

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, May 12, 2010
7:00 PM

MEMBERS PRESENT: Joe Aistrup, Vice Chairperson; Ricci Dillon; Connie Hamilton; and Catherine Lavis.

MEMBERS ABSENT: Harry Hardy, Chairperson.

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II; Savannah Benedick, Planning Intern.

CONSIDER THE MINUTES

Hamilton motioned to approve the April 14, 2010 minutes which was seconded by Lavis and passed with a vote of 4-0.

Consider a Request for a 180 DAY EXTENSION for an approved EXCEPTION to allow for an increase of the maximum thirty (30) percent lot coverage to thirty-five (35) percent for a proposed single-story office building at 1509 and 1515 Poyntz Avenue in the C-1, Restricted Business District. (Applicant/Owner: Calvin Emig).

Hamilton motioned to grant the Extension for Exception at 1509 and 1515 Poyntz Avenue. Seconded by Dillon, which passed with a vote of 4-0.

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 on Lots 1 – 11, Stone Pointe Addition in the R-3, Multiple-Family Residential District. (Applicant/Owner: Michael Hill, dba Michael Hill Development.).

Hamilton motioned to grant the Exception. Lavis seconded the motion, which passed with a vote of 4-0.

A PUBLIC HEARING to consider an EXCEPTION for an EXCEPTION to allow for a reduction of the minimum fourteen (14) foot front yard setback to three (3) feet along N. 9th Street to construct a proposed privacy fence; to allow for an increase of the maximum thirty (30) percent lot coverage to thirty-four (34) percent for a proposed detached garage; to allow one (1) off-street parking space to be located in the front yard area that is located between the front lot line and a parallel line drawn through the farthest point back on the façade of the residential building that faces towards the street on a corner lot; and, a reduction of the minimum fourteen (14) foot front yard setback to thirteen (13) feet along N. 9th Street and the eight (8) foot side yard setbacks to one (1) foot for the existing house for the owners to have clear title to the property; all the Exceptions are for the property located at 901 Leavenworth Street in the R-M/TNO, Four-Family Residential District and the Traditional Neighborhood Overlay District. (Applicant/Owner: Melvin Watson).

Bunger presented the Staff Report, recommending approval of the Exception request with eight (8) conditions (this was tabled at the February meeting due to design considerations).

Hamilton asked Bunger if there was a proposed conditional use for the “great room”, so there would be no notion of having a restroom. Bunger clarified saying the necessary component to make an area into a dwelling unit is shower/bath tub, stove, and kitchen facilities. The proposed garage does not have anything other than a toilet and sink. Also, code enforcement would be in charge of enforcing code, because the garage is not a complainant dwelling unit.

Aistrup opened the Public Hearing.

Melvin Watson (property owner) stated that he is available to answer any questions posed by the board and wanted to address that he can’t make the garage into a dwelling unit because it already has a condition placed on it. Also, there is code enforcement and rental inspections. Watson stated that the picket fence is envisioned to be painted or at least stained.

With no other comments, Aistrup closed Public Hearing.

Hamilton says she appreciates the work Watson has done getting the full neighborhood support and is almost inclined to support this, but with some unease. She still thinks the fence is too close to sidewalk, but is prepared to support it with a few modifications.

Dillon was in agreement with Hamilton, she also liked the effort by Watson. Dillon agreed that adding a 6th condition is necessary. She understood that the process should take care of it, but wanted to make it clear for future.

Aistrup added he would be opposed to the Exception normally, but the neighborhood support in the form of signed paper tipped the scale for him. Also, the garage is a well designed and conceived bonus. Thus he is willing to support this exception.

Hamilton says the proposed off street parking space is minimized visually by the fence. She recommended to the Board that the last sentence of the “Strict Application” standard include following :

Considering these alternative and that the property immediately to the south of the subject site has parking within the front yard area, that the applicant is proposing landscaping to buffer the parking space from the sidewalk and surrounding property owners, and that the proposed fence will provide a visual buffer of the parking space to the north, the strict application may be unreasonable.

The Board made the following findings of fact for the Exception at 901 Leavenworth Street:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The use as a two-family dwelling was given an opinion as a legally nonconforming use and the nonconforming location of the structure on December 3, 1991 (*see attached*). The opinion letter stated that the existing dwelling was built in the 1890’s, prior to the adoption of a Zoning Ordinance, and into the eight (8) foot side yard setback. The opinion letter does state that the location of the house was legally nonconforming because it was built before City adopted a Zoning Ordinance. As previously stated, an error occurred in the advertisement for the Exception request for the side yard setback of the existing structure to further provide the applicant information to establish clear title of the property. Other than this issue and the ones for which the Exceptions are being requested, the property complies with all applicable zoning regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The site and surrounding properties to the north, east, south and west are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The site is also within the 500 foot historical environs of the Ulrich House and the Women’s Club House. The area has several single-family, two-family and multiple-family rentals. To the east of the site is First Presbyterian Church and property owned by the church.

Proposed Fence

The proposed fence is not a minor encroachment into the front yard setback and may visually disrupt the building line along N. 9th Street. The original fence proposal was for a six (6) foot tall, wood screening fence. The revised fence proposal is for a five (5) foot tall picket style fence. Although the fence is only three (3) feet from the front property line along N. 9th Street, the redesigned fence should address the concerns of the original fence proposal. The picket style fence will reduce the scale and the mass of the fence along the property line of N. 9th Street. The picket fence will also allow for a better environment for landscaping to soften the affects of the fence on the public.

There are currently no other properties along N. 9th Street in the area that have a similar fence within the front yard setback. A property across the street to the northeast had begun installing a privacy fence in the front yard setback along N. 9th Street, but has since removed a majority of the fence posts after being informed that the fence’s location violated the Zoning Ordinance. There is only a small section of the fence remaining, which is hidden behind a neighboring house. The Community Development Department has been attempting to work with the property owner to bring the fence into compliance with the Zoning Regulations.

The applicant has submitted signed form letters by neighboring property owners stating that the applicant “has spoken to me about the fence project at 901 Leavenworth St. I also understand and approve of the special accommodations needed due to the houses proximity to the historic home as well as the required setback from the property line” (*see attached*).

