

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, October 10, 2012**  
**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, CFM, AICP, Planner II;

**CONSIDER THE MINUTES OF THE SEPTEMBER 12, 2012, BOARD OF ZONING APPEALS MEETING.**

Hardy moved to approve the September, 12, 2012 minutes, which was seconded by Hamilton as well as Kent and passed with a vote of 5-0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED OFF-STREET PARKING FOR A PROPOSED CHURCH WITH TWO-HUNDRED (200) FIXED SEATS FROM FIFTY (50) SPACES TO TWENTY-THREE (23) SPACES AT 821 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT: MANHATTAN MENNONITE CHURCH – RICHARD GEHRING).**

Hardy moved to grant a request for a 180 day extension for exception to allow for the reduction of the minimum required off-street parking for a proposed church with two-hundred (200) fixed seats from fifty (50) spaces to twenty-three (23) spaces at 821 Poyntz Avenue in the C-1, Restricted Business District. Hamilton seconded and the motion passed with a vote of 5-0

**A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO FOURTEEN (14) FEET ALONG KNOX LANE; A REDUCTION OF THE MINIMUM REQUIRED FRONT YARD**

**SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY (20) FEET ALONG CASEMENT ROAD; A REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK ALONG THE EAST PROPERTY FROM FIFTEEN (15) FEET TO ELEVEN (11) FEET; A REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK ALONG THE SOUTH PROPERTY LINE FROM FIFTEEN (15) FEET TO EIGHT (8) FEET; AND A REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK ALONG THE WEST PROPERTY LINE FROM FIFTEEN (15) FEET TO SIX (6) FEET. THESE EXCEPTIONS ARE FOR EXISTING MANUFACTURED HOMES THE COUNTRYSIDE ESTATES PARK IN THE R-5, MANUFACTURED HOME PARK DISTRICT (APPLICANT: SCHWAB-EATON P.A. – DAN MANLY OWNER: COUNTRYSIDE PARKS, LLC – TIM NIKOLAEV)**

Bunger presented the staff report. The City Administration recommended approval of the Exception, with three (3) specific conditions of approval.

Kent asked about the motivation behind the proposed exception to which Bunger stated that the additional land purchased by the new property owner for squaring up the west property line requires going through a concurrent platting process which in turn requires the property to be in compliance with the zoning regulation.

Aistrup opened the public hearing. Virginia Prompt who owns the property adjacent to the subject site at the corner of Casement Road and Knox Lane expressed her concern regarding granting exception in future to build manufactured homes on existing foundations. Aistrup responded by stating one of the three conditions of approval—“All manufactured homes moved or newly placed on the subject site shall conform to the bulk regulations of the R-5, Manufactured Home Park District.”

Robert Patterson, who is a resident of Dix Addition, off of Poppy Court expressed his concerns regarding increasing crime rate on the subject site and the manufactured homes moving closer to the property line to gain more lots. Aistrup explained that the exception is to bring the subject site to compliance for platting and that it only applies to the existing manufactured home and also that any new addition would have to comply with the zoning regulation. Hamilton added that even if the exception is granted, all existing units shall remain in place and not move towards the front yard. With no further comments, Aistrup closed the public hearing.

Hardy expressed his support for the concerned matter based on the facts presented in the staff report. Hamilton agreed to Hardy and acknowledged the importance of the conditions of approval considering the concerns of the neighbors. Bunger explained the conditions of approval in detail to reinforce that the exception only applies to the some of the existing manufactured homes and any new development shall be in compliance to the zoning regulation. Aistrup summarized the conditions of approval of exceptions and Hamilton clarified that the exception shall apply irrespective of ownership as long as the existing units remain in place.

The Board made the following findings of fact for the Exception at the Countryside Estate Parks.

**PRESENT USE:** Countryside Estates Manufactured Home Park

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than for the conditions that the Exception requests are to address, the subject site complies with all applicable regulations.

