

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, May 13, 2009**  
7:00 PM

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

MEMBERS ABSENT: None

STAFF PRESENT: Chad Bunger, Planner; Stephanie Watts, Intern; Anne Antonini, Intern, Steve Zilkie, Senior Planner

**CONSIDER THE MINUTES**

Hardy commented that City Staff did a very accurate job of capturing the discussion from the last meeting.

Aistrup moved to approve the minutes of the April 8, 2009, Board of Zoning Appeals meeting which was seconded by Wigfall and passed with a vote of 5-0.

**TABLE A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR THE MODIFICATION OF A LEGALLY NON-CONFORMING THREE-FAMILY DWELLING STRUCTURE IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: LARRY SCHOOF). THE REQUEST WAS ADVERTISED AS MODIFYING A LEGALLY NONCONFORMING THREE-DWELLING STRUCTURE IN THE R-1/TNO DISTRICT. AFTER THE REQUEST WAS PUBLISHED IN THE MERCURY AND PUBLIC NOTICE LETTERS WERE SENT TO PROPERTY OWNERS, IT WAS DISCOVERED THAT THE USE WAS NOT LEGALLY NONCONFORMING, BUT RATHER WAS GRANTED A CONDITIONAL USE AND SEVERAL VARIANCES TO EXIST. THE ITEM NEEDS TO BE TABLED TO CORRECTLY ADVERTISE THE REQUEST FOR THE JUNE 10<sup>TH</sup> MEETING.**

Bunger provided clarification to the Board that the Table is being requested to update the advertisement for this item.

Hamilton moved to TABLE a PUBLIC HEARING to consider a CONDITIONAL USE to allow for the modification of a legally non-conforming three-family dwelling structure at 930 Bertrand Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District.

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

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR AN APPROVED**

**CONDITIONAL USE FOR A CLUBHOUSE AND POOL, ON ITS OWN LOT, WHICH IS A “HEALTH, FITNESS AND SERVICE CLUB” IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT; AN APPROVED 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; AND AN APPROVED VARIANCE TO ALLOW OFF-STREET PARKING FOR THE PROPOSED STONE POINTE APARTMENT COMPLEX 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. THE APARTMENT COMPLEX WILL BE LOCATED IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT.**

With no Board discussion, Aistrup moved to approve an 180 DAY EXTENSION for an approved CONDITIONAL USE for a clubhouse and pool, on its own lot, which is a “Health, fitness and service club” in the R-3, Multiple-Family Residential District; an approved 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; and an approved VARIANCE to allow off-street parking for the proposed Stone Pointe Apartment Complex 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. The apartment complex will be located in the R-3, Multiple-Family Residential District.

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

**REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A HEALTH AND FITNESS CLUB IN THE I-2, INDUSTRIAL PARK DISTRICT. THE PROPOSED ACTIVITY IS FOR THREE (3) SOFTBALL FIELDS AND AN INDOOR MULTI-USE ATHLETIC FACILITY ASSOCIATED WITH THE OPTIMIST CLUB BALLPARK. (APPLICANT/OWNER: MANHATTAN OPTIMIST FOUNDATION, INC.) A MEMO HAS BEEN DRAFTED CONCERNING THE DIVISION OF WATER RESOURCES FLOODPLAIN FRINGE FILL PERMIT AND THE PROPOSED LIGHTING FOR THE BALL FIELDS. THE APPLICANT HAS ALSO REVISED THE SITE PLAN TO ADDRESS THE ISSUES WITH SETBACKS AS MENTIONED IN THE ORIGINAL STAFF REPORT. THE STAFF REPORT WILL BE UPDATED TO REFLECT THESE CHANGES.**

**REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A TEMPORARY DRIVEWAY AND PARKING LOT ASSOCIATED WITH THE OPTIMIST CLUB BALLPARK TO BE**

**LOCATED ON GRAVEL FOR A PERIOD OF TWO (2) YEAR. THE PROPERTY IS LOCATED IN THE I-2, INDUSTRIAL PARK DISTRICT. (APPLICANT/OWNER: MANHATTAN OPTIMIST FOUNDATION, INC.)**

Aistrup recused himself.

Hamilton motioned to remove from the Table both items.

Wigfall seconded the motion which on a vote of 4-0.

*Considered Together.*

Bunger summarized the lighting and floodplain fill issues brought up from last month's meeting. He reiterated Staff's approval recommendation and presented information on the new conditions added to staff recommendations. Bunger then recommended approval of the Conditional Use Permit with 8 conditions and the Exception with 4 conditions.

Wigfall sought clarification on erosion control.

Bunger responded that the Division of Water Resources conditioned the fill permit, which requires the applicant to plant fescue grass.

Wigfall asked if there was a plan to address the sound issue.

Bunger stated that there were no proposals received by the City address this issue. He further explained that there were mature trees in the area which would help buffer noise, but because of the floodplain, little in regards to landscaping could be provided.

Dillon asked for the distance between the existing field and residential units.

Bunger stated they were 200 to 300 from the residential properties located on the east side.

Hamilton asked Bunger if landscaping could be added as a condition to the request.

Bunger stated that landscaping will be addressed in the building permit.

Hardy opened the Public Hearing and requested that comments not duplicate those heard last month as they are already part of public record.

Robert Buel, of 2916 Tatarax Drive, stated he was an adjacent property owner and expressed concerns that the proposed fields will impact his property. More specifically, he was concerned with the issues of sound, lighting and potential increase in the base flood elevation. He also stated that he does not feel the ball field fits with the residential character of the neighborhood.

Dillon asked Buel if he currently had flood insurance.

Buel responded that he does not currently have flood insurance since he is not located in the floodplain. He did state though, that if the floodplain is raised, he will have to get flood insurance.

Dillon asked Buel if he had priced the cost of flood insurance.

Buel stated that he has not looked into it.

Jeff Zacharakis, of 2615 Georgetown Apartments, is a resident of Georgetown and inquired as to where the fill would occur and how high the fill would be.

Bunger showed Zacharakis the fill line referencing a map located on the slide show.

Tom Bennett, the applicant, stated that the fill would be level with the parking area.

Zacharakis asked if a hydrological study had been completed.

Bunger responded no.

