MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, June 8, 2005
7:00 PM

MEMBERS PRESENT: Chairperson Chuck Jackson, Connie Hamilton, Daniel Morin, Calvin Emig, and Harry Hardy.

MEMBERS ABSENT: None.

STAFF PRESENT: Steve Zilkie, Senior Planner; Cameron Moeller, Planner II; Katie Jackson, Assistant City Attorney; Jeremy Frazzell, Planner.

CONSIDER THE MINUTES OF THE MAY 11, 2005, BOARD OF ZONING APPEALS MEETING.

Emig moved that the Board approve the minutes. The motion was seconded by Hardy, which passed 5-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW A TELECOM STRUCTURE (AN APPROXIMATE ONE HUNDRED AND TWENTY (120) FOOT MONOPOLE CELLULAR TOWER) IN THE C-3, AGGIEVILLE BUSINESS DISTRICT. THE CONDITIONAL USE IS FOR PROPERTY LOCATED AT 1219 BLUEMONT AVENUE. (APPLICANT/OWNER: WESTERN WIRELESS AND CELLULAR ONE/MANHATTAN ICE & COLD STORAGE COMPANY, INC.)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM SETBACK FROM PROPERTY LINES FOR A PROPOSED TELECOM STRUCTURE (AN APPROXIMATE ONE HUNDRED AND TWENTY (120) FOOT MONOPOLE CELLULAR TOWER); AND AN EXCEPTION OF THE MINIMUM REAR YARD AND SIDE YARD SETBACKS FOR THE TELECOMMUNICATION FACILITIES, AND A FENCE ENCLOSURE, BOTH ASSOCIATED WITH THE TELECOM STRUCTURE. THE EXCEPTION IS FOR PROPERTY LOCATED AT 1219 BLUEMONT AVENUE. (APPLICANT/OWNER: WESTERN WIRELESS AND CELLULAR ONE/MANHATTAN ICE & COLD STORAGE COMPANY, INC.)

Ralph Wyngarden, Faulk and Foster 2680 Horizon Drive Southeast, Grand Rapids Michigan on behalf of the applicant, Western Wireless, explained that Western Wireless is withdrawing their application for a Conditional Use and Exception for the proposed cellular tower in the Aggieville District. He commented that the applicant will continue to look for a location to provide service and will be working with the City during that process.

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW AN EXISTING PAVED DRIVEWAY TO EXCEED TWENTY-FOUR (24) FEET IN WIDTH AND 960 SQUARE FEET IN AREA, AND A REDUCTION OF THE SEVENTY-FIVE (75) PERCENT LANDSCAPED AREA 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, ALL FOR A RESIDENTIAL STRUCTURE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. THE VARIANCE IS FOR PROPERTY LOCATED AT 2309 ANDERSON AVENUE. (APPLICANT/OWNER: RON FRANK) (*NOTE: THIS ITEM WAS TABLED BY THE BOARD OF ZONING APPEALS, AT THE REQUEST OF THE APPLICANT, FROM THE MAY 11, 2005, BOARD OF ZONING APPEALS MEETING, TO THE JUNE 8, 2005, MEETING.)*

Hardy made a motion to remove the item from the table.

Hamilton seconded the motion, which passed 5-0.

Zilkie clarified a technical portion of the regulations for posting a public hearing sign for the May public hearing.

Hamilton made a motion that the board had been advised that the public notice sign had not been posted throughout all of the time required by the regulations, but it had been posted for a significant amount of time, the public was out to speak on the issue and the public hearing should be conducted.

Emig seconded the motion which passed 5-0.

Zilkie presented the staff report and recommended approval with conditions.

Jackson asked if there were any questions from the board.

Hamilton asked if there was any evidence of a 2 family unit use, since the applicant had said previously that it was a single family use (approximately 2 or more months ago).

Zilkie referred the question to be directed to the applicant.

Hamilton asked how long it takes for a grandfathered use to lapse.

Zilkie explained that there is no lapse period, and the city has issued an opinion that the two-family dwelling is a legal nonconforming use and it can continue in that same manner and to his knowledge there has been no period of abandonment. Hamilton said she asked since the applicant said under oath that it’s a single family unit and that he’s owned for three years, and would that count?

Zilkie said the question should be directed to the applicant.

Jackson asked for additional questions for Zilkie.

Jackson asked that the audience keep comments related to the expanded driveway and not to the behavior of the residents, as the behavior had been addressed in previous meetings.

Hamilton asked for an exception as it is a new application to the record, but can't preclude and rely on memory of the behavior issue as there is a new board member (Morin).

Hardy said that the board cannot control the behavior of residents and comments should be directed to the expanded driveway in question.

Morin said he was aware of the issues.

Jackson opened for the public hearing.

