

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, May 11, 2011**  
**7:00 PM**

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

MEMBERS ABSENT: Ricci Dillon and Harry Hardy,

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

**CONSIDER THE MINUTES**

Hamilton moved to approve the March 9, 2011 minutes, which was seconded by Lavis and passed with a vote of 3-0.

**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 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 FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO EIGHT (8) FEET ALONG VATTIER STREET FOR NEW AND EXISTING OFF-STREET PARKING SPACES; A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO (24) FEET ALONG VATTIER STREET FOR THE EXISTING BUILDING; A REDUCTION OF THE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK ALONG VATTIER STREET TO FOURTEEN (14) FEET FOR A PROPOSED TRASH ENCLOSURE; A REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO EIGHT (8) FEET ALONG N. 8<sup>TH</sup> STREET FOR NEW AND EXISTING OFF-STREET PARKING SPACES; A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO (24) FEET ALONG N. 8<sup>TH</sup> STREET FOR THE EXISTING BUILDING; AND A REDUCTION OF THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK ALONG N. 8<sup>TH</sup> STREET, BLUEMONT AVENUE AND N. JULIETTE STREET TO ZERO (0) FEET FOR NEW AND EXISTING CHAIN LINK FENCING, ALL FOR THE BLUEMONT ELEMENTARY**

**SCHOOL AT 714 BLUEMONT AVENUE IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT (APPLICANT/OWNER: MANHATTAN/OGDEN USD 383 – DR. ROBERT SEYMOUR).**

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW FOR A REDUCTION OF THE MINIMUM SEVENTY-FIVE (75) PERCENT LANDSCAPED OPEN AREA REQUIRED IN THE FRONT YARD ALONG VATTIER STREET TO SIXTY-FIVE (65) PERCENT FOR NEW AND EXISTING OFF-STREET PARKING SPACES; AND TO ALLOW AN ENCROACHMENT OF TWENTY-TWO (22) FEET INTO THE THIRTY (30) FOOT VISION CLEARANCE TRIANGLE AT THE INTERSECTION OF N. 8<sup>TH</sup> AND VATTIER STREETS FOR EXISTING AND PROPOSED OFF-STREET PARKING FOR THE BLUEMONT ELEMENTARY SCHOOL AT 714 BLUEMONT AVENUE IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT (APPLICANT/OWNER: MANHATTAN/OGDEN USD 383 – DR. ROBERT SEYMOUR).**

Aistrup requested Bunger to present the EXCEPTION and VARIANCE requests for 714 Bluemont together.

Bunger presented the Staff Report with a recommendation of approval for the EXCEPTION requests and presented the Staff Report with a recommendation of approval for the VARIANCE requests.

Aistrup opened the Public Hearing.

Bob Seymour, Associate Superintendent for USD 383, said the school has tried to modernize and appreciates the effort it takes to make the site work; yes, there are many exceptions, but it is necessary to modernize the school.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton applauded the efforts of the School District to bring the site into compliance with code and the City/School collaboration. She supports the requests because the school is a long-established use. The Board is sensitive to vision triangles and is happy the City and School were able to work together to create a safer intersection.

Aistrup said there are parking issues. He actually hoped there would be a bigger parking lot, but there must be room for children to play, so it is a balancing act. The school is needed in the part of town in which it is located.

Hamilton said the cars need to have room to move without taking away from the play area.

The Board made the following findings of fact for the EXCEPTION at 714 Bluemont Avenue

**PRESENT USE:** Bluemont Elementary School

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

Based on the current number of employee at the elementary school, fifty (50) off-street parking spaces would be required (Section 7-103(C)(2)). Thirty-one (31) spaces currently exist; a total of thirty-three (33) spaces are proposed. Many of the schools in the City currently undergoing renovation do not meet the minimum off-street parking requirement for elementary schools. City Administration has taken the policy that as long as the number of employees does not increase with the building renovations, the nonconforming conditions would not need to be addressed. The same policy has been applied to the Bluemont Elementary School renovation.

Other than this issue, and the conditions addressed by the EXCEPTION and VARIANCE requests, the site complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The subject site and surrounding properties to the west, south and east are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. To the north are properties zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. The Moro PUD, a Residential Planned Unit Development, consisting of sixteen (16) dwelling units, is located to the southwest along N. 8<sup>th</sup> Street and Moro Street. The area has a mix of owner-occupied single-family homes, renter-occupied single-family homes, two-family dwellings, and a few multiple-family dwellings.

*Front yard setbacks for Existing Building and Fence*

Minimal adverse impacts on adjacent properties should occur by approving the EXCEPTIONs for the front yard setbacks to the existing structure along Vattier and N. 8<sup>th</sup> Streets and the existing fence surrounding the property. The original school was built in 1911, with additions built in the 1950's and 1980's. It is these additions that encroach into the minimum twenty-five (25) foot front yard setback—by less than one (1) foot. The existing conditions have been a part of the surrounding neighborhood for over thirty (30) years. The fence has been in its location for an undetermined amount of time. The fence is needed to ensure that the school children are safe from running into nearby streets, including the busy Bluemont Avenue, and to keep unauthorized people off of the school grounds.

*Front Yard Setback for Off-street Parking*

The front yard setbacks for the existing off-street parking along Vattier Street and N. 8<sup>th</sup> Street should not adversely affect the surrounding properties. The existing parking lot has been in this location for an undetermined amount of time. The location of the existing parking provides a landscaped buffer between the overhang of the vehicles' bumpers and the sidewalk, which prevents the sidewalk from being blocked along Vattier Street. The existing space between N.8<sup>th</sup> Street and the western edge of the parking lot provides for a landscaped area, with bushes and grass. The proposed off-street parking spaces to be added to the west side of the parking lot will remove a large portion of the landscaped area. However, a landscaped

buffer will remain, in order to prevent a fully-opened car door from blocking the adjacent sidewalk.

