

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, July 8, 2009
7:00 PM

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

MEMBERS ABSENT: Ricci Dillon

STAFF PRESENT: Chad Bunger, Planner; Stephanie Watts, Intern; Rob Ott

CONSIDER THE MINUTES OF THE JUNE 10, 2009, MEETING

Aistrup moved to approve the minutes of the June 10, 2009, Board of Zoning Appeals meeting which was seconded by Hamilton and passed with a vote of 4-0.

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A GROUP DAY CARE CENTER AT 1500 HUDSON AVENUE IN A R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: THOMPSON CONSTRUCTION, INC. – TODD THOMPSON).

Hamilton moved to remove the item from the Table.

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

Chad Bunger presented an updated staff report and recommended approval of the Conditional Use with nine (9) conditions.

Hardy asked Bunger to address drainage on the site.

Bunger provided details regarding the drainage plan.

Rob Ott addressed the general issue of stormwater in the Manhattan community. He described the stormwater requirements of the City, explaining that the general rule is that the amount of runoff on a property post-development must be less than or equal to its pre-development runoff.

Aistrup asked Ott if he had any data regarding the safety of retention basins.

Ott explained that the proposed retention basin would four (4) feet deep and described how retention basins work. He explained that all runoff from a 100-year storm into the proposed basin would have a detention time of just 43 minutes. This means that the vast majority of the time, the basin would be dry and pose no drowning or other safety risk.

Hamilton clarified that the proposed retention basin would not have standing water for more than 45 minutes.

Ott stated that this is correct and that it would function as a dry basin.

Hamilton asked how retention basins are monitored to ensure they are performing properly.

Ott explained the tools the City has available to enforce proper maintenance of retention basins, including restrictive covenants.

Hamilton asked Ott whether a restrictive covenant could be developed for the proposed retention basin on subject property, and at what point in the development process that would occur.

Ott responded that it would be applied during the platting process.

Bunger provided further clarification regarding how the restrictive covenant would function and when it would be applied to a property.

Ott explained that the restrictive covenant would be on the plat, filed at the Register of Deeds and that it would run with the property.

Hamilton asked how the proposed driveway differs from the driveway in the original proposal.

Bunger responded that the proposed driveway has shifted very slightly along Hudson Street, but that it had always been in compliance with the City's requirements.

Hamilton explained that the rationale behind her question was that the applicant addressed a majority of the concerns of the Board and public, yet did not address the location of the driveway in relation to the crosswalk.

Ott responded to this by describing the MATS requirements which have been adopted by ordinance. Ott further described the issues present on this site that created challenges for locating a driveway.

Hamilton asked Ott whether two driveways would be allowed if the site was developed as two residential lots.

Ott stated that all properties must be allowed direct access to streets, even in situations where there is nowhere to place a driveway that would be in compliance with MATS.

Hamilton stated that when the Board is reviewing applications for Conditional Use Permits, they are not only looking at how they meet the City's requirements, but also their potential impact on the surrounding neighborhood.

Ott stated that the proposed site plan is in compliance with the MATS.

Hamilton asked if the City's requirements address location or distance of curb cuts/driveways from crosswalks.

Ott stated that after researching this, the distance most common was 20 feet.

Hamilton asked if this distance was measured from the center or the edge of the crosswalk.

Ott stated it was measured from the edge of the crosswalk.

Hamilton asked City Administration what the distance would be from the edge of the proposed driveway to the crosswalk.

Bunger stated the distance would be 34 feet.

Hamilton asked staff if there could be a condition requiring the property to have a restrictive covenant.

Bunger stated that the Planning Board and Public Works Department would require a restrictive covenant, but the Board could still place it has a condition.

Hamilton asked why staff did not add a condition stating that the applicant should make every effort to maintain the natural screening already on the site.

Bunger stated that crafting and enforcing a condition to require the applicant to maintain all trees possible would be difficult.

Hamilton asked if approval of the landscape plan address retaining the existing vegetation.

Wigfall stated that it has been done before.

Bunger stated that he could not find a way to say what trees should remain and which ones should be removed.

Hardy stated that conditions should be enforceable.

Bunger agreed and added that conditions should also be specific.

Wigfall suggested looking at which trees should stay based on their function as screening.

Hamilton stated that the City ultimately could review the landscape plan and determine if the overall goal of maintaining the maximum number of trees has been met. Hamilton asked staff if the City has a procedure to do this.

Bunger stated that the City Forester could provide some assistance.

Wigfall stated that the occupancy permit could be withheld until the applicant had satisfied the landscaping requirements.

Bunger stated that a tree preservation plan could be implemented, but would not have as strong an enforcement mechanism as it would under the Planning Board.

Hardy opened the public hearing and invited the applicant to speak. He asked that all comments address the revised site plan and not to repeat anything that had already been said when the previous site plan for this item was discussed at the Board's May meeting.

Applicant Todd Thompson explained how the modified site plan addressed the concerns expressed by the Board and the neighborhood at the May hearing.