The proposed fence has been reviewed by the Historic Resource Board (HRB) and the State Historic Preservation Office (SHPO). The HRB reviewed the size, location and materials of the proposed fence with the character of the historic environs of the Ulrich House and the Women’s Club House. The HRB determined that the proposed screening fence would adversely impact the environs of the historic properties and forwarded a recommendation to the SHPO to not approve the request (*Board recommendation, meeting minutes, and evaluation standards are attached*). The SHPO found that the “proposed fence will not encroach upon, damage, or destroy the Robert Ulrich House, the Women’s Club House or their environs.” The SHPO decision approves the proposed fence at the subject site and did not follow the recommendation of the local HRB (*The letter from the State Historic Preservation Office is attached*). The redesigned fence was not reviewed by the local HRB or the SHPO because the original fence was approved by the SHPO. The redesigned fence should not adversely impact the adjacent property owners.

Proposed garage

As the applicant has stated, “the proposed 3-car garage has been designed to respect the character of the original house. Along with the incorporation of similar materials and scale, the new garage echoes the existing house’s 12” roof eave overhang.” The proposed detached garage is to have a lot coverage of approximately 998 square feet, including the roof eave overhangs. The detached garage is shown to meet the minimum front yard and side yard setbacks. The difference between the size of a detached garage that meets the minimum lot coverage and the proposed garage is approximately 289 square feet. Approximately 124 square feet of the lot coverage increase is attributed to the roof eave overhangs. The relatively small increase in lot coverage compared to a detached garage that will respect the character of the existing house and provide parking for three (3) cars should not adversely impact the surrounding property owners.

The local HRB reviewed the proposed garage on April 26, 2010. The local HRB determined that the proposed garage would not adversely impact the environs of the historic properties and forwarded a recommendation to the SHPO to approve the request. The SHPO has not issued a determination on the impact of the proposed garage on the Robert Ulrich House and the Women’s Club House historic environs at the time the staff report was completed. It may be appropriate that a condition of approval be made that the SHPO must make a positive finding on the proposed garage’s impact on the environs of the historic properties.

Proposed off-street parking space

To meet the minimum off-street parking requirement for the existing two-family dwelling on the subject site, the applicant has proposed parking in the three-car garage and an additional parking space to the east of the garage, for a total of four (4) off-street parking spaces. The proposed off-street parking is approximately three (3) feet from the front property line along N. 9th Street and is located in the area that off-street parking is prohibited by the TNO District.

The TNO District states that there will be no off-street parking spaces in the area located between the front lot line and a parallel line drawn through the farthest point back on the façade of the residential building that faces towards the street. The TNO District does allow parking on driveways in this prescribed front yard area for residential buildings containing no more than two (2) dwelling units. However, the proposed parking space is not on a driveway. An existing curb cut exists off of N. 9th Street, but there is no existing driveway leading from the curb cut into subject site. The TNO District prohibits the use of a driveway for a corner lot when an alley is available for access for off-street parking (Section 4-111(F)(1)(a)(2)). Also, there is not an adequate amount of depth to park a car on a new driveway that leads from the existing curb cut without blocking the public sidewalk because of the location of the proposed garage.

A multiple-family dwelling is located to the south of the subject property and has a parking lot that extends to the front property line along N. 9th Street and is located within the area where off-street parking is prohibited. According to the Riley County Appraisal Office, the multiple-family dwelling was constructed in 1972. The presence of off-street parking in the front yard area is not out of character for the area. Other multiple-family dwellings along N. 9th Street and in the surrounding neighborhood have parking in the front yard area.

The applicant has also shown landscaping on the site plan, which should provide a screening of the parked car from the street. The Board should consider requiring that the landscape should be year round evergreen shrubs or bushes and be a minimum of thirty (30) inch tall at the time of planting. At the time of planting, the landscape stock shall have a maximum separation of three (3) feet on center to screen the parking lot from N. 9th Street.

Existing Building

The existing house has been a part of the neighborhood since the 1890's, when it constructed in its existing location. There have been no complaints on record to the Community Development Department. The Exception for the existing house will not adversely the adjacent properties and give the property owner clear title to the property.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

The location of the fence does not affect vision clearance triangles at the intersection of Leavenworth Street or N. 9th Street or the intersection of the alley and N. 9th Street to the south. The off-street parking space also does not impact the vision triangle at the intersection of the alley and N. 9th Street. The proposed fence or the existing house does not encroach into any utility easements.

Proposed Fence

The location of the proposed fence does affect the public order along N. 9th Street. No other fences have been constructed in a similar location along the N. 9th Street right-of-way in the neighborhood. However, the redesigned fence should reduce the effects on the public by reducing the physical scale and mass along the sidewalk.

Proposed garage

The proposed detached garage should have minimal impacts on the public health, safety or welfare. The design of the garage is similar to character of the existing house and maintains the order of the older homes and properties in the area. The impacts on stormwater runoff should be minimal. The location of the detached garage is as close to the property line along the alley as possible, which maintains a rear yard between the existing house and the garage. The rear yard area will aid in the absorption of rainwater.

Proposed off-street parking space

The location of the off-street parking space does not disrupt the public order along N. 9th Street or the surrounding neighborhood. Other properties, particularly the multiple-family dwelling to the south of the subject site has off-street parking spaces in the front yard area. The proposed parking space provides adequate distance from the alley to allow driver to back a vehicle out of the garage and parking space and stop and look for traffic before entering the alley. This proposed setback provides for a safe driving environment along the alley. A driveway could possibly be extended from the existing curb cut into the subject site to provide for the parking space. However, there is not adequate space to park the vehicle on the potential driveway without blocking the sidewalk.

