

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, December 11, 2013**  
**7:00 PM**

MEMBERS PRESENT: Connie Hamilton, Vice-Chairperson; Catherine Lavis; and Angie Danner

MEMBERS ABSENT: Harry Hardy, Chairperson; Ray Thompson

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

**CONSIDER THE MINUTES OF THE NOVEMBER 13, 2013, BOARD OF ZONING APPEALS MEETING.**

Lavis moved to approve the November 13, 2013 minutes, which passed on a vote of 3-0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTIONS TO REDUCE THE MINIMUM REAR YARD SETBACK FOR DECKS GREATER THAN 30 INCHES IN HEIGHT ABOVE THE GRADE ON WHICH THEY ARE LOCATED FOR LOTS 12A AND 12B TO LOT 20A AND 20B, KIMBALL TOWNHOMES ADDITION; A REDUCTION OF THE MINIMUM REAR YARD SETBACK FOR A PRINCIPAL SINGLE-FAMILY ATTACHED RESIDENTIAL STRUCTURE (LOT 12A, KIMBALL TOWNHOMES ADDITION); AND TO ALLOW AN INCREASE OF THE MAXIMUM THIRTY-FIVE (35) PERCENT LOT COVERAGE TO UP TO FORTY-FIVE (45) PERCENT FOR LOTS 12B TO 20B, KIMBALL TOWNHOMES ADDITION FOR THE PURPOSE OF CONSTRUCTING SINGLE-FAMILY ATTACHED RESIDENCES WITH DECKS IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: BAYER CONSTRUCTION, OWNER: BAYER CONSTRUCTION AND APLETECH CONSTRUCTION, INC.).**

Lavis moved to approve the extension request. Danner seconded the motion which passed on a vote of 3-0.

**TABLE A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A GROUP DAYCARE CENTER AT 736 TUTTLE STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: DIANE LINDSEY)**

**TABLE A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FIFTEEN (15) FOOT SIDE YARD SETBACK TO SEVEN (7) FEET, FOR A PROPOSED GROUP DAYCARE CENTER AS A CONDITIONAL USE IN AN EXISTING BUILDING LOCATED AT**

**736 TUTTLE STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT.  
(APPLICANT/OWNER: DIANE LINDSEY)**

**TABLE A PUBLIC HEARING TO CONSIDER A VARIANCES TO ALLOW A  
REDUCTION IN THE MINIMUM REQUIRED LOT AREA FROM 10,000 SQUARE  
FEET TO 7,350 SQUARE FEET; AND A REDUCTION IN THE MINIMUM LOT  
WIDTH FROM 75 FEET TO 73 FEET ALL FOR A CONDITIONAL USE FOR A  
PROPOSED GROUP DAYCARE CENTER IN AN EXISTING BUILDING LOCATED  
AT 736 TUTTLE STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL  
DISTRICT. (APPLICANT/OWNER: DIANE LINDSEY)**

Lavis moved to table all three (3) public hearings to consider a conditional use, exception and variances. Danner seconded the motion which passed on a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE  
REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FOR A  
PROPOSED SIX (6) FOOT TALL, CHAIN LINK FENCE FROM TWENTY-FIVE (25)  
FEET TO ZERO (0) FEET AT 340 SETH CHILD ROAD IN THE C-5, HIGHWAY  
SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: WATERS, INC. –  
SCOTT WATERS)**

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO NOT PROVIDE SITE  
OBSCURING SCREENING OF NOT LESS THAN SIX (6) FEET IN HEIGHT FOR  
PURPOSES OF SCREENING OUTSIDE STORAGE FOR THE PROPERTY  
ASSOCIATED WITH A RENTAL CENTER LOCATED AT 340 SETH CHILD ROAD  
IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT.  
(APPLICANT/OWNER: WATERS, INC. – SCOTT WATERS)**

Bunger presented the Variance and Exception Staff Reports together with a recommendation of approval of the items with four (4) conditions each.

Hamilton opened the public hearing.

Scott Waters, applicant, said he was present to answer any questions.

Hamilton asked how the fence along the linear trail has worked out over the last seven years and if there have been any complaints that it isn't screened. Waters said that it hasn't been an issue.

Hamilton closed the public hearing.

Danner said that she could support the request

The Board made the following findings of fact for the Variance at 340 Seth Child Road.

**RESENT USE:** An existing 8,833 square foot commercial building, a 6,650 square foot commercial warehouse, an 8,625 square foot building addition to the commercial building, accessory parking and outdoor storage and display areas associated with a commercial rental center.