Dick Blackwell, 400 E. Iron, Salina KS, lawyer representing the applicant and that Blackwell's son had lived in the house last semester. He said that the real issues addressing the expanded driveway include:

1. Zoning and not disorderly conduct of the residents;
2. Safety of backing onto Anderson Avenue, an arterial street;
3. Given the odd dimensions and position of the lot, it is hard to attain the required 75% landscape area (pictures shown and added to file); and,
4. Consistency with the surrounding neighborhood (pictures shown and added to file);

Lisa Frank, wife of the applicant and parent of two of the kids that live in the house, said she requested the expanded driveway to help alleviate safety issues.

Morin commented that there are always cars parked on the expanded driveway and it is not being used as a turn-around. Morin questioned Mrs. Frank whether she was aware of that situation and if she had discussed that with the tenants.

Lisa Frank responded saying she was not totally aware of it, but even if there are cars parked in that spot, there is the ability to back out and drive out.

Ron Frank, applicant, reiterated the need for the expanded driveway for safety reasons; that the neighborhood area is more commercial than residential; and that the percentage of landscaped area may be less than the requirements, but the amount of square footage on the lot far exceeds any lot on either side.

Hardy reiterated that if two cars are parked on the expanded driveway, the problem still exists.

Ron Frank said it occurs mostly at off peak times, and doesn't know how to police it, but better to have it available than not at all.

Hardy responded saying it has to be more likely that the expanded driveway would be used for turn-around purposes than not.

Emig asked whether the original intention of the expanded driveway was for more parking, or for a turn-around area.

Ron Frank intended the area to be more of a turn-around than additional parking.

Emig asked how many tenants currently occupy the house.

Ron Frank said five tenants currently occupy the house.

Hamilton asked if there were two separate units, the addresses, and if there are separate utilities being paid

Ron Frank said the building is an up and down unit, separated by a door. It has two separate entrances with two bedrooms downstairs, three bedrooms upstairs, and two kitchens.

Morin asked if any research had been done on traffic accidents within the past ten or fifteen years and if speed was more of the safety issue?

Lisa Frank said no research was done, but speed is a safety issue. She said she had a letter from an area resident, Doug Kramer, 2310 Wildwood Lane (added to application file) and read the letter aloud.

Scott Ebert, father of a son who lived at 2309 Anderson, reiterated the safety issue.

Jackson asked if there were any questions from the board for Ebert.

Martin Van Swaay, 2321 Wildwood Lane, reiterated that safety is an issue, but behavior is reflective. The house invites parties, thus inviting a parking issue. The original driveway had six cars and with the expanded driveway there are nine cars equaling a huge parking lot. The issue is the broken window syndrome.

Jackson informed Van Swaay that there is nothing the board can do about behavior.

Morin said that there appears to be no problem with four plus cars at other properties. His point is that the parking of six cars in the area is not a unique situation.

Martin Van Swaay showed a picture of nine cars in the driveway and the expanded driveway (computer disc placed file).

Brenda Bell, 2370 Wildwood Lane, discussed conditions considering the variance:

1. Conditions unique to property: The residence is now two units, not one, but not a new condition as the landlord knew the residence status before.
2. Probable effect on neighborhood: Anderson Avenue is becoming a blighted area because of this type of variance and behavior.
3. Hardship: The hardship was created by the owner, as he should have received a variance first. It is not a hardship if he has to take out the expanded driveway when he shouldn't have put it in to start.

Deborah Dellere, 711 Midland Avenue, wanted to know why the judgment was aborted from the December finding.

Hardy responded by saying the applicant re-applied, and so the new application must be heard again.

Deborah Dellere asked about enforcement, if the applicant decides to not abide by the decision.

Hardy responded that enforcement is by the City and not the Board of Zoning Appeals.

Deborah Dellere said that there are no problems with safety on Anderson, that the need for the expanded driveway was more of a convenience factor for the residents than anything.

Morin asked how many accidents have occurred in this area.

Deborah Dellere responded that she has lived there for 39 years and there have been several accidents turning off of Midland Avenue, but not from pulling out of residence driveways and no direct neighbors have been involved in accidents.

Jane Houghton, 2320 Wildwood Lane, wanted to confirm that Frank had not attained a building permit for the expanded driveway and also said that Anderson Avenue has always been a busy street. Frank should not have purchased the property if safety was such a concern.

Emig asked about accidents in the area.

Jane Houghton, said it was a dangerous corner, but not from backing out into the street.

Christina Van Swaay, 2321 Wildwood Lane, said she has lived there for forty-one years. She reiterated that Anderson Avenue has safety issues and that the Franks should not have purchased the property if they had safety concerns.

Ron Frank said that the comments by neighbors are about pulling out onto Anderson Avenue and going forward and not backing out.