The proposed Exceptions should not adversely impact the public health, safety or general welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

Proposed Fence

The site is a corner lot with two (2) front yards, both of which require a minimum fourteen (14) foot front yard setback. The strict application of the Zoning Regulations would not allow the applicant to complete the fence as proposed. The applicant has stated that the need for the fence is to improve the safety of the tenants and their property following a recent incident of vandalism and to visually improve the property by completing the existing fence. The applicant could build the fence fourteen (14) feet away from the front property line along N. 9th Street and comply with the Zoning Regulations. The redesigned fence is a five (5) foot tall, picket style fence. The redesigned fence should mitigate the concerns raised with the initial Exception request. Although the fence does encroach into the established building line along N. 9th Street, the see-through design lessens that impact. The picket style fence will decrease the scale and massing for the public using the sidewalk and allow for landscaping to be planted along the outside of the fence.

The condition of the property requiring the Exception for the fence was created by the applicant with prior knowledge and disregard of the applicable regulation. The applicant met with members of the City staff to discuss the location and construction of the fence in the N. 9th Street front yard setback and was advised not to begin construction until the Board of Zoning Appeals approved an Exception to reduce the minimum fourteen (14) foot front yard setback. With prior knowledge and disregard of the regulations, the applicant constructed the fence posts and cross members. A City's Zoning Inspector issued a letter of violation on July

30, 2009, informing him of the violation of the location of the fence. The applicant is working with City Administration to correct the situation and have redesigned the fence to lessen its impacts on the surrounding properties and the general public. Based on these circumstances, it appears that the strict application of the regulations is unreasonable.

Proposed garage

The garage could not be built as proposed if the maximum lot coverage regulation for the R-M/TNO District was strictly applied. The garage is approximately 289 square feet to large for the subject site. The structure complies with all setback requirements, but does not comply with the maximum thirty (30) percent lot coverage requirement. The proposed garage could be decreased in size to meet the Zoning Regulations, however, the decrease in size might eliminate a parking space in the garage and remove the roof overhangs. By eliminating a parking space, alternatives would need to be considered to meet the minimum off-street parking requirements for a two-family dwelling. These alternatives maybe to eliminate the garage entirely, apply for an Exception to reduce the required number of parking spaces or redesign the layout of the subject site to accommodate the required number of parking spaces. The existing house has twelve (12) inch wide roof eave overhangs. The design of the proposed garage used similar architectural elements to respect the character of the existing house, including the twelve (12) inch wide overhangs. Designing the proposed garage without the roof eave overhangs would impact the character of the subject site. Considering the relative small increase in lot coverage that proposed garage creates, some of which is attributed to the roof eave overhangs and the attempt to create a building that was similar in character to the existing house, strictly applying the maximum lot coverage requirement maybe unreasonable.

Proposed off-street parking space

If the strict application of the TNO Site Design Standards were applied, the proposed off-street parking space could not be created because it is located in the area between the front lot line and a parallel line drawn through the farthest point back on the façade of the residential building that faces towards the street. Parking is allowed within this area on a driveway for a single-family or two-family dwelling. The proposed parking space is not determined to be a driveway. The TNO Site Design prohibits the installation of a driveway on a corner lot if alley access is available for off-street parking. The subject site could be redesigned to move the proposed garage to the north an additional 18 ½ feet to provide for a stacked parking configuration in front of the garage. Considering these alternative and that the property immediately to the south of the subject site has parking within the front yard area, that the applicant is proposing landscaping to buffer the parking space from the sidewalk and surrounding property owners, and that the proposed fence will provide a visual buffer of the parking space to the north, the strict application may be unreasonable.

Existing Building

No reasonable solution is available to correct the issue with the front yard setbacks of the existing house. An opinion of legal nonconformity has been issued for existing house. The Exception for the front yard setback provides additional information to give the applicant a clear title to the property. The opinion of legal nonconformity for the side yard setback should also provide the applicant with information for clear title to the property.

Hamilton motioned to grant the Exception to allow for a reduction of the minimum fourteen (14) foot front yard setback to three (3) feet along N. 9th Street to construct a proposed privacy fence; to allow for an increase of the maximum thirty (30) percent lot coverage to thirty-four (34) percent for a proposed detached garage; to allow one (1) off-street parking space to be located in the front yard area that is located between the front lot line and a parallel line drawn through the farthest point back on the façade of the residential building that faces towards the street on a corner lot; and, a reduction of the minimum fourteen (14) foot front yard setback to thirteen (13) feet along N. 9th Street for the owners to have clear title to the property; all the Exceptions are for the property located at 901 Leavenworth Street, in the R-M/TNO, Four-Family Residential District and the Traditional Neighborhood Overlay District with the following conditions of approval:

1. The Exceptions shall be limited to the proposed fence, three-car detached garage, off-street parking space and the existing house as shown on site plan and as outlined in the application documents.
2. The proposed fence, three-car detached garage and off-street parking space shall be built according to the site plan and maintained in good condition.
3. All applicable permits shall be obtained.
4. A minimum thirty (30) inch tall, year around evergreen landscape buffer shall be planted as shown on the site plan to buffer the off-street parking space. At the time of planting, the landscape stock shall have a maximum separation of three (3) feet on center to screen the parking space from N. 9th Street.
5. The required landscape buffer shall be installed before the approval of a Final Inspection.
6. The second story of the detached garage shall not be used as a dwelling unit.
7. The off-street parking space shall be paved with all-weather asphalt or concrete.
8. The proposed fence along N. 9th Street shall be maintained as see-through.

Seconded by Dillon, which passed with a vote of 4-0.

A PUBLIC HEARING to consider a VARIANCE to allow off-street parking for a proposed multiple-family apartment complex in the R-3, Multiple-Family Residential District, to be located between the front lot line and a line parallel to the front lot line drawn through a point which is on the side of the principal structure furthest from the front lot line, yet still facing the front lot line at 3000-3030 Grand Mere Parkway (Owner: Zach Burton – Banzi LLC Applicant: SMH Consultants – Jeff Hancock P.E.).

Benedick presented the Staff Report, recommending approval of the Variance request with one (1) condition.

Aistrup opened the public hearing regarding 3000-3030 Grand Mere Parkway.

Todd Anderson, SMH Consultants, stated that he is available to answer any questions posed by the board on behalf of his client and Mr. Jeff Hancock. No questions were posed of Anderson.

Aistrup closed public hearing.