As mentioned in “Compliance With All Applicable Regulations”, the subject site does not comply with the minimum off-street parking requirements. Section 7-103(C)(2) requires one (1) space for each employee. The school has fifty (50) employees and currently only thirty-one (31) off-street parking spaces. The additional two (2) parking spaces will not completely alleviate the on-street parking congestion caused by the school and adjacent residential uses, but will assist in addressing the neighborhood issue.

#### *Vattier Street Trash Enclosure Setback*

A six (6) foot tall, sight-obscuring trash enclosure is proposed north of the building along Vattier Street. The enclosure is proposed in this location so that it can be accessed from an existing curb cut onto Vattier Street. The materials used for the screening will be cedar planks. This location should not adversely impact surrounding neighbors. Due to the layout of the subject site, including the playground, few alternatives are available for the location of the trash dumpster that meet the minimum accessory structure setback requirement while still being reasonably accessible from a driveway. The dumpster and required screening could be located in the existing off-street parking lot, but it would most likely take up at least one (1) parking space, which would potentially adversely impact the already-congested streets in the surrounding neighborhood.

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

The EXCEPTION requests for the existing building, fence, and off-street parking will not affect the public health, safety or well being. These conditions have existed for over 30 years with no known complaints filed with the Community Development Department. The proposed location of the new off-street parking along Vattier Street does impact vehicular line-of-sight at the intersection of Vattier and N. 8<sup>th</sup> Streets. The Public Works Department has reviewed the location of the proposed parking spaces, and will require that a stop sign, stop-bar pavement marking, and improved crosswalk markings be installed by the applicant to change the configuration of the intersection, and improve the line-of-sight for vehicles approaching from either direction. These changes will make it a safer intersection for the public. (*See attached memo*)

An existing sanitary sewer main runs from west to east, from N. 8<sup>th</sup> Street to N. Juliette Avenue, in the middle of the subject site and under the existing building (approximately where the alley is located on the adjacent blocks). City policy prohibits a building to be built over City utility infrastructure, such as sanitary sewer mains, so that regular maintenance can be performed on the system without having to damage a building. The applicant is required to dedicate a utility easement and relocate the sanitary sewer main to accommodate the addition. The applicant and the Public Works Department are in the process of determining the best route for the location of the required utility easement and sanitary sewer main.

#### **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR**

**UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:**

*Front yard setbacks for Existing Building and Fence*

The strict application of the regulations for the existing building, fence, and off-street parking lot would require these conditions to be corrected. Portions of the existing building, which has been present for over thirty (30) years, would need to be removed in order to comply with the front yard setback along both N. 8<sup>th</sup> and Vattier Streets. Considering that the building encroaches only six (6) inches, this would be unreasonable.

The existing fence would need to be set back a minimum of twenty-five (25) from the front property lines, which would significantly reduce the area of the school's playground. The fence protects the school children from nearby traffic and designates the boundary of the school to ensure that only authorized personnel are allowed on school grounds.

*Front Yard Setback for Off-street Parking*

The off-street parking lot has been in its current location for an indeterminable amount of time. The strict application would require the encroaching off-street parking spaces to be removed, which would leave fifteen (15) of the existing spaces. Considering the on-street parking congestion in the area and that the existing off-street parking provided on the subject site already does not meet the minimum requirements, it would be unreasonable to remove these spaces to comply with the front yard setback requirement.

If the minimum required front yard setback for the two (2) new off-street parking spaces was strictly applied, they would not be permitted to be constructed at proposed. The proposed spaces reduce the need for two (2) vehicles to park on the street, which is already congested. This provides a benefit to the surrounding neighborhood, as well as to the employees of the school. Once the traffic control devices are installed, the proposed parking should not impact the public safety at the intersection. Thus, the strict application of the regulation would be unreasonable, considering these factors.

*Vattier Street Trash Enclosure Setback*

To meet the strict application of the accessory structure requirements, the trash enclosure would be required to be installed a minimum of sixty (60) from any front property line. The required enclosure could be located in an area of the subject site that would comply with requirement, but would entail either the removal of needed off-street parking, or difficult access from an adjacent street. The proposed location will be accessed from an existing curb cut onto Vattier Street. Considering these factors, strictly applying the front yard setback for the accessory structure appears to be unreasonable.

Hamilton made a motion to approve of EXCEPTIONs to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to eight (8) feet along Vattier Street for new and existing off-street parking spaces; a reduction of the minimum front yard setback from twenty-five (25) feet to (24) feet along Vattier Street for the existing building; a reduction of the minimum sixty (60) foot front yard setback along Vattier Street to fourteen (14) feet for a proposed trash enclosure; a reduction of the minimum required front yard

setback from twenty-five (25) feet to eight (8) feet along N. 8<sup>th</sup> Street for new and existing off-street parking spaces; a reduction of the minimum front yard setback from twenty-five (25) feet to (24) feet along N. 8<sup>th</sup> Street for the existing building; and a reduction of the minimum required twenty-five (25) foot front yard setback along N. 8<sup>th</sup> Street, Bluemont Avenue, N. Juliette Street and Vattier Street to zero (0) feet for new and existing chain link fence, all for the Bluemont Elementary School at 714 Bluemont Avenue in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District with the following conditions.

1. The EXCEPTIONs shall only apply to the existing conditions and proposed additions to the subject site as described in the application materials and shown on the site plan.
2. The VARIANCEs for existing and proposed off-street parking lot shall be approved.
3. The proposed addition shall be built according to the site plan and maintained in good condition.
4. All applicable permits shall be obtained prior to the construction of the new building.

Lavis seconded the motion, which passed by a vote of 3-0.

The Board made the following findings of fact for the EXCEPTION at 714 Bluemont Avenue.