Jackson asked if there were anymore comments. He then closed the public meeting, and asked for Board discussion.

Morin's comments, in summary form are:

1. The interpretation of the variance to allow the existing paved driveway appears to not be sufficient as the expanded driveway was created by the applicant and the first standard for a variance is not met.
2. Other properties have been approved for similar expanded driveways on a case by case basis.
3. The hardship is self imposed.
4. The adverse effect on the public health, safety, morals, order, convenience, prosperity, general welfare is relatively subjective; however the variance does not meet the first and third standard.
5. Is it opposed to the general spirit of the law? You could argue that also because the law was meant to provide adequate parking for in this case a two family dwelling. Adequate parking according to the law for a two family dwelling is four spaces. There is more than enough existing driveway there for four spaces.
6. Any safety issue and concern for enforcing the 30 m.p.h speed limit along Anderson Avenue should be handled through the police department, not the Board of Zoning Appeals.
7. There are adult people living in the dwelling. The property is supposed to be a rental property. The parents are expressing a concern for their children/adults who are living in the dwelling. If they rented the property to unrelated people would the safety concern still be addressed?
8. The parking regulation is restricted based on the type of residence and number of dwelling units on the property, not the amount of visitors.

Morin requested that the board members agree with him as the variance does not meet the first standard because it was an action created by the property owner.

Hardy's comments, in summery form:

1. He said he wanted to see how this particular request for a variance was different from the December request, but he didn't hear anything to change his mind.
2. He reviewed the prior decision and found that the nonconformity was previously raised and the August 2000 memorandum from city staff which he also noted was not a legal opinion, so there really wasn't a legal determination if it was two units or not and it was pointed out, at the time, that if a legal opinion was wanted, the applicant should get one.
3. Hardy said he struggled to see how the addition of the concrete slab is truly going to provide for safety. He said he heard from the applicant and others in support of the concrete slab, that there is a possibility that the concrete slab could be used for a turn around, however Hardy said he likes possibilities that are more likely to happen than not. According to the staff report, testimonies, and observations, Hardy did not see that it was a strong possibility that the slab was being used as a turn around.
4. The applicant was denied a variance in December by the board. Instead of complying with the enforcement action, it appears the applicant chose to find a potential legal loop hole to get the action before the board again to forestall having to comply with the enforcement action. But the application is clearly within their right to file a new

application in efforts to forestall all enforcement action. It is time to put the issue to rest.

Hamilton's comments, in summary form:

1. She said she had not seen or heard anything new that she is willing to accept.
2. The main focus of the new application is the assertion that the structure is being used as a duplex. The minutes of the December meeting note the non compliance, and the August 2000 memo, states that the structure is not currently being used as a duplex. At that time the applicant indicated the dwelling had four people living in it and he had owned it for three years. The board's understanding was this was not a duplex situation.
3. The new staff report and application state that the dwelling is a legally non conforming duplex and she was not willing to accept this as a finding of the report. She thought it was open for proof or determination by the City for whatever purpose, but she was not willing to use something that is so contrary to what was told to the board with no new information as a basis for considering more than four parking places being needed. Also, the applicant thinks this is a commercial area that it is alright to put parking spaces in the front yard. There has always has been a question about whether there is a safety issue, and as busy as Anderson is, she remained skeptical to advance any safety objective by allowing the concrete slab to continue. The last time the board found that allowing the slab there would increase the number of cars backing onto Anderson and creating more of a safety issue. She said that sometimes the regulations provide a limitation that provides the comfort level for safety.
4. The new staff report refers to the concrete slab as a parking area. There is adequate parking, an odd shaped lot, very steep slope, the board would normally take this into consideration if accommodation needed to be made to get four parking spots, and the minimum required parking for a duplex, then the board would be doing everything possible to accommodate the request if this were a solid legal non conforming use, but this is not the case
5. There is merit to the notion that sometimes property just can't be adjusted within the zoning ordinance to meet all good desires and needs of what people might want to do with it if it weren't in such an odd and terrible location.
6. The board's specific comments last time this was addressed were the probable effects on adjacent properties were not just to the east and west properties but also extended to the north and south. Neighbors from the south and north spoke out against this in property, comfort, quality of life language. Those are effects on adjacent properties as well as to the east and west. She would like to see that addressed in the board's findings this time.
7. For the properties exactly to the east and west, she does not recall looking at those properties for needing or applying for any parking. It is possible that they attained the parking prior to the regulation, a feature when Anderson expanded, or maybe a compliance issue.
8. Hamilton said she recalled the recent parking addition that was approved on Anderson Avenue that Mr. Frank referred too and the parking in the front yard was pretty

significant. The neighborhood around that property did not speak out against the proposal; in fact some were in favor of it, which makes a significant difference. It had different site problems, was located on a different part of Anderson, and was a fully established duplex. She said that even though other parking and turn-arounds exist on Anderson, if people got it before the regulations were implemented, then they are entitled to it. If the regulations restrict it, then you have to make the case to get it and she didn't see that the case had been made this time.