It is unknown how the location of these homes occurred. Only five (5) permits for the placement of the homes in question could be found. It is presumed that the five (5) lots with permits were placed on foundations that were already there. The lots and permit dates for these homes are as followed:

Lot	Permit Date
5	9/28/2009
6	9/23/2009
20	8/04/1998
22	4/15/2010
26	3/10/2008

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is zoned R-5, Manufactured Home Park District. To the south are properties zoned R-1, Single-Family Residential District. To the west are residential properties zoned PUD, Residential Planned Unit Development, R-4, General Residential District, R-2, Two-Family Residential District and R-1, Single-Family Residential District. To the north are residential properties zoned Residential PUD, R-1 District, R-2 District and R-5 District. To the west are unplatted tracts of land in the County that are zoned County C-4, Highway Business District and G-1, General Agriculture District.

These manufactured homes have been in their current locations for an undeterminable amount of time. The encroachments into the setbacks do not appear to be adversely impacting

adjacent properties. It is presumed that the manufactured homes that were recently permitted and moved in to their current locations were placed on existing foundations without checking on the required setbacks.

The manufactured home park is adequately screened from adjacent properties by existing screening fences and dense vegetation, which appears to mitigate any adverse affects the manufactured homes' proximity has to adjacent properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal impacts on adjacent properties, as stated previously in the "*Probable Effect On Adjacent Properties*" standard, the encroaching homes have been there for an undeterminable amount of time. The location of these homes does not appear to be impacting public health, safety or welfare.

The manufactured home on Lot 25 is located approximately one (1) foot into the KPL Easement that is on file with the Register of Deeds. To correct this existing condition, the easement will need to be drawn around the home with the concurrent plat or move the manufactured home. This condition will be corrected with the concurrent plat and reviewed by the Manhattan Urban Area Planning Board.

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

The strict application of the front and side yard setback requirements would be that the fourteen (14) manufactured homes be moved to conform to the twenty-five (25) foot front yard setback or fifteen (15) foot side yard setback. As previously mentioned, it cannot be determined how long most of these homes have been in their existing locations. It does not appear that the encroachment of these homes impact adjacent properties or the general public. The amount of effort and disruption to the families of these homes required to move the homes to conform to the setback requirements appears to be unreasonable considering the circumstances.

However, if one of these encroaching homes is moved or removed from the site, the placement of the next manufactured home should conform to the District setback regulations. City Administration is recommending a conditional approval to this effect.

Hardy moved to approve an Exception to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to fourteen (14) feet along Knox Lane; a reduction of the minimum required front yard setback from twenty-five (25) feet to twenty (20) feet along Casement Road; a reduction of the minimum required side yard setback along the east property from fifteen (15) feet to eleven (11) feet; a reduction of the minimum required side yard setback along the south property line from fifteen (15) feet to eight (8) feet; and a reduction of the minimum required side yard setback along the west property line from fifteen (15) feet to six (6) feet. These Exceptions are for existing manufactured homes at the Countryside Estate Manufactured Home Community in the R-5, Manufactured Home Park

District with the following conditions of approval:

1. The Exceptions shall only apply to the location of the existing manufactured homes on Lots 2, 4, 5, 6, 20, 22, 25, 26, 28, 31, 35, 36, 42 and 75 as described in the application documents and shown on the site plan.
2. All manufactured homes moved or newly placed on the subject site shall conform to the bulk regulations of the R-5, Manufactured Home Park District.
3. All applicable permits shall be obtained.

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

**A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY FIVE (25) FEET TO TWENTY (20) FEET FOR THE PROPOSED FRONT PORCH ADDITION TO AN EXISTING SINGLE-FAMILY DWELLING AT 116 E.J. FRICK DRIVE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: TRACY ANDERSON).**

Bunger presented the staff report. The City Administration recommended approval of the request for Exception with two (2) specific conditions of approval.

