by the City Engineer. She spoke to Gall's concerns, stating that Manhattan's insistence that collocation be sought whenever available reduced the likelihood that additional

towers would be added to the subject site in the future. She also noted that the proposed tower was fifty (50) feet shorter than the maximum allowable height for telecommunications towers.

The Board made the following findings of fact for the Conditional Use at 2288 Londonderry Drive:

1. The proposed wireless telecommunication tower and accessory structures comply with the requirements of Article XII, Telecom Structures, except for the requirement to construct a monopole designed to collapse on itself; and the proposed reduced setback of the tower. A companion Exception has been requested to reduce the required setback for the wireless telecommunication tower from 104 feet to eight (8) feet.
 - a. Section 12-111 (B) of the Zoning Regulation states that “All towers and stealth monopoles shall be designed and constructed to collapse on themselves to minimize the impact on surrounding properties. The proposed monopole tower is a Class III single shaft design that is engineered to a higher standard to sustain the impact of higher winds gusts from storms or straight line winds, rather than collapse upon itself as required. The pole design was chosen by the applicant because of the proximity to the water tank and pump station that is a vital component of the public’s water infrastructure. City Administration, including the Public Works Director, have reviewed the design of the proposed 100 foot tall, Class III monopole and concur with the applicant and their engineers’ proposal to upgrade the tower design beyond what the Zoning Regulations require due to the location.
 - b. The applicant has submitted the necessary documentation for the administrative permit required by Article XII.
2. The proposed wireless telecommunication tower is located in a developing residential neighborhood in the northwest area of the City. The subject site and properties to the east and south are located in the R-1, Single-Family Residential District. The properties to the east along Everett Drive are existing single-family houses with their rear yards abutting the subject site. The properties to the south along Londonderry Drive are either vacant lots or single-family homes under construction. Properties to the west are zoned R-2, Two-Family Residential District, and are currently vacant lots. The property immediately to the north of the subject site has not been annexed into the City and is zoned County G-1, General Agriculture. Located on this property are a pump station related to the City’s Cico Water Tank and a 120 foot tall wireless telecommunication monopole and accessory structures. The 120 foot tall monopole was granted a Conditional Use by Riley County’s Board of Zoning Appeals and was built in 1995. According to the applicant, this tower is not structurally capable of co-locating additional service on it (*see Attachment A*).
 - a. Although the applicant has submitted engineering information stating that the design of the monopole is intended to “remain intact and even operational in a

wind event which would render catastrophic destruction to ordinary structures,” it would be appropriate to view the fall zone of the entire tower measured from the base of the tower. The fall zone of the proposed tower would be approximately 104 feet in length, with no stated design direction of the fall. The closest residential structure to the tower is approximately 214 feet away, well outside of the 104 foot fall zone. The closest vacant residential lot to the west is approximately 97 feet from the base of the tower and is laid out so that its rear property line abuts the subject site. Because of required building setbacks in the R-2, Two-Family Residential District, no residential building should be closer than twenty-five (25) feet from the rear property line, and therefore be outside of the fall zone of the tower. A sixteen (16) foot utility and pedestrian easement exists along the shared property line. This would restrict the construction of any accessory structures such as detached garages, sheds any closer than sixteen (16) feet to the rear property line.

- b. The vacant residential lots to the east are located approximately 100 feet from the proposed tower. These residential lots have the side yards abutting the subject site and is required to provide a minimum side yard setback of eight (8) feet. A ten (10) foot utility easement exists along the west property line, which limits the construction of any structure within this easement.
- c. Structures within the fall zone of the monopole tower are the Cico Water Tank, which is approximately 35 feet from the tower, and the City’s water pump station, which is approximately 29 feet from the tower. The proposed Class III design of the monopole to be able to remain intact and operational during a catastrophic wind event addresses concerns of City officials regarding the proximity of the tower to the City’s structures and the protection of those structures; as well as protection of surrounding properties.
- d. The Cico Water Tank site is located at the top of a hill, which is the highest point in the area. The existing 120 foot tall monopole tower to the north is also located near the top of the hill. The houses to the east are approximate 30 foot lower in elevation than the subject site, with a percent slope of approximately 14% away from the subject site. Surrounding properties should not be adversely affected by the location of the tower, or accessory ground structures because of the steep elevation change. The residential properties to the south of the site are screened by the existing 34-foot tall, water tank and is approximately 25 feet lower in elevation or approximately 10% in slope away from the site. The vacant properties to the west of the subject site are at relatively the same elevation as the subject site, with only eight (8) feet of elevation change between the properties. These vacant, two-family residential lots will be the most impacted by the proposed tower and accessory structures. The proposed screening by an eight (8) foot tall cedar privacy fence along the north, east and west side of the lease area should minimize impacts caused by the ground structures at the base of the monopole.

