

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, December 14th, 2011**  
**7:00 PM**

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

MEMBERS ABSENT: None

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II;

**CONSIDER THE MINUTES OF THE NOVEMBER 9, 2011, BOARD OF ZONING APPEALS MEETING.**

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

**TABLE THE PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR AN EXISTING SINGLE-FAMILY DWELLING AT 1400 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. THE PROPOSED CONDITIONAL USE IS REQUIRED TO BRING THE PROPERTY INTO FULL CONFORMANCE WITH THE ZONING REGULATIONS, AS WELL AS TO PREPARE A FINAL PLAT FOR THE PROPERTY. (APPLICANT/OWNER: JULIE HAYNES).**

Hardy moved to table the item to the January 11, 2012 Board of Zoning Appeals meeting so that an Exception request could be re-advertised to correct an error. Kent seconded motion, which passed 5-0.

**TABLE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO SEVENTEEN (17) FEET FOR AN EXISTING SINGLE-FAMILY STRUCTURE AT 1400 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. NO ADDITIONS ARE PROPOSED FOR THE STRUCTURES. THE EXCEPTIONS ARE TO BRING THE PROPERTY INTO CONFORMANCE WITH THE ZONING REGULATIONS SO A FINAL PLAT CAN BE COMPLETED. (APPLICANT/OWNER: JULIE HAYNES).**

Hardy moved to table the item to the January 11, 2012 Board of Zoning Appeals meeting so that an Exception request could be re-advertised to correct an error. Kent seconded motion which passed 5-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM OFF-STREET PARKING REQUIREMENT FOR A TWO-FAMILY DWELLING IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT BEING USED AS A GROUP HOME FROM FOUR (4) PARKING SPACES TO TWO (2) PARKING SPACE. THE EXCEPTION IS FOR BOTH SIDES OF THE TWO-FAMILY DWELLING AT 3301 EFFINGHAM. (OWNER: BIG LAKES DEVELOPMENT CENTER, INC. – JIM HART APPLICANT: BOWMAN BOWMAN NOVICK, INC. – MICHAEL CARSON).**

Bunger presented the staff report, recommending approve with 3 conditions.

Hamilton asked why the staff's recommended condition that the garage space be re-established if use of the subject site as a group home cease to exist. Bunger explained the recommendation. Hardy recommended that the condition read that the Exception shall only apply to the use of the subject site as a group home. Hardy explained that it would be up to the next property owner to figure out the building design and parking requirements.

Aistrup opened the public hearing.

No one from the public spoke; the hearing was closed.

Hardy stated he could support the request and suggested that the staff's recommended #2 condition of approval be amended to read "the Exception shall only apply to the use of the property as a group home as outlined in the staff report." The Board agreed with the recommendation.

The Board made the following findings of fact for the Exception at 3301 & 3303 Effingham:

**PRESENT USE:** two-family dwelling used as a group home.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than the Exception requested; the subject site complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the north, on the west side of Candlewood Drive are zoned R-2, Two-Family Residential District and consists of single-family attached and two-family dwelling. To the east of Candlewood Drive are multiple-family dwellings in the R-3, Multiple-Family Residential District. To the west, north and south are single-family homes in the R-1, Single-Family Residential District. Also in the immediate area is the Candlewood Shopping Center, zoned C-2, Neighborhood Shopping District and the First Assembly of God church, zoned C-1, Restricted Business District.

Minimal adverse impacts on adjacent properties are anticipated by approving the Exception request to allow the attached garage to be converted to living space. The attached garages are currently being used for storage. According to the application materials, "the occupants of the group home do not own vehicles or operate their own vehicles. Current vehicle traffic is

limited to the BLDC (*Big Lakes Development Center, Inc*) van that picks them up and drops them off at different times of the day.” Off-street parking is available on the existing driveway for the Big Lakes Development Center, Inc. van and visitors.

The potential exists that the use of the subject site as a group home could cease to exist and that the structure would be used as a two-family dwelling or single-family attached dwellings. In the event this would occur, the reduction of off-street parking on the subject site may adversely impact adjacent property owners. There would not be adequate off-street parking for the typical family or rental unit. Residents of the house would be forced to park on Effingham or Candlewood Drive, which may impact the surrounding property owners. Because of this, City Administration has proposed a condition of approval that if the structure were to be used as anything other than a group home, the area of the attached garage that is to be renovated will be reverted back to an attached garage, which would provide the minimum required off-street parking for the use.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal impacts on public health, safety and general welfare are anticipated from approving the Exception. As stated, the residents of the dwellings do not have vehicles. The daily traffic to the group home is from the Center’s van to transport the residents around the City. Off-street parking is available for two (2) vehicles on the existing driveway. An increase in on-street parking congestion is not anticipated by approving the Exception.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application would not allow the proposed conversion of the attached garage into living space without providing additional off-street parking on the subject site. There is sufficient area that is adjacent to the existing driveway to expand it and provide the needed off-street parking. However, it appears that the expansion of the driveway would violate the driveway width and area regulations found in Section 7-102(C)(2). This would require a Variance to approve the expansion of the driveway to conform to the Zoning Regulations and provide the needed off-street parking spaces.