Lavis enquired if proposing a sidewalk in front of the subject site would somehow be affected if the exception is granted. Bunger explained that visually the house seems to be set back much deeper into the site, irrespective of the presence or absence of a sidewalk.

With no public comments Aistrup closed the public comment section for Board discussion. Kent stated that he sees no issues in granting the exception.

The Board made the following findings of fact for the Exception at 116 E.J. Frick.

**PRESENT USE:** Single Family Home

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site complies with all applicable regulations, other than for what the Exception requests are for.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding

properties to the immediate north, south, and east are zoned R, Single-Family Residential District. Properties to the west are zoned R-1, Single-Family Residential District. Minimal adverse impacts on adjacent properties are anticipated from the Exception request. The proposed covered porch will be in character with a number of houses along EJ Frick Drive, and the surrounding neighborhood at large. Some of the neighboring houses have covered front porches; some which are smaller than one proposed by the applicant. The house immediately adjacent to the subject site has a porch similar to the proposed porch. The applicant has presented an affidavit signed by the adjoining property owners stating that they are aware of proposed front porch addition and have no objects to the approval of the Exception. Also, the subject site does not have a sidewalk located in the front yard along EJ Frick Drive, the five (5) foot encroachment is expected to be visually unnoticeable.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Negative effects on the public health, safety and general welfare should be minimal. The proposed covered porch addition will be in character with the house itself and also a number of properties in the neighborhood. The building addition will not encroach into any visual triangles created by the street or be built in utility easements.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the front yard setback regulation would not allow the applicant to construct the covered porch as proposed. The building including the roof overhang is setback approximately twenty-nine (29) feet from the front property line along EJ Frick Drive. Therefore, would encroach approximately four (4) feet into the front yard setback because one half of the proposed porch is within the buildable area. The proposed addition should only improve the character of the house, will not be out of character with neighboring properties and should not impact adjacent properties or the general public. Considering all of these factors, it appears that the strict application of the front yard setback regulation is unreasonable for this situation.

Hardy made a motion to approve an EXCEPTION to allow for the reduction of the minimum required front yard setback from twenty five (25) feet to twenty (20) feet for the proposed front porch addition to an existing single-family dwelling in the R-1, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall apply to the proposed front porch addition as described in the application documents and shown on the site plan.
2. All applicable building permits shall be obtained.

Hamilton seconded the motion, which passed by a vote of 5-0

**A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A CONDITIONAL USE TO ALLOW FOR THE CONSTRUCTION OF A 150-FOOT TALL MONOPOLE TELECOMMUNICATION TOWER AND ACCESSORY STRUCTURES FOR THE PROPERTY AT 1200 HOSTETLER DRIVE IN THE I-2, INDUSTRIAL PARK DISTRICT (APPLICANT: MW TOWERS, LLC – CAROLINE BOYD, AGENT OWNER: CHERYL J. LEWIS TRUST, - CHERYL J & RICHARD W. LEWIS, TRUSTEES)**

**A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM REQUIRED SETBACK OF A PROPOSED CELLULAR PHONE TOWER FROM 150 FEET TO FIFTY (50) FEET; A REDUCTION OF THE MINIMUM REQUIRED TWENTY (20) FOOT SIDE YARD FOR PROPOSED FENCE TO TEN (10) FEET ALONG THE NORTH PROPERTY LINE; AND A REDUCTION OF THE MINIMUM REQUIRED TWENTY (20) FOOT REAR YARD SETBACK TO TEN (10) FEET ALONG THE EAST PROPERTY FOR THE SAME PROPOSED FENCE. THESE REQUESTS ARE ALL FOR THE PROPERTY AT 1200 HOSTETLER DRIVE IN THE I-2, INDUSTRIAL PARK DISTRICT. (APPLICANT: MW TOWERS, LLC – CAROLINE BOYD, AGENT OWNER: CHERYL J. LEWIS TRUST,- CHERYL J & RICHARD W. LEWIS, TRUSTEES)**

Bunger presented the staff reports for both the items together. The City Administration recommended approval of both items, with seven (7) specific conditions of approval for the Conditional Use and three (3) specific conditions of approval for the Exception.