Hamilton supports with two (2) suggestions for consideration: to remove 1st sentence from the second paragraph of “Unnecessary Hardship” standard and to drop relationship to intent of regulations dealing with modern developments in the last paragraph of that standard.

Lavis agrees, and says it is not relevant.

Hamilton appreciates design work and landscaping to buffer looks.

The board made the following findings of fact for the Exception at 3000-3030 Grand Mere Parkway:

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is platted so that Lots 1 and 2 are corner lots fronting three (3) public rights-of-way. The lots are platted so that access must be provided by Grand Champions Drive, therefore the yard fronting this right-of-way is considered the front yard. A corner lot with three (3) front yards is a unique condition found on only a few properties within the City. In order to provide enough landscaping in the side yard to soften the appeal and provide vertical relief of the apartment buildings, eight (8) parking stalls on each lot are located in the front yard area.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse impact is anticipated to occur on adjacent properties. Currently, the land to the northwest and southwest of the subject property is zoned County PUD, Planned Unit Development and is currently undeveloped. The land to the east of the Grand Champions Addition is zoned R-S, Single-Family Residential Suburban District. While this area may contain residential uses in the future, currently the Colbert Hills Golf Course is the use located in this district. The location of the parking areas will primarily be in the side and rear yards of the subject site, therefore there will be minimal views of the parking from Grand Mere Parkway. Additionally, the proposed landscape plan is anticipated to mitigate any adverse views of the parking from the proposed single-family units included in the Grand Champions Addition that will be located southeast of the subject site.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The applicant has submitted an approved site plan with parking areas that do not encroach into the front yards to receive a building permit. This site plan, however, provides additional parking in the side yard setback and does not offer landscaping that would soften the appeal of the proposed apartment buildings. The new site plan incorporates landscaping in the side yard that provides vertical relief of the building. Additionally, the layout of the building lines is to provide architectural relief for the aesthetics of the buildings. According to the applicant, the intention of the apartment building design is “to have a project site that is appealing to the eye and not just a flat sided building and sea of parking.”

The proposed landscape plan is intended to mitigate any unpleasant views of the parking areas, and the apartment building design is intended to improve the aesthetic qualities of the subject site.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No adverse effect on the public is expected with the Variance request. The parking areas will be located outside of any public easements. The proposed design of the buildings is intended to create an aesthetic appeal, and the location of the parking is not anticipated to adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

RELATIONSHIP TO INTENT OF REGULATIONS: The intent of the off-street parking regulations is to reduce the visual impact of large parking areas to passers-by and adjacent residential uses. The proposed site plan meets the spirit and intent of the regulations. All parking is behind the minimum front yard setback. The apartment buildings are located so that they face the fronting street and the parking areas are to the side and rear of the buildings, although not technically the furthest point on the façade. This type of development pattern is generally consistent with the intent of the regulations.

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

Hamilton moves to grant the Variance to allow off-street parking 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, in the Grand Champions Addition, associated with a proposed multiple-family apartment complex, located at 3000 & 3030 Grand Mere Parkway in the R-3 Multiple-Family Residential District, with the following conditions:

1. The Variance shall be according to the proposed site plan shown in the application documents and shall be limited to those lots on the proposed site plan.

Lavis seconded, which passed with a vote of 4-0.

A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to seven (7) feet to construct a proposed six (6) foot tall screening fence along Kimball Avenue for the property located at 2001 Hillview Drive in the R, Single-Family Residential District (Applicants/Owners: Jeroen Roelofs and Stella Lee).

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

Dillon asked Bunger who policies the number of hens if a neighbor were to complain. Bunger replied saying the Planning department enforces limitations, because no code specifically dealing with number of hens and animal control would address noise, smell, etc.

Aistrup points out that there was a letter written by Charles Jones.

Aistrup opened the Public Hearing.

Jeroen Roelofs, the applicant, says he is there to address any questions there may arise. He wrote all neighboring property owners a letter; no neighbors had any concerns with the issue.

With no other comments from the public, Aistrup closed the Public Hearing.

Aistrup stated that since dealing with the fence and the chicken coop, an Exception and Variance, respectively. The fence Exception would be addressed first.

Hamilton more than sufficiently swayed and thinks the fence is done in a good way. All agreed.

The Board made the following findings of fact for the Exception at 2001 Hillview Drive:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: An existing shed is located along the west property line and is within the minimum three (3) foot side yard setback for an accessory structure. This item was not included in the public notice for the Exception. The applicant can choose to move the shed outside of the side yard setback or seek an additional Exception to bring the property into compliance. Other than this issue, the subject site currently complies with all applicable regulations, other than that for which the Exception is requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and the adjacent properties are zoned R, Single-Family Residential District. The area consists of single-family homes. To the east is the USD 383 College Hill Pre-Kindergarten and Preschool, its playground and open spaces. To the south is Kimball Avenue, a four-lane arterial road. To the west and north are large lot, single family homes.

Minimal adverse impacts on adjacent properties are anticipated by the proposed fence. The properties to the south are separated from the subject site by the busy, four-lane arterial road. The preschool to the east will not be impacted by the fence. The preschool and the subject site are separated by the Hillview Drive right-of-way. The proposed fence is to be located behind the Hillview Drive front façade of the house, which will increase the separation from the preschool site. The property most likely impacted by the proposed fence is the property to the west. The proposed fence is to be setback three (3) feet from the west property line. The added separation from the property line should minimize any impacts the proposed fence would have on the property owner to the west. The subject site has several mature trees along Kimball Avenue and the west property line that should also reduce any visual impacts to the screening fence on adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed fence will be outside of any utility easements and not within the vision clearance triangle created by Kimball Avenue and Hillview Drive. The location and materials of the proposed fence should not impact the pedestrians that travel along Kimball Avenue. The visual building line or the order along

Kimball Avenue should not be adversely impacted by the proposed fence. The preschool to the east currently has a chain link fence that is zero feet on the property line along Kimball. The subject site has a pedestrian guard rail that separates the sidewalk and the subject site and protects against a small vertical drop-off on the subject site. There are mature trees and bushes that are located on the front property line along Kimball Avenue and the west property line. These trees should buffer the size and mass of the proposed fence of the public. Considering these factors, the proposed fence is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

The strict application of the regulations for the accessory use setbacks would not allow the applicant to construct the fence as proposed. The minimum setback for an accessory structure along Kimball Avenue is twenty-five (25) feet. There is an existing fence located approximately thirty (30) feet from the Kimball Avenue front property line. The fence could be moved as close as twenty-five (25) feet from the front property line.