Taking into the fact that the tenants do not own or operate their own vehicles and that majority of the traffic to the subject site is the Center’s van, reducing the minimum requirement for off-street parking spaces appears to be the most reasonable solution. Off-street parking is still provided for the Center’s van and visitors. Considering that the Exception will not impact the adjacent property owners or the general public and that the proposed Exception appears to be the most reasonable solution for this particular property and use; the strict application of the Zoning Regulations is unreasonable.

Hardy moved to approve the Exception to allow for the reduction of the minimum off-street parking requirement for a two-family dwelling being used as a group home from four (4) parking spaces to two (2) parking space at 3301 and 3303 Effingham in the R-2, Two-Family Residential District, with the conditions of approval as outlined by the staff and the modification to the 2<sup>nd</sup> condition:

1. The Exception shall be limited to the building renovation as outlined in the application documents, floor plan and site plan.
2. The Exception shall only apply to the use of the property as a group home as outlined in the staff report
3. All applicable permits shall be obtained.

Hardy seconded the motion, which passed with a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR THE CONSTRUCTION OF A 100-FOOT TALL MONOPOLE CELLULAR PHONE TOWER AND ACCESSORY STRUCTURES AT 1210 POTTAWATOMIE AVENUE, IN THE I-3, LIGHT INDUSTRIAL DISTRICT. (OWNER: SCOTT AND DEBORAH SOWELL APPLICANT: DOLAN REALTY ADVISORS, LLC).**

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE REQUIRED SETBACK OF A PROPOSED CELLULAR PHONE TOWER FROM 115 FEET TO THIRTY-TWO (32) FEET AT 1210 POTTAWATOMIE AVENUE IN THE I-3, LIGHT INDUSTRIAL DISTRICT. (OWNER: SCOTT AND DEBORAH SOWELL APPLICANT: DOLAN REALTY ADVISORS, LLC).**

Aistrup suggested that the two items pertaining to 1210 Pottawatomie Avenue be heard together.

Bunger presented both staff reports for the requests for a proposed telecommunication at 1210 Pottawatomie Avenue. He recommended approval of both items.

Hamilton wanted to confirm that the proposed tower was to add to the other sites within the City and not a precursor to abandon other sites in the City. Bunger responded with the information that was provided in the application materials and referred all other questions to the applicant.

Aistrup opened the public hearing.

Mike Douchant, applicant, answered Hamilton's questions and provided additional details about the proposed telecomm tower. Douchant stated that the proposed tower would be an addition to his client's, Verizon Wireless, existing sites, but in the near future, existing towers would need to be abandoned in order to provide the required telecommunication services.

With on other members of the public speaking, Aistrup closed the public hearing.

Hamilton stated she supported the requests. She did express her concerns of having abandoned poles that would not be torn down. Bunger addressed the concern that the Zoning Regulations do require abandoned poles to be removed within a certain amount of time.

Hamilton recommended to the Board that condition #1 be amended to state "The site shall be

developed as proposed in the site plan and application documents and shall be maintained in good condition in compliance with all City Regulations.

The Board was comfortable with Hamilton's recommendation

The Board made the following findings of fact for the Conditional Use at 1201 Pottawatomie Avenue:

**PRESENT USE:** Metal welding and fabrication business.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed wireless telecommunication tower and accessory structures comply with the requirements of Article XII, Telecom Structures, except for the proposed reduced setback of the tower. A companion Exception has been requested to reduce the required setback for the wireless telecommunication tower from 115 feet approximately 32 feet from the property line to the west and 95 feet to the north, and 45 feet to the property line to the south.

The applicant will be required to submit the necessary documentation for the administrative permit required by Article XII prior to the issuance of any building or electrical permits. Future wireless telecommunication providers locating in the lease area and on the tower will be required to submit a completed administrative permit, as required by Article XII, as well.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed wireless telecommunication tower and accessory structures are to be located in an area that has a mix of industrial, residential, agricultural uses in rural Riley County and public open space and parks. The subject site and the adjacent property to the west are zoned I-3, Light Industrial District. The adjacent property to the west is owned by the City, where a pump station is located for flood control related to the levee system. Further to the west, across Manhattan Avenue are vacant lots owned by the City of Manhattan, commercial and industrial uses and nonconforming single-family homes. To the north, east and south are properties zoned R-2, Two-Family Residential District. These properties consist of single-family homes to the southeast, the Sojourner Truth Park to the east and Griffith Park to the north. The Union Pacific Railroad is located immediately to the north of the subject site. The Linear Trailhead is to the south across Pottawatomie Avenue. Further to the east is the Pottawatomie Court Residential Planned Unit Development. To the south and southwest, outside of the Manhattan City limits, is Wildcat Creek and agricultural land, zoned Riley County G-1, General Agriculture and a single-family home zoned Riley County C-4, Highway Business District.