Kent enquired about the standard classification of the tower and how that relates to issues of wind load and snowfall, to which Bunger suggested that he would rather have the applicant discuss it.

Aistrup opened the public comment section. Carolyn Boyd, the applicant, came forward to discuss the wind load question asked by Kent. She explained that the towers are designed based on a standard designated wind load speed for the Manhattan area which is further increased for added safety. She also mentioned that they have constructed a similar monopole within the City four years ago, which could successfully withstand the weather conditions up until now.

Kent asked Boyd to describe “is built to crash straight out.” Boyd explained that generally

monopoles don't fail due to weather conditions but the pole is engineered in such a way that in an event of collapse, the pole falls within the property. Boyd suggested the Board to allow the access road (as shown in the site plan) to be graveled during the construction period and later removed, so that the existing asphalt strip can be continued for future access to the pole. Boyd also suggested providing a parking spot to benefit the property owner. Bunger explained Boyd's proposal to the Board and suggested allowing it. Bunger suggested the Board to require an updated site plan showing the temporary graveled access road and the proposed permanent asphalt driveway.

With no public comments Aistrup closed the public comment section for Board discussion. Hardy stated that with modifications to the staff report to include the condition regarding the access road, he is willing to support the application. Hamilton agreed to Hardy and generally discussed the positive aspects of the proposed project.

Bunger clarified the condition to be added to the staff report as—"Permanent paved driveway shall be installed prior to the final inspection of the monopole."

The Board made the following findings of fact for the Conditional Use at 1200 Hostetler Drive.

**PRESENT USE:** Storage units for a variety of businesses.

**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 150 feet to fifty (50) feet.

The I-2, Industrial Park District regulations requires a side yard and rear yard setback of twenty (20) feet. Article V (Accessory Uses) does not allow accessory structures, such as fences to differ from the setbacks in the I-2 District. The proposed fence is to be setback approximately ten (10) feet from the north and east property line, which requires a companion setback.

The site plan shows the driveway and off-street parking space to be constructed of gravel. Article VII, Off-Street Parking and Loading, Section 3(a) requires that all parking spaces, travelways, driveways, ingress and egress shall be paved. No Variance has been applied for to not pave this area. A condition of approval has been proposed by City Administration which will require the paving of the driveway and off-street parking space.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding



properties are zoned I-2, Industrial Park District. Most all of these properties are related to an industrial use, such as a contractor business. To the south, along McCall Road are highway related commercial properties, such as drive-in restaurants that are zoned PUD, Commercial Planned Unit Development or C-5, Highway Service Commercial District.

The proposed telecommunication monopole and accessory structures should not be out of character with the immediate properties. The immediate area is devoted to industrial and service commercial uses. No other structures are as tall as the proposed monopole. Most structures are single-story. There are other structures in the area that are similar to the proposed accessory structures on subject site, particularly immediately to the west, across Hostetler Drive. These structures are devoted to other types of communication services.

McCall Road is a heavily traveled, major arterial roadway that is approximately 900 feet to the south of the subject site. This area has recently been redeveloped with new highway related businesses, such as drive-thru restaurants and a hotel. The presence of the proposed wireless telecommunication monopole should not adversely affect the commercial properties to the south.

As part of the application process for a Conditional Use, the applicant held a neighborhood meeting for all property owners within 200 feet of the subject site. According to the meeting summary, only the property owner attended the meeting.

The greatest impact to adjacent properties would be if the tower would fail and collapse. The proposed monopole is to be located fifty (50) feet from the north and west property lines, ninety (90) feet from the south property line and over 300 feet from the west property line. In looking at the 2011 aerial photography, the closest building on an adjacent site is ninety (90) feet from the north property line, or 140 feet from the center of the monopole. Outdoor storage of materials and vehicles appear to be as close as zero (0) feet from the east and north property lines.

