

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, February 9, 2011
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Joe Aistrup, Vice Chairperson; Connie Hamilton; Catherine Lavis.

MEMBERS ABSENT: Ricci Dillon.

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II; Ashley Myers, Planning Intern

CONSIDER THE MINUTES

Lavis moved to approve the January 12, 2011 minutes which was seconded by Hamilton and passed with a vote of 3-0.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTION TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED NUMBER OF OFF-STREET PARKING SPACES FROM 63 PARKING SPACES TO 3 PARKING SPACES FOR A PROPOSED SELF-STORAGE UNIT BUSINESS ON PROPERTY LOCATED AT 4850 EUREKA DRIVE IN THE I-3/AO, LIGHT INDUSTRIAL DISTRICT AND AIRPORT OVERLAY DISTRICT. (APPLICANT/OWNER: K & M HOLDING)

Hamilton moved to approve the 180 day extension, which was seconded by Lavis and passed with a vote of 3-0.

A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum front yard setback along Wreath Avenue from twenty-five (25) feet to ten (10) feet and along Lundin Drive from twenty-five (25) feet to nine (9) feet for a new off-street parking lot for the Manhattan Technical College at 3136 Dickens Avenue in the R, Single-Family Residential District. (Applicant/Owner: Manhattan Area Technical College).

Myers presented the Staff Report with a recommendation of approval for the Exception request.

Hamilton asked about the utility pole along Lundin Drive. Myers said it is under the size which is regulated, thus it is exempted from regulation.

Hardy opened the Public Hearing.

President/CEO Robert Edelston of MATC said the Technical College is growing and parking has become a problem. The students took it upon themselves to pay a \$1/credit hour fee to

raise money for the new parking lot. He is concerned for his students' safety crossing Wreath Avenue. The placement of the parking lot is sensitive to storm water drainage and runoff. Additionally, the angled parking which is within the setback will be taken out and posted with signs to prohibit parking.

Mark Lundin, Plaza West Apartments owner, said he is in favor of the school constructing a very well needed parking lot. However, there are several aspects of the project he is opposed to: first, the setbacks along Wreath and Lundin which will hurt site distances; second, the lack of green space; third, the exit on Lundin with cars who travel with high speeds; and fourth, he would like the lot to be moved to the south. Lastly, he would like the curb cut along Lundin Drive to be removed and placed along the south connecting to the existing parking drive.

Kirk Hoke, Schwab-Eaton, responded to Lundin's questions. The site will be graded extensively, thus there should not be any site distance issues. The parking lot will be 35 feet from the Wreath Avenue, so the cars should not obscure site on the road. The entrance to the lot from Wreath Avenue will be aligned with Robinson Drive (coming out of CiCo Park), while the entrance from Lundin will be the required 150 feet from the intersection. The lot cannot be moved any farther south because it is the breaking point for the drainage in the area and no more water can be put into the tributary.

Aistrup asked if the parking lot could be moved to the east, farther from Wreath Avenue. Hoke said to the east the terrain drops two-three feet and would require a retaining wall. However, the 25 foot setback is based on the R zoning district for residences with driveways.

Aistrup said it is a residential area, with which the school fits into. Need to have a consistent neighborhood aesthetic and setback. Hoke said he does not see the connection between the school and the residential area because the school occupies the entire block.

Trasenda Lundin, Plaza West Apartments owner and manager, is excited for the new parking for the school, but has issues with the site distances. When Wreath Avenue was lowered the site distances were changed. She thinks people will still park along Lundin Drive even after the new parking lot is completed because there is a stair case leading to the school at the end of the drive. No parking between the Lundin Drive entrance and Wreath Avenue needs to be enforced. When the Plaza West Apartments were built, they followed the standards and she thinks it s a bit of double standard to allow people to choose their own setback. Finally, the Plaza West tenants are good people and they deserve green space.

Hardy closed the Public Hearing and opened Board Discussion.

Aistrup asked Bunger about the drainage issue on the south side of campus as it relates to CiCo. Bunger said the Cico Tributary is a problem in terms of erosion and the amount of water coming off. The City is studying it now to figure out how to correct it. So by staying out of the tributary watershed it will help the situation. Granted detention would be utilized and required to detain to the same rate as what is now. However, going from a majority green

space to a parking lot will create runoff. In terms of that, it would be beneficial to the area to keep the lot in the proposed position.

Hamilton appreciated the presented information and the fact that the students taxed themselves to get the new parking lot. She thought the Lundins should know the Board's perspective on the issue. They heard drainage and tributary concerns and with the significant drop off of terrain, it is a good reason for an Exception. There will be 35 feet from the edge of Wreath Avenue to the parking lot, which will allow green space. And hopefully the visibility along Wreath Avenue will be improved. Hopefully the Lundins and the school will work together to restrict the parking along Lundin Drive. The MATC site is a big piece of property and they are entitled to a curb cut along Lundin Drive, which meets the code of 150 feet from the intersection. Finally, since the site is the entire block, it should not disrupt the neighborhood.

Aistrup said because of the drainage area and the typography there is no other strong option for the placement of the parking lot. And the Board has no jurisdiction over the curb-cut; it only has to meet code.

Hardy said this is the type of situation the Board addresses and agrees with it.