**PRESENT USE:** Bluemont Elementary School

**CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is the Bluemont Elementary School, which is located on the public Square 57, Ward 3. The school was originally built in 1911, with additions built in the 1950's and 1980's. The non-residential use in the R-M/TNO District on the public square is a unique condition to the area and zoning district. The elementary school has different needs and use characteristics compared to the surrounding single-family, two-family, and multiple-family residential uses in the area. These include different parking requirements, different times during the day when trips to and from the school are made, and the desire to have more area devoted to open space and the children's outdoor play area.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The subject site and surrounding properties to the west, south and east are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. To the north are properties zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. The Moro PUD, a residential planned unit development consisting of sixteen (16) dwelling units, is located to the southwest along N. 8<sup>th</sup> Street and Moro Street. The area has a mix of owner-occupied single-family homes, renter-occupied single-family homes, two-family dwellings, and a few multiple-family dwellings.

Minimal adverse impacts on adjacent properties are anticipated to occur due to approval of the VARIANCEs. The existing off-street parking lot consumes approximately thirty-three (33) percent of the required front yard area. The maximum percentage allowed to be paved is twenty-five (25) percent. This condition has been present for over thirty (30) years, with no known complaints to the Community Development Department. The added parking space

along Vattier Street would add approximately 170 square feet, or 1.7% of the total area, of pavement to the subject site.

On-street parking is congested throughout the area, due in part to the fact that the school does not meet the minimum off-street parking requirement of one space for each elementary school employee. Allowing the additional parking space at the intersection of Vattier Street and N. 8<sup>th</sup> Street will help to alleviate the on-street parking demand and its effect on the adjacent properties.

Approving the VARIANCE to allow the proposed parking space in the Vision Clearance Triangle should not impact the adjacent properties. Currently at the intersection of Vattier and N. 8<sup>th</sup> Streets is a medium-sized bush that encroaches into the Vision Clearance Triangle. The bush is approximately in the same location that the new parking space will be installed. Once removed, a grass lawn is to be planted in the remaining area between the parking lot and the sidewalk (along the front property line).

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:**

The strict application of regulation for the open landscaped area would require that the nonconforming off-street parking spaces be removed. The parking spaces have been present for over thirty (30) years, without any issues to the surrounding neighborhood or the general public. The subject site is an entire City block, and other areas could be used for off-street parking. However, these other areas are currently used for outdoor educational activities and the playground. Requiring the parking spaces to be constructed in these areas would impact the activities of school, and could possibly consume more open landscaped space on the subject site than what is currently taken up by the existing parking lot. Requiring the strict application of the off-street parking regulations would be a hardship to the applicant.

There appears to be no clear hardship to the applicant by strictly applying the Vision Clearance Triangle regulation. However, the applicant is trying to increase the amount of off-street parking that is provided on the subject site. This is due to the already-burdensome level of parking congestion on the surrounding streets, which is impacting adjacent properties. Without a VARIANCE to the strict requirements of the regulations, the proposed parking space to be located in the Vision Clearance Triangle could not be installed. The Vision Clearance Triangle is already comprised by the existing bush near the intersection, with no known complaints. While the bush could be removed, and the proposed parking space not be built, in order to preserve the vision clearance triangle, the applicant has agreed to improve the intersection of Vattier and N. 8<sup>th</sup> Streets to improve the line-of-sight, as well as vehicular and pedestrian safety. Denying the VARIANCE request could be a hardship to the surrounding neighborhood as a whole, due to a lack of effort to improve the parking situation on the subject site, and consequently the surrounding neighborhood.

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

The VARIANCE to reduce the open landscape space from seventy-five (75) to sixty-five (65) percent should not affect the public health, safety or well-being. The existing off-street

parking lot has existed for over 30 years with no known complaints filed with the Community Development Department. The additional two (2) parking spaces will help to address on-street parking congestion in the area, caused in part by the school.

The proposed location of the new off-street parking along Vattier Street does impact the vehicle line-of-sight at the intersection of Vattier Street and N. 8<sup>th</sup> Street. The Public Works Department has reviewed the location of the proposed parking spaces and will require that a stop sign, stop-bar pavement marking, and crosswalk markings be installed by the applicant to improve the configuration of the intersection. These improvements will alter the line-of-sight for vehicles approaching the intersection from either direction, which will in turn make it a safer intersection for the public (*see attached memo*).

An existing sanitary sewer main runs west-east from N. 8<sup>th</sup> Street to N. Juliette Avenue in the middle of the subject site and under the existing building (approximately where the alley is located on the adjacent blocks). City policy prohibits a building to be built over City utility infrastructure, such as sanitary sewer mains, so that regular system maintenance can be performed without having to damage a building. The applicant is required to dedicate a utility easement and relocate the sanitary sewer main to accommodate this addition. The applicant and the Public Works Department are in the process of determining the best route for the location of the required utility easement and sanitary sewer main.

**RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the off-street parking regulations is to reduce the visual impact of large parking areas for non-residential uses in residential districts to passers-by and adjacent residential uses. The subject site is comprised of a public square that is the size of a City block. The majority of the subject site is open landscape space, which includes the playground area to the east. The majority of the area in question was established over thirty (30) years ago, with no known complaint about its location. The addition of the parking space in the required front yard and open landscaped areas amounts to a reduction of approximately only 170 square feet, or 1.7%, of the total area. Considering how long the existing parking lot has been in place, the relatively small amount of area that the proposed parking space will add to the total amount of parking in the required front yard space, and the fact that the majority of the site will remain open landscaped space, the intent of the regulation is met.

The intent of the Vision Clearance Triangle regulation is to ensure that the sight line of drivers and pedestrians is not compromised along streets and sidewalks, in order to ensure safety. The Public Works Department has required that the intersection of Vattier and N. 8<sup>th</sup> Streets be improved with stop signs at Vattier Street to improve the intersection and the line-of-site distances approaching the intersection. By improving the intersection, a safer environment for drivers and pedestrians will be created, which meets the overall intent of the regulation.