Jennifer Olsen, administrator of the proposed day care center, stated she would be happy to address any questions the Board may have.

Thompson added that they had already received phone calls from people in need of child care.

Aistrup asked Thompson if he would be agreeable to a condition addressing the Board's concerns about screening and preserving or replacing the existing vegetation at the subject site

Thomson stated that he had not yet assessed the current vegetation on the subject site. He stated that he would agree to leave as many trees as possible, provided that the trees were in good condition.

Wigfall expressed concerns about pedestrian access to the proposed day care center, noting that because the proposed site plan does not show a walkway from the sidewalk to the front of the building, anyone walking to the daycare would have to enter the site from the driveway.

Thompson stated that the modified site plan had the location of the improvements reversed from where they had been in the previous site plan, and that the new location of the retention pond prevented a walkway from being located between the front of the building and the existing sidewalk.

Wigfall asked the applicant if they expected any of their clients to walk to the daycare rather than drive.

Thompson stated that the retention basin could be redesigned to allow for a sidewalk leading from the front door to the sidewalk.

Melinda Daniels, 3509 Minton Landing, expressed concerns about the scale of the proposed building, the potential impact of the day care use on surrounding property values, the lack of vegetation and screening shown on the site plan, and parking and circulation. She contended that the proposed development would dominate over the neighborhood and expressed her preference for a residential use at the subject site.

James Koelliker, 3500 Minton's Landing, presented a slide show outlining his concerns to the Board (*a copy of the slides are on file*). He contended that the size of the use was more consistent with commercial districts than residential districts, that the proposed use would have a negative impact on surrounding property values, and if allowed, the proposed day care center would create problems with traffic and pedestrian safety.

Aistrup asked Koelliker whether he would consider a daycare use similar to a school, as there is an elementary school directly across the street from the proposed day care center.

Koelliker stated that he did not consider the two uses to be similar, and explained his reasoning to the Board.

Susan Koelliker, 3509 Minton Landing, expressed her concerns about the proposed day care center, which included traffic, parking, and safety issues created by having standing water in the detention basin.

Elias C. Tolentinur, 255 Ridge Drive, expressed his support for the proposal, stating that it addressed the community's need of childcare, that it would provide 14 new jobs. He contended that the day care center would enhance the school already present in the neighborhood. He did agree, however, with the previous speakers' contentions that the proposed day care center could potentially lower surrounding property values.

Andrea Tiede, 3434 Chimney Rock Road, expressed her concerns about the proposed day care center, which included the location of parking lot, a potential increase in noise during the day, that the proposed development might change the character of the established neighborhood.

Scott Eilert, 3401 Sioux Circle, stated his concerns with the proposed daycare, which included parking, traffic along Hudson, and the proximity of the proposed driveway to the existing crosswalk. Eilert stated that he agreed with a comment Aistrup had made during the May hearing on the previous site plan for the proposed day care center, in which he had said that the scale of the proposed day care center did not fit with the surrounding neighborhood. Eilert also expressed concern that the proposed building did not have anywhere for children to go during inclement weather.

Sally Landowne, 3438 Chimney Rock Road, expressed concerns about the proposed location of the dumpster on the site and the commercial feel of the development.

Melinda Daniels spoke to Aisturp's previous question about the difference between a school and a day care centers, expressing her view that schools and day care centers are fundamentally different from one another, and that a school is the heart of the neighborhood.

With no further comment, Hardy closed the Public Hearing and opened for Board discussion.

Hamilton expressed her appreciation for the applicant's effort to address the concerns of both the Board and the public. She stated that she would be uncomfortable supporting this request because she felt that it would negatively impact its surrounding neighborhood and would establish a bad precedent that residential areas are open for commercial development. She expressed her view that the size of the proposed facility makes the Conditional Use application akin to a spot rezoning from a residential to a commercial use. She expressed concern about the proximity of the proposed curb cut to the existing crosswalk.

Hamilton suggested that staff print the standards for Exceptions, Variances, and Conditional Uses on back of agendas so that members of the public attending Board of Zoning Appeals hearings could see the criteria to which the Board is bound in its decision-making. She then addressed the standards for Conditional Uses and stated that she was convinced that the proposal would damage property values and dominate over the surrounding neighborhood because of its size and height. She contended that the proposed parking and loading were in compliance with screening requirements. She expressed concern that the proposed day care center would exacerbate already congested parking and traffic conditions around the existing elementary school. She acknowledged that there is a strong need within the City of Manhattan for more day care and that this site might be an ideal location for a day care center for the city as a whole. She stated, however, that the Board considers the potential impacts of applications on their surrounding neighborhoods, and does not address issues pertaining to the needs of the community at large.

Hardy stated that he could not support the current proposal. He also expressed his appreciation for the applicant's effort to address the concerns of the Board and the public and to make the project work. Hardy stated that the applicant did not meet standards B, C, D and E for Conditional Uses. He echoed

Hamilton's statements regarding Manhattan's need for child care, and stated that he could not support the proposal.