The Board made the following findings of fact for the Exception at 3136 Dickens Avenue.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site currently has parking to the property line along the access drive which runs parallel to Dickens Avenue and has site access from Wreath Avenue. The applicant will address this issue after completion of the new parking area. Other than the current parking issue and the Exception request, the subject site current complies with all applicable requirements of the Zoning Regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The neighborhood is residential in character with the subject site zoned R, Single-Family Residential District. The properties immediately to the north are zoned R-3, Multiple-Family Residential District, with R-1, Single-Family Residential District, properties located to the southwest of the site. Additionally, the southeast is zoned R-2, Two-Family Residential District, and R-3, Multiple-Family Residential District. The proposed parking is in effect taking over the parking function now fulfilled by the lot at CiCo Park, thus minimal adverse impacts are expected on adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Currently there is a CATV/electric utility pole located next to the proposed curb cut along Lundin Drive, which runs underground to the educational buildings. However, this utility pole is exempted from vision clearance triangle regulations due to the size of the pole, which is smaller than the maximum allowable size.

As a part of the engineering process, Schwab-Eaton conducted Traffic and Drainage study reports regarding the proposed parking lot. The Traffic Impact Study prepared by Schwab-

Eaton, “concluded the proposed parking lot will, in essence, replace current parking in CiCo Park. Since both parking lots main point of access is Wreath Avenue, the impact to adjacent public streets will be negligible. The addition of parking on campus will reduce the parking needs in CiCo Park, thereby making a safer and more convenient pedestrian route for students, and reducing pedestrian-vehicle conflicts as students cross Wreath Avenue.”

The Drainage Study completed by Schwab-Eaton, utilized the Modified Rational Method and Haestad PondPack Version 5 to realize a “small detention basin” is necessary near “the northwest corner of the existing building that incorporated a shallow berm... Although there is an increase in the 2-year storm discharge, it is minimal and the discharge from the larger storm events were actually reduced from levels that would occur before the parking lot was constructed.”

The City’s Public Works Department accepted the traffic and drainage study reports without exception; although, it was recommended to include bicycle parking on the west side of the building.

The safety of students and faculty would be improved by the proposed Exception request, because they would no longer be required to cross Wreath Avenue to get to the educational facilities. In summary, minimal adverse effects on the health, safety and welfare of the public are expected.

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

The subject site occupies the entire block causing all yards to be considered front yards requiring the twenty-five (25) foot setback on every side; however, because the Kansas Department of Transportation (KDOT) controls access on Dickens Avenue it is considered a side yard with a setback of fifteen (15) feet. The strict application of the Zoning Regulations would not allow the applicant to construct the parking lot as proposed; to conform to the Regulations approximately fourteen (14) parking stalls would need to be eliminated out of the approximate seventy-seven (77) proposed stalls.

The steep terrain of the northeast portion of the subject site hinders the possible locations of parking facilities causing the proposed location to be the best possible site. The application documents state, “Since a dedicated zoning district does not exist for ‘schools’, the MATC campus falls in a residential zoning district that has ‘Bulk Regulations’ that do not necessarily fit the needs for schools. Regardless, special effort was made to meet city setback requirements when possible. The topography of the land is the major factor in making this request for reduced setbacks.”

Hamilton made a motion to approve an EXCEPTION to allow a reduction of the minimum front yard setback along Wreath Avenue from twenty-five (25) feet to ten (10) feet and along Lundin Drive from twenty-five (25) feet to nine (9) feet for a new off-street parking lot for the

Manhattan Technical College in the R, Single-Family Residential District with the following conditions:

1. All applicable permits shall be obtained.
2. The Exception shall apply to the proposed parking lot as outlined in the Staff Report and application documents and as illustrated in the site plan.
3. Non-conforming stalls along the south side to be removed upon completion of the approved off-street parking lot.

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

A PUBLIC HEARING to consider a VARIANCE to allow a driveway to be greater than twenty-four (24) feet in width and 960 square feet in area; and to reduce the minimum 75% landscaped open area required in the front yard, all for a proposed paved driveway for a new single-family dwelling located in the R, Single-Family Residential District (Applicant/Owner: Mary and Carl Ice).

Bunger presented the Staff Report with a recommendation of approval for the Variance request.

Hardy asked about possibly changing the driveway regulations because this type of request is prevalent. Bunger said he is working on it and actually has a meeting with Public Works the following week. It is hard to make changes though because it applies to the entire City, thus it must be carefully worded and calculated. He is contemplating taking the house out of the calculation. Hardy said he echoes Bunger's frustration, but would like to have progress because he does not want to hit an unsuspecting applicant with the new regulations.

Hardy opened the Public Hearing.

Mike Carson, Bowman, Bowman, Novick, Inc. (applicant's architect), said he was available for any questions. The design was trying to meet all of the neighborhood's restrictive covenants.

Hardy closed the Public Hearing and opened Board Discussion.

Aistrup said this is pretty much pro-forma now and supports the application.

The Board made the following findings of fact for the Variance at 2630 Heartland Drive.