According to the stamped letter submitted by a licensed engineer, the proposed tower is to be a Class II monopole, which is to withstand a 90 mph wind with no ice or a 40 mph wind with  $\frac{3}{4}$  inches of ice on the pole. The states "Should the wind speed increase beyond the capacity of the built-in safety factors, to the point of failure or one more structural elements, the most likely location of failure would be within the flanged connection at the base of the top section. Assuming that the wind pressures profile is similar to that used to design the monopole; the monopole will yield at the location of the highest combined stress ratio within the flanged connection. This is likely to result in the portion of the monopole above "folding over" onto the portion below, essentially collapsing upon itself. . . . In the unlikely event of total separation, this, in turn, would result in collapse of that section to the ground within a radius of 50 feet."

If the monopole is designed and constructed within the specifications outlined in the stamped engineer's letter, the adjacent properties should not be impacted by the monopole in the event of a failure.

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

- 1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** The lease area is a sixty (60) by sixty (60) foot area in the northeast corner of the site to construct a one-hundred and forty-five (145) foot tall monopole telecommunication tower (150 foot tall with lightning rod) and accessory telecommunication structures. The site plan shows that the tower will be located approximately fifty (50) feet from the north and east property lines, ninety (90) feet from the south property line and over 300 feet from the west property line, along Hostetler Drive. An Exception is required to reduce the required setback of the monopole from 150 feet (height of the tower) to fifty (50) feet.

There are four (4) areas for accessory equipment shown in the lease area. AT&T Mobility is proposing the development and will occupy the space to the west of the tower. The AT&T structure will be approximately fifteen (15) wide and forty-seven (47) deep. The space will include the structure for the electronic equipment and an emergency generator. The other three (3) telecommunication provider sites are shown to be twelve (12) feet wide and twenty (20) feet deep. Other structures within the lease area are elevated ice bridges to cover the telecommunication cables and utility equipment racks.

The location and size of the conditional use for the proposed monopole tower and accessory telecommunication structures should not dominate the immediate neighborhood to a point that it would prevent development and use of neighboring properties.

- 2. LANDSCAPING AND SCREENING:** The subject has a large open area to the south and east of the existing building and parking lot. A portion of this will be consumed by the lease area and driveway leading to the telecommunication structures. There are no landscaping requirements in the I-2 District for the proposed use in the area of the subject site.

The lease area is proposed to be enclosed by a six (6) foot tall chain link fence with barbed wire on top of it, for a total of nine (9) feet tall. No screening materials are proposed. Other fences in the surrounding area do not have screening materials. The I-2 District requires that outdoor storage of materials or vehicles related to a vehicle towing and storage service provide sight-obscuring screening (*Section 302(E)(2-5)*). The proposed structures are not required to provide sight-obscuring screening. The Board of Zoning Appeals may require year-round sight-obscuring in order to reduce visual impacts and enhance the compatibility of telecom structure(s) with the character of nearby land uses and the area (*Section 12-112(D)*)

**ADEQUATE PROVISION OF PARKING AND LOADING:** Section 12-112(E) requires that one (1) off-street parking for the telecommunication structure. One (1) parking space is provided to the south of the lease area, adjacent to the proposed driveway.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** The subject site is relatively flat. Stormwater runoff will generally stay on the subject site to do it being flat. The entire subject site is located in the FEMA AH Zone, 1% Annual Chance of Flood Plain. The AH Zone is defined as having flood depths of 1 to 3 feet caused by areas of

ponding storm water. Development is allowed in the AH Zone as long as structures are elevated one (1) foot above the Base Flood Elevation, which is 1008 feet above sea level. The structure and generator is proposed to be raised on a platform to an elevation of 1009 feet, to comply with the Flood Plain Regulations.

Public utilities are available in the area and are adequate to serve the subject site.

**ADEQUATE PROVISION OF ACCESS:** Access to the subject site is currently off of Hostetler Drive via a driveway adjacent to the building.