Hamilton made a motion to approve a VARIANCE to allow for a reduction in the minimum seventy-five (75) percent required landscaped open area required in the front yard along Vattier Street to sixty-five (65) percent for new and existing off-street parking spaces, AND to allow an encroachment of twenty-two (22) feet into the thirty (30) foot Vision Clearance



Triangle at the intersection of N.8<sup>th</sup> and Vattier Streets for existing and proposed parking for the Bluemont Elementary School at 714 Bluemont Avenue in the R-M/TNO, Four-Family Residential with Traditional Neighborhood Overlay District, with the following conditions of approval:

1. The VARIANCES shall only apply to the existing conditions and proposed additions to the subject site as described in the application materials and shown on the site plan.
2. The EXCEPTIONS for existing and proposed improvements to the subject site shall be approved.
3. The proposed addition shall be built according to the site plan and maintained in good condition.
4. The improvements to the intersection of Vattier Street and N. 8<sup>th</sup> Street, as required by the Public Works Department, shall be completed prior to completion of the added off-street parking spaces.
5. All applicable permits shall be obtained prior to the construction of the new building.

Lavis seconded the motion, which passed by a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A REDUCTION OF THE MINIMUM REQUIRED OFF-STREET PARKING SPACES FROM THIRTY-SIX (36) TO TWENTY-SEVEN (27) FOR AN EIGHTEEN (18) UNIT MULTIPLE-FAMILY DWELLING AT 1866 COLLEGE HEIGHTS ROAD IN THE R-3/OU, MULTIPLE-FAMILY RESIDENTIAL AND UNIVERSITY OVERLAY DISTRICTS (APPLICANT/OWNER: GJL REAL ESTATE LLP – GWYN RIFFEL).**

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW OFF-STREET PARKING FOR A PROPOSED MULTIPLE-FAMILY APARTMENT COMPLEX IN THE R-3/UO, MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND UNIVERSITY OVERLAY 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 AND TO REDUCE THE MINIMUM 75% LANDSCAPED OPEN AREA TO 65% REQUIRED IN THE FRONT YARD AT 1866 COLLEGE HEIGHTS ROAD (APPLICANT/OWNER: GJL REAL ESTATE LLP – GWYN RIFFEL).**

Aistrup requested Bunger to present the EXCEPTION and VARIANCE requests for 1866 College Heights together.

Bunger presented the Staff Report with a recommendation of approval for the EXCEPTION requests and presented the Staff Report with a recommendation of approval for the VARIANCE requests.

Aistrup opened the Public Hearing.

Ken Ebert, key architect for the project, made a presentation regarding the ratio of parking per bedroom near the subject site, which were all shown to be fewer than 2 stalls per room. He also discussed that the design was created to allow the most daylight possible into each unit.

Mark Lundin, 1100 Jacob's Court, stated that he owns the building located across from the subject site (1860 College Heights), which was built in 1968 with 1 ½ stalls per unit. He commented that there is a parking issue in the area. There is no parking on Sunset Avenue, one-sided parking on College Heights, and dormitory kids parking along McCollum. He stated that he built a retaining wall on his property, but that it will not keep the headlights from shining into his units' bedrooms. He stated the City Planning Board needs to pay attention to parking issues and listen to KSU. He asked why the City is shorting itself in parking, and asked where these people are supposed to park. Has there been a VARIANCE in parking from 2 stalls to 1 ½ stalls recently? Bunger replied yes, the Tecumseh PUD, located at Tecumseh and Quivera Drive, was approved by the Manhattan Urban Area Planning Board for 1 ½ stalls per bedroom.

Hamilton asked Lundin how many units he has in his apartment complex. Lundin said twelve 2-bedroom units, and in 1968 was required to provide 1 ½ stalls per unit. Hamilton verified that Lundin has 24 bedrooms and 18 parking stalls. Lundin said yes, and that everyone fights over the stalls.

Hamilton verified with Lundin that he is concerned that there won't be enough parking on site, which will add to congestion on the street. He agreed.

Aistrup asked how many people are living on the existing site. Bunger said 10 units with 16 bedrooms. Aistrup said that the 18 bedrooms will replace 16 bedrooms, and 27 parking stalls will replace approximately 23 parking stalls. This is about the same ratio of parking. Aistrup asked if the people who live at the subject site now fight with Lundin's tenants. Lundin said yes, it is a problem.

Hamilton fully agrees that there is a parking problem, but states that Lundin does not want the EXCEPTION and VARIANCE to be granted because of the parking issue. Lundin said the applicants could build less and downsize their project.

Ebert said maybe Lundin is worried about his lack of parking, not that of the subject site. Also, the ordinance is written on a per bedroom basis, not per unit.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said that the parking issue is difficult, but the parking in the project will neither solve nor aggravate the existing parking problem. If the applicants were asking for less parking than before, then it would be a different story; however, the project is actually offering more stalls. The applicant is trying to make a good faith effort with this project. While she is not a fan of everyone breaking the code, this is a new use/construction placed into an existing parking problem; thus, she can support it.

Aistrup concurred with Hamilton. The applicant is not contributing anything more than what already exists on the property. The older properties which were grandfathered in with parking required per unit—not bedroom—are really the problem.

The Board made the following findings of fact for the EXCEPTION at 1866 College Heights Road.

**PRESENT USE:** Ten (10) dwelling units, with a total of sixteen (16) bedrooms in three (3) separate structures and two (2) detached accessory buildings.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The design of the proposed multiple-family development has parking 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 location of four (4) off-street parking spaces and a portion of the structure exceed the minimum seventy-five (75) percent landscaped open space required by the regulation. Both conditions do not comply with Section 7-102(C)(2). The off-street parking is located twenty-five (25) feet from the College Heights Road front property line. The point furthest from the front property line is forty-two (42) feet. The area consumed by the parking spaces and the building is approximately sixty-five (65) percent. The applicant is seeking a VARIANCE for the proposed off-street parking.