CONDITIONS UNIQUE TO THE PROPERTY:

The property is located in the Grand Mere Development, a unique development when compared to other subdivisions in the City. While zoned R, Single-Family Residential District, the neighborhood consists of estates properties with significantly larger homes and entrances unlike other similarly zoned and platted subdivisions. These platted lots are much wider and larger in lot areas than typical lots found throughout the City. This large-lot, estate

type development is a unique condition compared to other subdivisions that are zoned in the R District.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Minimal adverse impacts are anticipated on adjacent properties. The proposed driveway and parking area would be in character with the established neighborhood. Many of the homes along Heartland Drive and throughout the Grand Mere subdivision have similar driveways and home entrances. The proposed site plan has been reviewed and approved by the Grande Mere Architectural Review Board.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

No specific hardship exists for the applicant if the driveway and parking design regulation was strictly applied. The driveway, parking area and house could be redesigned to meet the regulations. However, a substantial number of the properties along Heartland Drive and throughout the Grand Mere subdivision have circular driveways and parking areas that do not meet Zoning Regulations for minimum open landscape area in the front yard or maximum driveway width. The large driveways that violate the Zoning Regulations were not reviewed by the Community Development Department during the building permit application process (*Note: Under current procedures, Zoning Inspectors typically do not review single-family home construction plans for compliance*). When the neighboring properties' illegally nonconforming driveways and parking areas are considered, an unfair circumstance is created. These property owners were allowed to construct their homes, driveways and parking areas in a way that the applicant is not. This situation may be seen as an unnecessary hardship.

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

No affects on public health, safety or welfare are anticipated. The proposed driveway would not encroach on any public rights-of-way or easements. The circular driveway would enable vehicles to exit the property in a safer forward motion instead of backing out of the driveway. The proposed circular driveway should not improve or worsen the safety of Heartland Drive, a local residential street.

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 original intent of the regulation that requires landscaped open space and the maximum amount of paving for driveways was to reduce the amount of front yard area that is paved and to help maintain the residential character of properties located within residential zoning districts, especially for lots located in the older, Ward districts. The regulation was created in the mid-1980's as a result of paved parking being placed in front of apartment buildings in the Ward Districts. The proposed site plan meets the spirit and intent of the regulations. All parking is behind the minimum front yard setback.

The Ward district lots generally are smaller than those in the Grand Mere subdivision. Likewise, the housing market in the Grand Mere development differs significantly from other

established neighborhoods. Although the open landscape space in the defined front yard area is proposed to be reduced to approximately 56%, the proposed house and circular driveway will match the residential character of adjacent houses and the Grand Mere Development.

Aistrup made a motion to approve a VARIANCE to allow the maximum driveway width to increase from twenty-four (24) feet to eighty-eight (88) feet; allow the maximum driveway area to increase from 960 square feet to 3,500 square feet; and, reduce the minimum 75% landscaped open area required in the front yard to 56%, all for a proposed paved driveway for a new single-family home at 2630 Heartland Drive in the R, Single-Family Residential District with the following condition:

1. The driveway shall be constructed and located as shown on the application documents and site plan.
2. The landscaping shown on the site plan shall be maintained in good condition.
3. All applicable permits shall be obtained

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

A PUBLIC HEARING to consider a CONDITIONAL USE to allow for a proposed sorority house at 508 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District (Applicant/Owner: Zeta Tau Alpha Fraternity Housing Corporation).

A PUBLIC HEARING to consider EXCEPTIONS to allow for a reduction of the minimum twenty-five (25) foot front yard setback along Sunset Avenue to zero (0) feet for the existing and redesigned off-street parking lot; a reduction of the minimum sixty (60) foot front yard setback along Fairchild Avenue to five (5) feet for an accessory trash receptacle screening; an increase in the maximum thirty-five (35) foot height regulation to thirty-eight (38) feet for proposed additions to the existing structure; and a reduction of the minimum number of off-street parking spaces required for a fraternity or sorority from the required forty-six (46) spaces to twenty-six (26) spaces. Twenty-six (26) off-street parking spaces currently exist on the site. These EXCEPTIONS are for a proposed sorority house at 508 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. (Applicant/Owner: Zeta Tau Alpha Fraternity Housing Corporation).

A PUBLIC HEARING to consider a VARIANCE to not provide a six (6) foot tall sight obscuring screening required for an off-street parking lot adjacent residential properties at 508 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. The parking lot is associated with a new sorority house on the site (Applicant/Owner: Zeta Tau Alpha Fraternity Housing Corporation).

Bunger presented the Staff Report for the Conditional Use, Exception, and Variance request recommending approval for all three.

Bunger mentioned the occupancy number from the application documents and Staff Reports needed to be altered from 61 to 62 people.

Hardy opened the Public Hearing.

Jeff Schutzler, Helix Architecture, said he was available to answer any questions. He worked with the City to try to address all of the issues involved with the project.

Dick Hayter, 1920 Grandview Drive, said he supports the requests. His issue was clarified by Bunger regarding the zero setback on Sunset. As he understands it the Variance is for the parking lot as it abuts Sunset, how it currently sits, and not the rest of the front yard. His concern was the setback reduction would run the full North/South property line. Bunger said the setback reduction is only for the parking lot and the site plan, if approved tonight, would be what is built.

Hardy closed the Public Hearing.

Hardy commended the applicant for addressing concerns and working with the neighbors. He also said Bunger did a very good job presenting all of the issues.