Emig's comments, in summary form:

1. Emig said he had no new comments and would follow his earlier December decision.
2. He said he does see some uniqueness to the property versus other properties. Normally, other residences or dwelling units have on-street parking available and this property does not; however, he offered a possible solution to the visitors that visit their adult children and are uncomfortable backing onto Anderson Avenue, which is that maybe they should park up the street on one of the side streets or nearby parking lots to ensure safety.

Jackson comment in summary form:

1. He believed it was too bad that the children did not respect their parent's good name in Salina and that they came to Manhattan and became bad neighbors creating the problem in the first place. As he stated earlier, had the kids not created the problem through their actions and behavior, this may not have been much of a problem, but the decision may turn on their actions.
2. He was concerned about the board's possible decision, as the board has approved similar projects in the past for the same reason.
3. He said the whole street is a problem as the house next door to the property had six cars parked in front of it. He felt sorry that the kids were going to be restricted for the amount of friends they can have over based on the parking.
4. Declining the request and requiring on-street parking in another area increases parking congestion on Midland and Willard and its going to be shoved out into the neighborhood.

Morin said that the variance in December should have been denied based on the first standard, because it is a problem created by an action of the property owner in a strict legal definition. He continued by saying that the applicant is asking for a variance for something he did.

Jackson said the reason for the board is to give residents of Manhattan a remedy if something like this happens. He doesn't feel comfortable denying this request, but the applicant should have approached someone at the City and asked them. With the square footage of landscaping he has on his property, he may not have known what to do to find out and that the driveway expansion was a violation. He didn't feel the board should get down on this landlord for the possible "honest mistake".

Hamilton said she didn't think it was uncommon, but the more common practice was that people make application before they proceed and it is not that uncommon that people will be told that their project doesn't comply. We do get into circumstances where the existing

driveway, existing being an adjective, describing that there is a driveway there, the board goes out of its way, unless there is extreme bad faith, to look at the request as if it weren't poured and then say would we have approved it if it were coming to us fresh. In this case, we have the benefit of seeing it poured and seeing how it has been used and that doesn'tt work to the applicant's advantage in this case.

The Board's consensus was to use the findings of the December 2004 meeting as a template along with additional modifications or alterations for the findings at this meeting.

1. Hamilton, Hardy, Jackson, and Emig found that the standard was met and that the subject property is a residential property located along Anderson Avenue, a designated arterial street. For safety concerns, current regulations prohibit direct driveway access onto an arterial street. The high amount of traffic on Anderson Avenue makes it difficult and dangerous to back out onto the roadway. It should be noted that it is an odd shaped lot. The house was not built parallel to Anderson Avenue resulting in an odd shaped front yard, however it is noted the area for which the variance being requested was the direct result of the applicant placing the concrete slab there, which is what necessitated the application.

Hardy and Hamilton found that the conditions unique to the property still remain and the fact that we have an incredible amount of the property that cannot be used to accommodate the desire to add extra parking, which you would normally find on a residential lot and that the applicant did not create that condition.

Morin found that there is an "and" and not an "or" in the standard, and the finding has to satisfy both. He found that doesn't satisfy the second part of number one; therefore, it doesn't satisfy it in entirety. He found that in legal terminology there is a difference between "and" and "or".

Hardy and Hamilton found that even if you read them all together, taken as a whole, even though the concrete slab is there, the property is still unique. Even though the applicant did put the concrete slab there, we note that, when taking the property as a whole even with that addition of that little slab in there, that property is still a unique situation.

Morin found that he agreed that the property is unique, but you have to take both together, so if you fail either one you fail the whole thing. They are not mutually exclusive, they are joined. He found that if it were separated, then it would be: 1.It is unique to the property, 2.Not created by action(s) of the property owner.

Morin found that the standard was not met as the Variance is asking for an existing driveway that is there, and was created by the property owner.

2. Hamilton, Hardy, and Emig found that the standard was not met and that the affect to adjacent properties will be adverse. The visual impact for this added expanded concrete parking area will allow cars to park there, and will be a severe effect. The surrounding properties include immediately adjacent rental properties; single-family owner occupied homes, and professional offices. The expanded concrete parking area will be visible and cause

dramatic visual deterioration of the neighborhood.