A twenty (20) foot wide access and utility easement from Hostetler Drive to the lease site is proposed to the south of the south of the existing parking lot. Within the twenty (20) foot wide easement, a twelve (12) foot gravel driveway is shown on the site plan. Article VII, Off-Street Parking and Loading, Section 3(a) requires that all parking spaces, travelways, driveways, ingress and egress shall be paved. The access to the subject site and lease area for the telecommunication structures is adequate. A condition of approval has been proposed by City Administration which will require the paving of the driveway and off-street parking space.

**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 application materials state that there are no wireless telecommunication towers in this area of the industrial park and this area of the City, “leaving the surrounding businesses and northern residential neighborhoods with less than ideal wireless coverage.” A coverage map for AT&T’s current service is provided. AT&T will be the primary wireless communication provider of this tower and will occupy the highest point on the tower. According to the application materials, the need for the tower is to improve service in the area and reduce service loads from other existing sites.

The proposed coverage map (*included*) shows that the new tower will even out AT&T’s coverage to the area and improve services to businesses in the area and residential areas to the north.

**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 150 foot tall monopole does not incorporate any stealth design features. The immediate area is largely industrial. There are highway commercial uses to the south of the subject site. The types of uses found in the area do not

typically necessitate the design of a stealth telecommunication tower. These stealth design measures are usually found in residential areas or areas where visual preservation is desired.

Hardy moved to approve the Conditional Use to allow for the construction of a 150-foot tall monopole telecommunication tower and accessory structures at 1200 Hostetler Drive in the I-2, Industrial Park District, with the following conditions of approval (as modified):

1. The site shall be developed as proposed in the site plan and application documents and shall be maintained in good condition.
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 twelve (12) foot driveway and off-street parking space, as shown on the site plan, shall be paved according to the requirements of Article VII.
6. The monopole shall be designed to accommodate a minimum of four (4) wireless communication providers.
7. The site shall be developed as proposed in the site plan and application documents and shall be maintained in good condition.
8. Permanent paved driveway shall be installed prior to the final inspection of the monopole

Lavis seconded the motion, which passed by a vote of 5-0.

The Board made the following findings of fact for the Exception at 1200 Hostetler Drive.

**PRESENT USE:** Storage units for a variety of businesses.

**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. An Exception has been requested to reduce the required setback for the wireless telecommunication tower from 150 feet to fifty (50) feet.

The I-2, Industrial Park District regulations requires a side yard and rear yard setback of twenty (20) feet. Article V (Accessory Uses) does not allow accessory structures, such as fences to differ from the setbacks in the I-2 District. The proposed fence is to be setback approximately ten (10) feet from the north and east property line, which requires a companion setback.

The site plan shows the driveway and off-street parking space to be constructed of gravel. Article VII, Off-Street Parking and Loading, Section 3(a) requires that all parking spaces, travelways, driveways, ingress and egress shall be paved. No Variance has been applied for to

not pave this area. A condition of approval has been proposed by City Administration which will require the paving of the driveway and off-street parking space.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The subject site and surrounding properties are zoned I-2, Industrial Park District. Most all of these properties are related to an industrial use, such as a contractor business. To the south, along McCall Road are highway related commercial properties, such as drive-in restaurants that are zoned PUD, Commercial Planned Unit Development or C-5, Highway Service Commercial District.

*Tower Setback*

The greatest impact to adjacent properties would be if the tower would fail and collapse. The proposed monopole is to be located fifty (50) feet from the north and west property lines, ninety (90) feet from the south property line and over 300 feet from the west property line. In looking at the 2011 aerial photography, the closest building on an adjacent site is ninety (90) feet from the north property line, or 140 feet from the center of the monopole. Outdoor storage of materials and vehicles appear to be as close as zero (0) feet from the east and north property lines.