Hamilton expressed appreciation for the applicant working with the City. She likes the building will be used for students again and it will improve the site from its current use. The parking is tight and congested, but it works. The parking does not need to be screened because it faces other parking, not a residence.

Aistrup said he supports the application.

The Board made the following findings of fact for the Conditional Use, Exception, and Variance at 508 Sunset Avenue.

CONDITIONAL USE:

A. Compliance with all applicable regulations: The subject site was developed as Greek housing in 1939 and has been used that way ever since. Up until 1996, the use of the subject site conformed to the various Zoning District Regulations that were historically designated for the subject site. In 1996, the Zoning Regulations were overhauled and most of the uses previously permitted in the UO, University Overlay District, including fraternity and sorority, are now required to receive a Conditional Use. The use of the subject site is considered to be legally nonconforming and could continue in its existing condition as Greek housing. The applicant's proposed renovations and additions to the structure and site modifies the legally nonconforming use, which requires an approval of a Conditional Use to bring the site into conformance.

The existing configuration of the site and proposed additions and renovations requires a number of Exceptions and a Variance. The existing building is thirty-five (35) feet, when measured from the average finish grade around the structure, as defined by the Zoning

Regulation. The roof on the structure is flat and does not provide for adequate slope to provide for drainage. The applicant is proposing to construct a new two (2) foot tall cornice/parapet, internal roof drains and increased roof insulation “to provide a durable building roof and to comply with current building code requirements.” The proposed changes to the roof line would make the building height approximately thirty-seven (37) feet. A companion Exception has been requested for the renovated roofline.

Site improvements include re-aligning the off-street parking lot to provide one-way traffic entering Fairchild Avenue and existing Sunset Avenue. The existing location of the off-street parking along Sunset Avenue is approximately zero (0) feet from the front property line. The proposed re-alignment of the parking lot will not change the western edge of the parking spaces along Sunset Avenue. An Exception has been request to reduce the front yard setback from twenty-five (25) feet to zero (0) feet.

The re-aligned parking lot will change the angle of the parking spaces to 45 degrees and provide 4 parallel spaces along the east property line. Twenty-six (26) off-street parking spaces are provided with the revamped parking lot, which is the same number of off-street parking currently provided on the subject site. The existing and proposed use as Greek housing has an occupancy count of 62 spaces, which requires 46 off-street parking spaces (Section 7-103 (A)(4) Dormitories, fraternities, and sororities: At least one (1) parking space for each occupant for the first twenty (20) occupants, or a total number of spaces equal to seventy-five percent (75%) of the total occupants, whichever is greater.) The applicant has proposed a companion Exception for the required number of off-street parking on the subject site.

A trash dumpster and screening is proposed to be located approximately five (5) feet from the front property line along Fairchild Avenue. The Zoning Regulations for accessory structures require that the structure be located at least sixty (60) feet from the front property line. Also encroaching in the sixty (60) foot front yard setback for accessory structures is a condensing unit for the structures heating, ventilation and cooling system. An Exception has been requested to reduce the setback to five (5) feet for the proposed location of the accessory structures.

The applicant has requested a Variance to not provide the required screening of an off-street parking that is adjacent to a residential property as required by Section 7-102(E)(5). The site currently does not provide the needed screening and the applicant has proposed to not provide the screening for safety reasons for the ladies living at the sorority and aesthetic reasons.

Other than these conditions, the subject site complies with all applicable regulations.

B. Probable effect on adjacent properties: The subject site is zoned R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. Properties immediately to the north and south are also zoned R-1/TNO/UO Districts. These properties include fraternities and sororities. To the east along Fairchild Avenue are properties zoned R-1/TNO Districts and R-1/TNO/UO Districts. The area is a mix

of owner-occupied single-family homes, single-family rental and two-family rental units in converted homes and “annex” houses for nearby fraternity and sorority houses. To the west are properties zoned R-1 District and R-3/UO, Multiple-Family Residential District and University Overlay Districts. The majority of single-family homes in the R-1 District are owner-occupied. The properties in the R-3/UO Districts are a mix of multiple-family housing and a fraternity.

The Zeta Tau Alpha sorority is not anticipated to have an adverse impact on adjacent properties. The area is a mix of Greek housing, houses associated with the Greek houses, rental units and owner-occupied homes. The subject site has been a Greek house since 1939. The subject site has been in existing condition, with similar residence occupancy (62) since 1956. Although the subject site and structure is being renovated and added onto, these improvements should not adversely impact the adjacent properties. The proposed building additions will provide the new sorority with a reorganized interior, including chapter meeting space, a new dining room and renovated living space. As previously stated, the occupancy count of the structure will not change compared to the existing number. The building addition’s location conforms to the Zoning Regulations.

A new dumpster and required screening is proposed approximately five (5) feet from the front property line along Fairchild Avenue. A condensing unit for the heating, ventilation and air conditioning (HVAC) condensing unit is proposed approximately nineteen (19) feet from the Fairchild Avenue front property line. Both of these accessory structures encroach into the sixty (60) foot front yard setback. The location of the dumpster is at the end of the Fairchild Avenue roadway, a one-way road, with a landscape boulevard in the middle. No adjacent properties would be immediately affected by the location dumpster and HVAC condensing unit in the front yard. According to the site plan, the dumpster is proposed to be screened by landscaping materials. The proposed landscaping should adequately screen the structures and visually provide a buffer to nearby residential properties and traffic on Fairchild Avenue.