The applicants have stated that the area outside of the existing fence and within the front yard areas “is nice and flat and located under the only mature tree that is located within the lot (meaning not at the border) and close to the house. Therefore this would be very well suited as a play area for children.” Given the area that the applicant’s would like to use as a garden and play area for their family and the amount of vehicle and pedestrian traffic that is present along Kimball Avenue; safety and privacy is a concern. The proposed screening fence would allow the applicants the ability to use a portion of their yard that is suited for their family and keep the children and pets from running into traffic or having their privacy interrupted by pedestrians on the sidewalk to the south. As mentioned, the adjacent properties should not be adversely impacted by the proposed fence because of separation because of the roadways and mature trees and shrubs. Given the circumstances of the property and the purpose of the proposed fence, the strict application of the regulations would be unreasonable.

Hamilton motioned to approve an Exception to allow a reduction of the minimum twenty-five (25) foot front yard setback to seven (7) feet to construct a proposed six (6) foot tall screening fence along Kimball Avenue for the property located at in the R, Single-Family Residential District, with the following conditions:

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

Lavis seconded, which passed with a vote of 4-0.

A PUBLIC HEARING to consider a VARIANCE to reduce the minimum distance between a property line and the feeding, grazing, or sheltering of animals or poultry in either penned enclosures or in open pasture of a one-hundred (100) feet to twenty-five (25) feet from the south property line, thirty (30) feet from the west property line and seventy-five (75) feet from the east property line for a proposed chicken coup at 2001 Hillview Drive in the R-1, Single-Family Residential District. (Applicants/Owners: Jeroen Roelofs and Stella Lee).

Bunger presented the Staff Report, recommending approval of the Variance with six (6) conditions.

Hamilton says this is a new issue. Says this is a large lot with a fence, vegetation, and space is unique to the city. She is inclined to approve, but needs to change part of the unnecessary hardship. Aistrup agrees with the issue of unnecessary hardship. Treat as an unique animal hobby, but needs to make it applicable to pet laws and neighbors.

Dillon says there is a need to tie in the specific non-commercial use.

The Board made the following findings of fact for the Variance at 2001 Hillview Drive:

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is a large lot that is approximately 121 feet wide, 170 feet deep and with 20,037 square feet in area. The subject fronts onto a Kimball Avenue, a heavily travelled, four-lane arterial road. Although the subject site and the location of the chicken coop do not meet the minimum distance requirement for the agriculture use limitation of the R District, it is a property unique to the surrounding properties. With the exception of the property immediately to the west of the subject site, few single-family residential properties are the size of the subject site and also front onto a four-lane arterial road.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and the adjacent properties are zoned R, Single-Family Residential District. The area consists of single-family homes. To the east is the USD 383 College Hill Pre-Kindergarten and Preschool, its playground and open spaces. To the south is Kimball Avenue, a four-lane arterial road. To the west and north are large lot, single family homes.

According to the application documents “the location of the chicken coop has been chosen to ensure minimal impact on neighbors.” The proposed chicken coop will be located approximately twenty-five (25) feet from the Kimball Avenue front property line, thirty (30) feet from the west property line and seventy-five (75) feet from the property line along Hillview Drive. Any visual impacts from the chicken coop will be lessened by the proposed fence related to the Exception that the applicants have requested.

The proposed chicken coop would house up to six (6) hens and no roosters. As the applicant has stated, “almost all chicken noise complaints are related to roosters; hens do not crow.” Considering the amount of traffic on Kimball Avenue and the amount of noise generated from the street, the noise created by the hens should not be noticeable

Other possible impacts on adjacent properties would be from odors generated from the chicken manure and the attraction of predators and rodents. The applicant has provided information from the So Po Chicken internet site (www.SoPoChickens.org) which states that “the amount of chicken manure produced by six hens is roughly equivalent to the dog droppings produced by a medium to large dog. And unlike dog or cat poop, chicken manure can be easily composted into organic garden fertilizer.” The issue of the attraction of predators to the chickens would be present even if the subject site had adequate separation from all property lines. Reducing the separation from one-hundred (100) feet to at least twenty-five (25) feet will not increase the attraction of predators. As the applicant has stated “. . . animals attracted to something would have no problem covering the larger distance.” The applicant has also stated that the proposed chicken coop will be predator proof because hardware wire will be buried under the ground to prevent a predator from digging into the coop. The attractions of rodents will be dependent on how the applicants care for the chickens and store the chicken feed. The applicants have stated that they will use rodent proof containers and limit the amount of feed given to the chickens to prevent excessive food lying around. A similar attraction of rodents could be created by having dog or cat food not stored properly and if excessive pet food is left out in the open.

Existing Ordinances in the City’s Code of Ordinance prohibit fowl running at large (Sec. 6-2), prohibit the presence of game cocks or fighting birds (Sec. 6-7-1-b) and prohibits fowl to create a public nuisance (Sec 6-8 and Sec 21-12-7).