Aistrup expressed his view that a day care center could work on the subject site, but that the scale and number of children in the current proposal would not. He stated that the large parking lot proposed had a commercial feel that would not fit the character of the neighborhood and would lower property values. He contended, though, that the footprint of the building itself fit the character of the established neighborhood because it was equivalent to the footprint of a large house. Aistrup reiterated his view that a daycare could be appropriate on this site if it served a smaller number of children.

Wigfall commented that the vegetation currently on the site would be difficult to keep given the grading plans. She concurred with Hamilton's assessment of whether each standard was met and why. Wigfall expressed concerns about the number of children and the size of the development, and stated that she had difficulty supporting the request.

Hamilton asked City Administration if the Board needed to vote on whether each standard was or was not met.

Bunger stated that the Board only needed to agree on the Findings of Fact, and that they did not need to vote on whether each standard was met.

The Board made the following findings of fact for the Conditional Use at 1500 Hudson Avenue.

- A. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property and the proposed use comply with all applicable provisions of the Zoning Regulations, except the need for a Conditional Use.
- B. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and the properties to the north, east and south are zoned R-1, Single-Family Residential District. The properties to the west are zoned R, Single-Family Residential District. The properties surrounding the subject site are single-family uses. To the west of the site are the Amanda Arnold Elementary School and the Cottonwood Racquet Club. The Cottonwood Racquet Club is a private tennis and fitness club. The current enrollment of the elementary school is 418 students, Pre-Kindergarten through 6th Grade. The school day begins at 8:15 am when children are allowed to be dropped off and ends at 3:40 pm when the school is dismissed. Amanda Arnold also operates before and after-school programs which run from 7:00 am to 8:40 am, and 3:40 pm to 5:30 pm.

There will be an increase in light, sound and traffic from the proposed use compared to the existing use of a single-family home on a large lot.

Traffic

Hudson Avenue is a twenty-seven (27) foot wide collector street. According to the Public Works Department, the collector street has a traffic count of 3,135 vehicles per day, which equates to a Level of Service (LOS) of A. The LOS A is the highest grade of service and is described as a free-flow of traffic. The Engineer Department has minimal traffic data for Hudson Avenue that shows the vehicle traffic volume peaks at

7:00 am to 9:00 am and from 3:00 pm to 6:00 pm. The reason for these peak traffic counts is due to the drop off and pick up times at Amanda Arnold Elementary School and traffic heading to and from work.

A traffic report was submitted by Ian Reekie, P.E. of Schwab-Eaton, P.A. dated May 1, 2009 (*attached*). The report has calculated that the proposed 5,600 square foot ground day care center would add an additional 78 vehicles to the traffic volume during the group day care center's peak hours. The revised site plan and floor plans show a building that will be approximately 5,800 square feet. Ian Reekie, P.E. submitted updated traffic volumes based on the size of the new building. The new traffic impact based on the new building would be a total of 81 vehicles during the p.m. peak hour.

The traffic report states that the peak hour of traffic for the day care center is 10:00 am. The peak hour information in the traffic report was obtained from the General Service Administration (GSA) Child Care Center Design Guide, July, 2003 (*The GSA is an independent agency of the United States Government that helps manage and support other federal agencies. Source: www.wikipedia.com*). Using the general times that people go to and from work (8:00 am to 5:00 pm) it is assumed that there is also an increase in vehicular traffic from the group day care center during the 7:00 am hour for drop off and 5:00 pm hour for pick up of the children. The additional traffic should not degrade the level of service to a lower level of service.

There has been concerns raised by adjacent property owners in the form of written letters to the Board of Zoning Appeals (*attached*) that the added traffic from the group day care center during the times of drop-off and pick-up at the elementary school will add to the congestion on Hudson Avenue and side streets (Minton Landing, Chimney Rock Road and Claflin Road). The amount of traffic added to Hudson Avenue (81 vehicles in the p.m. peak hour) should not be significant enough to worsen the flow of traffic on Hudson Avenue.

At the June 10th Board of Zoning Appeals meeting, concerns about the offset between the northern driveway on the site and the northern entrance of the Amanda Arnold Elementary School was also raised. The concern is that if there is not adequate separation between the two entrances, vehicles attempting to cross traffic to enter into the school or the site would cause delays in the traffic flow. The original site plan showed two (2) entrances into the site; a one-way circular drive at the northern end of the site (60 feet from the Amanda Arnold entrance) and two-way entrance (approximately 160 from the north entrance and 140 from the south entrance at Amanda Arnold Elementary School). The revised site plan shows one (1) access point into the site that is approximately 185 feet from the north curb cut at Amanda Arnold Elementary School and approximately 175 feet from the south curb cut at the school (measured to the center of the curb cut). The proposed driveway into the site meets the Manhattan Area Transportation Study and the Manhattan Subdivision Regulation's requirement to provide a minimum of 150 feet of separation of access points along collector streets.