The proposed off-street parking lot provides twenty-six (26) off-street parking spaces, which is identical to the existing number of spaces on the subject site. The proposed renovation and additions to the structure does not increase the number of residential occupants. The number of parking spaces on the subject site has been at twenty-six (26) since 1956, when the building was added onto. The amount of on-street parking along Fairchild Avenue and the surround neighborhood is extremely limited. This is due, in part, to the fraternities and sororities in the area not being able to provide sufficient parking for the occupancy of the structures. However, the propose improvements to the site do not change the number of occupants or off-street parking spaces on the subject site. The proposal will not improve or worsen the on-street parking conditions in the area.

The re-configuration of the parking lot would realign the parking spaces so that traffic would be required to enter the property from Fairchild Avenue and exit onto Sunset Avenue. The re-aligned parking lot should provide a more uniformed circulation pattern to the property, Fairchild Avenue and Sunset Avenue.

C. Domination by use over neighboring properties:

The subject site has been used as Greek housing since 1939. The structure was added onto in 1956. At that time, the site was generally reconfigured to its current configuration. Other than the addition to the roof, the proposed building addition conforms to the Zoning Regulation. The roof addition is to construct a two (2) foot cornice/parapet to provide for a durable roof and comply with building code. The existing roof is flat and does not provide for a minimum slope to drain water off of the building.

Because of the historic use of the subject site and the mix of the residential properties in the surrounding neighborhood, the proposed Conditional Use should not domination the existing uses in the neighborhood.

- 1. Location, nature, and height of physical improvements:** The existing building has a limestone, brick and stucco exterior finish. The building foot print is approximately 4,225 square feet. The building is three-stories tall, with a building height of thirty-five (35) feet, measured at the average finished grade around the building. The applicant has proposed to construct a two-story addition on the east side of the structure to provide new dining and chapter meeting space, as well as a kitchen and storage space. The exterior finish of the addition will be brick and stucco to match the rest of the building. The addition will be approximately twenty-one (21) feet tall from the existing grade. Included in the building addition construction will be a two (2) foot tall cornice to provide for the appropriate roof pitch. The cornice would raise the building height to thirty-seven (37) feet. An elevator tower is also proposed with the building addition. It will be an additional four (4) feet from the existing roof line. Elevator towers are exempt from the building height requirements (Section-406).
- 2. Landscaping and screening:** The subject site has existing landscaping throughout, consisting of a grass lawn along Sunset Avenue and mature deciduous trees. New landscape beds are proposed at the foundation of the building to the east, in front of the sidewalk on the west side of the structure and in the off-street parking lot.

The applicant has proposed to screen the trash dumpster located at the southeast corner of the subject site with landscaping. The site plan does not specific what type or size the landscape materials will be. In order to provide for appropriate screening, the landscape materials should be year-round evergreen plants that should be six (6) feet in height at the time of planting and be planted close enough together to provide the appropriate sight-obscuring screening.

The off-street parking lot is required to be screened from residential properties to the north and east by a minimum six (6) foot tall sight-obscuring screening. The applicant has submitted a Variance request to not provide the required screening. According to the application documents the Variance request is born out of the concern for the safety of the women of the sorority house and aesthetic concerns. More information on the Variance request can be found in the Variance staff report.

D. Adequate provision of parking and loading: Section 7-103(A)(4) states that dormitories, fraternities, and sororities are required to provide least one (1) parking space for each occupant for the first twenty (20) occupants, or a total number of spaces equal to seventy-five percent (75%) of the total occupants, whichever is greater. The total occupant count for the proposed sorority is 62 residents. A total of forty-six (46) off-street parking spaces are required for the use.

A total of twenty-six (26) off-street parking spaces are provided on the subject site. This number has been present on the subject site since 1956, when the building was added onto. The re-aligned off-street parking lot maintains the current number of parking spaces. The applicant has requested an Exception to reduce the required number of off-street parking spaces from forty-six (46) to twenty-six (26) spaces. More information can be found in the Exception staff report.

E. Adequate provision of drainage, and other public utilities: The site is served by existing utilities. Adequate drainage exists for the subject site.

F. Adequate provision of access: The site gains access from Fairchild Avenue to the east and Sunset Avenue to the west. The existing curb cuts are fifteen (15) feet on Fairchild Avenue and approximately twelve (12) feet onto Sunset Avenue. Currently, both access points are used for two (2) direction travel. The applicant has proposed to narrow the access point off of Fairchild Avenue to ten (10) feet wide and re-align the off-street parking lot to create a one-way traffic flow from entering from Fairchild Avenue and exiting on to Sunset Avenue. The access points and the traffic flow are adequate for the use of the subject site.

EXCEPTION:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site was developed as Greek housing in 1939 and has been used that way ever since. Up until 1996, the use of the subject site conformed to the various Zoning District Regulations that were historically designated for it. In 1996, the Zoning Regulations were overhauled and most of the uses previous permitted in the UO, University Overlay District, including fraternity and sorority, are now required to receive a Conditional Use. The use of the subject site is considered to be legally nonconforming and could continue in its existing condition as Greek housing. The applicant's proposed renovations and additions to the structure and site modifies the structures devoted to the legally nonconforming use, which requires an approval of a Conditional Use to bring the site into conformance.