- e. The presence of the existing monopole to the north of the subject site and Cico Water Tank should also be considered when evaluating the impacts on adjacent properties. The existing monopole tower to the north has been in existence since 1995. The City's water tank was constructed in 1977. The 50 foot tall guyed wire tower which holds communication equipment for the City was constructed in 1999. The equipment on the 50 foot tower is proposed to be relocated to the new monopole tower and the old tower is to be removed. The residential developments surrounding the site were first platted in 2004, with Western Hills Addition, Unit Twelve. The current residents of the area do not appear to be adversely affected by these existing utility and communication structures and should not be impacted by the construction of the new tower. Future residents of the vacant lots in the area also should not be impacted by the monopole tower, and do have the opportunity to evaluate the affects of telecommunication structures before purchasing a property, or building a house.
 - f. The mere presence of the tower should not adversely affect the value of adjoining property.
3. The maximum height of a tower and antenna allowed by the Zoning Regulations is 150 feet, not including lightning rods, which shall not exceed 20 feet in height. The height of the proposed tower and lightning rod is 104 feet. The proposed tower should not be out of character with the area which includes the 34 foot tall by 100 foot wide Cico Water Tank, a 50 foot tall, guyed wire tower, the City water pump station and a 120 foot tall monopole. Construction of the new tower would eliminate the 50 foot tower used by the City's Water Department. The equipment from the City's tower will be relocated to the new tower. Considering the presence of these existing structures, the new 104 tall monopole tower should not dominate the surrounding properties.
4. No landscaping or screening is required in the R-1, Single-Family Residential District. The site currently has an eight (8) foot tall chain-link fence, topped with strands of barbed wire for security of the water tank. The applicant has proposed to install a swinging gate at the northeast corner of the site to gain access to the lease area. The City has requested that an eight (8) foot tall, cedar fence be located on the north, east and west sides of the lease area at the grade of the ground equipment for screening purposes. The proposed gate and screening shall be reviewed and approved by the Board of Zoning Appeals, if deemed appropriate subject to Article XII, Section 12-112 (D), Screening and Landscaping.
5. Section 12-112 (E) requires at least one (1) off-street parking space be located on the site. The submitted site plan shows the addition of a twelve (12) foot wide concrete driveway and adequate space for the parking of one (1) vehicle to serve the limited maintenance activities associated with the tower and telecommunication facilities.

6. Adequate utilities are available to serve the use. Drainage facilities are not required to serve the use. The site and the adjoining property to the north are at the highest point in the area. The site drains in all directions away from the water tank. A seven (7) foot tall retaining wall is proposed to be installed and backfilled to create a level surface. This elevated area should not adversely affect the stormwater run-off from the site. Other than existing and proposed structures, the majority of the site is open, grassy areas.
7. Adequate access is available from a driveway off of Londondery Drive, which is a gravel driveway that continues onto the property to the north. The applicant has proposed to install a twelve (12) foot wide driveway to give access to the leased portion of the City property. The City is requesting that the existing gravel portion of the driveway and the parking area into the leased area be paved with concrete to control dust and be maintenance free.
8. Attachment A is an engineer stamped tower analysis of the existing 120 foot tall monopole located on the adjacent property to the north. This analysis explains, in part, that the existing tower cannot structurally support a fourth set of wireless telecommunication antennas. No other suitable wireless telecommunication tower is available to service the area.