A concern was also raised at the June 10th Board of Zoning Appeals meeting that the access into the site was too close to an existing school crosswalk at the southern end of the property. The proposed curb cut will be approximately sixty-five (65) feet from the crosswalk (measured to the center of the curb cut). The school district employs a crossing guard to be present during the morning drop-off and evening pick-up times. The principal at Amanda Arnold School was contacted by City Staff and did not have any issues with the location of the driveway. Rob Ott, City Engineer, has reviewed the proposed access in relationship to the school crossing and had no issues or comments (*attached memo*).

Light

The landscape plan shows the approximate location of a light mounted on a six (6) foot tall pole on the east edge of the parking lot to illuminate the parking areas. This pole will be setback approximately four (4) feet to the east property line (rear yard). Seven (7) lights are proposed to be located on the exterior of the building. Two (2) will be used to illuminate the front façade, four (4) along the rear façade, and one (1) along the south facade. A note on the landscape plan states that these lights will be shielded by full cut off design to minimize light spillage to adjacent properties. The increase in light from the property should not adversely impact adjacent properties. At the June 10th Board of Zoning Appeals meeting, the applicant stated that the pole light would be used to illuminate the parking lot mainly during morning hours. It may be appropriate to place a condition on the proposed group day care center that the pole light will not be illuminated between the hours of 9:00 pm to 6:00 am.

The revised site plan shows an off-street parking lot with a total of thirty (30) spaces, located approximately eight (8) feet from the east property line and thirty-seven (37) feet from the south property line. The parking lot will be screened by a six (6) foot tall wooden screening fence that meets the minimum requirement of the Zoning Regulations. Lights from cars parking in the parking lot should not adversely affect adjacent properties because of the required site obscuring screening.

Noise

The area is an established single-family residential neighborhood with several homes having families with children of different ages. Directly to the west of the subject site is the Amanda Arnold Elementary School, which has an enrollment of approximately 418 children in Pre-Kindergarten to 6th Grade. No zoning complaints are on file regarding the Amanda Arnold Elementary School. Other elementary schools and similar group day care centers are located within residential neighborhood throughout the City with no reported adverse impacts caused by noise. The proposed group day care center is to have a maximum of 80 children ages six (6) weeks to five (5) years of age. The hours of operation for the proposed group day care center are 6:00 am to 6:00 pm Monday through Friday. The age groups to be served by the day care center will be consistent with families found in the adjacent neighborhood. Any noise from the day care center would occur during daytime hours, which should not cause an adverse impact to the adjacent neighborhood. The group day care center will close at 6:00 pm, so there should be no disturbance during the evening or night hours. Outside play time

would typically occur during the mid-morning and afternoon times as weather permits. The outdoor play time will also be adjusted by the seasons of the year. Children will have limited outdoor play time during the hot and cold seasons of the year. For these reasons, the proposed use should also not create an impact on most neighbors.

The proposed use across from the Amanda Arnold Elementary School would present a good relationship between the school and the group day care center. Parents of elementary and pre-school aged or young children could conveniently take both children to the same general location for both school and early child care services. This would be an ideal situation and location for such a scenario.

The scale of the proposed use, with a maximum of eighty (80) children and fourteen (14) employees results in a commercial enterprise that has a large parking lot located near residential properties. The proposed use is not compatible with the character of neighborhood and would adversely impact the adjacent properties.

C. DOMINATION BY USE OVER NEIGHBORING PROPERTIES:

1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS: The proposed structure will be a two-story structure with lap-siding, and a pitched, asphalt shingle roof. The main entrance of the building will be on the west (front) of the structure and will be covered with stone. The structure will be located near the northern property line of the site. The building will have a twenty-five (25) foot front yard setback along the new property line of Hudson Avenue, *(a new front property line is to be established by the Final Plat of the Cornerstone Child Enrichment Center, which will dedicate the west forty (40) feet of the property as Hudson Avenue road right of way; reflecting the existing street improvements)*, a twenty-nine (29) foot side yard setback from the north property line, a seventy-one (71) foot setback from the rear property line to the east and a one hundred (100) foot side yard setback to the south property line.

The two-story structure will be approximately twenty-seven (27) feet tall at its highest point and be approximately 5,800 square feet in total floor area. The main entrance of the structure will be to the west and oriented towards Hudson Avenue. Six (6) classrooms are proposed for the group day care center; four (4) on the main floor and two (2) on the second floor. According to the floor plans, the classrooms on the main floor will be for children ages 18-months to 3-years. The second story classrooms will be for children three (3) to five (5) year olds. Two (2) set of stairs will lead from the main entrance to the second story. The main floor classrooms are between approximately 420 square feet and 550 square feet in area. The second story classrooms are approximately 690 square feet in area.

To the east of the building, the applicant has proposed two (2) playgrounds. No detailed plans have been provided for the play structures. Each of these playgrounds will be separated and screened by a six (6) foot tall wooden fence. Access to the playground will be from the rear of the building through the main floor classrooms or

an interior hallway leading to an exterior door. Gates are proposed along the west side of the playground fence for a fire escape route. Two, ten (10) foot long by six (6) foot wide storage sheds are proposed within the playground areas. The fence will be located approximately thirty-four (34) feet from the rear yard and 129 feet from the south side yard.