Zacharakis further expressed his concerns with the issue of flooding and with excess sound and light created by the proposed fields. He also expressed his concern with the fact that no hydrological study had been completed.

Steve Zilkie addressed the flood plain permit issue and reiterated that it was not related to the Conditional Use Permit request. He further stated the fill permit was already issued, meaning the applicant can begin filling the land at any time, and the applicant followed the appropriate process.

Hamilton asked staff when the flood plain map was adopted.

Zilkie provided information on when the flood plain maps were drawn and adopted.

Hamilton asked if the DWR issued the permit based on the existing map.

Zilkie responded that they did issue the permit based on the existing map.

Nancy Hardy, of 2623 Georgetown Apartments, asked staff which year the fill permit was issued.

Bunger responded the permit was issued in February of 2009.

Nancy Hardy expressed concern that the number of parking spots proposed seemed inadequate for the ballpark. She also stated that she had a concern about the addition of impervious surfaces on the site and the potential increase in water runoff. Nancy Hardy also discussed some kind of underground retention to store water runoff. She then stated that she would like to hear from the applicant.

Tom Bennett stated that he was there to answer any questions.

Dillon asked what the reasoning was behind the maximum height of 50 feet for the light pole.

Bennett stated that 50 feet is the tallest light pole they will install, yet it does not indicate the height of those that will be installed. He also stated that the light poles installed will most likely not be 50 feet tall.

Wigfall asked the applicant if they had considered any kind of retaining system for stormwater runoff.

Bennett replied that they had not considered it.

Hamilton asked for further clarification in regards to underground storage of water runoff.

Bennett responded that the percentage of parking would be rather insignificant as far as increasing the amount of runoff and the parking lot would not be much worse than the current gravel conditions.

Hamilton suggested a condition to address sound and asked the applicant if they would have any issues with this.

Bennett stated that he had no problem with a condition addressing sound and more specifically speaker placement. He also said that they are not anticipating the use of speakers or the fields being used during late hours because the ballpark is for youth.

Dillon asked for clarification as to who would be using the ballpark and if they would be used for tournament play.

Jeff Zacharakis asked the applicant when the ballpark would close and what time they are expecting games to be over.

Bennett stated that games would be over and the park would close by 9:30pm, 10:00pm at the latest.

Hardy closed the Public Hearing and opened for Board Discussion.

Wigfall stated that she would like the Board's discussion to be focused on the matter at hand, not on the issue of runoff. Suggested that the City need to discuss the stormwater runoff issue and flooding as a whole at a later date.

Hamilton stated that she appreciated Steve Zilkie's comments and if there is any impact on surrounding property owners, it is because of the DWR, not the Board's decision on the CUP for the property's use as a ballpark. She also stated that the Board is looking at whether the ballpark with injure the surrounding properties and there is already a baseball field on the property. Based on the standards of the Conditional Use Permit, the Board is to consider the effects of light, sound, hours of operation, etc., not the floodplain issue. Hamilton also stated that she can support the two year extension for the gravel parking area.

Dillon felt as if the light issue should be addressed and did not think it was necessary for the light poles to be 50 feet tall.

Hardy explained how the fill issue is not the Board's concern. He also expressed that he was not as concerned with the issue of sound since no complaints had been filed before. He did state that the lighting issue could be addressed.

Dillon stated that this particular ballpark is not an intense use facility like other complexes.

Hardy concurred with Dillon's statement.

Wigfall expressed that she would like to see a landscape plan that addressed erosion, noise, light and aesthetics.

Hamilton stated that the applicant is not required to provide landscaping to buffer sound or light.

Wigfall replied that she believes a landscaping plan may address neighbors concerns and her own apprehensions.

Hamilton asked Wigfall if she had any ideas for a landscaping plan.

Wigfall replied that she would like to see the applicant replace plant material lost in flooding.

Hamilton discussed modifying the conditions to address Wigfall's concerns.

Wigfall declared that this would address her concerns.

Hamilton suggested adding a condition that would state, "All efforts should be made to preserve existing landscaping that is not inconsistent with the proposed plan."

Dillon agreed.

Hardy suggested this above condition be added as condition number "9".

Hamilton also suggested a condition limiting the light pole height to a 40 foot maximum.

Hardy further clarified the light pole height condition by stating, "The proposed field lights should be downcast with full cutoff design, with pole length no greater than 40 feet." These modifications are to be made to Condition number "5".

Hamilton stated that she would like a condition that states, "Any amplified sound will have speakers directed away from all residential areas." This suggested condition will be noted as Condition number "10".

Hamilton also stated that a condition should be added to address the issue of time duration of activities.

Bunger suggested adding a new condition to address this issue that states, "All activities will cease no later than 10:00pm." (Condition number "11")

The Board agreed with the suggestion to add an eleventh condition.

Hamilton also requested that staff findings reflect the Board's decision to change the maximum pole height from 50 feet to 40 feet tall.

Hamilton stated that she appreciated the comments and concerns expressed.

The Board made the following findings of fact for the Conditional Use located at 317 Plymate Lane Street:

- A. Compliance with all applicable regulations: The Optimist Park was created when the land was donated to the Manhattan Optimist Foundation in 1986. The City of Manhattan's Zoning Regulation at that time (Ordinance No. 3790) did not permit parks and playgrounds nor allow health and fitness clubs as a Conditional Use in the I-

2 Zoning District. The current Optimist Park is a nonconforming use. The Conditional Use request for the proposed ball fields and indoor athletic practice facility will bring the property into conformance with the current Zoning Regulations.

In January, 2009, the Manhattan Optimist Foundation acquired a 2,395 square foot piece of Lot 4, Westside Industrial Park, Unit 2 Addition. This acquisition of land was done by a lot split by deed and not a Final Plat. The Manhattan Urban Area Subdivision Regulations state in Article I, General Provisions, Part 5, Applicability: Section I-501: Subdivision of land shall be made in accordance with these Regulations, and shall require a plat or replat (whichever is applicable) to be made in accordance with these Regulations, unless otherwise exempted by Part 6, below, whenever the owner(s) of any land within the jurisdiction of these Regulations desires to:

1. Divide, or further divide, land into two or more lots or parcels; or,
2. Otherwise alter the boundaries of lots or parcels of land.