Jackson and Morin found that the standard was met and that adjacent properties to the east and west of Lot 4 should not be adversely affected by the expansion of the driveway. Those adjoining properties have similar multiple parking spaces in the front yard as occurs on Lot 4. To the north is Anderson Avenue, a four lane arterial street. The expanded driveway does not adversely affect views of drivers along the street. Other properties are separated from the expanded driveway area by distance. The expanded driveway is a parking area that is generally not visible from adjoining properties; however, vehicles parked on the expanded area are readily visible to the public and property to the north. There are two other properties along Anderson Avenue that are to the east of Lot 4, along the north side of Anderson Avenue, which have similar backing/parking areas. It is not uncommon to find examples of "U" shaped driveways and similar parking areas along the Anderson Avenue corridor from generally between the Sunset Avenue and Anderson Avenue intersection and Hudson Avenue and Anderson Avenue intersection.

3. Hamilton, Hardy, Emig, and Morin found that the standard was not met and that the application documents state that the subject property is located on a blind and potentially dangerous corner. The applicant states that the expanded and improved parking area is intended to increase the safety of the tenants by allowing them room to turn around in the driveway, allowing them to enter facing Anderson Avenue rather than having to back out onto the street. While the applicant created the need for the Variance by construction of the driveway, the physical conditions are hardships that were not created by the applicant. However, many of the houses along Anderson Avenue have to back out onto the street when leaving their property, which does not result in an undue hardship for this property only. The property would be required to provide four parking spaces at least. The existing driveway currently provides enough parking spaces to meet this requirement.

Jackson found that the standard was met and that the statement pertaining to the concrete slab in this case to be true.

4. Hamilton, Hardy, Emig, and Morin found that the standard was not met and that there would be adverse affects to the general public. The expanded driveway allows vehicles more space for parking but does not provide adequate room to maneuver and exit the property without backing out onto Anderson Avenue.

Jackson found that the standard was met and that there would be no adverse affect on the general public.

5. All members of the Board found that the standard was not met as the intent of the regulations that require landscaped open space, maximum amount of paving, and the width of driveways are 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. The improvement and expansion of the parking area and driveway exceeds the required seventy-five percent minimum landscaping of the front yard. The area located between the front

property line and the existing structure does not meet the intent of the regulations.

Based on the findings of fact, Hamilton moved that the Board deny the Variance to allow an existing paved driveway to exceed twenty-four (24) feet in width and 960 square feet in area, and a reduction of the seventy-five (75) percent landscaped area 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, all for a legal nonconforming two-family dwelling unit, on Lot 4, Curran Addition, at 2309 Anderson Avenue.

Hardy seconded the motion, which passed 5-0. (Note: the initial vote was 4-1, with Jackson voting in opposition; however, the vote was immediately recognized and corrected to 5-0 because Jackson recognized that there was an inconsistency with his findings and he had not found that the last standard was met.)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW AN INCREASE OF THE THIRTY (30) PERCENT MAXIMUM LOT COVERAGE FOR A PROPOSED ADDITION TO AN EXISTING SINGLE-FAMILY DWELLING UNIT, WHICH IS LOCATED IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE EXCEPTION IS FOR PROPERTY LOCATED AT 801 HOUSTON STREET. (APPLICANT/OWNER: RICHARD AND KIMBERLY SMITH)

Moeller presented the staff report and recommended approval with conditions.

Jackson opened and closed the public hearing with no one speaking.

Hamilton added the condition that the existing bathroom be removed from the front porch.

Kim Smith, applicant, agreed to the condition.

The Board made the following findings of fact:

A. The house encroaches approximately five (5) feet into the required fourteen (14) foot front yard setback on the east property line along South 8th Street. However, it was built before the zoning regulations would have required this setback. The property otherwise complies with all applicable requirements of the Zoning Regulations other than the one for which the Exception is being requested. The addition itself will not encroach into any required setback.

B. There should be minimal negative impact on adjacent properties as a result of granting the Exception. The addition is no bigger than absolutely necessary to create a functional first floor bathroom and entryway, and care has been taken to design the addition so that it ties in with the architecture of the home. Lot coverage on the site will remain comparable to neighboring properties, and will only slightly exceed the maximum allowed by thirty (30) square feet.

C. No adverse effects on the health, safety and welfare of the public are expected. The addition does not encroach on a public easement or a vision triangle.

D. Strict application of the Regulations would require the applicant to either reduce the size of the addition or forego the addition altogether. Reducing the size of the addition would not likely change the impact on neighboring properties, but would necessitate the removal of the cistern and deny the applicant the use of the cistern as a storm shelter. If the applicant were to forego the addition, the applicant would have to choose between a first-floor bathroom and a wrap-around porch, but could not have both.