The applicant has requested a Variance to not provide the required screening of an off-street parking that is adjacent to a residential property as required by Section 7-102(E)(5). The site currently does not provide the needed screening and the applicant has proposed to not provide the screening for safety reasons for the ladies living at the sorority and aesthetic reasons.

Other than these conditions, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site is zoned R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. Properties immediately to the north and south are also zoned R-1/TNO/UO Districts. These properties include fraternities and sororities. To the east along Fairchild Avenue are properties zoned R-1/TNO Districts and R-1/TNO/UO Districts. The area is a mix of owner-occupied single-family homes, single-family rental and two-family rental units in converted homes and “annex” houses for nearby fraternity and sorority houses. To the west are properties zoned R-1 District and R-3/UO, Multiple-Family Residential District and University Overlay Districts. The majority of single-family homes in the R-1 District are owner-occupied. The properties in the R-3/UO Districts are a mix of multiple-family housing and a fraternity.

Building Height

Minimal adverse impacts on adjacent properties should be created by approving the Exception to increase the building height. The existing building is thirty-five (35) feet high, measured at the average finished grade around the building. The existing building’s roof is flat and level with the roof line. The building renovation would have a two (2) foot cast stone cornice to alter the roof pitch to the minimum Building Code requirement of 1/4” per 1’ 0” foot sloop. The added two (2) foot building height will include internal roof drains and roof insulation. According to the application documents, “the proposed new cornice/parapet is designed to provide a more aesthetically pleasing termination of the building than the existing gutter and downspouts. We believe these changes are necessary to provide a durable building roof and to comply with current building code requirements.”

Front Yard Setback – Parking

The existing off-street parking lot along Sunset Avenue is approximately zero (0) feet from the front property line. The condition has been present since 1956 when the subject site and building was altered. The proposed re-alignment of the off-street parking spaces on the subject site changes the angle of the parking spaces to 45 degrees along the northern section of the off-street parking lot and also adds four (4) parallel spaces along the east property line. The location of the parking spaces along Sunset Avenue is not proposed to change.

Minimal adverse impacts should be created by approving the Exception for the location of the off-street parking spaces. As stated, the spaces have been located in the required front yard setback since 1956. No complaints about the location of the parking spaces have been provided to the Community Development Department. The re-aligned off-street parking lot will provide for a one-way circulation pattern from east to west through the parking lot. This should improve internal circulation as well as reduce impacts on the traffic along Sunset Avenue.

Off-street Parking

The current occupancy total for the structure is sixty-two (62) residents. The proposed renovations and additions to the building are not planned to increase or decrease the total number of occupants in the building. The proposed alterations to the subject site are to re-align the parking lot, but maintain the same off-street parking count at twenty-six (26) spaces.

The proposed use is required to have a minimum of forty-six (46) off-street parking spaces. The mix of single-family, two-family and the high residential uses with the Greek housing and its proximity to Kansas State University causes on-street parking congestion throughout the area. The configurations of occupants and off-street parking spaces have been established since 1956, when the building was added onto and the site was altered to provide more parking. Although there are problems with the on-street parking throughout the area, approving the Exception would not worsen the situations since the parking count is not proposed to be changed from what has been in place for over fifty (50) years.

Front Yard Setback – Accessory Structures

The proposed location of the dumpster and the heating, ventilation and air condition (HVAC) condensing unit should not adversely impact adjacent properties. The location of the dumpster is to be approximately five (5) feet from the front property line along Fairchild Avenue. The HVAC condensing unit is to be approximately nineteen (19) feet from the Fairchild Avenue front property line. The dumpster is proposed to be screened by landscape vegetation along the east and south side of the dumpster. This landscape screening should also partially screen the proposed HVAC system. The location of the dumpster is at the end of the Fairchild Avenue roadway, a one-way road, with a landscape boulevard in the middle. No adjacent properties would be immediately affected by the location of dumpster and HVAC condensing unit in the front yard. The proposed landscaping should adequately screen the structures and visually provide a buffer to nearby residential properties and traffic on Fairchild Avenue.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal impacts on the general health, safety and welfare are anticipated. The proposed building and site improvements do not encroach into any easements or vision triangles. The location of the off-street parking along Sunset Avenue has been present since 1956 and has not posed a problem to traffic along the collector street. The re-alignment of the off-street parking lot to create a one-way circulation from Fairchild Avenue to Sunset Avenue should improve traffic flow along both streets. Currently, vehicles can enter the site from both streets, causing minor traffic congestions. The location of the trash dumpster should not impact the general public because of the proposed landscape screening.

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 not allow the site to be developed as proposed.