The current configuration of the subject site, having three (3) residential structures on one (1) lot, violates Section 3-401(A), which prohibits more than one (1) principle structure on a residential zoning lot, except in Planned Unit Developments. According to the Riley County Appraisers Office, the nonconforming condition was created between 1945 and 1950. The proposed development plan would remove the structures and bring the subject site into conformance with the Zoning Regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the immediate north, east, and south are zoned R-3/UO, Multiple-Family Residential and University Overlay District. To the west are properties zoned R-M/UO Four-Family Residential District and University Overlay District. The area is a mix of single-family, two-family and multiple-family dwellings and Greek housing associated with Kansas State University. A majority of the dwelling units in the area are rental units. The applicant owns the adjacent multiple-family rental properties to the north and northeast.

The application documents state that the “current and historical actual-need data of the applicant’s numerous other similar apartment properties prove a 1.5/unit parking ration is quite adequate. Student housing close to campus is in high demand, especially for students who may not have a car. Based on the applicant’s rental history, more than 50% of one bedroom apartments are occupied by a single person.”

The current configuration of the property has ten (10) units, with a total of sixteen (16)

bedrooms (7 one-bedroom apartments, a two-bedroom apartment, a three-bedroom apartment, and a four-bedroom apartment). Although the off-street parking area is currently graveled, it appears that twenty (20) to twenty-three (23) spaces are provided. The current configuration of the subject site would require a minimum of twenty-five (25) spaces. The existing off-street parking does not provide the minimum required for the combined use. Looking at the subject site collectively, a parking ratio of 1.44 spaces per bedroom is provided, which is similar to the proposed development. No complaints have been filed with the Community Development Department regarding the current amount of off-street parking at the subject site.

Considering the applicant's current and historic parking need data, and the current configuration of the subject site; the request to reduce the minimum number of off-street parking spaces from thirty-six (36) spaces to twenty-seven (27) spaces for the eighteen (18) unit apartment should not adversely impact adjacent property owners

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** There should be minimal effects on the public health, safety, or welfare. As previously described, the applicant's actual parking need data shows that an off-street parking ratio of 1.5 spaces per bedroom is adequate for one-bedroom dwelling units. No on-street parking is allowed along Sunset Avenue. On-street parking is allowed on only one (1) side of the street on College Heights Road, McCollum Street, and Platt Street. These streets are currently congested because of parking demands from other properties and their proximity to Kansas State University. Any adverse impacts would be to the already congested on-street parking in the area if the proposed parking was not adequate for the proposed development.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the off-street parking regulations for the eighteen (18) unit, one-bedroom multiple-family dwelling would require a ratio of two (2) spaces for each dwelling unit, or thirty-six (36) spaces. The applicant could decrease the number of dwelling units in the proposed development to meet the number off-street parking that is provided on with the development, or decrease the size of the building footprint and increase the height of the building to maintain the desired number of dwelling units in order to have enough space on the subject site to provide for the required parking. The R-3 District does not have a maximum height requirement, but the applicant has determined that constructing a structure taller than three stories is cost prohibitive.

The application materials state "Calculation of parking ratios for similar properties owned by the applicant, and those nearby the proposed project reveal ratios in line with the requested EXCEPTION for 1.5 spaces per unit. The applicant has owned the subject property for 30 years. It currently has 10 units with 16 bedrooms (*quotation corrected after speaking with property owner*) in three converted houses. The applicant desires to improve the quality of the housing and has found that upgrading existing units does not provide the cost/benefit that new construction will provide."

The application goes on to state “The relative gain to the community is more efficient use of existing infrastructure (sewer, water, streets). Serving an increasing K-State student enrollment and housing demand close to campus parallels city objectives and the tenets of sustainability. Housing in proximity to campus results in fewer auto-trips generated and promotes pedestrian and bike means of travel.”

Considering these factors, and that the proposed off-street parking count should not impact adjacent property owners or the public health, safety and welfare, the strict application of the minimum parking requirement for the eighteen (18) unit, one-bedroom multiple-family dwelling is unreasonable.

Hamilton made a motion to approve of an EXCEPTION to allow for a reduction of the minimum required off-street parking for an eighteen (18) unit multiple-family dwelling from thirty-six (36) to twenty-seven (27) at 1866 College Heights Road in the R-3/OU, Multiple-Family Residential District and University Overlay District with the following conditions of approval:

1. The EXCEPTION shall apply to the proposed development as outlined in the Staff Report and application documents and as illustrated in the site plan.
2. All applicable permits shall be obtained.
3. The VARIANCE for the location of the off-street parking in the defined front yard area shall be approved.

Lavis seconded the motion, which passed by a vote of 3-0.

The Board made the following findings of fact for the VARIANCE at 1866 College Heights Road.

**PRESENT USE:** Ten (10) dwelling units, with a total of sixteen (16) bedrooms in three (3) separate structures and two (2) detached accessory buildings.

**CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is in a unique neighborhood with a mix of single-family, two-family and multiple-family dwellings and Greek housing associated with Kansas State University. A majority of the dwelling units in the area are rental units. The applicant owns the adjacent multiple-family rental properties to the north and northeast. Several of properties in the neighborhood do not meet the regulation to keep off-street parking behind or to the side of a multiple-family dwelling. Currently, the subject site does not meet the regulation along Sunset Avenue. The proposed redevelopment of the subject site would eliminate this condition. The adjacent properties to the north, west, and east have parking lots in the entire front-yard area in front of the structures. Other properties in the area have similar conditions, although to a lesser degree.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal adverse impacts on adjacent property should occur by approving the VARIANCE for the location of the off-street parking. The current configuration of the subject site has off-street parking between the front lot line along Sunset Avenue and front façade of the southwest building. No complaints have

been issued to the Community Development Department regarding the current site configuration. Other properties in the immediate areas have parking located within the front yard area. These include the twelve (12) unit multiple-family dwelling immediately to the east of the subject site, the thirty-five (35) unit multiple-family dwelling immediately to the north of the subject site, the nine (9) unit multiple-family dwelling directly northeast of the subject site and the Greek housing and the United Methodist student housing to the west of the subject site. Most of these structures were built prior to 1969 when the regulation to require the off-street parking behind the point furthest from the front lot line, yet still facing the front lot line was first adopted. The regulation was later adapted to its current form in the mid-1980s. However, this condition is an established characteristic of the surrounding neighborhood.

It is only because of the design of the building, with the western units extending towards Sunset Avenue, that causes the need for the VARIANCE. If the structure was redesigned to have no front façade variations along Sunset Avenue, the location of the parking would be in conformance with the regulations. Visually, the proposed building design should enhance the character of the neighborhood, and at the same time minimize the impact of the twenty-seven (27) stall parking lot makes on the adjacent properties.

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:**

It is the strict application of the regulation that requires the building design or the parking lot location to change. The proposed site plan shows the parking lot in line with the front façade along College Heights Road. It is only the design of the structure, with the varying façade depths, that moves the defined front yard area back from twenty-five (25) feet from the front property line (the leading façade of the structure along College Heights Road) to forty-two (42) feet (point of the structure furthest from the front lot line, yet still facing the front lot line). Visually, the intent of the regulation is met for both street frontages. The proposed building screens the parking lot from traffic and property owners along Sunset Avenue. When viewing the proposed development from College Avenue, the location of the parking lot is in line with the front building façade and has a twenty-five (25) foot wide landscaped space to visually buffer the area. The strict application of the regulation would require the building to be redesigned, or the parking lot relocated. Considering that the proposed design of the subject meets the basic intent of the regulation, it appears that a hardship is created for the applicant.

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

No adverse effect on the public is expected with the approval of 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 for multiple-family dwellings 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 multiple-family dwelling is located so that it faces the fronting streets, 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.

The specific regulation requiring the VARIANCE was created in the mid-1980's as a result of paved parking being placed in front of multiple-family dwellings in the older grid street-patterned portion of the City (the Ward Districts). The regulation was created to preserve front yards for these developments. The proposed development on the subject site meets this intent by maintaining a twenty-five (25) foot wide landscape area along College Avenue.

Hamilton made a motion to approve a VARIANCE to allow off-street parking for a proposed multiple-family apartment complex in the R-3/UO, Multiple-Family Residential District and University Overlay 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 AND to reduce the minimum seventy-five (75) percent landscaped open area to sixty-five (65) percent required in the front yard at 1866 College Heights Road, with the following conditions of approval:

1. The VARIANCE shall apply to the proposed development as outlined in the Staff Report and application documents and as illustrated in the site plan.
2. All applicable permits shall be obtained.
3. The EXCEPTION to reduce the minimum required number of off-street parking shall be approved.
- 4.

Lavis seconded the motion, which passed by a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR AN INCREASE IN THE MAXIMUM TEN (10) FOOT DRIVEWAY WIDTH TO TWENTY-TWO (22) FEET FOR A NEW DRIVEWAY ASSOCIATED WITH A NEW TWO-CAR, DETACHED GARAGE AT 501 LARAMIE STREET IN THE R-2/TNO TWO-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: JOHN STAMEY AND MICHELLE ISEMAN).**

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

Lavis asked about the huge hackberry tree near the driveway. Has it been looked at by the City Forester? Bunger said the street tree is within City control and the City Forester had no

issue with it at the Development Review Committee. However, the City Forester can look at it. Lavis said root damage is an issue.

Aistrup opened the Public Hearing.

John Stamey, applicant, said he can answer any questions the Board has and he appreciates the concern regarding the hackberry tree. Lavis said there is potential hazard from root damage. Stamey said he trimmed the tree and he is interested in maintaining it. Stamey said he does not know much about trees, but would be happy to visit with the City Forester about it. He does not want to lose the tree.

Hamilton verified that the existing garage goes into the alley setback, while the new one does not. Stamey said yes. Hamilton asked how long the garage has been there. Stamey said it was built out of used lumber. Hamilton said there is no reason to think the garage has not been there for a long time. Bunger said the Riley County Appraiser's Office lists it as built in the 1900s with no building permit.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said she appreciates the concern about the tree; the new driveway could impact it, though not the garage. The City has a very talented Forestry department, which can help. She can support the EXCEPTION; however, she takes the TNO requirements seriously. The use and orientation is very established. The TNO moves traffic to the alley, but the site has an established use, which can be more appealing. Additionally, the garage is going to be in the same character of the house and the curb cut left unexpanded, which saves the tree.

Aistrup concurs on all points. He congratulated the applicant on the design. It is more visually appealing. Additionally, a two-car garage is kind of expected today.

Hamilton said she understands the intent of the driveway audit performed, but makes the point of the needs of the TNO; however, the proposal does look better.

The Board made the following findings of fact for the EXCEPTION at 501 Laramie Street.

**PRESENT USE:** Single-family home.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The location of the existing garage is approximately two (2) feet from the alley to the south, which encroaches into the three (3) foot setback for the accessory structure. The existing driveway does not comply with the TNO District requirement that it should be accessed off of the adjacent alley. The proposed detached garage would eliminate these issues. Other than these issues, and that for which the EXCEPTIONS are for, the property complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties immediately surrounding the subject site are zoned R-2/TNO, Two-Family Residential



District and Traditional Neighborhood Overlay District. To the south and west are properties zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. To the east along N. 4<sup>th</sup> Street is the Manhattan Marketplace PUD. The area immediately around the subject site is a mix of single-family and two-family dwellings. There are a few multiple-family dwellings in the immediate area. There is an even distribution of owner-occupied and rental properties in the area.