Emig moved that the Board approve an Exception to allow an increase of maximum lot coverage for a proposed bathroom addition to a single-family home within the R-1, Single-Family Residential District, and the TNO, Traditional Neighborhood Overlay District, at 801 Houston Street, based on the findings of fact, with the following conditions:

1. The applicant shall obtain a building permit.
2. The exception shall apply only to the bathroom addition, as proposed.
3. The existing bathroom shall be removed from the front porch.

Hardy seconded the motion, which passed 5-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW A PROPOSED HEALTH, FITNESS AND SERVICE CLUB IN THE HIGHLAND MEADOWS ADDITION, UNIT ONE. THE PROPOSED FACILITY CONSISTS OF A CLUBHOUSE, MEETING ROOM, WORKOUT ROOM, SWIMMING POOL, AND LEASING OFFICE FOR A PROPOSED APARTMENT COMPLEX. THE FACILITY WILL BE LOCATED IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. THE CONDITIONAL USE IS FOR PROPERTY GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF WILDCAT CREEK ROAD AND SCENIC DRIVE AND WEST OF THE INTERSECTION OF STONE DRIVE AND SCENIC DRIVE IN THE HIGHLAND MEADOWS ADDITION, UNIT ONE. (APPLICANT/OWNER: SCI OF MANHATTAN INC./SSF DEVELOPMENT, LLC (ROGER SCHULTZ)

A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW OFF-STREET PARKING FOR A PROPOSED MULTIPLE-FAMILY APARTMENT COMPLEX TO BE LOCATED BETWEEN THE FRONT LOT LINE AND A LINE PARALLEL TO THE FRONT LOT LINE DRAWN THROUGH A POINT WHICH IS ON THE SIDE OF THE PRINCIPAL STRUCTURE FURTHEST FROM THE FRONT LOT LINE, YET STILL FACING THE FRONT LOT LINE, AND A REDUCTION OF THE REQUIRED SEVENTY-FIVE (75) PERCENT LANDSCAPED AREA BETWEEN THE TWO LINES DESCRIBED ABOVE, ALL IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. THE VARIANCE IS FOR PROPERTY GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF WILDCAT CREEK ROAD AND SCENIC DRIVE AND WEST OF THE INTERSECTIONS OF STONE DRIVE

AND HIGHLAND RIDGE DRIVE WITH SCENIC DRIVE IN THE HIGHLAND MEADOWS ADDITION, UNIT ONE. (APPLICANT/OWNER: SCI OF MANHATTAN INC./SSF DEVELOPMENT, LLC (ROGER SCHULTZ)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM REQUIRED NUMBER OF OFF-STREET PARKING FOR A PROPOSED MULTIPLE-FAMILY DWELLING APARTMENT COMPLEX IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. THE EXCEPTION IS FOR PROPERTY GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF WILDCAT CREEK ROAD AND SCENIC DRIVE AND WEST OF THE INTERSECTIONS OF STONE DRIVE AND HIGHLAND RIDGE DRIVE WITH SCENIC DRIVE IN THE HIGHLAND MEADOWS ADDITION, UNIT ONE. (APPLICANT/OWNER: SCI OF MANHATTAN INC./SSF DEVELOPMENT, LLC (ROGER SCHULTZ)

Zilkie presented the staff reports and recommended approval, with conditions.

Hamilton wanted to ensure adequate parking was available for the pool, health and fitness club, and leasing office. She also asked to place a condition to prevent additional parking from entering into the designated floodplain and inquired on the duration of the tax credit housing.

Emig asked for clarification on the amount of ADA parking spaces made available and the tax credit units with regards to student housing.

Morin addressed the possibility of single military personnel teaming up in apartments.

Roger Schultz addressed the concerns of the board including: parking frontage and screening; the number of units, 96 of which will be tax credit units; the type of housing; that there will be no further expansion of the multiple-family area; and, that the proposed development has addressed the identification of the Topeka Shiner within Wildcat Creek.

Kirk Hoke with Schwab Eaton asked to change and include the fence on the retainer wall to a live fence including trees and shrubs.

Emig inquired on the ADA parking, density, income requirements, character, and nature of the proposed units to ensure compatibility with regulations and aesthetics of area.

Roger Schultz ensured compatibility with the regulations and quality of the project.

Jackson closed public hearing.

Hardy supported all three applications and commented that the project addresses the housing needs in the community.

Hamilton supported all three items, except that a condition should be added to protect the floodway, as well as a condition regarding the screening request of either a six foot fence or evergreen screening.

The Board made the following Findings of Fact for the Conditional Use:

A. The proposed clubhouse/pool complies with all regulations, except a Conditional Use Permit must be approved. Additionally, the proposed site plan indicates the lot lines of Lots 60-62, Highland Meadows Addition, Unit One, will be changed. A Final Plat or Boundary Line Adjustment must be approved to account for adjusted lot lines of Lots

B. Minimal impact is expected on adjacent properties. To the north, south and east is the proposed apartment complex. To the west is an undeveloped church site. The proposed clubhouse/pool will be separated from the church site by a six (6) foot screening fence on top of a retaining wall.