The property shall be replatted to comply with the Manhattan Subdivision Regulations. Other than these issues, the property complies with the applicable regulations.

The original site plan showed the proposed building encroaching into the twenty (20) foot side yard setback. The softball field associated with phase four was located in thirty-five (35) foot front yard setback of the Plymate Lane cul-de-sac. The revised site plan has moved the building so that it is twenty-three (23) feet from the side property line to remove it from the setback. The revised site plan also shows the phase four ball field thirty-five (35) feet from the front property line along Plymate Lane. The revised site plan brings these two structures into conformance with the Zoning Regulations.

- B. Probable effect on adjacent properties: The subject site and surrounding properties to the south and west are zoned I-2, Industrial Park District. To the north and east of the subject site, properties are zoned R, Single-Family Residential District and R-2, Two-Family Residential District. The current Zoning Map appears to be in error by showing the R, Single-Family Residential District, on the subject site. When the area, including the subject site, was annexed into the City, the area was zoned for industrial uses south of the center line of Wildcat Creek. To the north of Wildcat Creek, the property was zoned for residential uses. The property within the I-2 District consists of light manufacturing and storage uses. The area in the R District is vacant land located along Wildcat Creek and vacant land associated with the former Riley County shops. The properties within the R-2 District are single-family detached and single-family attached dwellings.

The Optimist Park has been in existence since 1986. The single-family attached and single-family detached dwellings closest to the existing playing fields were built in the late 1980's and early 1990's. The apartments along Garden Way were built in the mid-1960's. Other single-family homes to the east of the Optimist Foundation property

were built in the 1940's, 1950's and 1960's. There are no complaints on record concerning the existing softball fields and/or the existing lighting. The proposed location of the new softball and tee-ball fields will be further away from residential uses than the existing softball and tee-ball fields. The softball field (Field #1) that is the closest to residential uses is approximately 200 feet from the rear property line of the single-family attached dwellings along Connecticut Avenue. This ball field will be replaced by the new softball field along the western property line. The new, west softball field will be approximately 280 feet from the apartment building along Garden Way and will be separated by dense tree cover. The other regulation softball field that is proposed will be approximately 320 feet from the closest residential property versus the existing Field #2, which is approximately 200 feet from the residential properties to the east. The new tee-ball field will be moved to the east, but placement and orientation of the new field will be towards the remainder of the Optimist Foundations property and not towards any adjacent properties.

The existing Field #2 has lighting for the ball field. No known complaints are on record concerning the existing lights of the Optimist Park. The new softball field to be located along the west side of the park is located approximately 280 feet from the nearest residential property to the northwest along Garden Way. This apartment building appears to be adequately screened from the proposed softball field by dense, mature trees along Wildcat Creek. The residential properties closest to the new, east softball field are approximately 300 feet. The distance from the existing softball field to these residential properties is approximately 180 feet. The proposed lighting for the infield and outfield of both softball fields match the standards for lighting used for the recreational facilities at Griffith Park at the corner of Fort Riley Boulevard and S. Manhattan Avenue. These field lights were upgraded in 2007/2008. Because existing Field #2 has lighting for the playing field and of the distance of the new softball fields to the adjacent residential neighborhood is over 280 feet, the proposed lighting softball fields should not adversely impact adjacent properties.

The proposed improvements should not adversely impact that adjacent industrial uses to the south and west. Many of these businesses are closed after 5:00 pm and are not open on the weekends, which are typically the days of the week and hours when the softball fields and tee-ball fields are being used for practice or games.

The proposed development does require a significant amount of fill and grading to bring portions of the property out of the floodplain to a point high enough to protect the fields from future flooding. Approximately seventeen (17) to nineteen (19) vertical feet of fill is proposed to be added in areas on the northwest and east side of the park. The proposed placement of fill for the four (4) phases of the park has been approved by the Division of Water Resources, Kansas Department of Agriculture (Approval of Application No. LRL-0081-FF, approved February 25, 2009). The proposed softball and tee-ball fields should not adversely impact adjacent properties.

C. Domination by use over neighboring properties:



Location, nature, and height of physical improvements: The subject site is Lots 5, 6 and 7, Westside Industrial Park Addition, Unit 2, part of Lot 4, Westside Industrial Park Addition, Unit 2, and Lot 4, Amherst Industrial Park Addition. The area is 18.77 acres (817,827 square feet). The applicant has proposed to construct two new regulation softball fields and a tee-ball field to replace the existing ball fields and construct a 90 foot by 110 foot indoor athletic practice facility for the Optimist Clubs' youth softball and wrestling programs. Each softball field will be with lit by four (4) banks of lights on forty (40) foot tall poles. The infield lights will produce 30 foot candles of light. The outfield lights will produce 20 foot candles of light. The fields will have accessory fences, dugouts, scoreboards and bleachers. No building designs or floor plans have been presented at this time for the indoor athletic practice facility.

1. The proposed building and the softball fields and tee-ball field fields are adequately setback from the front, side and rear property lines.
2. The proposed softball and tee-ball fields will replace existing ball fields at the Optimist Park. These fields have been used by the Optimist Foundation for their sports programs since 1986 with no record of complaints. The proposed building and the use will not dominate the surrounding industrial uses.

Landscaping and screening: No specific landscaping plan has been proposed. The outfields of the ball fields will be grass and the areas to be filled and graded will be seeded with grass. Chain link fences will surround each ball field and be used as the backstop for each ball field. These fences will not be used for screening purposes, but rather to designate the playing field and protect spectators from softballs.