The house on the subject site was built in 1890, and although it is not registered as a historic property, it is a recognizable property in the neighborhood (the house is on the neighborhood sign at the corner of N. 4<sup>th</sup> Street and Laramie Street). The detached garage was built in the early 1900's. According to the application documents, "The proposed design (of the detached garage) replicates the existing structure in style, orientation, materials, finishes, and use. As such it utilizes the same driveway and curb cut." The removal of the existing garage and replacement of it with a new, two-car detached garage that utilizes the existing curb cut and is twenty-two (22) feet wide, should not adversely impact the surround neighborhood.

The new garage will have the same orientation as the existing garage, and as stated above, utilize a similar design. Other corner lots in the immediate area have similar detached garages that are orientated towards the street and do not gain access from the adjacent alley. Furthermore, there are also properties on corner lots and interior lots that have driveways that are wider than the maximum ten (10) foot width required by the TNO District. The applicant has provided a "driveway audit" and photos showing the location of some of these properties. Although a majority of these properties were built prior to the adoption of the TNO District in 2003 – 2004, they still represent the character of the area. The proposed detached garage and the driveway's location and width will match the character of the subject site and the surrounding neighborhood.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal impacts on the public health, safety, general welfare or order should occur by approving the EXCEPTION request. The proposed detached garage complies with all of the required setbacks of an accessory structure and will be outside of any utility easements and the Vision Clearance Triangle at the intersection of the alley and the N. 5<sup>th</sup> Street property line. As mentioned above, the proposed driveway matches the character of driveway placement and the width of driveways throughout the neighborhood.

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

The strict application of the TNO Site Design Standards requires that, because of the adjacent alley, the garage would need to be oriented towards the alley and that no part of the driveway be located in the front yard along N. 5<sup>th</sup> Street. The application materials show a redesign of the detached garage to orientate it off of the adjacent alley. The redesigned garage is set back fourteen (14) feet from the south property line along the alley to meet minimum parking design standards. The applicant has calculated that the back yard area would be reduced from 3,000 square feet to 2,500 square feet, or a reduction of sixteen (16) percent. Considering the EXCEPTION request, the applicant feels that this option is unreasonable.

Taking into the account that “the proposed design (of the detached garage) replicates the existing structure in style, orientation, materials, finishes, and use,” the proposed garage will utilize the existing curb cut off of N. 5<sup>th</sup> Street, and that several properties in the surrounding neighborhood have similar driveways both in orientation and in width, it appears that the strict application of the regulation to require that no part of the driveway be located in the front yard or be wider than ten (10) feet is unreasonable.

Lavis made a motion to approve of an EXCEPTION to allow for an increase in the maximum ten (10) foot driveway width to twenty-two (22) feet for a new driveway located in the front yard along N. 5<sup>th</sup> Street associated with a new two-car, detached garage at 501 Laramie Street in the R-2/TNO Two-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions

1. The EXCEPTION shall only apply to the proposed detached garage and driveway as shown on the site plan and outlined in the application documents.
2. The detached garage shall be constructed according to the application and site plan documents.
3. All applicable permits shall be obtained.

Hamilton seconded the motion, which passed by a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR AN INCREASE OF THE MAXIMUM LOT COVERAGE FROM THIRTY (30) PERCENT TO THIRTY-TWO (32) PERCENT FOR A PROPOSED ADDITION TO THE EXISTING HOUSE AT 444 OAKDALE DRIVE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT (APPLICANT/OWNER: TROY AND BETTY HENSLEY).**

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

Aistrup opened the Public Hearing.

Troy Hensley, applicant, said he was there to answer questions.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said she thought the request was perfectly reasonable and appreciated the Staff Report.

The Board made the following findings of fact for the EXCEPTION at 444 Oakdale Drive.

**PRESENT USE:** Single family home.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property was constructed in 1959, with the current property owners gaining title in 1994. The subject site

currently complies with all applicable regulations, other than the one for which an EXCEPTION is being requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is zoned R, Single-Family Residential District, and is located in a predominantly single family neighborhood. The R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, is located to the east, while R-5, Manufactured Home Park, and I-2, Industrial Park, and other uses are located to the west.

Due to the location of the proposed screened-in porch, there is minimal anticipated adverse impact on adjacent properties. The proposed site of the porch is located on the south side of the property, away from the two front yards along Grandview Drive and Oakdale Drive. The property which would be most impacted from the project is 440 Oakdale Drive—the property directly adjacent to the south. The property owners of 440 Oakdale Drive, Don and Sara Ekhart, expressed support for the project and voiced no opposition to it. Furthermore, they stated, “actually this would be a nice addition to their home. This would be right next to my home, and since we would be about the only ones that know it is there, I see no problem with it.”

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The EXCEPTION request does not encroach upon 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 maximum lot coverage would not allow the structure to be built as proposed. If the thirty (30%) percent lot coverage regulation was enforced, then the proposed screened-in porch would be required to be approximately half of the desired size. This would limit the use of the porch and restrict internal circulation. The applicants have tried to meet all applicable regulations; however, there are limited options available for the space and type of use that the applicants’ desire.

Hamilton made a motion to approve an EXCEPTION to allow for an increase of the maximum lot coverage from thirty (30) percent to thirty-two (32) percent for a proposed addition to the existing house in the R, Single-Family Residential District with the following conditions:

1. The EXCEPTION shall be limited to the proposed screened-in porch as outlined in the application documents and shown on the applicant’s site plan.
2. All applicable permits shall be obtained.