**CONDITIONS UNIQUE TO THE PROPERTY:** The unique condition to the property which would prevent the installation of sight obscuring screening of the outdoor display and storage area on the site is the elevation change and slope between the road surface of Seth Child Road and the site. The Seth Child Road surface is approximately sixteen (16) feet higher in elevation than the outdoor storage and display area of the site. North bound traffic in the east lane has an unobstructed view of the entire site. No viable option could be created where the outdoor display and storage area as it exists could be screened. The site is also located within a service commercial district and is surrounded by similar types of automotive sales, and service type operations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The site and properties to the south along the Seth Child Road Frontage Road are zoned C-5, Highway Service Commercial District. The uses in this area include Midas automotive repair shop, and the Little Apple Toyota and Honda dealership automotive sales lot and repair shop. To the north of the subject site is the equipment rental business that the subject site is to become part of, through the declaration of the zoning lot. Directly to the east is property zoned I-2, Industrial Park District. The Linear Park trail is located to the east of the site and runs the length of the east property line. Further to the east of the site is a heavily wooded, vacant lot with a large portion of the property in the 100 year flood plain. Other developments in the I-2 District to the east include storage units and multi-tenant buildings used for industrial uses. To the west are properties zoned Residential PUD. Seth Child Road, a four-lane arterial road with approximately 250 foot wide ROW is directly to the west. Further to the west is a steep hill side with dense trees.

Minimal adverse affects to adjacent properties to the south, west and north are anticipated by approving the Variance. The rental of compact construction equipment and do-it-yourself yard and home improvement equipment is generally in character with the surrounding properties due to the Little Apple Toyota and Honda dealership and the Midas automotive repair shop along Seth Child Frontage. To the west and north is the Seth Child Road ROW, the steep hill side, and vacant land in the Floodway and 100-Year Floodplain.

There is concern that not providing sight obscuring screening along the east property line may adversely affect the users of the Linear Park Trail. The trail is heavily used by walkers, runners and bike riders throughout the year. The area of the site adjacent to the trail is behind the commercial and warehouse buildings and appears to be storage of equipment and not intended for display of the various types of equipment to rent. The existing fence was granted a Variance in May, 2009 to not provide the required site obscuring screening. The Board determined that the type of equipment and materials stored in the area along Linear Trail would not adversely impact the users of the trail.

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

The unique condition of the property creates the unnecessary hardship to screen the site for two (2) of the four (4) property lines. Although sight obscuring slats could be installed in the existing chain link fence, because of the elevation change to Seth Child Road, it would be unreasonable.

The Variance approved in 2009 related the need to not provide the required screening to the fact that the business operates sales lots of boats or motor vehicles. The proposed Variance for the new fence on the zoning lot will be similar to the existing use of the equipment rental business. The applicant currently has a chain link fence around the perimeter of the property area to enclose the equipment for security purposes but has proposed to not provide the sight obscuring screening.

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

The display area does not encroach into any utility easements or negatively affect the public rights-of-way. Not providing the sight obscuring screening is not anticipated to have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

**RELATIONSHIP TO INTENT OF REGULATIONS:**

The C-5, Highway Service Commercial District provides for businesses offering accommodations, supplies, or services to motorists, and for certain specialized activities which require access to major streets and highways. Construction equipment sales and rental, not including heavy equipment types such as bulldozers and cranes are permitted uses within the C-5, Highway Service Commercial District. The use limitation of the C-5, District however requires any outdoor storage or display of items not classified as boats or motor vehicles to be enclosed with sight obscuring screening, therefore the trailers and other equipment displayed for rent that does not meet the definition of motor vehicle would have to be screened.

The compact construction and do-it-yourself equipment currently located in front of the buildings on the site for rent includes skid loaders, backhoes, trenchers, aerial equipment, seeders, aerators and tree chips and large accessories to these pieces of equipment, such as attachments to the skid loaders and backhoes. These pieces of equipment appear to be displayed in an orderly fashion similar to that of a sales lot for motor vehicles or boats. Other equipment such as scaffolding along with storage of other equipment and materials are located at the rear of the building along the property line adjoining Linear Park Trail. This area appears to be used as more of a storage area, rather than for outdoor display. To not require screening for the entire site could allow any number of items associated with the rental equipment and the general business to be stored outside, which could potentially have an adverse affect on the surrounding neighborhood. However, the Board determined that this area did not require screening in 2009. The proposed fence is similar in design and intent as the existing fence on the zoning lot.