Given the location of the chicken coop, the fact that the noise from Kimball Avenue will be louder than the number of hens proposed and the information the applicant has provided regarding odors, and the attraction of both predators and rodents, there should be minimal impacts on the adjacent property owners. It would be appropriate to limit the number of chickens as well as prohibit the property owners to feed and shelter roosters to limit any adverse impacts on adjacent property owners.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:
The Board finds the proposed chicken coop, in this case, is viewed as a unique, noncommercial hobby, which is subject to City regulations applicable to the care of pets, which could not be pursued without a Variance from the distance requirements of the agriculture use.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

Minimal affects on the public health, safety or general welfare is anticipated. As the applicant has stated in the applicant documents, efforts will be made to reduce the impact of the chicken on the surrounding property owners and neighborhood. Hens will only be raised in the chicken coop as pets and for the harvesting of the eggs. Typically, hens do not create the noise nuisance that roosters do. The chicken coop will be built to prevent predators from entering the coop and measures will be made to prevent rodents from eating the chicken feed. Also, the applicant has shown that the amount of chicken manure that is produced by six (6) chickens is similar to that of a medium to large sized dog and can be composted to create organic fertilizer.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the use limitation for agricultural uses in the R, Single-Family Residential District, is to minimize the conflict between the agricultural use and adjacent residential property owners by creating a minimum separation distance between the sheltering, feeding and grazing of animals and the residential uses. The use limitation does not differentiate between larger agricultural uses or larger animals, such as horses or cattle, compared to the small, hobby uses of chickens, like what is being proposed. As the applicant has stated “the location of the chicken coop has been chosen to ensure minimal impact on neighbors.” The proposed chicken coop is located as far away from adjacent property owners as possible, without encroaching into required setbacks for accessory structures. The applicant has also accounted for other possible conflicts with the chickens and the adjacent residential properties. The proposed chicken coop will house hens, instead of the noisier roosters. The applicant has stated that the construction of the coop will resist predators and that the storage of chicken feed will be in rodent proof containers. Because the applicant’s proposal for the chicken coop; including having only hens and a plan to care for the chickens, the conflicts between the agriculture use and residential uses are minimized. The proposed Variance to allow a chicken coop within 100 feet of all property lines meets the intent of the use limitations.

Dillon motioned to approve Variance to reduce the minimum distance between a property line and the feeding, grazing, or sheltering of animals or poultry in either penned enclosures or in open pasture of a one-hundred (100) feet to twenty-five (25) feet from the south property line, thirty (30) feet from the west property line and seventy-five (75) feet from the east property line for a proposed chicken coop at 2001 Hillview Drive in the R, Single-Family Residential District, with the following conditions of approval:

1. The Variance should apply to the proposed chicken coop as shown in the site plan and as outlined in the application documents.
2. The Variance shall apply only to the applicants - Jeroen Roelofs and Stella Lee
3. The chicken coop shall be constructed as proposed, maintained within city codes, and operated as a non-commercial hobby.
4. No roosters shall be raised on the property.
5. A maximum of five (5) chicken hens shall be housed in the chicken coop or on the property
6. The chicken coop and the care for the chickens shall comply with all applicable City of Manhattan Ordinances.

Lavis seconded, which passed with a vote of 4-0.

A PUBLIC HEARING to consider a VARIANCE to allow for a business to have more than one (1) wall sign in the C-1, Restricted Business District. Two (2) wall signs have been proposed on Building G in the Manhattan Medical Center for each of the businesses to be located in that building. The property is at 1133 College Avenue. (Applicants/Owners: Manhattan Medical Center – Bob Dieball).

Bunger presented the Staff Report, recommending approval of the Variance with two (2) conditions of approval.

Aistrup opened the Public Hearing.

Susan Zeller, Thomas Sign Service, behalf of applicant (Bob Dieball), stated the both signs would read exactly the same. No questions for were asked of Ms. Zeller.

With no other comments, Aistrup closed the Public Hearing.

Dillon has no problems with it, Claflin is a busy street, and thus clear signs are best. Others agreed.

The Board made the following findings of fact for the Exception at 1133 College Avenue:

CONDITIONS UNIQUE TO THE PROPERTY:

The unique condition of the property is the change of grade between the west side and east side of the property. There is an approximately twelve (12) foot difference in elevation between the two (2) sides of the subject site. Because of this elevation change the building was designed to have separate entrances for the medical offices, each one (1) being on different levels. The proposed signs are designed so that the public and clients of the medical offices can be directed to the upper or lower level parking lots and the correct medical offices. The need for the proposed signs is a function of the design of the building, which was dictated by the terrain of the subject site.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site is zoned C-1, Restricted Business District. To the south and west of the subject site are properties zoned R, Single-Family Residential District. These properties consist of single-family homes. To the north are properties zoned U, University District, C-1 District and PUD, Residential Planned Unit Development.

The Sign Regulations allow properties in the C-1 District to have a maximum gross surface area of a sign to not exceed one (1) square foot for each one (1) foot of linear street frontage which abuts the zoning lot (Section 6-202(D)). The subject site has approximately 1,048 linear feet of frontage on to Claflin Road. The subject site could have signs that equal to 1,048 square feet. The proposed wall signs and approved ground sign have a total surface area of approximately 72 square feet.

The proposed wall signs are facing Claflin Road and are not out of character with the surrounding properties along the collector street corridor. Similar signs are located throughout

the Manhattan Medical Center complex. The location of the signs will not be seen by the adjacent residential properties to the south or west. The building will screen the residential properties to the south from the signs. The residential properties to the west are perpendicular to the area of the building where the signs will be located. The residential properties to the northeast and northwest are along Claflin Road and are in proximity to other types of commercial developments with similar types of signs. No adverse impacts are expected on adjacent properties.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The strict application of the regulations will impose a hardship on the Medical Office's clients. Given the design of the medical office building, with its limited interior access between the two (2) floors, and the possibility for confusion for the clients and public to get to the correct medical office, the proposed wall signs may be helpful and necessary. Although, each business is listed on each wall sign, or a total of two (2) signs per business; the signs act more as directional or informational signage, rather than a typical business sign that specifically advertises a business and their services or products. The signs cannot be deemed as an information sign designed for the convenience of the public (i.e. identify entrance and exit drives, parking areas, one-way drives, restrooms, freight entrances, accepted credit cards, self serve pumps, automatic teller machines, teller or drive-up windows, and similar informational signs) because each sign is larger than five (5) square feet in area and the business name and/or logo is more than thirty (30) percent of the sign's surface area (Section 6-104(A)(5)). The sign is a total of approximately twenty-one (21) square feet.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

The proposed signs are approximately thirty (30) feet away from north property line, along Claflin Road. The size and distance from the property line meet the minimum standards of the Sign Regulations for the C-1 District and should not impact the driving public. The purpose of the signs is to direct traffic the correct parking area and medical office entrances. By improving the informational and directional signage on the subject site should positively impact the public by decreasing confusion of people trying to find the correct office.