Front Yard Setback – Parking

The Zoning Regulations requires that off-street parking be setback a minimum of twenty-five (25) feet. The existing and proposed parking is approximately zero (0) feet from the front property line along Sunset Avenue. The parking in the front yard setback area could be removed, but it would eliminate four (4) off-street parking spaces. The site could be redesigned to accommodate the lost parking spaces. The most feasible location for additional

parking would be to the west of the existing building. Parking in this area would most likely require a Variance because a significant amount of open landscape space would be lost to the needed parking. Locating off-street parking in the area would also detract for the character of the neighborhood by removing the open yard area and mature trees. The required number of off-street parking spaces for the sorority could be further reduced to address the lost of the parking spaces in the front yard. However, further reducing the number of the off-street parking space would adversely impact the surrounding neighborhood by increasing the demand for the severely limited amount of on-street parking available in the area. Considering these options and their impacts and the fact that parking has existing in the present location since 1956, it appears that requiring the strict application of the regulation would be unreasonable.

Off-street Parking

The total occupancy of the proposed structure is sixty-two (62) residents, which is the same as what it currently is. Based on the total occupancy, the proposed use would be required to provide forty-six (46) off-street parking spaces. The proposed site plan shows twenty-six (26) spaces. The subject site has provided twenty-six (26) spaces since 1956. The required off-street parking count is dependent on the total occupancy count of the sorority. The occupancy could be limited to equal the number of off-street parking space proposed. The building has historically been designed to house 62 residents. If no modifications were proposed to the structure or the site, a fraternity or sorority could use the subject site without requiring Board of Zoning Appeals actions, because it is legally nonconforming. The property became legally nonconforming when the Zoning Regulations were changed in 1996 that required fraternities and sororities to be approved for a Conditional Use. The proposed addition and site improvements requires the need for the Conditional Use and the property brought into conformance with the Zoning Regulations, thus then need for the Exceptions. Considering this fact, the strict application of the Zoning Regulations appears to be unreasonable.

Front Yard Setback – Accessory Structures

The strict application of the front yard setback for accessory structures requires that the trash dumpster and HVAC condenser unit be setback a minimum of sixty (60) feet. Because of the layout of the subject site, few options exist to place the accessory structures behind the required front yard setback along Fairchild. The dumpster needs clear access from the street or parking lot. The dumpster could be moved within the parking lot, but an off-street parking space maybe lost because of the need for the trash truck to be able to access the dumpster. The proposed location provides for the best opportunity for the dumpster to be accessed. The dumpster will be screened by landscaping, which should minimize its impacts on adjacent properties.

The HVAC condenser unit could be moved to the west towards Sunset Avenue. Because of a ten (10) foot wide utility easement, the condenser unit cannot be located immediately to the south of the structure that is behind the sixty (60) foot front yard setback. This is because of the width of the condenser unit and the location of egress windows to the basement of the accessory structure would encroach into the utility easement. The condenser unit could be located in approximately the front of the building along Sunset Avenue. Placing the

condenser unit in this location may visually distract for the front yard and front of the sorority building. Considering these factors and the fact that the units will be screened to minimize its impact on the neighboring properties and Fairchild Avenue, the strict application of the setback requirement may be unreasonable.

Building Height

The existing structure is thirty-five (35) feet tall, measured to the average finish grade around the building. The structure was built with a flat roof that does not provide for adequate slope to drain water properly. The applicant is proposing to construct a two (2) cornice/parapet that will provide for the required slope by the Building Code, roof drains and insulation. The proposed cornice/parapet will raise the building height to thirty-seven (37) feet. According to the application materials proposed roof addition will improve the durability of the roof and would be more aesthetically pleasing, compared to the existing gutter and down spots on the building. Considering the need for the proper roof slope and the advantages the proposal has on the visual aesthetics of the building, strict application of the height requirements would be unreasonable.

VARIANCE:

CONDITIONS UNIQUE TO THE PROPERTY: The subject site and the surrounding area are unique in that the area is predominately used for Greek housing. The subject site and the adjacent properties to the north and immediately south are all Greek housing. To the east is an annex sorority house. Neither the subject site, nor the adjacent properties provide screening for the off-street parking lots. In 2006, the Greek house at 517 Fairchild Terrace was required to install a six (6) foot tall sight obscuring fence along the south property line to screen the house at 501 Fairchild Terrace from the parking lot. The house to the east, 1852 Fairchild Avenue is not screened from the off-street parking lot. It is unclear with the parking lots to the north and south was developed. The parking lot on the subject site was created in 1956.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site is a through lot, as defined by Article 16 of the Zoning Regulations, which is “an interior lot having frontages on two (2) streets which do not intersect at a point contiguous to such lot.” The lot has front yards along Sunset Avenue to west and Fairchild Avenue to the east. All other property lines are defined as side yards.

Minimum adverse impact on adjacent properties is anticipated by not providing the required screening of the properties to the north and east. To the north is a sorority and to the east is a sorority annex house. Both of these properties have off-street parking spaces or parking lot access aisles running along the property lines of the subject site. Neither of these adjacent parking lots has the required sight obscuring screening for off-street parking spaces. It is unclear when these parking lots were established. The existing off-street parking lot on the subject site has been present since at least 1956. No complaints about the existing off-street parking lot or the lack of the required screening have been received by the Community Development.