According to the applicant, the design of the Class II tower is to collapse upon itself in the event of the tower's structural failure. The only structure close enough to the proposed tower would be that of the property owner's, who have agreed to lease the ground to Verizon Wireless. The closest residential home is 240 feet away from the tower location. The City's pump station is over 130 feet from the location of the tower. Failure of the proposed tower should only impact structures related to the property owner.

The base of the proposed 100 foot monopole tower and accessory structures and equipment

will be screened from adjacent residential property in the City by the existing concrete block building on the subject site. The accessory structures, equipment and tower base will also be below the grade of Pottawatomie Avenue. The location of the lease site will be approximately 8 to 10 feet lower than the roadway.

Similarly tall towers and structures are present in the immediate area. The applicant has provided photographs and information that a silo used for cement storage used to be present on the subject site. According to the photographs, the tower was located to the east of the existing building on the subject site and appeared to be approximately 50 feet in height. Six (6) light towers surround the sports fields at Griffith Park, which is immediately to the north of the subject site. These towers are approximately 75 feet in height. The presence of these existing light towers or the cement silo that used to be on the subject site did not appear to impact nearby residence. The tower and accessory structures and equipment will be screened by the existing building and will be below the roadway of Pottawatomie Avenue.

The applicant held a neighborhood meeting on February 10, 2011 regarding the proposed tower on the subject site. According to the applicant, only the property owner attended the meeting. The construction of a 100 foot monopole tower should not adversely affect the value of adjacent properties.

The proposed tower is within the levee critical zone, which is a 500 foot buffer zone on the landward side of the City's flood protection levee system that is established to ensure that the integrity of the levee is protected. Construction within this area that meets certain parameters must be approved by the United States Army Corps of Engineers to ensure that it will not cause failure of the levee. The design of the monopole foundation was approved by the United States Army Corps of Engineers on November 30, 2011 (*see attached*).

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

- 1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** The maximum height of a tower and antenna allowed by the Zoning Regulations is 150 feet, not including lightning rods, which shall not exceed 20 feet in height. The height of the proposed tower and lightning rod is 115 feet. The proposed tower should not be out of character with the area which includes 75 tall light towers at the Griffith Park sports fields. The accessory structures and equipment will be screened from view of nearby residential properties by the existing building on the subject site. These structures and equipment will also be 8 – 10 feet below the grade of the Pottawatomie Avenue roadway. Considering the presence of these structures and how the accessory structures will be obstructed from the view of nearby property owners, the new 115 tall monopole tower should not dominate the surrounding properties.
- 2. LANDSCAPING AND SCREENING:** The I-3, Light Industrial District does not have specific screening or landscaping requirements for this type of use. The I-3 District requires that sight-obscuring screening be provided for storage of equipment and materials. This does not apply in this situation. Other than the parking and driveways, the subject site and lease area is grass lawns.

The leased area will be enclosed with a 6 foot tall chain linked security fence, topped with strands of barbed wire that will be 1 foot wide, for a total of a 7 foot tall fence. The entrance to the enclosed area will be 12 feet wide on the north side of the lease area with a double swing gate. The proposed gate and screening shall be reviewed and approved by the Board of Zoning Appeals, if deemed appropriate subject to Article XII, Section 12-112 (D), Screening and Landscaping.

**ADEQUATE PROVISION OF PARKING AND LOADING:** Section 12-112 (E) requires at least one (1) off-street parking space to be located on the site. The submitted site plan does not show a specific area for an off-street parking space associated with the lease area. The subject site is a large zoning lot with several areas devoted to the parking of service vehicles and other equipment. A 20 foot wide utility/access easement is proposed to be dedicated between the property owner and lease holder leading from Pottawatomie Avenue on the east side of the subject site, behind the existing building to the lease area. Adequate space is located immediately in front of the lease area in this utility/access easement to accommodate the parking of vehicles to inspect and service the wireless telecommunication equipment.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Adequate utilities are provided to the subject site. The lease area for the telecommunication equipment is currently at a low part of the subject site, which is bordered by the railroad to the north, the existing building to the, Pottawatomie Avenue to the South and Manhattan Avenue to the west. Any storm water runoff created by the development will be retained on the subject site.

**ADEQUATE PROVISION OF ACCESS:** An existing driveway leads from Pottawatomie Avenue on the east side of the subject site, behind the existing building to the lease area site. A proposed 20 foot wide utility/access easement between the property owner and the lease holder is to follow this existing driveway leading to the lease area to provide access to the wireless telecommunication compound. Adequate access is provided.