RELATIONSHIP TO INTENT OF REGULATIONS:

The design of the C-1 District is to provide for non-retail commercial, and business and professional activities adjacent to arterial and collector streets. The intent of the District is to be compatible with adjacent residential districts. The Sign Regulations for the C-1 District carry out the intent of the District by limiting the number of signs a business can have to one (1) so that the property does not become over commercialized in appearance. The C-1 District does allow the total surface of area of all signs to be as large as one (1) square foot for each one (1) foot of linear street frontage which abuts the zoning lot. The subject site has approximately 1,048 linear feet of street frontage. The total square footage of all signs on the lot could be as large as 1,048 square feet. The proposed signage on subject site is 72 square feet in area. Considering the purpose of the proposed signs to direct the public to the appropriate entrance of the medical office building and the minimal size of the proposed sign package compared to what would be permitted, the intent of the regulations are met.

Hamilton motioned to grant the Variance to allow for a business to have more than one (1) wall sign on Building G at 1133 College Avenue in the C-1, Restricted Business District with the following conditions of approval:

1. The Variance shall only apply to the proposed sign as shown on the site plan and outlines in the application documents.
2. All applicable permits shall be obtained.

Second by Dillon, which passed with a vote of 4-0.

A PUBLIC HEARING to consider a VARIANCE for the reduction of the minimum 750-foot radial distance from other advertising sign (off-site sign) to one-hundred and fifty (150) feet for a proposed advertising sign (off-site sign) located along Ft. Riley Boulevard at 130 E. Poyntz Avenue in the C-5, Highway Service Commercial District (Applicants/Owners: Dick Edwards Ford Dealership).

Bunger presented the Staff Report, recommending denial of the Variance at 130 E. Poyntz Avenue. Three (3) conditions of approval were offered if the board were to approve the Variance.

Hamilton asked Bunger if there are other instances for non-billboard off-site sign examples. Bunger said there were no examples of non-billboard sized off-site sign examples in town.

Dillon asked Bunger if there is any other location on the site where they could do this. Bunger said no.

Hamilton asked Bunger is there any provision that the existing billboard were taken over as a public service billboard? Would there be a way to get around the regulation?- yes. If the sign specific says something about the site- it is fine. The moment directs to off-site subject to the regulation. There is some language that would potentially allow it to happen.

Aistrup says the issue is the sign is blatantly pointing to their other location. Could get around it with a web address or other options.

Hamilton appreciates the regulation- that way cannot sell out areas.

Aistrup opened the Public Hearing.

Ken Schmelzle, comptroller at Dick Edwards, said the previous sign was approved by city, but the individual is no longer with city.

Scott Kolp, Shirley Signs, called the City to see if there was going to be an issue in changing the face of the sign. The City employee said there was no problem with it, thus the company ordered the new sign face.

Bunger clarified the sign issue. Re-facing a sign is no issue, but the new sign was a new type of sign, thus needed a sign permit.

Greg Covington, has concerns for drawing people down Highway 24. Need to exercise careful judgment for deviation from norm.

Aistrup closed the Public Hearing.

Hamilton understands how problem developed, but still persuaded by the city staff's judgment, Aistrup agrees.

The Board made the following findings of fact for the Exception at 130 E. Poyntz Avenue:

CONDITIONS UNIQUE TO THE PROPERTY: There appears to be no unique conditions to the property that is not created by the actions of the applicant. The site is flat and there is no obstruction between the proposed sign face on the existing pole sign and the adjacent off-site advertising sign, that might otherwise justify reducing the minimum distance between two (2) off-site advertising signs.

The condition that has created the need for a Variance is the applicants proposed sign, which has been determined an off-site advertising sign because of the arrow and miles listed direct that the sign viewer to a business that is not located on the subject site. A sign face has been permitted that lists the business name and the business website. Other forms of advertising, including other off-site advertising sign that meet the Sign Regulations, could be used to direct potential customers to the other automobile sales lot to the east.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and the adjacent properties to the east are zoned C-5 Highway Service Commercial District and Light-Manufacturing-Service Commercial District. To the north of the subject site is the E. Poyntz Avenue right-of-way, which is zoned I-3, Light Industrial District. Further to the north are properties zoned C-5. To the east is Ft. Riley Boulevard ROW and Tuttle Creek Boulevard ROW which is zoned Light-Manufacturing-Service Commercial District. Further to the east is the Manhattan Town Center Mall, which is zoned C-4, Central Business District. To the south of the subject site is property zoned I-3 District and consists of the Union Pacific Railroad and the levee system.

Minimal adverse impact is expected by the installation of the proposed off-site advertising sign. The proposed sign is to replace an existing sign on a pole structure that is permitted. The proposed sign will be the same dimensions as the existing sign. The previous sign was permitted because it identified the business at the subject site. The proposed sign is determined to be an off-site advertising sign because it directs attention to a business that is not located on the subject site.

Although the placement of the sign will not detract or impact adjacent properties because it is the same sign as the existing sign; approving the proposed off-site advertising sign may adversely impact the rights of adjacent property owners. Several businesses in the vicinity also have branch stores or other business locations similar to the circumstances of the applicants. If the applicant would be allowed to convert an existing, permitted pole to an off-

site advertising sign, other businesses should also have the opportunity. Placing an off-site advertising sign at this location also limits and restricts the placement of an off-site advertising sign in a permitted location that meets the 750 foot radius distance between other advertising signs. This would also impact adjacent property owner's rights.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

There does not appear to be an unnecessary hardship to the applicant by strictly applying the Sign Regulations. The automobile sales business on the subject site is adequately identified by the permitted awning signs and pole sign. The second automobile sales business to the east has other means to attract business, including using existing advertising signs (off-site signs) that meet the Sign Regulations.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

The effects on the health, safety, morals, order, convenience, prosperity, or general welfare of the public should be minimal. The visibility and the internal illumination of the proposed sign should have minimal effects on the public driving east and west along E. Poyntz Avenue, or north and south along Ft. Riley Boulevard. The proposed sign is identical in size and height as the existing sign. The sign is not located in a public easement or vision triangle. Advertising signs are part of the established order along Ft. Riley Boulevard and E. Poyntz, although the existing off-site advertising signs meet the required 750 foot radius distance requirement.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the Sign Regulations to restrict the distance between two (2) or more off-site advertising signs is to reduce the amount of distractions and visual clutter along a road corridor. Off-site advertising signs are typically large signs with external illumination, that when allowed to be near another off-site advertising sign can cause distractions for drivers. The proposed sign would replace be the same size as the existing sign: four (4) feet by twenty (20) feet on an approximately twenty (20) foot pole. The size and location of the existing sign has not appeared to impact the drivers along E. Poyntz Avenue or Ft. Riley Boulevard. Changing the face of the sign to an off-site advertising sign should not impact the drivers either.