Lavis seconded the motion, which passed by a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION ALLOW A REDUCTION OF THE MINIMUM FRONT YARD SETBACK ALONG NORTH 6<sup>TH</sup> STREET FROM FOURTEEN (14) TO ZERO (0) FEET FOR A PROPOSED WOODEN PRIVACY**

**FENCE UP TO BUT NO GREATER THAN EIGHT (8) FEET IN HEIGHT. THE PROPERTY IS LOCATED AT 530 VATTIER, IN THE R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: ELENA V. BOIKO AND MICHAEL S. RHODES).**

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

Aistrup asked if Myers had stated that the EXCEPTION could be conditioned with the clearing of the sidewalk. Bunger said that he is not sure about it, but it could be a stretch. However, the Board could strongly recommend clearing it.

Aistrup opened the Public Hearing.

Elena Boiko, applicant, said the north property has no sidewalk at all. The brick sidewalk is almost impossible to maintain and clean. They have talked to Code about the sidewalks, and because the property is a corner lot, it has two sidewalks. People don't use the brick sidewalk along N. 6<sup>th</sup> Street. Code is okay with the N. 6<sup>th</sup> Street sidewalk not being maintained, as long as the Vattier sidewalk is maintained. The fence request is to extend the existing fence to help the residents enjoy gardening and a bird sanctuary. She said that it does not seem like it will destroy the look of the neighborhood.

Hamilton asked if there is a sidewalk there now. Boiko said yes, there is a brick sidewalk under the grass.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said she is not inclined to make the sidewalk an issue. However, the City might make it an issue at some point. Just because it is not being conditioned in this EXCEPTION request won't protect them. They could place the fence where it won't interfere with a possible future sidewalk. The fence makes sense, and she is comfortable with 6 feet rather than anything higher.

The Board made the following findings of fact for the EXCEPTION at 530 Vattier Street.

**PRESENT USE:** Single Family Home

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site currently complies with all applicable requirements of the Zoning Regulations, other than the one for which an EXCEPTION is being requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. There are various zoning districts surrounding the subject site. The R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District, continues to the

southeast; the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District is located to the southwest. To the north is R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District and properties to the west are zoned R-3/M-FRO, Multiple-Family Residential District and Multi-Family Redevelopment Overlay District. The neighborhood is composed of single-family renters, owner-occupied housing, and multiple-family housing.

The entire intersection of Vattier and N. 6<sup>th</sup> Streets was considered when evaluating this setback EXCEPTION request. The properties surrounding the intersection all have a six (6) foot fence, with the exception of 601 Vattier, which has a fence just over five (5) feet. The location and length of the fence within the yard vary for each property. 600 Vattier received an EXCEPTION in 1998 to construct a fence zero (0) feet from the sidewalk. The property located at 531 Kearney (immediately to the north) also has a fence constructed near the sidewalk. Thus, adverse impacts are not anticipated on adjacent properties and this proposed fence line would be consistent with the surrounding neighborhood. However, the possibility of a seven (7) or eight (8) foot fence along the sidewalk parallel to N. 6<sup>th</sup> Street may physically encroach upon the walking space and is not consistent with the character of the neighborhood. Granted, 531 Kearney (immediately to the north) has a six (6) foot tall picket fence, and an additional foot and a half (1 ½) of latticework above the top of the fence; however, the lattice is a more permeable surface than a picket fence and is more consistent with the visual character of the neighborhood. Furthermore, if the applicants wish to pursue an eight (8) foot fence, a building permit is necessary. Thus City Administration recommends lowering the fence height to six (6) feet, which is a more appropriate height for the neighborhood.

The ten (10) foot Vision Clearance Triangle requirement was not initially met by the proposed site plan; however, City Administration met with the applicant, explained the vision triangle requirements and possible designs which would conform to the regulations. The applicants agreed with City Administration's recommendation to angle the fence in a right triangle as it approaches the alley. This revision to the site plan conforms to vision triangle regulations as stated in Section 3-411(D) of the Zoning Regulations. *See site plan as revised by City Administration.*

In addition, the current sidewalk running parallel to N. 6<sup>th</sup> Street is severely overgrown. City Administration recommends clearing the sidewalk, making the walking path easier to navigate.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The EXCEPTION request does not encroach upon any utility or drainage easements. The request is not anticipated to negatively affect the public health, safety, or welfare. However, City Administration recommends altering the fence height from up to eight (8) feet to the maximum of six (6) feet to be consistent with the character of the surrounding neighborhood.

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

If strict application of regulations were enforced, the fence would be allowed to relocate from its current location of sixteen (16) feet from the sidewalk to fourteen (14) feet from the sidewalk, adding approximately 304 square feet of private space to the backyard. The open front yard along N. 6<sup>th</sup> Street would remain exposed to the neighborhood, and not be consistent with the applicant's plans. The fences located along N. 6<sup>th</sup> Street are wooden picket fences, which are roughly six (6) feet in height, all in the natural wood color or stained a dark brown.

Hamilton made a motion to approve an EXCEPTION to allow the reduction of the minimum front yard setback along North 6<sup>th</sup> Street from fourteen (14) to zero (0) feet for a proposed wooden privacy fence up to but no greater than eight (8) feet in height. The property is located at 530 Vattier, in the R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District with the following conditions:

1. The fence shall be no greater than six (6) feet in height.
2. The fence shall be maintained in good condition and implemented as shown in application documents and on the site plan, *as amended by staff*.
3. The ten (10) foot Vision Clearance Triangle shall be maintained between the alley and N. 6<sup>th</sup> Street intersection, as shown in the revised site plan.
4. The EXCEPTION is limited to the portions of the property along N. 6<sup>th</sup> Street.

Lavis seconded the motion, which passed by a vote of 3-0.

Aistrup adjourned the meeting.

Respectfully Submitted,

Ashley Myers, Planning Intern and Kevin Credit, Planning Intern.