**WHETHER SUBSTANTIAL EVIDENCE EXISTS TO DEMONSTRATE THAT EXISTING OR APPROVED TELECOM STRUCTURES OR ANTENNA SUPPORT STRUCTURES ARE UNSUITABLE FOR CO-LOCATION OR TO SERVE THE PROPOSED SERVICE AREA:** The applicant has submitted information in the application packet that their client, Verizon Wireless, currently has 9 wireless telecommunication sites in and around the City of Manhattan. The written information states that a new location is needed to maintain adequate services in the area along Fort Riley Boulevard. Two (2) potential sites were considered; a new site at a Westar Energy property in the Stagg Hill neighborhood and the one at the subject site. Others were initially considered, but were deemed too close to existing Verizon Wireless sites to be effective in achieve the projects goals or was already a Verizon Wireless site. The applicant's RF Engineer has concluded that because of the subject site's location in relationship to other Verizon Wireless sites and the improvement to the provider's wireless system, this site was the preferable site. No other site is located in the immediate area that would allow the provider to co-locate on an existing wireless telecommunication tower.

**WHETHER THE PROPOSED TELECOM STRUCTURE(S) HAS INCORPORATED A REASONABLE LEVEL OF STEALTH DESIGN TO MINIMIZE THE VISUAL IMPACT OF THE TELECOM STRUCTURE(S), GIVEN THE TYPE OF TELECOM STRUCTURE AND THE CHARACTER OF THE AREA IN WHICH THE STRUCTURE(S) IS PROPOSED TO BE LOCATED:** Stealth design is, “A method of designing, constructing, and/or locating any telecom structure to blend in with the character and environment of the area in which it is located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles of Article XII, Section 12-114.” The proposed 100 foot tall monopole does not incorporate any stealth design features. Given the heights of the existing light towers at Griffith Park to the north (approximately 75 feet in height) and that a 50 foot cement silo was present on the subject site at one time; the monopole tower should not be out of character with the surrounding area. The surrounding area does have mature trees, with trees located in the Griffith Park parking lot, and along Pottawatomie Avenue. The subject site has a few evergreen trees located on it, but they are not substantially tall. Requiring the applicant to incorporate stealth designs for the proposed tower maybe inappropriate because of the similar structures existing in the area and that the subject site is void of any trees, especially trees that would of height and size for a stealth tower to be effective.

Hardy moved to approve a Conditional Use to allow for the construction of a 100-foot tall monopole cellular phone tower and accessory structures at 1210 Pottawatomie Avenue, in the I-3, Light Industrial District, based on the City’s staff report and the following conditions of approval:

1. The site shall be developed as proposed in the site plan and application documents and shall be maintained in good condition in compliance with all City regulations.
2. The Exception to reduce the setback of the proposed wireless telecommunication tower shall be approved.
3. All applicable permits shall be obtained.
4. An administrative permit for a telecom structure shall be approved prior to the construction of the proposed telecommunication tower and before each additional telecommunication provider’s equipment is installed.
5. The monopole shall be designed to accommodate a minimum of three wireless communication providers.

Kent seconded the motion, which passed with a vote of 5-0.

The Board made the following findings of fact for the Exception at 1201 Pottawatomie Avenue:

**PRESENT USE:** Metal welding and fabrication business.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed wireless telecommunication tower and accessory structures comply with the requirements of Article XII, Telecom Structures, except for the proposed reduced setback of the tower, which is what the Exception request is for. A Conditional Use has been to construct the proposed 115 foot



monopole tower on the subject site.

The applicant will be required to submit the necessary documentation for the administrative permit required by Article XII prior to the issuance of any building or electrical permits. Future wireless telecommunication providers locating in the lease area and on the tower will be required to submit a completed administrative permit, as required by Article XII, as well.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed wireless telecommunication tower and accessory structures are to be located in an area that has a mix of industrial, residential, agricultural uses in rural Riley County and public open space and parks. The subject site and the adjacent property to the west are zoned I-3, Light Industrial District. The adjacent property to the west is owned by the City, where a pump station is located for flood control related to the levee system. Further to the west, across Manhattan Avenue are vacant lots owned by the City of Manhattan, commercial and industrial uses and nonconforming single-family home. To the north, east and south are properties zoned R-2, Two-Family Residential District. These properties consist of single-family homes to the southeast, the Sojourner Truth Park to the east and Griffith Park to the north. The Union Pacific Railroad is located immediately to the north of the subject site. The Linear Trailhead is to the south across Pottawatomie Avenue. Further to the east is the Pottawatomie Court Residential Planned Unit Development. To the south and southwest, outside of the Manhattan City limits is Wildcat Creek and agricultural land, zoned Riley County G-1, General Agriculture and a single-family home zoned Riley County C-4, Highway Business District.