1. The I-2, Industrial Park District, requires a landscape area of twenty (20) feet installed on all sides abutting a street. The south parking lot associated with the indoor athletic practice facility requires screening at a minimum of a four (4) foot tall earth berm and densely planted evergreen vegetation to conform to the I-2 District. One (1) tree of a minimum two and one-half (2 ½) caliper in size is also required in the landscape area to conform to the use limitation of the district. The required landscape area and screening shall be installed and maintained when the proposed building is constructed.
- D. Adequate provision of parking and loading: The existing configuration of the Optimist Park has approximately 70 off-street parking spaces on a gravel surface. An Exception to allow for the gravel parking and driveway for up to two (2) years has been requested. The proposed site plan for the Optimist Park shows 89 off-street parking spaces in four (4) different parking lots (23 spaces surrounding the indoor practice facility, 20 spaces north of the new tee-ball field and 20 spaces north of the new softball fields proposed in phase four and 26 spaces to the west of the phase four softball field). The parking lots will be accessed from two (2) curb cuts from the bulb of the Plymate Lane cul-de-sac. The driveway and parking spaces will be paved. The 90 X 110 foot indoor practice facility is required to have sixty-six (66) off-street parking spaces based on the requirement for Auditoriums, gymnasiums and other

places of assembly without fixed seats (Section 7-103(C)(10) At least one (1) parking space for each three (3) persons based upon the designated capacity).

The City of Manhattan Zoning Regulations does not specifically address parking requirements for baseball, softball and tee-ball fields. In researching this topic, cities across the country use different numbers of required off-street parking spaces for the recreational uses. Based on the research, City Administration has determined a reasonable requirement is that each field to provide eighteen (18) spaces (2 parking spaces for each position on the field) is appropriate. The three (3) proposed ball fields are required to have fifty-four (54) off-street parking spaces.

It is unlikely that the indoor practice facility (batting cages, pitching mounds and wrestling practice areas) and the softball and tee-ball fields will be used at the same time. When the weather is not appropriate to play on the ball fields, the indoor practice facility will be used. Likewise, when the weather permits the ball fields to be used, the indoor athletic practice facility will not be used. Because of the characteristics of the two (2) recreational uses, City Administration has determined that a reasonable parking requirement for the facilities is to share the proposed 89 off-street parking spaces. The proposed parking lots and number of parking spaces are adequate for the proposed ball fields and indoor athletic practice facility.

Two (2) of the four (4) parking lots are in the mapped floodplain. Parking is permitted in these areas, provided that vehicles or trailers can be moved out of the flood area before the flood waters rise to a level that could impact the parked vehicles or trailers. The concern is that the flood waters could damage the vehicles and/or trailers or the contents in them, or worse, sweep the vehicles downstream, which would most likely worsen the flooding by blocking stormwater structures or cause damage to property downstream. Because the park is not monitored on a continual basis, City Administration recommends a condition of approval to limit the use of the parking lots in the floodplain to no overnight parking or long term storage of trailers or other equipment.

- E. Adequate provision of drainage, and other public utilities: Parts of the site are in the Floodway District and Floodway Fringe District, which controls the type of development in these overlay districts to minimize the damage caused by a flooding event to the site, adjacent properties and properties upstream and downstream from the site. The existing softball fields experience damage to the ball fields and fences during flooding from Wildcat Creek, which has prompted the new park layout. The proposed softball and tee-ball fields will be in the Floodplain Fringe District. Fill can be added to the Floodway Fringe District, provided that the Division of Water Resources issued a Floodplain Development Permit. The proposed improvements requires approximately seventeen (17) to nineteen (19) feet of vertical fill in areas of the site to make the land level and useable for the softball and tee-ball fields. The proposed fill will have a side slope of 1 vertical foot to 3 horizontal feet and will be seeded with fescue grass to protect the fill from erosion. The proposed development received a Floodplain Fill permit from the Division of Water Resources on February

25, 2009 for the four (4) phases (Approval of Application No. LRL-0081-FF). A local Floodplain Development Permit has been approved by the City. Adequate provision of drainage is provided for the proposed development. Public utilities are adequate to serve the site.

- F. Adequate provision of access: The Park has access from an existing curb cut on the bulb of the Plymate Lane cul-de-sac. The proposed site plan will have two curb cuts off of the cul-de-sac to access the two parking areas. The access will be adequate for the proposed uses at the Optimist Park.

Hamilton moved to approve a Conditional Use to allow for a Health and Fitness Club which consists of three (3) softball fields and an indoor multi-use athletic practice facility associated with the Optimist Park at 317 Plymate Lane in the I-2, Industrial Park District with the following conditions of approval:

1. The Conditional Use shall be limited to the proposed two (2) softball fields, a tee-ball field and the indoor athletic practice facility as outlined in the site plan and application documents.
2. All necessary building permits shall be obtained.
3. The park shall be maintained in good condition.
4. An amendment to the Conditional Use shall be required if the size, orientation or use of the proposed 90 foot by 110 foot building changes.
5. The proposed field lights shall be downcast with full cutoff design, with pole length no greater than forty (40) feet.
6. All four (4) phases of the proposed development shall be completed by April 1, 2012. An amendment to the Conditional Use shall be issued for any phase not completed by April 1, 2012 prior to the beginning of construction of that phase.
7. Off-street parking areas in the mapped floodplain area shall be restrict to no overnight parking or long-term storage of vehicles, trailers or equipment.
8. The property shall to conform to the Manhattan Urban Area Subdivision Regulations.
9. All efforts should be made to preserve existing landscaping that is not inconsistent with the proposed plan.
10. Any amplified sound will have speakers directed away from all residential areas.
11. All activities will cease no later than 10:00pm.

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

The Board made the following findings of fact for the Exception at 317 Plymate Lane:

- A. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The Optimist Park was created when the land was donated to the Manhattan Optimist Foundation in 1986. The City of Manhattan's Zoning Regulation at that time (Ordinance No. 3790) did not permit parks and playgrounds nor have health and fitness clubs as a Conditional Use in the I-2, Industrial Park District. The current Optimist Park is a nonconforming use. The Conditional Use request for the proposed ball fields and indoor athletic practice facility will bring the property into conformance with the current Zoning Regulations.

In January, 2009, the Manhattan Optimist Foundation acquired a 2,395 square foot

piece of Lot 4, Westside Industrial Park, Unit 2 Addition. This acquisition of land was done by a lot split by deed and not a Final Plat. The Manhattan Urban Area Subdivision Regulations state in Article I, General Provisions, Part 5, Applicability: I-501 Subdivision of land shall be made in accordance with these Regulations, and shall require a plat or replat (whichever is applicable) to be made in accordance with these Regulations, unless otherwise exempted by Part 6, below, whenever the owner(s) of any land within the jurisdiction of these Regulations desires to:

1. Divide, or further divide, land into two or more lots or parcels; or,
2. Otherwise alter the boundaries of lots or parcels of land.