Considering the unique condition of the site and the equipment in the front of the buildings are

being displayed similarly to that of a sales lot for motor vehicles or boat, it appears that the intent of the C-5 District, Use Limitation regulation is met for the north, west and south property line. The use of the area to the rear of the building as an outdoor storage area for various items does not meet the intent; however in this case, given the unique location of the property, the required screening is unjustified.

Lavis made a motion to approve a Variance not provide site obscuring screening of not less than six (6) feet in height for purposes of screening outside storage along the northerly, westerly, easterly and southerly property lines for the property associated with the Waters Rental business at 340 Seth Child Road in the C-5, Highway Service Commercial District, with the following conditions of approval:

1. The Variance to not provide sight obscuring screening shall apply to the property as outlined in the application documents and shown on the site plan.
2. The Exception for the location of the proposed fence shall be approved.
3. Screening of not less than six (6) feet in height shall continue to be provided for the existing propane and fuels tanks.
4. The outdoor display and storage of the compact construction, do-it-yourself home improvement, and other equipment and attachments shall be maintained in good condition.

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

The Board made the following findings of fact for the Exception at 340 Seth Child Road.

**PRESENT USE:** An existing 8,833 square foot commercial building, a 6,650 square foot commercial warehouse, an 8,625 square foot building addition to the commercial building, accessory parking and outdoor storage and display areas associated with a commercial rental center.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Currently the area is a vacant lot used for parking motor vehicles associated with the rental business. The applicant is constructing a building addition on the zoning lot and is proposing to install the proposed fence around the perimeter to enclose the area and make it a part of the rental business storage and outdoor display area. The location of the proposed fence and the desire to not provide sight obscuring screening of the outdoor storage and display area requires an Exception and Variance. Other than these issues, the site complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The site and properties to the south along the Seth Child Road Frontage Road are zoned C-5, Highway Service Commercial District. The uses in this area include Midas automotive repair shop and the Little Apple Toyota and Honda dealership automotive sales lot and repair shop. To the north of the subject site is the equipment rental business that the subject site is to become part of, through the declaration of the zoning lot. Directly to the east is property zoned I-2, Industrial Park District. The Linear Park trail is located to the east of the site and runs the length of the east property line. Further to the east of the site is a heavily wooded, vacant lot with a large

portion of the property in the 100 year flood plain. Other developments in the I-2 District to the east include storage units and multi-tenant buildings used for industrial uses. To the west are properties zoned Residential PUD. Seth Child Road, a four-lane arterial road with approximately 250 foot wide ROW is directly to the west. Further to the west is a steep hill side with dense trees.

The proposed fence will match the existing fence on the zoning lot in height, materials and location along the Seth Child Frontage Road. The existing fence does not appear to have impacted the adjacent area. Several adjacent businesses along the cul-de-sac have customer parking, displays of motor vehicles for sales and structures in the required front yard setback. The proposed fence will be similar in character to the conditions found in the commercial area. Minimal adverse impacts on adjacent property should occur from allowing the new fence to be located in the required front yard setback.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed fence will not encroach into the public right-of-way. The application site plan shows that the fence will run the entire width of the subject site with one access gate at the south curb cut. The applicant states that the fence will swing inward and be used for rare occasions for truck access. Although the proposed fence would be located within the ten (10) foot vision triangle create by the intersection of the driveway and the street, support columns and the fence that are less than twelve (12) inches in diameter are permitted (Section 3-411(D) & (E)). The proposed fence conforms to the vision triangle requirements.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the Zoning Regulations would require that the fence be setback a minimum of twenty-five (25) feet from the front property line along Seth Child Frontage Road. As previously mentioned, the adjacent businesses along the frontage road, including the rental business, currently have customer parking, motor vehicle displays, structures and existing fences within the front yard setback. Requiring the proposed fence to be setback at least twenty-five (25) feet when this requirement was not enforced on the northern section of the zoning lot or for adjacent properties appears unreasonable.

Lavis made a motion to approve an EXCEPTION to allow for the reduction of the minimum required front yard setback for a proposed six (6) foot tall, chain link fence from twenty-five (25) feet to zero (0) feet at 340 Seth Child Road in the C-5, Highway Service Commercial District, with the following conditions of approval:

1. The Exception request shall be limited to the proposed fence as described in the application documents and shown on the site plan.
2. The Variance to not provide sight obscuring screen shall be approved.
3. The subject site shall be developed as proposed.
4. All applicable permits shall be obtained.