The proposed swimming pool will be surrounded by a fence, which must conform to Building Code requirements for safety purposes.

C. Refer to the site plan

1. The proposed clubhouse is approximately 2,400 square feet in area on a proposed 25,400 square foot lot. The one-story building will be setback approximately 75 feet from property to the west, which has a minimum required 25 foot rear yard setback. The pool, an accessory use to the clubhouse, will be setback approximately 15 feet from the rear lot line. Minimum rear yard setback is five (5) feet. No exterior lighting is identified with the proposed use. Any lighting shall be downcast and shaded so as to minimize any adverse affect on the church site to the west. The facilities are proposed as an amenity to the apartment complex and are not a commercial health, fitness and service club, which could dominate the neighborhood in which it is proposed.

2. Provision for landscaping and screening are proposed and should be adequate to conform to the landscaping and screening requirements of the Zoning Regulations. The proposed site plan indicates adequate provision for trees has been made, as a function of the off-street parking regulations. At the time of application for building permits, landscaping shall conform to the requirements of the Zoning Regulations. A 6 foot fence, on top of a retaining wall, will screen the site from property to the west.

D. The Manhattan Zoning Regulations do not specifically address parking requirements for swimming pools. Standard national requirements vary from 1 to 4 spaces for every 200 square feet of pool surface area. The proposed swimming pool will be approximately 20 feet in width by 40 feet in length, or 800 square feet in surface area, which would typically result in 4 to 16 potential required parking spaces. The applicant has made provisions for 4 parking spaces. Given the fact that the swimming pool is designed for use by residents and guests of the apartment complex, many of whom will walk to the pool, and the availability of off-street parking associated with the apartment complex, the 4 off-street parking spaces provided

should be a reasonable number.

E. Adequate provision for drainage and public facilities were considered with the approval of the Preliminary Plat. No additional public improvements are needed to serve the proposed use.

F. Vehicular access is from Stone Drive and is adequate. Sidewalk is required and provided along Stone Drive. Pedestrian access is otherwise through parking lot aisles.

Hamilton moved that the Board approve a Conditional Use Permit for the installation of a swimming pool and clubhouse on Lot 61, Highland Meadows Addition, Unit One, or its Final Plat or Boundary Line Adjustment equivalent, based on the findings of fact, with the following conditions:

1. Downcast and shielded lighting shall be provided.

2. The applicant shall obtain all necessary building permits prior to construction of the swimming pool and clubhouse.

3. The conditional use shall apply to the proposed site plan.

4. At a minimum, landscaping shall be provided as proposed; at the time of application for a building permit, landscaping shall conform to the requirements of the Zoning Regulations; shall be maintained in good conditions; and, shall be installed no later than the first planting season after construction.

5. Applicant shall protect the floodway, as well as provide screening with either a six foot fence and/or evergreen screening.

Hardy seconded the motion, which passed 5-0.

The Board made the following Findings of Fact for the Variance:

1. A large portion of the northern parts of Lots 34 and 35 are located within the Floodway portion of the 100 Year Flood Plain, which is an unbuildable area; however parking areas are a permitted use allowed in the Floodway. Wildcat Creek is immediately north of the two lots and is a natural limitation on space available for parking. While parking is allowed in the Floodway, subject to local and state flood plain regulations, it is discouraged so as to maintain the Floodway flow of flood waters free of obstructions. Floodway areas are proposed to be maintained as open space. By maintaining this open area, less land is available and the site is more restricted in how the parking areas are arranged in relation to the apartment buildings. In addition, the flood plain is being used for a siltation basin to control storm water run-off into Wildcat Creek, as required by the State of Kansas, and to comply with the Clean Water Act. The requirements for the siltation basin were not known until application was made for a permit to discharge storm water into Wildcat Creek.

The location of parking on Lots 36, 37 and 63 is a function of the street patterns created with

the plat, and individual parcel ownership prior to platting. The church site to the east, Lot 59, Highland Meadows Addition, Unit One, existed prior to platting, as well as the parcel on which Lots 36-37, and 60-63 are located. Lots36-37 and 60-63 were not originally intended to be included with the plat, but were needed for adequate access.

2. Minimal adverse impact is anticipated to adjacent properties. Other than the parking area adjacent to Scenic Drive, the off-street parking is internalized within the development. There will likely be some visibility of the parking areas adjacent to Scenic Drive for motorists traveling on that street; however, the visibility of parking will likely be minimal as the parking areas will be sited at a slightly higher elevation than Scenic Drive along the a portion of the street, and will be set back from driving lanes approximately 80 to 100 feet. In addition, landscaping, as shown on the proposed site plan, adds some buffering along Scenic Drive for those parking areas requiring the Variance and mitigates any visual impact.