The property shall be replatted to comply with the Manhattan Subdivision Regulations.

The original site plan showed the proposed building encroaching into the twenty (20) foot side yard setback. The softball field associated with phase four was located in thirty-five (35) foot front yard setback of the Plymate Lane cul-de-sac. The revised site plan has moved the building so that it is twenty-three (23) feet from the side property line to remove it from the setback. The revised site plan also shows the phase four ball field thirty-five (35) feet from the front property line along Plymate Lane. The revised site plan brings these two structures into conformance with the Zoning Regulations. Other than these issues, the property complies with the applicable regulations.

- B. PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties to the south and west are zoned I-2, Industrial Park District. To the north and east of the subject site, properties are zoned R, Single-Family Residential District and R-2, Two-Family Residential District. The current Zoning map is in error by showing the R, Single-Family Residential District, on the subject site. When the area, including the subject site, was annexed into the City, the area was zoned for industrial uses south of the center line of Wildcat Creek. To the north of Wildcat Creek, the property was zoned for residential uses. The property within the I-2 District consists of light manufacturing and storage uses. The area in the R District is vacant land located along Wildcat Creek and vacant land associated with the former Riley County shops. The properties within the R-2 District are single-family detached and single-family attached dwellings.

The Parking Regulations requires off-street parking and driveway and aisles to be paved surfaces to control dust, prevent soil erosion and to allow buildings and facilities to be more handicapped accessible. The Optimist Park has been in existence since 1986. The single-family attached and single-family detached dwellings closest to the existing playing fields were built in the late 1980's and early 1990's. The apartments along Garden Way were built in the mid-1960. Other single-family homes to the east of the Optimist Foundation property were built in the 1940's, 1950's and 1960's. The parking lot is over 500 feet from the nearest residential property. The industrial uses to the southwest do not appear to be affected by dust that may be created by the gravel

parking lot. The existing parking lot is made of crushed limestone and has been properly compacted and maintained to reduce the amount of soil erosion that may affect Wildcat Creek and properties downstream. Allowing the existing parking lot to remain as an gravel surface for up to two (2) years while the Optimist Park is being reconstructed to include three (3) new playing fields, a indoor athletic practice facility and new paved parking lots should not adversely affect adjacent properties.

C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Exception for the existing gravel parking lot is not anticipated to have a negative impact on the public health, safety or welfare. The parking lot has had a gravel surface since the park was first created in 1986 with no adverse impacts on the public. Allowing the Exception will allow the Optimist Park to serve the softball and tee-ball teams while the new playing fields and indoor practice facility is being built.

D. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: Considering that the third and fourth phases are conceptual in nature and are dependent on volunteer efforts and future donations, the strict application of the regulation would require that the proposed parking lots be constructed and the gravel parking area not be used at the completion of construction phase of the west softball field and the tee-ball field or the existing parking lot be paved once the west softball field and new tee-ball field are completed. The existing softball and tee-ball fields are proposed to be used while the new fields are being constructed. Depending on the timing of the construction of new playing field and parking lots and its coinciding with the playing season of the softball program; requiring the new parking lots be constructed as proposed would eliminate the use of the existing north softball field (Field #1) and the tee-ball field (Field #3). Requiring the existing parking lot to be paved once phases one and two are complete would force the Optimist Foundation to remove the paved parking lot to construct the final phase of the Park renovation. Although an exact timeline is not determined, the application documents state that the goal is to begin construction in 2011. Considering these circumstances and the fact that the gravel parking lot has been in existence since 1986, the proposed Exception to allow the gravel parking lot to remain for two (2) years is unreasonable.

Hamilton moved to approve an EXCEPTION to allow for a temporary driveway and parking lot associated with the Optimist Club Ballpark to remain as a gravel surface for a period of two (2) years.

1. The Exception to allow the gravel off-street parking and driving aisles shall only be for the existing parking lot as shows on the site plan.
2. The gravel off-street parking and driving aisles shall conform to the requirements of Article VII, Off-Street Parking and Loading within two years of the date of approval of the Exception.
3. The gravel off-street parking and driving aisles shall be maintained in good condition to control for dust.

4. The property shall conform to the Manhattan Urban Area Subdivision Regulations.
5. The Exception shall be limited to what is shown on the revised site plan as dated March 15<sup>th</sup> 2009.

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

*Ricci Dillon excused herself from the meeting, citing prior commitment.*

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A REDUCTION OF THE MINIMUM REAR YARD SETBACK ALONG THE ALLEY NORTH OF FAIRVIEW AVENUE FROM TEN (10) FEET TO ZERO (0) FEET FOR AN EXISTING DETACHED GARAGE AND THE ADDITION OF A CAR PORT AT 1736 FAIRVIEW AVENUE, LOCATED IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH A TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (OWNER: DON AND ARTYCE HEDRICK AGENT: STANLEY J. KOEHN).**

Watts presented staff report and recommended approval with three conditions.

Hardy opened Public Hearing.

Don Hedrick, the applicant, presented additional details to the request. Also expressed how they tried to address the issue of parking while trying to work within the zoning constraints. Hedrick also noted that his intentions were to add to the neighborhood's aesthetics, not detract from it.

Hardy thanked the applicant for trying to remain with the zoning constraints and closed the Public Hearing.

Hamilton stated that the proposal was consistent with previous garage projects and she could support it.

Wigfall expressed her appreciation for the aesthetics and stated she could also support the request.

The Board made the following findings of fact for the Exception at 1736 Fairview Avenue:

- A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property is currently in compliance with all applicable regulations other than for which the Exception is being requested. The existing garage is a legal nonconforming structure because it met all zoning requirements when it was built in 1924. Modifying or adding to the legally nonconforming structure requires the proposed Exception.
- B. PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay District. To the east along N. 17<sup>th</sup> Street, there are properties that are zoned R-1/TNO/UO, Single-Family Residential District with a Traditional Neighborhood Overlay District and University Overlay District. The owners feel that by being able to modify the existing structure to address the parking issue, they will have less negative impact on the visual quality of the neighborhood as compared to using gravel as a parking pad. The proposed removal and expansion of

the garage and addition of the carport should not impact neighbors to the north of alley since the structure will not be moving any further north and the carport will not be seen from the alley because the garage will act as a visual barrier.