Although the application documents state that the design of the Class II tower is to collapse upon itself in the event of the tower's structural failure, it would be appropriate to view the fall zone of the entire tower measured from the base of the tower. The only structure close enough to the proposed tower would be that of the property owner's, who have agreed to lease the ground to Verizon Wireless. The closest residential home is 240 feet away from the tower location. The City's pump station is over 130 feet from the location of the tower. The site plan shows the tower to be 95 feet from the north property line, along the Union Pacific right-of-way. The actual railroad tracks are approximately 25 feet from the adjoining property line, or 120 feet from the proposed base of the tower. Failure of the proposed tower should only impact structures related to the property owner. The Exception request should not adversely affect adjacent properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed tower is within the levee critical zone, which is a 500 foot buffer zone on the landward side of the City's flood protection levee system that is established to ensure that the integrity of the levee is protected. Construction within this area that meets certain parameters must be approved by the United States Army Corps. of Engineers to ensure that it will not cause failure of the levee. The design of the monopole foundation was approved by the United States Army Corps. of Engineers on November 30, 2011 (*see attached*).

The City's levee system pump station is over 130 feet from the base of the tower. In the event of a structural failure, the 115 foot tall tower (100 foot tower with a 15 foot tall lightning rod)

should not impact the pump state. The proposed telecommunication tower should not impact the public's health, safety or general welfare.

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

The strict application of the setback requirements for wireless telecommunication towers would require the applicant to find a different location, because this site does not meet the minimum requirements of the Zoning Regulations. The ideal location would need to be a minimum of 230 feet in width and depth with the tower located in the middle of the property. This site is approximately 320 feet wide and 141 feet deep. The presence of the existing concrete block building forces the proposed tower to be located 32 feet from the east property line. The subject site is not adequate to strictly meet the Zoning Regulations. However, the design of the Class II monopole is to collapse upon itself in case of structural failure, which reduces its impact zone substantially. Considering the design of the proposed pole and that it should not adversely affect adjacent properties, requiring a tower setback equal to the height is unnecessary at this location.

**FOR ALL EXCEPTIONS, WHETHER THE PROPOSED TELECOM STRUCTURE HAS INCORPORATED A REASONABLE LEVEL OF STEALTH DESIGN MEASURES TO MINIMIZE THE ADVERSE VISUAL IMPACT OF THE TELECOM STRUCTURE(S), GIVEN THE CHARACTER OF THE TELECOM STRUCTURE AND THE AREA IN WHICH THE TELECOM STRUCTURE(S) IS PROPOSED TO BE LOCATED:**

Stealth design is, "A method of designing, constructing, and/or locating any telecom structure to blend in with the character and environment of the area in which it is located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles of Article XII, Section 12-114." The proposed 100 foot tall monopole does not incorporate any stealth design features. Given the heights of the existing light towers at Griffith Park to the north (approximately 75 feet in height), the monopole tower should not be out of character with the surrounding area. The surrounding area does have mature trees, with trees located in the Griffith Park parking lot, and along Pottawatomie Avenue. The subject site has a few evergreen trees located on it, but they are substantially tall. Given the development of the site and surrounding area, a stealth design may be unreasonable.

**IN THE CASE OF A REQUEST FOR AN EXCEPTION OF THE HEIGHT LIMIT, THAT THE EXCEPTION IS NECESSARY TO DO THE FOLLOWING:** Not Applicable

**(A) TO FACILITATE CO-LOCATION OF OTHER PROVIDERS IN ORDER TO AVOID CONSTRUCTION OF A NEW TOWER; OR,** Not Applicable

**(B) TO MEET THE COVERAGE REQUIREMENTS OF THE APPLICANT'S PERSONAL WIRELESS TELECOMMUNICATIONS SYSTEM:** Not Applicable

Hardy moved to approve of the Exceptions to allow a reduction of the required setback of a

proposed cellular phone tower from 115 feet to 32 feet to the east, 95 feet to the north and 45 feet to the south at 1210 Pottawatomie Avenue, in the I-3, Light Industrial District with the following conditions of approval:

1. The Exception shall be limited to the proposed 115 foot tall monopole as shown on the site plan and outlined in the application documents.
2. The Conditional Use for the proposed 115 foot tall wireless telecommunication tower and accessory structures shall be approved.
3. All permits shall be granted prior to construction.

Kent seconded the motion, which passed 5-0.

**CONTINUE THE PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A LODGING/BOARDING HOUSE CONSISTING OF EIGHT (8) BEDROOMS, FOUR (4) BATHROOMS AND ONE (1) KITCHEN AT 1810 TODD ROAD IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: GARY GLATZ AND LELA BECK-GLATZ).**

Hardy moved to remove the Conditional Use at 1810 Todd Road from the table. Hamilton seconded, and the motion passed 4-0. Kent was absent from the vote.