3. Strict application of the Regulations would require the applicant to redesign the site layout of the proposed apartment complex, likely forcing the applicant to add fill to a portion of Floodway in order to develop areas within the 100-Year Flood Plain and re-design a required siltation basin. In addition, the property has been Final Platted and the street and lot layout may need to be Replatted if the Variances are denied.

4. No adverse impact to the public is expected with the Variance request. Realistically, the only parking area associated with this request that may have an impact on the public is the parking area adjacent to Scenic Drive and that impact is visual. With landscaping, the negative impacts of this parking area should be minimal.

5. The intent of the off-street parking regulations is to reduce the visual impact of large parking areas to passers-by and adjacent residential uses. The proposed site plan meets the spirit and intent of the regulations. All parking is behind the minimum front yard setback. The apartment buildings are sited so that they face the fronting street and the parking areas are sited to the side and rear of the buildings. This type of development pattern is generally consistent with the intent of the regulations.

The specific requirement requiring the Variance was created in the mid-1980 as a result of parking being placed in front of apartment buildings in the older grid pattern, which is the Ward District, portion of the City. Its application in that part of the City was to preserve front yards along primarily rectangular lots and grid street patterns. The proposed street pattern is part of a curvilinear street pattern dictated in large part by Wildcat Creek, parcel ownerships and existing Scenic Drive. The proposed development is consistent with modern development patterns versus street patterns created in the late 1800’s.

Hamilton moved that the Board approve a Variance approval of a Variance of the location requirement of off-street parking in the Highland Meadows Addition, Unit One, on Lots 34, 35, 36, 37 and 63, associated with a proposed apartment complex, based on the findings of fact, with the following conditions:

1. The Variance shall be according to the proposed site plan shown in the application

documents and shall be limited to those lots on the proposed site plan.

2. The Variance shall be approved concurrently with the application for an Exception.

3. Landscaping shall be provided as proposed and shall be maintained in good condition.

4. Off-street parking or loading shall be prohibited in the floodway.

Hardy seconded the motion, which passed 5-0

The Board made the following Findings of Fact for the Exception:

A. The site otherwise complies with all applicable regulations other than those addressed through this application and the concurrent requests for a Variance related to location of off-street parking and a Conditional Use Permit for a clubhouse/pool.

B. No adverse effects on adjacent property owners are expected. The number of parking spaces provided should be more than adequate to handle the parking demand and there is no reason to expect that residents will be forced to use adjacent neighborhoods for parking.

Other apartment complexes (Pebblebrook to the northeast along Anderson Avenue) provides a similar ratio (2.3 overall, but with no tax credit units). The off-street parking ratio in Pebblebrook appears to be adequate to handle the parking load. Parking will be internalized and should be sufficient to meet market demand.

C. No negative effects on the public are expected. There is no reason to expect that the number of parking spaces provided will be insufficient to handle the parking demand. The off-street parking requirements of the Zoning Regulations are largely intended to address the parking situation inherent in apartment complexes that are occupied mostly by students. Apartment complexes occupied by students normally have at least one car per occupant and therefore require a higher number of parking spaces per dwelling to account for guests and other visitors. Apartment complexes targeted to a different demographic, as is the case with proposed apartment complex, generally do not require as many parking spaces per dwelling unit to meet the parking demand.

In addition, a benefit of reducing the amount of parking required is the fact that more of the development that would otherwise be paved is maintained as green space.

Floodway along Wildcat Creek, which is to the north of apartment buildings on the north side of Highland Ridge Drive, could be utilized for parking, but the Floodway is intended to convey flood waters. The Floodway will be preserved as a part of the proposed site plan.

D. The strict application of the regulations would require the applicant to provide many more parking spaces than what is realistically needed, likely requiring the applicant to create parking areas within the apartment complex that are maintained as open green space.

Emig moved that the Board approve of an Exception to allow for a reduction of the minimum required number of off-street parking spaces for a proposed multiple-family complex on Lots 31-37, and 60-64, Highland Meadows Addition, Unit One, from a total of 780 off-street parking spaces based on 120 two-bedroom units and 120 three bedroom units, to 527 off-street parking spaces, based on the findings of fact, with the following conditions:

1. The Exception shall be limited to the proposed site plan and number of dwelling units and bedrooms per dwelling unit, as set out in the application documents.
2. A minimum of 527 off-street parking spaces shall be provided.
3. A companion Variance shall be approved.
4. The applicant shall prohibit parking or loading in the floodplain.

Hamilton seconded the motion, which passed 5-0.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Jeremy Frazzell, Planner

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