The landscape plan shows that one (1), six (6) foot tall light pole will be located on the east side of the parking lot. Lighting mounted to the exterior wall of the building is also proposed. A total of seven (7) lights are proposed to be mounted on the building (2 on the west façade, 4 along the east façade and 1 on the south facade). A note on the landscape plan states that “all building and pole lights are shown in their approximate location and shall be shielded by full cut off design to avoid or minimize spillage and glare onto adjacent roadways and surrounding residences.”

The scale of the proposed use, with a maximum of eighty (80) children and fourteen (14) employees results in a commercial enterprise that has a large parking lot (30 off-street parking spaces) located near residential properties. The proposed use is not compatible with the character of neighborhood and will dominate the use of neighboring properties.

2. **LANDSCAPING AND SCREENING:** The applicant has submitted a landscape plan that shows deciduous and ornamental trees along the edge of the property and around the edge of the parking lot. Landscape beds are proposed in front of the building adjacent to the sidewalk. The landscape beds will consist of a variety of deciduous and evergreen shrubs, ornamental grasses and perennials. The remaining open landscape will be seeded lawn areas. A thirty-five (35) foot wide lawn area is proposed along the east property line and a twenty-five (25) foot wide lawn area is proposed along the north property line. The subject site is overgrown with mature deciduous and evergreen trees. According to the landscape plan, these trees are to be removed. Removing the existing trees reduces the visual barrier between the subject site and adjacent properties. The applicant should make every attempt to keep these trees to maintain a buffer to reduce any visual, light and noise impacts.

The applicant has proposed to screen the playground areas with a six (6) foot tall wooden fence. A retaining wall is needed along the north and east property lines to improve the building site for the proposed parking lot because of the change in elevation on the property. The retaining wall will be at its tallest at the northeast corner of the property (4.5 feet) and decrease in height to its lowest point on the west side of the site (1 foot tall). The retaining wall will be two and a half (2.5) feet tall at the south end of the north – south portion of the wall. Additional fencing will be added on top of the retaining wall or on the inside of the wall to create a screening that is a minimum of six (6) feet tall in height.

Sight obscuring screening is required screening for parking lots that are located within twenty-five feet of adjacent property situated in a residential district (Section 7-102 (E)(5)). A wooden screening fence is proposed to be constructed around the east and

south side of the parking lot to meet this requirement.

This standard to determine if a proposed Conditional Use will dominate neighboring properties is:

“The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.”

The proposed use will only access Hudson Avenue, a two-lane collector. No vehicular or pedestrian traffic will use the adjacent local residential streets to gain direct access to the site. The location, size and intensity of the proposed use will not prevent the immediate neighborhood from developing in accordance to the zoning district requirements because the properties are already completely developed. The proposed use does not dominate over neighboring properties.

- D. ADEQUATE PROVISION OF PARKING AND LOADING: A driveway is proposed off of Hudson Avenue that leads to a parking lot with thirty (30) off-street parking spaces. Based on the maximum number of children at the group day care center (80) and the stated number of employees (14); a minimum of thirty (30) off-street parking spaces are required by the Zoning Ordinance. The proposed parking lot meets the minimum number of required off-street parking spaces. The northern row of parking spaces are nine (9) feet in width and the southern row of parking spaces are eight (8) feet, seven (7) inches in width. The parking stall widths exceed the minimum parking standard requirements.

There has been concern by adjacent property owners, in the form of written letters to the Board of Zoning Appeals (*attached*), that the added traffic from the group day care center during the times of drop-off and pick-up at the elementary school will add to the congestion on Hudson Avenue and side streets (Minton Landing, Chimney Rock Road and Claflin Road). It appears that the traffic congestion in the area is due to inadequate internal traffic flow and off-street parking on the school's property. Adequate circulation and off-street parking is provided on the site. The traffic generated from the proposed group child care center should not add to the congestion of the area streets. (*The applicant originally requested a companion Exception to reduce the required number of off-street parking spaces from 30 to 22. This request has been withdrawn because it is not needed with this proposal*)

- E. ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES: A drainage report was submitted by Gregory Fief, P.E. of Schwab-Eaton, P.A., dated May 1, 2009 (*attached*). The report states that the site is mostly open space and drains from the north in two (2) directions, southeast and southwest. A low earthen berm divides the tract of land so that one-third of the stormwater runoff is shed to the southeast towards the stormwater sewer system on Chimney Rock Road. The

stormwater runoff from the remaining two-thirds of the property is directed to the Hudson Avenue stormwater system. The existing stormwater runoff is .94 cubic feet per second (cfs) to the southeast and 1.61 cfs to the southwest for a 100-year storm event.