**CONTINUE THE PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A VARIANCE TO ALLOW A REDUCTION IN THE MINIMUM REQUIRED LOT AREA FOR A CONDITIONAL USE IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT, FROM 10,000 SQUARE FEET TO 7,562 SQUARE FEET FOR A PROPOSED LODGING/BOARDING HOUSE AT 1810 TODD ROAD IN THE EXISTING BUILDING. (APPLICANT/OWNER: GARY GLATZ AND LELA BECK-GLATZ).**

Hardy moved that the Variance at 1810 Todd Road be removed from the table. Hamilton seconded, and the motion passed 4-0. Kent was absent from the vote.

The Board decided that the public hearing did not need to be re-opened. Bunger did restate the City Administration's recommendation for denial, because of concerns for the precedence that could be established by approving the request. They agreed to allow Mr. Glatz to address the Board with new information.

Gary Glatz, applicant, provided new information to the Board, including the uses of the surrounding properties in the area and the unique condition that is created by the mix of nonconforming uses found west of Denison Avenue along Todd Road and Elaine Road. Glatz further explained the situation that created the use of the subject site and the desire to allow for the continued use of the subject site.

Hamilton asked if a conditional use was ever approved for a lodging/board house. Bunger did know that there had been some established at one time, but could not find the Board approving the type of residential use in recent years.

Hamilton asked if approved conditional uses were approved that also needed a variance for lot

area or lot width. Bunger did state that a conditional use and a variance for a one bedroom bed and breakfast on a 7,500 square foot lot that was approved. Bunger recalled another bed and breakfast was approved that had a variance approved for the lot area. Bunger reiterated the concern that City Administration has a concern of establishing a precedence to allow the use of a lodging/boarding house on a 7,500 lot in the City.

Aistrup asked if those lots were in a similar zoning district as the subject site. Bunger explained the different zoning districts and their locations in the City. Bunger provided the Board with the definition of a lodging/boarding house in the Zoning Regulations.

Kent asked if the location of the property is unique. Bunger responded that the area is unique in terms of its makeup of mixed uses, some of which are nonconforming to the Zoning Regulations.

Board began discussion of the items. The Board discussed what conditions of the subject site were unique to the zoning district.

Hardy brought up the fact that there does not appear to be a unique hardship to the applicant that was not created by the applicant.

Hamilton felt that the applicant operated an excellent use of the property that would not impact the neighborhood, but it does not appear that the Variance request addressed all of the standards for the Variance.

Hardy agreed with Hamilton.

Aistrup addressed the non-conforming uses of the area.

The Board made the following findings of fact for the Variance at 1810 Todd Road:

**PRESENT USE:** West half of a single-family attached dwelling

**CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is 7,562 square feet in area. The subject site has been subdivided several times. The subject site and the adjoining lot to the west were originally platted in 1955 as Lot 23, Sunrise View Addition, with a total area of 8,424 square feet. In 1992, a two-family dwelling was constructed on the site. A Zoning Inspector Officer informed the previous owner that the design of the house, which could conceivably be used as a multiple-family dwelling would be in violation of the R-2, Two-Family Residential District, and that although the Zoning Regulations do not restrict the total number of bedrooms that a dwelling may have, it does limit the number of unrelated individual in a dwelling to a maximum of four (4) people (*see attached*).

In May of 1999, Lot 23 and Lot 22, Sunrise View Addition was replatted to create the Final Plat of Tex Winter Addition, which created Lots 1 and 2. The two-family dwelling was located on Lot 2. Tex Winter Addition, Unit Two, filed in January, 2000, moved the property line slightly between Lots 1 and 2. In July, 2000, Lot 2 was replatted to subdivide the lot by

creating a side property line down the center of the two-family dwelling, thus creating two (2) single-family attached dwellings. The subject site is Lot 1, Tex Winter Addition, Unit 3, which has 7,562 square feet. The adjoining lot, Lot 2, has 4,201 square feet.

Considering the location of the property to Kansas State University, it appears that the former owner designed the dwellings to accommodate more units than would be permitted by the R-2, Two-Family Residential District.

Although the property has been subdivided several times and the design and development of the site historically had issues, the property itself is not unique to the surrounding area or other properties zoned R-2 District throughout the City. The subject site is similar in size to other one- and two-family dwelling in the neighborhood and throughout the City. The subject site is rectangular in shape and meets the minimum lots depth and lot width requirements of the R-2 District.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and the adjacent property to the west are zoned R-2, Two-Family Residential District. The property to the immediate west is zoned R-2/UO, Two-Family Residential District and University Overlay District. Properties to the south of the subject site are zone R-3/UO, Multiple-Family Residential District and University Overlay District and PUD, Commercial Planned Unit Development. To the east of Denison Avenue is Kansas State University, Zoned U, University District. Properties to the north and west are zoned R-1, Single-Family Residential District. The area is a mix of residential uses. The properties zoned R-3/UO District is a combination of Greek housing associated with Kansas State University and multiple-family dwellings. The properties zoned R-1 District are a mix of one-family and two-family dwellings. The two-family dwellings are located in this district are assumed to be nonconforming to the Zoning Regulations when the area was rezoned to R-1 District in 1969.