The east property line does have mature cedar trees and various types of bushes along it that does provide some form of screening. The height and density of the trees and bushes does not meet the minimum requirements of the Zoning Regulations. The application documents have stated that “We believe the provision of the required sight obscuring screening provides a security risk for the 62 college women who will be living in the renovated sorority house as well as the adjacent sorority properties.” Other fences are located in the neighborhood, which does not appear to cause security issues for the adjacent sororities. However, the concern that a required six (6) foot tall fence would create areas where the security of the residents of the sorority on the subject site and adjacent sororities is a concern is valid.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

It appears that no specific hardship exists for the applicant that would prevent the required fence to be installed as required. Accommodations in the site plan could be created to have the fence installed. However, when the area is taken into consideration, it appears that installing the required fence may create a safety issues for the ladies living at the subject site and at the properties to the north and east. A fence may create an unsafe environment, where the view from adjacent properties is limited. Giving the sororities in the area the ability to “keep an eye” on their neighbors would creating a safe environment for all properties from trespassers and other criminal activities.

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

Minimal effects on public health, safety and welfare are anticipated to occur from not providing the required screening. The subject site and surrounding properties currently do not provide the required screening of off-street parking spaces. The off-street parking lot on the subject site has not been screened since 1956, with no complaints from the public filed with the Community Development Department.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the regulation to provide for sight obscuring screening around off-street parking lots containing more than six (6) spaces that are adjacent to residential properties in residential districts is to reduce the impacts created by the off-street parking spaces. These impacts can include visual, noise and lights pollution from vehicles and other activities. The areas immediately adjacent to the existing off-street parking on the subject site are parking lots associated with the sorority to the north and its annex house to the east. The adjacent properties do not provide the screening of their off-street parking lot as required by the Zoning Regulations. These parking lots impact the subject site equally as much as the parking lot the subject site impacts the adjacent properties. The eastern property line is lined with mature cedar trees and a variety bushes that do minimize the impacts of the parking lot to some extent, but does not meet the definition of sight-obscuring screening. Considering the existing condition of the subject and the adjacent properties and the applicant’s concern with safety for the residents of the subject site and adjacent properties, it appears that the intent of the regulations is met.

Aistrup made a motion to approve a Conditional Use to allow for a proposed sorority house at 508 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional

Neighborhood Overlay District and University Overlay District, with the following conditions of approval:

1. The Conditional Use Permit shall be limited to the Zeta Tau Alpha sorority at 508 Sunset Avenue as outlined in the application documents and shown on the applicant's site plan.
2. No more than sixty-two (62) occupants may reside in the Zeta Tau Alpha sorority at 508 Sunset Avenue.
3. Sight obscuring landscape screening shall be provided as shown on the site plan. The landscape stock shall be evergreen trees or bushes and shall be at least six (6) feet tall at the time of planting.
4. Landscaping and sight-obscuring screening shall be maintained in good condition.
5. All necessary building permits shall be obtained prior to construction of the proposed interior renovations.
6. The Zeta Tau Alpha sorority at 508 Sunset Avenue shall conform to all Fire, Building and Life Safety Codes.
7. The Exceptions to reduce the required number of off-street parking, reduce the front yard setback to zero (0) feet on Sunset Avenue for the off-street parking lot, reduce the front yard setback for accessory structure to five (5) feet, and to increase the maximum building height to thirty-seven (37) feet shall be approved prior to approving the Conditional Use request.
8. The Variance to not provide the required sight-obscuring screening for the off-street parking lot shall be approved.

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

Aistrup made a motion to approve EXCEPTIONS to allow for a reduction of the minimum twenty-five (25) foot front yard setback along Sunset Avenue to zero (0) feet for the existing and redesigned off-street parking lot; a reduction of the minimum sixty (60) foot front yard setback along Fairchild Avenue to five (5) feet for an accessory trash receptacle screening; an increase in the maximum thirty-five (35) foot height regulation to thirty-eight (38) feet for proposed additions to the existing structure; and a reduction of the minimum number of off-street parking spaces required for a fraternity or sorority from the required forty-six (46) spaces to twenty-six (26) spaces for the sorority house at 508 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District, with the following conditions:

1. The Conditional Use for the Zeta Tau Alpha sorority shall be approved
2. No more than sixty-two (62) occupants may reside in the Zeta Tau Alpha sorority at 508 Sunset Avenue.
3. Sight obscuring landscape screening shall be provided as shown on the site plan. The landscape stock shall be evergreen trees or bushes and shall be at least six (6) feet tall at the time of planting.
4. Landscaping and sight-obscuring screening shall be maintained in good condition.
5. All necessary building permits shall be obtained prior to construction of the proposed interior renovations.

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

Aistrup made a motion to approve a Variance to not provide a six (6) foot tall sight obscuring screening required for an off-street parking lot adjacent residential properties at 508 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District, with the following conditions of approval.

1. The Variance shall apply to the subject site as shown on the site plan and as described in the application documents.
2. All applicable permits shall be obtained

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

Capital Improvements Plan Forms

No recommendations or requests were made.

Board Officer Elections

Hamilton motioned to nominated Joe Aistrup as Chairperson for the Board of Zoning Appeals. Hardy seconded the motion, which passed 3-0, Aistrup abstaining. Hardy nominated Connie Hamilton as Vice Chair for the Board of Zoning Appeals. Lavis seconded the motion, which passed 3-0, Hamilton abstaining.

Respectfully Submitted,

Ashley Myers, Planning Intern

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