Stealth design is, “A method of designing, constructing, and/or locating any telecom structure to blend in with the character and environment of the area in which it is located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles of Article XII, Section 12-114.” Given the sparse surrounding of tall trees, the elevation of the ground that the tower is proposed to be constructed on compared to other adjacent properties and that a 120 foot tall monopole tower exists in the immediate area, a stealth design is difficult to incorporate and possibly unreasonable. The applicant has agreed to install an eight (8) foot tall, cedar fence along the north, east and west side of the leased area at grade of the accessory ground structures to screen adjacent property owners from the proposed and future service provider ground equipment.

Hamilton made a motion to approve a Conditional Use to allow the construction of a 104-foot tall monopole tower and lightning rod and accessory ground structures for wireless telecommunications at 2288 Londondery Drive in the R-1, Single-Family Residential District, with the following conditions:

1. The site shall be developed as proposed in the site plan and application documents and shall be maintained in good condition.
2. All applicable permits shall be obtained.
3. The applicant shall pave the gravel portion of the existing driveway and the proposed driveway extension and parking area for the lease area with concrete.
4. An eight (8) foot tall cedar privacy fence shall be installed along the north, east and west of the leased area at the grade of the accessory structures.
5. The monopole shall be designed to accommodate a minimum of three wireless

communication providers.

Wigfall seconded the motion, which PASSED with a vote of 5-0.

The Board made the following findings of fact for the Exception at 2288 Londonderry Drive:

1. The proposed wireless telecommunication tower and accessory structures comply with the requirements of Article XII, Telecom Structures, except for the requirement to construct a monopole designed to collapse on itself and the proposed setback of the tower. A companion Exception has been requested to reduce the required setback for the wireless telecommunication tower from 104 feet to eight (8) feet.
 - a. Section 12-111 (B) of the Zoning Regulation states that “All towers and stealth monopoles shall be designed and constructed to collapse on themselves to minimize the impact on surrounding properties. The proposed monopole tower is a Class III single shaft design that is engineered to a higher standard to sustain the impact of higher winds gusts from storms or straight line winds, rather than collapse upon itself as required. The pole design was chosen by the applicant because of the proximity to the water tank and pump station that is a vital component of the public’s water infrastructure. City Administration, including the Public Works Director, have reviewed the design of the proposed 100 foot tall, Class III monopole and concur with the applicant and their engineers’ proposal to upgrade the tower design beyond what the Zoning Regulations require due to the location.
 - b. The applicant has submitted the necessary documentation for the administrative permit required by Article XII.
2. The proposed wireless telecommunication tower is located in a developing residential neighborhood in the northwest area of the City. The subject site and properties to the east and south are located in the R-1, Single-Family Residential District. The properties to the east along Everett Drive are existing single-family houses with their rear yards abutting the subject site. The properties to the south along Londonderry Drive are either vacant lots or single-family homes under construction. Properties to the west are zoned R-2, Two-Family Residential District, and are currently vacant lots. The property immediately to the north of the subject site has not been annexed into the City and is zoned County G-1, General Agriculture. Located on this property are a pump station related to the City’s Cico Water Tank and a 120 foot tall wireless telecommunication monopole and accessory structures. The 120 foot tall monopole was granted a Conditional Use by Riley County’s Board of Zoning Appeals and was built in 1995. According to the applicant, this tower is not structurally capable of co-locating additional service on it (*see Attachment A*).