The proposed development will remove the earthen berm and direct the stormwater runoff to a stormwater detention basin to the south. Because of the increase in impervious surface from the buildings, sidewalks and parking lots, the rate of stormwater runoff will increase to 6.21 cfs for a 100 year storm, or an increase of 286%. The City of Manhattan has recently implemented a policy that requires any development over 0.5 acres to have “post development conditions shall have storm water release rates equal to or less than pre-development conditions.” To meet this requirement, Schwab-Eaton has designed a stormwater detention basin. The detention basin will be approximately three (3) feet deep and provide a storage volume of approximately 4,700 cubic feet. The original site layout required 3,700 cubic feet of storage. The new site layout actually decreases the amount of impervious service by approximately 3,000 square feet, thus requiring slightly less stormwater detention.

The basin will collect the stormwater runoff from the site and slowly release the water into the Hudson Avenue drainage system at the pre-development rate. The detention basin is located to the south of the proposed building and is located in a twenty-nine (29) foot wide drainage easement. During dry weather that basin will be a dry, grassy area.

Rob Ott, City Engineer, has reviewed the revised site plan and the original the drainage report and accepts the proposal with no comments (*attached memo*). Based on the findings in the drainage report and the memo from the City Engineer, the applicant has provided adequate provision for drainage.

There are adequate utilities to service the subject site along Hudson Avenue. An existing water well is located in the southeast area of the property. The proposed structure is to be connected to City water services. Because the water well is not needed and that it poses a danger to the children of the group day care center and the public, the water well should be plugged according to procedures to plug abandoned water wells (K.S.A. 82a-1213).

- F. ADEQUATE PROVISION OF ACCESS: Hudson Avenue is a two-lane collector. The applicant is proposing a two-way driveway to lead to a parking lot with thirty (30) off-street parking spaces. The driveway will be a minimum width of twenty-six (26) feet at the entrance of the parking lot and flare to the south to a maximum of thirty (30) feet so that vehicles will have more space to enter the site from Hudson Avenue.

The original site plan showed two (2) entrances into the site; a one-way circular drive at the northern end of the site (60 feet from the Amanda Arnold entrance) and a two-way entrance (approximately 160 from the north entrance and 140 from the south entrance at Amanda Arnold Elementary School). The revised site plan shows one (1)

two-way entrance into the site that is approximately 185 feet from the north curb cut at Amanda Arnold Elementary School and approximately 175 feet from the south curb cut at the school (measured to the center of the curb cut). The proposed driveway into the site meets the Manhattan Area Transportation Study and the Manhattan Subdivision Regulation's requirement to provide a minimum of 150 feet of separation between access points along collector streets.

The proposed access point into the site will be approximately sixty-five (65) feet from a school crossing point along the south property line. A crossing guard is employed by the school district to patrol the crossing during the morning drop-off and afternoon pick-up times.

Rob Ott, City Engineer, has reviewed the proposed access to the subject site and accepts the proposal with no comments (*attached memo*).

The size of the proposed driveway and its intersection with the sidewalk that leads to the school crossing area may cause traffic hazards between vehicles and pedestrians. Because of this potential conflict, adequate and safe access to the site is not provided.

The location of the proposed group day care center is advantageous in that it is located along an urban collector adjacent on the edge of an established residential neighborhood. The proposed group day care center would not require local residential streets to gain direct access to the center and could potentially be walked to by neighborhood families.

Hamilton made a motion to deny a CONDITIONAL USE to allow for a Group Day Care Center in an R-1, Single-Family Residential District located at 1500 Hudson Avenue based on the Board's findings.

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

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE FOR A PROPOSED EXPANSION OF THE MANHATTAN SURGICAL CENTER AT 1829 COLLEGE AVENUE. (APPLICANT/OWNER: MANHATTAN SURGICAL PROPERTIES LLC/MERCY HEALTH CENTER OF MANHATTAN INC.)

Bunger presented the staff report and recommended approval with two conditions.

Hardy opened the public hearing.

Applicant Scott Chapman, offered to answer questions from the Board.

Hardy expressed his appreciation for the forward planning the Surgical Center had done with

its initial development.

Hamilton stated that the concerns and questions the Board had initially had about the Surgical Center when it obtained its original Conditional Use Permit had been addressed, and that the Center was working well. She expressed her view that the Center has been an asset to the community.

Elias Tolentinur stated that he was against the proposal because it duplicated services provided by Mercy Regional Health Center.

Hamilton explained Board did not address concerns about duplication of services within the community, but instead was bound to consider only specific standards regarding the potential impacts on surrounding properties.

With no further public comment, Hardy closed the public hearing.

The Board made the following findings of fact for the Conditional Use at 1829 College Avenue:

A. Compliance with all applicable regulations: A condition of approval with the original Conditional Use in 1999 required that any expansion to the build would require a new Conditional Use. The proposed building expansion meets all applicable Zoning regulations other than the need for a Conditional Use.