Reducing the lot area from the minimum required 10,000 square feet to the current lot area of 7,562 square feet for the proposed lodging/board house should not adversely impact the adjacent properties to the north, east or south. The surrounding uses have similar or more intense residential uses compared to the proposed eight (8) bedroom lodging/boarding house. The average size of lots with two-family uses on them is approximately 9,700 square feet. Ample separation is provided to the east towards the adjacent property.

The west property is the other half of the single-family attached dwelling. There is no separation by means of a yard between the single-family attached dwelling to the west and the proposed lodging/boarding house on the subject site. The owner of that property has signed a form letter of support of the Conditional Use request for the proposed lodging/boarding house. Regardless of the neighboring property owner's support, creating a lodging/boarding house with up to eight (8) unrelated people living in the dwelling may be inappropriate. The amount of noise and traffic generated from the proposed use may adversely impact the adjacent property because adequate separation by a yard between the two (2) dwellings is not provided. This could adversely impact the adjacent property.

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

The dwelling unit was constructed in 1992 with five (5) bedrooms, four (4) bathrooms, a kitchen and two (2) living rooms throughout the three (3) levels of the dwelling (a basement, main floor and second story floor). The strict application of the lot area requirements for a Conditional Use in the R-2 District would not allow the proposed lodging/boarding house. The applicant can continue using the dwelling as a rental unit for a maximum of four (4) unrelated people or rent the structure to a family, as defined by the Zoning Regulations. The strict application of the regulations is not a hardship to the applicant.

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

The effects of approving the Variance should not adversely impact the general public safety and welfare. The residential intensity of the proposed lodging/boarding house with five (5) bedrooms is similar or less intense the surrounding residential properties. A number of nonconforming two-family dwellings are established in the area. There are a number of Greek houses and multiple-family dwelling in the immediate area. The multiple-family dwellings have a range of twelve (12) to thirty-six (36) dwelling units. The Greek houses have room for 36 to 80 residents.

**RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the regulations regarding the increased lot size standard for Conditional Uses is to decrease density and to allow adequate spacing between those conditional uses and the uses allowed in the residential district by right. The subject site is part of a single-family attached residential unit. There is an adjoining party wall that separates the two (2) dwellings. The issue of separation from the adjoining single-family dwelling is more a function of the design and use of the two (2) lots. There is no separation between the proposed lodging/boarding house and the adjacent property. A lodging/board house is intended to be on its own lot with adequate yards, rather than be separated by a common wall between attached dwelling units. Because of this, the intent of the minimum lot area regulation is not met.

Hardy moved to deny the Variance to reduce the minimum lot area from 10,000 square feet to 7,652 square feet for a Conditional Use to establish a lodging/boarding house in the R-2, Residential District.

Hamilton seconded them motion. She stated that she could not approve the Variance because the “Hardship Standard” was not met. The motion passed 4-1

Kent stated that he voted against the motion because he felt that a hardship was created because of the history of the property and that it has unique circumstances surrounding the use and the property.

The Board made the following findings of fact for the Conditional Use at 1810 Todd Road:

**PRESENT USE:** East half of a single-family attached dwelling

**A. Compliance with all applicable regulations:** During a rental inspection on March 10,

2011, the inspector determined that two (2) nonconforming rental units were in the structure. Proper separation between the two (2) units was not provided. Five (5) tenants were living in the main and second floor. According to the inspector's notes, the owner uses the basement unit when they are in town. The maximum number of unrelated individuals that can live in a dwelling unit is four (4) (*see attached Rental Inspection report*). The actual circumstance of the rental inspection was that the dwelling exceeded the maximum number of unrelated individual in the dwelling. Because of the design of the structure as a single-family attached dwelling, two (2) units cannot be created in one-half of the dwelling.

The proposed Conditional Use for a lodging/board house is to correct this situation of having more than the maximum number of unrelated tenants in a dwelling. The existing dwelling meets the definition of a lodging/boarding house because only one (1) kitchen is present and fewer than 10 unrelated individuals live in the dwelling. It does not appear that the living arrangements of the dwelling were similar to that of a lodging/boarding house, where the rooms are rented individually for sleeping accommodations. Rather, the dwelling was rented by a group of unrelated individuals, including the applicant's immediate family member. A Variance for the required lot area for the proposed Conditional Use is also required.

**B. Probable effect on adjacent properties:** The subject site and the adjacent property to the west are zoned R-2, Two-Family Residential District. The property to the immediate west is zoned R-2/UO, Two-Family Residential District and University Overlay District. Properties to the south of the subject site are zone R-3/UO, Multiple-Family Residential District and University Overlay District and PUD, Commercial Planned Unit Development. To the east of Denison Avenue is Kansas State University, Zoned U, University District. Properties to the north and west are zoned R-1, Single-Family Residential District. The area is a mix of residential uses. The properties zoned R-3/UO District is a combination of Greek housing associated with Kansas State University and multiple-family dwellings. The properties zoned R-1 District and a mix of one-family and two-family dwellings. The two-family dwellings are located in this district are assumed to nonconforming to the Zoning Regulations when the area was rezoned to R-1 District in 1969.