The impact of the proposed project should have minimal impact on both neighbors to the east and west of the subject property. Both neighbors to the east and west are separated from the subject property by wood privacy fences.

C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed modification of the existing garage and addition of a car port are not located within any utility easement. The proposed modification to the existing garage would reduce conflicts with vehicular traffic along the alley. By providing better access to the garage by moving the entrance seven (7) feet to the east, a better line of sight is created by allowing the driver to pull out of the garage more parallel to the alley before entering the alley, thus reducing possible collisions with vehicle traveling in the public alley when compared to backing directly into the alley. This garage and driveway design will result in a safer driving environment in the alley. Approval of the setback reduction is not anticipated to have an adverse effect on the health, safety, and general welfare of the community.

D. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the rear yard building setback would not allow the applicant to modify the existing garage as proposed. No additions, enlargement, or remodeling can occur to the legally nonconforming structure unless the structure conforms to all applicable Zoning Regulations. The applicants have stated that they currently cannot utilize their existing garage because "...of the garage's position in the middle of the lot and its small opening [along] the side, it is extremely difficult to maneuver even a small car into it..." If they were to follow the strict application of the rear yard setback, the applicants would be required to place the new garage and carport ten (10) feet off the rear property line, leaving only an approximate twenty (20) foot strip of useable rear yard. The applicants also stated that they have "...resisted turning their rear yard bordering the alley into gravel like most of the other backyards along the alley because they feel it is an eyesore..." Considering that the proposed modification of the garage and addition of a carport should not adversely affect the adjacent properties, that the existing garage is already located within the ten (10) foot building setback and it would improve traffic safety along the alley, strictly applying the regulation would be unreasonable for this situation.

Wigfall moved to approve an Exception to allow for a reduction of the minimum rear yard setback along the alley north of Fairview Avenue from ten (10) feet to zero (0) feet for the expansion of an existing detached garage and the addition of a car port at 1736 Fairview Avenue, located in the R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay District with the following conditions of approval:

1. The Exception shall apply only to the proposed expansion of the existing detached garage as outlined in the application documents and shown on the site plan.
2. The detached garage shall be constructed according to the proposed site plan.
3. All applicable permits shall be obtained prior to construction of the garage and carport.

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

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A REDUCTION IN THE FRONT YARD SETBACK FOR PERMITTED STRUCTURES IN REQUIRED YARDS FROM FIFTEEN (15) TO NINE (9) FEET FOR A PROPOSED ACCESS RAMP IN THE FRONT YARD ALONG S. 12<sup>TH</sup> STREET IN THE R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT WITH A TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: BILLY JOE PEOPLES).**

Antonini presented the staff report and recommended approval with three conditions.

Hardy opened Public Hearing.

Scott Cronin, the City's Housing Rehab Inspector and representative for the applicant, was at the meeting to entertain any questions the Board may have had.

Hardy closed the Public Hearing and opened for Board discussion.

Hamilton stated that she appreciated the work Scott Cronin did to make this possible.

Aistrup commended the city for having the HOME program and stated he could support the request.

Hamilton stated that similar requests have been brought before the Board in the past. Hardy expressed his appreciation that the staff report examined different alternatives.

The Board made the following findings of fact for the Exception at 1209 Yuma Street:

- A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all existing regulations, except that for which the Exception is requested.
- B. PROBABLE EFFECT ON ADJACENT PROPERTIES: The proposed access ramp is not anticipated to have any negative affects on adjacent properties. The degree of encroachment into the front yard setback should be very minor, because the ramp will only be sixteen (16) inches high at its tallest point, excluding handrails. S. 12<sup>th</sup> Street dead-ends less than one (1) block south of the subject site.



Properties north of the subject site are zoned R-2/TNO, Two-Family Residential District with a Traditional Neighborhood Overlay and PUD, Planned Residential Development. These properties consist of a mix of single-family homes and an apartment complex. Properties to the east, south, and west of the subject site are zoned R-2/TNO, Two-Family Residential District with a Traditional Neighborhood Overlay, and consist of a mix of single-family homes and duplexes.

Though none of the surrounding properties have ramps similar to what is proposed for the subject site, several have covered front porches built of similar materials to what is proposed for the ramp, and the ramp should thus not be perceived as out of character for the neighborhood. In older residential areas of the community with similar architectural character to the neighborhood of the subject site, the proposed ramp configuration is not uncommon.

- C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed ramp would not encroach upon any public easement or right of way, and is out of the vision clearance triangle at the corner of S. 12<sup>th</sup> Street and Yuma.
- D. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The proposed access ramp's six (6) feet of encroachment into the front yard setback is relatively minor, especially when the ramp's short height, relative transparency, and location near the terminus of S. 12<sup>th</sup> Street are taken into consideration.

The strict application of Zoning Regulations would not allow any type of access ramp to be constructed that would connect the applicant's front door to his carport. Manhattan Zoning Regulations do not allow permitted structures in required yards to be located closer than fifteen (15) feet to the front property line, and the existing house is located fourteen (14) feet from the front property line, in compliance with the Traditional Neighborhood Overlay District. The Traditional Neighborhood Overlay District's close front yard setback does not take into consideration and in many cases does not allow for the construction of accessibility ramps.

According to the applicant's agent, the proposed ramp is designed to give users direct access to the driveway by utilizing existing sidewalks along the east side of the property that currently lead from the front porch to the carport. The only other possible location for the proposed access ramp would be in the applicant's side yard along the western property line, connecting to a side door. Currently, both entrances to the existing house in the subject site are accessible only by steps. In order to locate an access ramp along the western façade of the house, an existing air conditioning unit and associated concrete pad and plumbing would have to be relocated and a sidewalk would have to be constructed. There is also an existing chain-link fence separating the applicant's property from his neighbor to the west that according to the applicant's agent is two (2) feet inside Mr. People's property, along the western property line,

which means that there would be very limited space to construct an access ramp at that location. In order to comply with the regulations for permitted structures in side yards, the ramp could only be four (4) feet wide at it's widest. This would not allow it to comply with the ADA minimum standard width of five (5) feet for turning.