B. Probable effect on adjacent properties: The site is zoned R-1, Single-Family Residential District. To the north is the large detention basin which serves the hospital and surgical center complex, Kimball Avenue, an approximately 110 foot road right-of-way and the Woodway Apartment Complex which is zoned PUD, Residential Planned Unit Development District. To the east are College Avenue, a 90 foot road right-of-way, and the Kansas State Memorial Stadium and parking lot. The football stadium and parking lot is zoned U, University District. To the south is Mercy Health Center and off-street parking, which are in the R-1 District. To the west is driveway to Mercy Health Center and the vacant former St. Joseph Senior Community. This area is zoned R-1 District.

The proposed addition will be to the north, south, and west of the existing Manhattan Surgical Center. The existing medical building and the proposed expansion meet the character of the neighborhood. The proposed expansion to the north will be separated from the apartment complex by the existing detention pond and the wide, four-lane, arterial road, Kimball Avenue. Minimal adverse impacts are anticipated to the adjacent properties.

C. Domination by use over neighboring properties:

1. Location, nature, and height of physical improvements: The proposed expansion will be the same height as the existing center and will be constructed with exterior materials like the existing center. The west expansion will be setback approximately thirteen (13) feet from the side lot line to the west. The expansion furthest to the south will be setback approximately eighty-two (82) feet from the side property line. An approximately 440 square foot expansion to be located along the south wall will be 116 feet from the south property line. The proposed expansion to the north will be setback approximately 200 feet from the front lot line along Kimball Avenue. The expansion will not dominate the use of adjoining land.
2. Landscaping and screening: The site is well landscaped. The proposed expansion will removed approximately 13,550 square feet of open green space. The site has a significant amount of open landscape space along the Kimball Avenue and College Avenue property lines. No additional landscaping or screening is required.

D. Adequate provision of parking and loading: Hospitals must provide at least one and one-half (1 ½) parking spaces for each hospital bed. The existing center was required to provide at least 39 off-street parking spaces. 119 parking spaces have been provided. The proposed expansion includes adding six (6) additional hospital beds, which would require nine (9) parking spaces. The additional demand for the expansion would fit within the existing parking.

E. Adequate provision of drainage, and other public utilities: Adequate public utilities serve the site. The site drains to an existing drainage pond to the north of the surgical center. The 1999 Conditional Use application included a storm water management plan. This plan stated that the storm water detention was designed to accommodate the existing building and future expansions, including this proposal. The storm water detention conforms to the Storm Water Management Master Plan (SWMMP) at the time.

F. Adequate provision of access: Access to the surgical center is provided by existing driveways that connects to the private driveways that lead to the Mercy Regional Health Center from Kimball Avenue and College Avenue. These access points are adequate.

1. Conditional Use Permit shall only apply to the proposed site plan and expansion and shall be developed as proposed in the application documents.
2. Future expansions shall require a new Conditional Use Permit.

Aistrup made a motion to approve a Conditional Use to allow for a proposed expansion of the Manhattan Surgical Center, which is located in the R-1, Single-Family Residential District at 1829 College Avenue with the following conditions:

1. Conditional Use Permit shall only apply to the proposed site plan and expansion and shall be developed as proposed in the application

documents.

2. Future expansions shall require a new Conditional Use Permit.

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

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A GROUP DAY CARE CENTER AT 2800 CLAFLIN ROAD IN AN R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: UNIVERSITY CHRISTIAN CHURCH PRESCHOOL ACADEMY / OWNER: UNIVERSITY CHRISTIAN CHURCH)

Stephanie Watts presented the staff report and recommended approval with four (4) conditions.

Hamilton asked for more information regarding the “Compliance with all Applicable Regulations standard”.

Bunger responded that because the proposed daycare will not use the existing gravel parking lot on the grounds of the church, he asked that the Board consider the daycare as a separate use from the church. He explained how the day care center and use are in compliance with all applicable regulations, but that the church and its functions are not in compliance with parking regulations because of the gravel lot. Bunger recommended that the church address the gravel parking lot issue.

Wigfall clarified that if the church wanted to modify the sanctuary, they would need to address the gravel parking lot.

Bunger responded in the affirmative.

Hardy stated that he could recall a previous request made by the church for a temporary gravel lot, but that he could not remember whether that request was for the current gravel lot or another parking area that was subsequently paved.

Bunger explained that City staff could not find any previous Board of Zoning actions allowing gravel parking.

Hamilton proposed that Condition Two be expanded to include not only the hours of

operation, but also Tuesday through Thursday, while school is in session.

Watts provided additional information as to why the other restrictions were not included as part of the condition.

Hardy agreed to leave Condition Two as laid out in the staff report.

Hardy opened the public hearing.

Applicant Lindsay Welch, Director of the UCC Preschool Academy, approached the Board and provided further information on the proposed day care center.

With no further public comment, Hardy closed the Public Hearing and opened the Board discussion.

Hardy stated he could support the request given the location of the proposal, the fact that there were no proposed exterior alterations, and the fact that there were no existing parking issues at the subject site. He also expressed his appreciation for the applicant's recognition of the need for daycare. He also recognized the need for the use of the Preschool Academy's existing facility for church functions.