According to the stamped letter submitted by a licensed engineer, the proposed tower is to be a Class II monopole, which is to withstand a 90 mph wind with no ice or a 40 mph wind with  $\frac{3}{4}$  inches of ice on the pole. The stamped letter states “Should the wind speed increase beyond the capacity of the built-in safety factors, to the point of failure or one more structural elements, the most likely location of failure would be within the flanged connection at the base of the top section. Assuming that the wind pressures profile is similar to that used to design the monopole; the monopole will yield at the location of the highest combined stress ratio within the flanged connection. This is likely to result in the portion of the monopole above “folding over” onto the portion below, essentially collapsing upon itself. . . . In the unlikely event of total separation, this, in turn, would result in collapse of that section to the ground within a radius of 50 feet.”

If the monopole is designed and constructed within the specifications outlined in the stamped engineer’s letter, the adjacent properties should not be impacted by the monopole in the event of a failure.

*Fence setback*

Minimal issues should be caused by allowing for the placement of the fence in the proposed location. The property to the south has a fence located at the property line. The properties to the east and north do not have a fence, but equipment is located near the adjoining property lines. The fence is setback ten (10) feet from the north and east property line to ensure that the existing utility easement is not encroached upon.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal impacts shall be felt by the public if the Exception requests are granted. As stated in the “Probable Effect On Adjacent Properties,” the proposed monopole tower is designed to collapse upon itself. There would be no impacts

to the general public if a failure would occur.

The proposed fence will be towards the rear of the subject site and outside of any established utility easement or vision triangles.

**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 300 feet in width and depth with the tower located in the middle of the property. This site is approximately 144 feet wide and 350 feet deep. The tower could be located more towards the center of the subject site. However, the subject site is not adequate to strictly meet the Zoning Regulations. 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 150 foot tall monopole does not incorporate any stealth design features. The immediate area is largely industrial. There are highway commercial uses to the south of the subject site. The types of uses found in the area do not typically necessitate the design of a stealth telecommunication tower. These stealth design measures are usually found in residential areas or areas where visual preservation is desired.

**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 the Exception to allow a reduction of the minimum required setback of a proposed cellular phone tower from 150 feet to fifty (50) feet; a reduction of the minimum required twenty (20) foot side yard for proposed fence to ten (10) feet along the north property

line; and a reduction of the minimum required twenty (20) foot rear yard setback to ten (10) feet along the east property for the same proposed fence. These requests are all for a property at 1200 Hostetler Drive in the I-2, Industrial Park District, with the following conditions of approval (as modified):

1. The Exception shall be limited to the proposed 150 foot tall monopole and fence as shown on the site plan and outlined in the application documents.
2. The Conditional Use for the proposed 150 foot tall wireless telecommunication tower and accessory structures shall be approved.
3. All permits shall be granted prior to construction.
4. Permanent paved driveway shall be installed prior to the final inspection of the monopole

Hamilton seconded the motion, which passed by a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A CONDITIONAL USE TO ALLOW FOR AN EXISTING GROUP DAYCARE CENTER AT FIRST LUTHERAN CHURCH – 930 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT/OWNER: FIRST LUTHERAN CHURCH – JESSICA PROCKISH)**

Bunger presented the staff report. The City Administration recommended approval of the request for a Conditional Use with five (5) specific conditions of approval.

With no questions from the Board, Aistrup opened the public hearing. Bill Fuller who is a member of the First Lutheran Church generally discussed the need for a day care center within the community and requested approval of the application. Aistrup closed the public comment section for Board discussion.

Hardy noted that there are no issues to not approve the conditional use considering; no structural addition being proposed, surplus parking spaces, and efficient use of the area. Hamilton agreed to Hardy and added that she was pleased by the manner in which the list of people who were contacted was presented and suggested the staff to use it as an example for future applications.

The Board made the following findings of fact for the Conditional Use at 930 Poyntz Avenue.