Hamilton motioned to deny the Variance for the reduction of the minimum 750-foot radial distance from other advertising sign (off-site sign) to one-hundred and fifty (150) feet for a proposed advertising sign (off-site sign) located along Ft. Riley Boulevard at 130 E. Poyntz Avenue in the C-5, Highway Service Commercial District Light-Manufacturing-Service Commercial District.

Lavis seconded the motion, and the Variance was denied by a vote of 4-0.

A PUBLIC HEARING to consider an EXCEPTION to allow for a reduction of the minimum twenty-five (25) foot rear yard setback to nineteen (19) feet for proposed additions to the existing house. The property is located at 2504 Purcell's Mills in the Butterfield, Unit 7 PUD, Residential Planned Unit Development. (Applicants/Owners: Karen Franklin)

Bunger presented the Staff Report, recommending approval to the exception with two (2) conditions of approval.

Hamilton asked Bunger were there any lot coverage issues. Bunger said there were no issues.

Aistrup opened the Public Hearing.

Greg Covington, the project contractor, went to each resident adjacent to the property owner's property and spoke to them personally, explained the issue to each of them, and none of the property owners had any issues or objections. Covington stated he believes there was an error when the PUD was created causing there to be a hardship on all the residents for their back yards for mowing etc. Given the shape of the yard, it would be extremely hard for her to fix the contractor error. The shed was not put in correctly, so if was needed to be moved, it would fall apart. Covington wanted to clarify and said the angle from the property line to the corner of the building might be 18.3 feet, which he wanted to be sure it was okay for code inspection.

With no other comments, Aistrup closed the Public Hearing.

Dillon stated the shed is not before the Board tonight.

Hamilton appreciates Mr. Covington's comments about the hardships all the neighbors are facing. Aistrup agrees.

The Board made the following findings of fact for the Exception at 2504 Purcell's Mills.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The site plan shows an existing garden shed at the rear of the property that belongs to the applicant. The shed encroaches into the five (5) foot rear yard setback and is partially located on the adjacent property to the east. The applicant will need to address the location of the shed separately from the current application. If the applicant chooses to move the shed completely onto her property, the shed must conform to the Zoning Regulations by being setback a minimum of five (5) feet from the rear lot line and three (3) feet from the side lot lines or seek and Exception. Other than this issue, the property complies with the applicable regulations and for the Exception request.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The properties to the east, south and west are zoned PUD, Butterfield Residential Planned Unit Development. To the north of the subject site are properties zoned R-2, Two-Family Residential District, and are currently vacant. The adjacent properties in the Butterfield PUD are single-family dwellings.

The Exception request is not anticipated to adversely affect adjacent properties. The property to the immediate north had an Exception approved for a similar request for an addition on April 14, 2010. The adjacent property to the east has an existing screening fence that is approximately six (6) feet from the adjoining rear property line. The fence and the added six foot of separation from the proposed addition should reduce the impact on the properties to the

east. The location of the proposed bedroom addition is on the northeast corner of the house. The house should screen properties to the south and west from the proposed master bedroom addition. The property to the south will be the most impacted by the screened-in porch. Considering that there is already a concrete pad at this location, the proposed screened-in porch should not adversely impact the adjacent property owner.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

The Exception request does not encroach on any utility or drainage easements. The request is not anticipated to negatively affect the public health, safety, or welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

The strict application of the zoning regulations would prevent the addition to be constructed as proposed. The applicant originally had received a building permit for an addition that met the minimum setback requirements. The measurement error by the contractor in digging the foundation footing creates the need for the Exception. The applicant's consultant, Greg Covington of Covington Home Crafters, explains the steps that it would take to fill in the trench made in error and prepare the area for the permitted addition in the application documents. According to Mr. Covington ". . . filling in the excavated footings with attention to appropriate compaction of soil in incremental 'lifts', followed by re-excavation of the footings at a point only a few feet closer to the existing home. This would likely result in 'crumbling' of sidewalls of the newly excavated trenches while they are being dug, or shortly thereafter, particularly with the weight of the backhoe being applied directly over those areas." Considering the amount of time and extra resources it will take to correct the error of the contractor and that the applicant has decided that the larger addition would better meet her needs.

The proposed screened-in porch was only considered after it was determined that the Exception for the master bedroom addition was needed. The porch will be approximately nineteen (19) feet at its closest point to the rear property line and twenty-one (21) feet from at the point furthest from the rear property line. The rear yard property is diagonal in relation to the house, which limits the available area to construct the proposed screened-in porch. Due to the angle of the rear property line, the rear yard setback is as close as four (4) feet from the rear of the house. If the proposed addition was to comply with the twenty-five (25) foot setback requirement, the applicant would not have enough space available to build the proposed addition. Due to the circumstances of the error in the preparation for the master bedroom addition and the lot design of the subject site, the strict application of the zoning regulations is unreasonable.

Dillon moved to approve the Exception to allow for a reduction of the minimum twenty-five (25) foot rear yard setback to nineteen (19) feet for proposed additions to the existing house at 2504 Purcell's Mill, in the Butterfield, Unit 7 PUD, Residential Planned Unit Development.

1. The Exception shall apply to the proposed additions as outlined in the application documents and as illustrated in the site plan.

2. All applicable permits shall be obtained.

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

Aistrup adjourned.

Respectfully Submitted,

Ashley Myers, Planning Intern