The ramp's encroachment into the setback should be relatively minor, especially when the site's location and the utility Mr. Peoples would gain from its installation are taken into consideration. That, coupled with the fact that there are no reasonable alternative locations for an access ramp on the subject site make the strict enforcement of the regulations unnecessary and unreasonable.

Hamilton moved to approve an Exception to reduce the front yard setback for permitted structures in required front yards from fifteen (15) feet to nine (9) feet for a proposed access ramp in the R-2/TNO, Two-Family Residential Zoning District with a Traditional Neighborhood Overlay at 1201 Yuma Street with the following conditions:

1. The proposed ramp is constructed as shown on the application documents.
2. The ramp is maintained in good condition.
3. The Exception shall apply only to the access ramp as shown on the site plan and in the application documents.

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

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO NOT PROVIDE SITE OBSCURING SCREENING OF NOT LESS THAN SIX (6) FEET IN HEIGHT FOR PURPOSES OF SCREENING OUTSIDE STORAGE FOR THE PROPERTY ASSOCIATED WITH A RENTAL CENTER LOCATED IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: WATERS, INC. – JIM WATERS).**

Bunger presented the staff report and recommended approval to not provide site obscuring screening along the northerly, westerly and southerly property lines with 5 conditions.

Hardy opens the Public Hearing.

Jim Waters, the applicant, described the previous Variance he has requested. He also commented that he disagreed with City Staff regarding screening along the linear trail. Water told the Board that he had his property surveyed and his understanding is that the linear trail is dissected by his property line. He also stated that he constructed his fence further back on his property as to not disturb the linear trail. He expressed to the Board that if he was required to screen the eastern side of his property, he would install plastic slats. Waters asked the Board to consider whether plastic slats are for the public good. He also commented that the industrial uses located on the east side of the trail do not have any screening. Waters asked the

board to strike the condition that would make him screen his property located along the linear trail.

Aistrup asked the applicant if he had looked into placing landscaping between his fence and the trail to provide natural screening.

Waters replied that there was not a sufficient amount of room between the fence and the trail to add landscaping.

Hardy closed the Public Hearing and opened Board discussion.

Hamilton stated that she did not want to see plastic slats placed along the fence out of concern for the impact it might have on the linear trail.

Aistrup stated that the plastic slats could detract from the aesthetics.

Hamilton spoke to the previous Variance on the site and stated that if the fence were to stay, she could support not screening the fence since Waters accommodated the linear trail.

Hardy discussed the current proposal in relation to a previous request for the subject site, noting that the property is in better condition now than it was before.

Hamilton essentially concurred with Hardy's statement and went on to say that she appreciated staff's findings that the materials being stored behind the building are different in this request than the previous request. Hamilton expressed that she felt the fence alone provided enough separation between the property and linear trail. She stated she was persuaded not to require the applicant to screen the eastern part of his property given his accommodation for the linear trail.

Aistrup stated that he concurred with all of the reasons stated above.

Hamilton proposed a modification to Staff Findings. Stating that in the third paragraph under "Relationship to Intent of Regulations", she would like the last line to be modified to the following, "The use of the ware to the rear of the building as an outdoor storage area for various items does not meet the intent, but the applicant has extended accommodation for the linear trail by placing his fence further back on his property to allow the linear trail to exist."

Bunger expressed to the Board that he would need the modifications word-for-word. He went on to state that the City has received no proof for or against the fact of where the linear trail is located in relation to his property line or if it is located in an easement. Bunger asked the Board if accommodating the linear trail supersedes visual screening the storage of equipment and again stated that he would need their rationale word-for-word.

Hamilton stated that she would reconsider how to modify the findings given Bunger's explanation on the ownership situation of the linear trail.

This part of the linear trail is bordered by industrial uses without screening and the applicant by the existing fence has provided more screening [than other properties].  
Bunger provided clarification that the I-2 District does require screening.

The Board stated that no screening is provided in the subject area.

Bunger responds that there is no outdoor storage that requires screening.

Hamilton asked for clarification on what is required to be screened.

Bunger responds that C-5 requires any outdoor storage or display of equipment, other than sale lots for boats or motor vehicles, to be screened regardless of the Linear Trail. He further clarifies that the presence of outdoor storage requires screening.

Hardy stated that Waters could conceivably store boats or motor vehicles in the rear of their property without having to provide screening.

Bunger responded that this was correct.

Bunger showed pictures of the property, more specifically the equipment stored in the rear of the property.

Hardy stated that Bunger did make valid points, but further explained that he did not want to force the applicant to screen the rear property line along the Linear Trail, because the result would be plastic slats.

Aistrup proposed the following modification to Staff Findings, "Use of the area to the rear of the building as an outdoor storage area for various items, does not meet the intent, however, in this case, the Board simply does not feel it is justified given the unique location of the site."

Hamilton agreed with Aistrup's modification to the Findings of Fact.

Bunger clarified with the Board the modifications to the Findings of Fact, "The use of the area to the rear of the building as an outdoor storage area for various items, does not meet the intent, however, in this case, given the unique location of the property, the Board feels that the required screening is unwarranted."

Hardy agreed with Bunger's summarization of the Board's opinion.

Hamilton asked staff the rationale behind requiring screening.

Bunger responds that it is an aesthetic requirement to conceal storage equipment. He further explained the requirements of the C-5 Zoning District.

Hamilton further asked for clarification as to what or whom the storage was to be screened from.

Bunger replied that it was to be screened from the public, adjacent properties, public right-of-way.

Hardy suggested further modifications to the Findings of Fact and proposed deleting Conditions #1 and #2.

Hamilton and Bunger both responded that Condition #1 would need to be modified.

Bunger provided a suggestion for how to word the first Condition, “The Variance to not provide sight obscuring screening shall apply as outlined in the application documents and shown on the site plan.”

Hardy expressed his approval of the suggestion and again stated that Condition #2 would be omitted. Hardy also stated that Condition #4 would need to be modified.

Bunger responded that Condition #4 would need to be omitted entirely if the Board’s Finding was to not provide screening for the rear storage area.