The design of the structure, with the five (5) bedrooms and one (1) kitchen was created when the dwelling was built in 1992. It was discovered that the subject site exceeded the maximum number of unrelated people in the dwelling unit (a total of 4) when it was registered with the rental inspection program and later inspected. It is unknown how long more than four (4) unrelated people have lived in the dwelling. The surrounding uses have similar or more intense residential uses compared to the proposed lodging/boarding house. The nonconforming two-family dwellings in the area could have a maximum of eight (8) tenants in each unit. To the south of the subject site are several Greek Houses and multiple-family dwellings. The multiple-family dwellings have a range of twelve (12) to thirty-six (36) dwelling units. The Greek houses have room for 36 to 80 residents.

The applicant has provided information that "We have had at least one family member

using part of the property as their place to live as long as we have owned 1810 Todd. We intend to continue this practice as long as we own the property, going forward.” The applicants’ daughter uses the basement living space as a place to study and a second residence while she lives in the dorms at Kansas State University. The applicant’s argument is that an immediate family member or the applicants living in the basement bedroom provides an “on-site manager” of the proposed lodging/board house. This would be similar to how the lodging/board house was customarily developed, with an owner of a house renting out bedroom space to long-term guests. Having the immediate family member living at the property may reduce adverse impacts the use may have on adjacent properties.

As required by the Conditional Use application process, the applicant held a neighborhood meeting on May 15, 2011 at the subject site. A total of five (5) people attended the meeting. According to the meeting summary (*see attached*), the attendees had several questions about the Board of Zoning Appeals process and the now defunct rental inspection. Two of the meeting attendees signed the optional form support letter (*see attached*).

The property is adequately separated by established yards and parking lots to the properties to the east and north. The property to the west is the other half of the single-family attached dwelling. No separation by a yard or open space exists between the single-family attached dwellings. The owner of that property has signed a form letter of support of the Conditional Use request for the proposed lodging/boarding house. Although the existing neighbor supports the proposed living arrangement, establishing a lodging/boarding house in a single-family attached dwelling may be inappropriate. The proposal is to allow eight (8) unrelated individuals to live together in the dwelling. The amount of noise and traffic generated from this use may adversely impact the adjacent property compared to the maximum allowed number of four (4) unrelated individuals.

### **C. Domination by use over neighboring properties:**

#### **1. Location, nature, and height of physical improvements:**

The proposed lodging/boarding house is to be located inside the existing structure on the subject site. The structure is a two-story, Victorian style, single-family attached dwelling with approximately 2,300 square feet of living area. The existing structure is well maintained in appearance. No changes are proposed to the exterior of the dwelling. The front door faces Todd Road via a covered front porch. Being a single-family attached dwelling, the west property line runs along the common line between the two (2) dwellings. An off-street parking lot is situated to the east of the dwelling. Neither the existing house, nor the proposed use should dominate the use of other properties.

#### **2. Landscaping and screening:** The subject site has grass lawn areas around the dwelling. Annual and perennial landscape beds around the foundation of the structure are present. A six (6) foot tall screening fence encloses the rear yard area of the subject site.



**D. Adequate provision of parking and loading:** The applicants' proposed use as a lodging/board house with eight (8) bedrooms is required to provide a minimum of two (2) parking spaces, plus one (1) parking space per sleeping room (Section 7-103(A)(5)), for a total of ten (10) off-street parking spaces. Nine (9) spaces are currently present. The applicant has stated that additional spaces could be created in the rear yard that is currently fenced in.

City Administration is considering the structure as having five (5) bedrooms, as they are labeled on the application building floor plan. Based on this, the proposed use is required to have seven (7) off-street parking spaces. The subject site has adequate parking for the use with five (5) bedrooms.

**E. Adequate provision of drainage, and other public utilities:** Adequate provision for drainage and other public utilities are provided.

**F. Adequate provision of access:** Access is provided off of Todd Road. Three (3) off-street parking spaces are situated off of the road right-of-way (ROW). A shared driveway between the subject site and the adjacent property to the east leads to the remaining seven (7) off-street parking spaces to the east of the dwelling. Adequate access is provided to the site.

Hardy made a motion to deny the proposed Conditional Use for the proposed lodging/boarding house at 1810 Todd Road in the R-2, Two-Family Residential District.

Hamilton seconded the motion, which passed 4-1. Kent votes against the motion.

Aistrup adjourned the meeting.

Respectfully Submitted,

Chad Bunger, AICP, CFM, Planner II