Wigfall expressed appreciation for the fact that the proposed day care center was designed to accommodate a flexible number of children given the proposed hours of operation.

The Board made the following findings for a Conditional Use at 2800 Claflin Road:

- A. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The northwestern parking located on the subject site has a gravel surface. As per Article VII, Section 7-102 (E)(3) of the Zoning Regulations, all off-street parking areas, parking spaces, etc., shall be paved. The University Christian Church was not granted an Exception to allow for the temporary use of gravel as a parking lot surface. To correct this issue, the church would need to either pave this parking area or request an Exception from the Board of Zoning Appeals to allow for the temporary use of gravel as a parking surface. This gravel parking lot will not be utilized by the employees or the parents of the children attending the proposed preschool and is viewed separately from the proposed Conditional Use. Other than this issue and the need for a Conditional Use to allow for the proposed preschool, the existing and proposed uses comply with all applicable provisions of the Zoning Regulations.

- B. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed group day care center is not anticipated to have an adverse affect on adjacent properties. The properties directly west of the site are zoned C-1, Restricted Business District, and R-3, Multiple-Family Residential District. The properties to the north are zoned R, Single-Family Residential District and R-3, Multiple Family Residential District. Properties to the south are zoned C-2, Neighborhood Shopping District and the properties to the east are zoned PUD, Planned Unit Development.

The building in which the proposed preschool will be located in is hardly visible from Claflin Road due to the terrain of the property. The property east of the subject property, Westport Commons, is currently being developed as a PUD. The developer proposes to locate a bank and office space on the site. Properties both to the north and west are adequately screened by large mature trees and an elevation change of approximately forty (40) feet.

The properties located in the C-2, Neighborhood Shopping District to the south of the site should not be adversely impacted by the proposed child care center. Currently, the building located immediately south of the subject site is vacant (the former Taco Hut building). Also south of the property is Papa Murphy's Pizza and several buildings with office space. All of the residential properties immediately north and west of the subject site are zoned R-3, Multiple-Family Residential District; and are adequately screened by heavy vegetation and changes in elevation.

C. **DOMINATION BY USE OVER NEIGHBORING PROPERTIES: (SITE PLAN)**

LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS: The subject property has three buildings located on the site which serve various purposes for the church. The building in which the preschool is proposed to be located is the most western building. The building is currently used as the Education Building. According to the building code footprint recently submitted to the Department of Fire Services, the proposal is to use the existing floor plan of the building, which provides six (6) classrooms. There is an existing playground behind the eastern most building and is enclosed by a chain-link fence. There are no proposed exterior modifications to be made.

There is a significant elevation change on the site. The building is currently at an elevation of 1112 feet, while the properties located to the north of the site are at an elevation of 1068 feet and west of the site at 1072 feet. This is an elevation change of forty (40) to forty-four (44) feet.

LANDSCAPING AND SCREENING: The site has heavy vegetation with mature trees on the north and west property lines. A steep slope lies along the north and west property lines with an overall elevation change of approximately forty-four (44) feet

with heavy vegetation located on it. These areas provide adequate screening from adjacent properties to the west and north.

- D. ADEQUATE PROVISION OF PARKING AND LOADING: Section 7-103 (C)(4) requires group day care centers to provide at least one (1) parking space for each employee and one (1) parking space for each five (5) children. The applicant stated that no more than twenty (20) staff members will be present at the day care center during operational hours and the center will be licensed for no more than seventy-eight (78) children. Based on the application materials, the proposed day care center would be required to provide thirty-six (36) parking spaces.

An existing parking lot located south of the proposed Preschool Academy building will provide an adequate number of parking spaces to service the day care center. The parking lot located south of the existing buildings provides 125 parking spaces, including six (6) handicap stalls. While the site also provides other satellite parking areas on the property, the southern-most parking lot will serve the Preschool's parking needs.

- E. ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:
The property currently has access to City water and sewer as well as other utilities including electric, gas, cable and telephone services. No changes are proposed that would alter the current storm drainage patterns on the property. Storm drainage flows to the north and west property lines and then drains into existing channels according to City Engineer, Rob Ott.
- F. ADEQUATE PROVISION OF ACCESS: The site gains direct access from three (3) existing curb cuts along Browning Avenue. The curb cut located closest to Claflin Road (the southern-most curb cut) is the main entrance and exit that the preschool will utilize. The traffic associated with the day care center should not negatively impact traffic along Browning Avenue or Claflin Road.

Wigfall made a motion to approve a Conditional Use to allow for a Group Day Care in an R-3, Multiple-Family Residential District at 2800 Claflin Road with the following conditions:

1. The Group Day Care Center shall be owned and operated by University Christian Church Preschool Academy as proposed.
2. The Group Day Care Center shall be limited to the hours of 9:00 AM – 3:30 PM.
3. The Group Day Care Center shall have no more than seventy-eight (78) children at the preschool at any given time.
4. The applicant shall obtain all necessary licenses and permits.

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

Hardy adjourned.

Respectfully Submitted,
Stephanie Watts, Planning Intern
sr