**PRESENT USE:** Existing Group Day Care Centers and Nursery School.

## STANDARDS FOR A CONDITIONAL USE

**A. Compliance with all applicable regulations:** The existing parish hall and sanctuary is a nonconforming structure with respect to building height and setbacks. On April 3, 1996, the subject site was granted a variance by the Board of Zoning Appeals to allow for a reduction of the north side yard setback from eight (8) feet to five (5) feet and to allow for an increase in the maximum structure height from thirty (30) feet to thirty-nine (39) feet as a part of the parish hall addition. . The maximum lot coverage for C-1, Restricted Business District is thirty (30) percent. Considering the lots dedicated to parking, the subject site complies with thirty (30) percent maximum lot coverage restriction.

**B. Probable effect on adjacent properties:** Since the Group Day Care Center has been operating since 2011, there is no proposed physical change to the property. Therefore, no adverse effect is anticipated on adjacent properties due to the conditional use being in place. The conditional use application is to merely bring the existing use to compliance. The subject site is located within the historic environs of Woman's Club and Fitz House. The Historic Resources Board reviewed the application on September 24, 2012 and has found that the proposed conditional use would not encroach upon, damage or destroy the historic environs of Woman's Club and Fitz House and forwarded their recommendations to State Historic Preservation Office (SHPO). SHPO has determined on September 26, 2012 that the proposed Conditional use does not encroach upon, damage, or destroy any listed historic property or its environs.

**C. Domination by use over neighboring properties:** Immediately adjacent properties to the north of the subject site are zoned R-M, Four-Family Residential District with TNO, Traditional Neighborhood Overlay District. Properties adjacent to east and west are zoned C-1, Restricted Business District. Proposed conditional use is neither drastically different from the regular use of the property—religious gathering and worship—nor in conflict with the surround residential and commercial properties. In terms of its operation, the proposed conditional use does not dominate over the neighboring properties because a relatively small intake of twenty four (24) children. The conditional use would generate increased traffic to the subject site but is expected to be negligible considering C1, Restricted Business District.

- 1. Location, nature, and height of physical improvements:** There is no proposed physical change to the property; therefore, if the Conditional Use is granted, the impact on the neighborhood due to the location, nature, and height of the physical structure shall remain the same.
- 2. Landscaping and screening:** The subject site is landscaped with grass, mature trees, and shrubs and is well-maintained and no change is proposed to the existing landscape. Screening is not required as a part of the conditional use.

**D. Adequate provision of parking and loading:** Section 7-103 of the Zoning Ordinance stipulates one (1) parking space for each employee and one (1) parking space for each five (5) children for Group Day Care Centers. The proposed conditional use shall have no more than



twenty-three (23) children and six (6) staff at any given time, thereby requiring a total of eleven (11) parking spaces. There are thirty six (36) off-street parking spaces to the north of the subject site and fourteen (14) off-street parking spaces to the west of the subject site together constituting sufficient parking spaces for the proposed conditional use, thereby maintaining compliance with the stipulated parking regulations.

**E. Adequate provision of drainage and other public utilities:** Adequate drainage and utilities exist for the site and no changes are proposed.

**F. Adequate provision of access:** No changes are proposed which would affect the provision of access to the subject site or existing off-street parking lots.

Hardy moved to approve a Conditional Use to allow for an existing Group Daycare Center at 930 Poyntz Avenue in the C-1, Restricted Business District, with the following conditions:

1. The Conditional Use Permit shall apply to the existing development as stated in the application documents.
2. The Group Day Care Center shall be owned and operated by First Lutheran Church as proposed.
3. The Group Day Care Center shall be limited to the hours of 7:00 AM – 6:00 PM, Monday through Friday.
4. The Group Day Care Center shall have no more than twenty-three (23) children and six (6) staff at the day care center at any given time.
5. The applicant shall obtain all necessary licenses and permits.

Hamilton seconded the motion, which passed by a vote of 5-0.

Aistrup adjourned the meeting.

Respectfully submitted by  
Jose Abraham, Planning Intern