Hamilton suggested expanding Condition #5 to include the word “storage” so that there would be some mechanism for ensuring it maintains in good condition.

The Board made the following findings of fact for the Variance at 338 Seth Child Road:

- A. **CONDITIONS UNIQUE TO THE PROPERTY:** The unique condition to the property which would prevent the installation of sight obscuring screening of the outdoor display and storage area on the site is the elevation change and slope between the road surface of Seth Child Road and the site. The Seth Child Road surface is approximately sixteen feet higher in elevation than the outdoor storage and display area of the site. North bound traffic in the east lane has an unobstructed view of the entire site. No viable option could be created where the outdoor display and storage area as it exists could be screened. The site is also located within a service commercial district and is surrounded by similar types of automotive sales, and service type operations.
- B. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The site and properties to the south along the Seth Child Road Frontage Road are zoned C-5, Highway Service Commercial District. The uses in this area include a vacant lot associated with Water’s Rental where moving trucks and box trucks are parked, Midas automotive repair shop, and the Little Apple Toyota and Honda dealership automotive sales lot and repair shop. Directly to the east is property zoned I-2, Industrial Park District. The Linear Park trail is located to the east of the site and runs the length of the east property line. Further to the east of the site is a heavily wooded, vacant lot with a large portion of the property in the 100 year flood plain. Other developments in the I-2 District to the east include storage units and multi-tenant buildings used for industrial uses. To the north of the site are vacant tracts of land zoned C-5, I-2 and PUD, Planned Unit Development. The vacant tract zoned C-5 is part of the Seth Child Road right-of-way (ROW). Linear

Park Trail extends to the northwest in the ROW. The vacant tract zoned PUD, is part of the Garden Way Residential PUD and is entirely in the Wildcat Creek Floodway and 100 Year Floodplain. To the west are properties zoned Residential PUD. Seth Child Road, a four-lane arterial road with approximately 250 foot wide ROW is directly to the west. Further to the west is a steep hill side with dense trees.

Minimal adverse affects to adjacent properties to the south, west and north are anticipated by approving the Variance. The rental of compact construction equipment and do-it-yourself yard and home improvement equipment is generally in character with the surrounding properties due to the Little Apple Toyota and Honda dealership and the Midas automotive repair shop along Seth Child Frontage. To the west and north are the Seth Child Road ROW, the steep hill side, and vacant land in the Floodway and 100-Year Floodplain.

There is concern that not providing sight obscuring screening along the east property line may adversely affect the users of the Linear Park Trail. The trail is heavily used by walkers, runners and bike riders throughout the year. The area of the site adjacent to the trail is behind the commercial and warehouse buildings and appears to be storage of equipment and not intended for display of the various types of equipment to rent. The original Variance to not provide sight obscuring screening along the northern edge of the property was primarily based on the fact that live plant stock and trees for sale would be located in the northeast corner of the property. Because of this plan, it was determined that the Linear Park Trail would be adequately screened. No such plan is present with the current use of the property. Sight obscuring screening of not less than six (6) feet in height should be installed along this property line to conceal the storage of equipment behind the buildings and preserve the view of the Linear Park Trail.

- C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The unique condition of the property creates the unnecessary hardship to screen the site for two (2) of the four (4) property lines. Although sight obscuring slats could be installed in the existing chain link fence, because of the elevation change to Seth Child Road, it would be unreasonable.

The applicants also state that requiring sight obscuring screening “is too restrictive for the project – sales lots for boats and motor vehicles are already exempt from this requirement.” The applicant currently has a chain link fence around the perimeter of the property area to enclose the equipment for security purposes but has proposed to not provide the sight obscuring screening

- D. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The display area does not encroach into any utility easements or negatively affect the public rights-of-way. Not providing the sight obscuring screening is not anticipated to have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

- E. RELATIONSHIP TO INTENT OF REGULATIONS: The C-5, Highway Service

Commercial District provides for businesses offering accommodations, supplies, or services to motorists, and for certain specialized activities which require access to major streets and highways. Construction equipment sales and rental, not including heavy equipment types such as bulldozers and cranes are permitted uses within the C-5, Highway Service Commercial District. The use limitation of the C-5, District however requires any outdoor storage or display of items not classified as boats or motor vehicles to be enclosed with sight obscuring screening, therefore the trailers and other equipment displayed for rent that does not meet the definition of motor vehicle would have to be screened.

The compact construction and do-it-yourself equipment currently located in front of the buildings on the site for rent includes skid loaders, backhoes, trenchers, aerial equipment, seeders, aerators and tree chips and large accessories to these pieces of equipment, such as attachments to the skid loaders and backhoes. These pieces of equipment appear to be displayed in an orderly fashion similar to that of a sales lot for motor vehicles or boats. Other equipment such as scaffolding along with storage of other equipment and materials are located at the rear of the building along the property line adjoining Linear Park Trail. This area appears to be used as more of a storage area, rather than for outdoor display. To not require screening for the entire site could allow any number of items associated with the rental equipment and the general business to be stored outside, which could potentially have an adverse affect on the surrounding neighborhood.

Considering the unique condition of the site and the equipment in the front of the buildings are being displayed similarly to that of a sales lot for motor vehicles or boat, it appears that the intent of the C-5 District, Use Limitation regulation is met for the north, west and south property line. The use of the area to the rear of the building as an outdoor storage area for various items, does not meet the intent, however, in this case, given the unique location of the property, the Board feels that the required screening is unwarranted.

Aistrup made a motion to approve a Variance not provide site obscuring screening of not less than six (6) feet in height for purposes of screening outside storage along the northerly, westerly, easterly and southerly property lines for the property associated with the Waters Rental business at 338 Seth Child Road in the C-5, Highway Service Commercial District, with the following modified conditions of approval:

1. The Variance to not provide sight obscuring screening shall apply to the property as outlined in the application documents and shown on the site plan
2. Screening of not less than six (6) feet in height shall continue to be provided for the existing propane and fuels tanks.
3. The outdoor display and storage of the compact construction, do-it-yourself home improvement, and other equipment and attachments shall be maintained in good condition.

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

**ELECTION OF BOARD VICE-CHAIRPERSON**

Respectfully Submitted,  
Stephanie Watts and Anne Antonini, Planning Interns

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