- a. Although the applicant has submitted engineering information stating that the design of the monopole is intended to “remain intact and even operational in a wind event which would render catastrophic destruction to ordinary structures,” it would be appropriate to view the fall zone of the entire tower measured from the base of the tower. The fall zone of the proposed tower would be approximately 104 feet in length, with no stated design direction of the fall. The closest residential structure to the tower is approximately 214 feet away, well outside of the 104 foot fall zone. The closest vacant residential lot to the west is approximately 97 feet from the base of the tower and is laid out so that its rear property line abuts the subject site. Because of required building setbacks in the R-2, Two-Family Residential District, no residential building should be closer than twenty-five (25) feet from the rear property line, and therefore be outside of the fall zone of the tower. A sixteen (16) foot utility and pedestrian easement exists along the shared property line. This would restrict the construction of any accessory structures such as detached garages, sheds any closer than sixteen (16) feet to the rear property line.
 - b. The vacant residential lots to the east are located approximately 100 feet from the proposed tower. These residential lots have the side yards abutting the subject site and are required to provide a minimum side yard setback of eight (8) feet. A ten (10) foot utility easement exists along the west property line, which limits the construction of any structure within this easement. The property directly to the north is not within the City limits and is zoned G-1, Riley County General Agriculture. Located on this property are the City’s water pump station and a 120 foot tall monopole tower. The pump station is approximately 29 feet from the base of the proposed tower. The existing monopole is approximately 183 feet from the base of the proposed tower. No residential structures are or should be located within the 104 foot setback area. The properties to the south of the subject site would be over 240 feet way from the proposed tower and are screened by the thirty-four (34) foot tall water tank.
 - c. Because the Class III design of the proposed tower is generally used in situations where a higher level of strength and protection against failure is desired and that no residential structures are located within or should be located in fall zone, the Exception request should not adversely affect adjacent properties.
3. The proximity of the Cico Water Tank and the water pump station is a concern of City Administration regarding public health and safety. The water tank and pump station serves a majority of the residents in the northeast part of Manhattan. The water tank is located approximately 35 feet from the tower to the south and the City’s water pump station situated approximately 29 feet from the tower to the northwest. The proposed monopole is designed to be able to remain intact and operational during a catastrophic wind event. In the event of a severe storm or strong straight line winds that would damage the proposed tower, the water tank and pump station would most likely be

damaged be the winds first, and not by the failure of the tower. City Administration has determined that the design of the proposed tower should not have a negative effect the water tank or pump station and not negatively impact the public health and safety.

4. The strict application of the setback requirements for wireless telecommunication towers would require the applicant to find a different location, because this site does not meet the minimum requirements of the Zoning Regulations. The ideal location would need to be a minimum of 208 feet in width and depth with the tower located in the middle of the property. This site is approximately 195 feet wide and 189 feet deep. The presence of the Cico Water Tank forces the proposed tower to be located approximately eight feet from the north property line. The subject site is not adequate to strictly meet the Zoning Regulations. However, the design of the Class III monopole is such that it is not supposed to fail and even remain in operation during a catastrophic storm. Considering the design of the proposed pole and that it should not adversely affect adjacent properties, requiring a tower setback equal to the height is unnecessary at this location.
5. Stealth design is, “A method of designing, constructing, and/or locating any telecom structure to blend in with the character and environment of the area in which it is located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles of Article XII, Section 12-114.” Given the height of the proposed structure, the elevation of the ground that the structure is proposed to be constructed on compared to other adjacent properties and a 120 feet tall monopole tower exists in the immediate area, a stealth design is difficult to incorporate and possible unreasonable. The applicant has agreed to install an eight (8) foot tall cedar fence to the east and west of the proposed structures to screen adjacent property owners from the proposed and future service provider structures.

Aistrup made a motion to approve an Exception to allow a reduction of the required setback of a proposed cellular phone tower from 104 feet to eight (8) feet at 2288 Londondery Drive with the following conditions of approval:

1. The Exception shall be limited to the proposed 104 foot tall monopole as shown on the site plan and outlined in the application documents.
2. The Conditional Use for the proposed 104 foot tall wireless telecommunication tower and accessory structures shall be approved.
3. All permits shall be granted prior to construction.

Emig seconded the motion, which PASSED with a vote of 5-0.

CONSIDER A REQUEST FOR A 30 DAY EXTENSION OF AN APPROVED EXCEPTION TO ALLOW A TEMPORARY GRAVEL DRIVEWAY BETWEEN THE FRONT LOT LINE AND A LINE PARALLEL TO THE EXISTING RESIDENTIAL

**STRUCTURE AT 2920 TATARRAX DRIVE IN AN R, SINGLE FAMILY
RESIDENTIAL DISTRICT. (APPLICANT/OWNER: DOUG AND RUTH PARKER).**

Bunger recommended approval of the Extension.

Hardy closed for Public Hearing and opened for Board discussion.

Emig moved to approve the Extension. The motion was seconded by Wigfall and passed with a vote of 5-0.

ADJOURNED.

Respectfully Submitted,

Anne Antonini and Stephanie Dikeman, Planning Interns

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