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

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FOR A PROPOSED OFF-STREET PARKING LOT FROM TWENTY-FIVE (25) FEET TO FOURTEEN (14) FEET FOR AN EXISTING PARKING LOT FOR A RESTAURANT AT 1709 FT. RILEY BOULEVARD IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: DARA'S FAST LANE – CHRIS DARA)**

Bunger presented the Exception Staff Report with a recommendation of approval of the item with three (3) conditions.

Hamilton asked for clarification on the three front yards. Bunger explained that the property fronts three different right-of-ways and they are considered front yards.

Hamilton then asked about the designations on the site plan. Bunger said that the designations are for proposed trees.

Hamilton asked about the proposed parking arrangement. Bunger explained the circulation in regards to traffic and parking.

Hamilton asked about the lighting for the proposed improvements. Bunger said that they would have to be in compliance with the regulations.

Danner asked if the proposed parking on the north side of the lot would be an issue in regards to encroaching into the right-of-way. Bunger said that there is sufficient space for cars to back out and exit the parking spaces.

Hamilton opened the public hearing.

Brian Ruhl, representative, said that he was present to answer any questions.

Hamilton asked if there were plans for additional lighting. Ruhl said that the existing lighting seems to be sufficient but more could be added if needed.

Hamilton closed the public hearing.

The Board made the following findings of fact for the Exception at 1709 Ft. Riley Boulevard.

**PRESENT USE:** Taco Casa Restaurant and drive-thru.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** A portion of the existing drive-thru awning on the south side of the restaurant is located off of the site and onto the

Kansas Department of Transportation (KDOT) controlled right-of-way for Ft. Riley Boulevard. This is an existing condition and is considered to be allowed by KDOT and the City of Manhattan. Other than this issue, 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 the road rights-of-way are zoned C-5, Highway Service Commercial District. To the east is the 17<sup>th</sup> Street Properties Commercial Planned Unit Development. To the north of Yuma Street and the west side of S. 17<sup>th</sup> Street are properties zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood. To the south of Ft. Riley Boulevard, properties are zoned I-3, Light Industrial District. The area is a mix of residential, commercial and industrial uses. To the north and west are single-family and two-family homes and Long's Park. To the east is a commercial strip center with a restaurant and retail sales and a hotel. To the south are a mix of industrial uses, primarily focused on the automotive and construction industry.

The adverse impacts on adjacent properties should be minimal. Up until recently, the subject site had a fuel pump island in the general area where the new off-street parking spaces will be located. The vehicles using the fuel pumps were effectively parked in the front yard setback, albeit, for a short period of time.

Having off-street parking in the front yard is not a unique condition in the surrounding area. The commercial PUD to the east was approved with parking along both Yuma Street, S. 17<sup>th</sup> Street and Ft. Riley Boulevard within twenty-five (25) feet of the property lines. Some of the industrial uses to the south of Ft. Riley Boulevard also have parking less than twenty-five (25) feet from the edge of the ROW.

The residential uses across S. 17<sup>th</sup> Street to the west should not be adversely impacted. The road ROW is over seventy-five (75) feet wide. The residential uses face Rockhill Road and have the back yards adjacent to S. 17<sup>th</sup> Street. These rear yards are also screened from the roadway by solid wooden fences.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** There should be minimal impacts on the public health, safety or order. No changes or alterations to the curb cuts onto S. 17<sup>th</sup> Street are proposed. The off-street parking spaces will generally be in the same location as the fuel islands that were recently removed. The location of the proposed parking spaces will not be out character or order with the surrounding commercial and industrial properties in the area.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the twenty-five (25) foot front yard setback requirement for off-street parking would prohibit the proposed design of the off-street parking lot for the renovated use of the existing building. Based on the size of the building and the calculated floor area used for the restaurant, twenty-five (25) parking spaces are required. It does not appear that the required parking spaces can be laid out in a manner on the subject site that would adhere to the required setbacks and allow for easy flow of vehicular traffic to and from the drive-thru



window. The applicant could remove the drive-thru to allow for more area to provide parking or reduce the size of the useable area of the building to reduce the number of required off-street parking spaces. Both of these options to adhere to the front yard setback requirement appear unreasonable.

The unique shape of the subject site adds to the situation which requires the Exception request. Because of the horizontal curve of S. 17<sup>th</sup> Street, the front property line is at an angle. This angle limits the area where off-street parking can be located. The S. 17<sup>th</sup> Street ROW also extends to the east along the north property line of the subject site. If the ROW would follow the perceived line along the roadway, a portion of the off-street parking spaces would not be within a front yard setback.

When considering the unique conditions of the subject site, the minimal adverse impacts on the surrounding properties and the general public, the strict application appears to be unreasonable.

Danner made a motion to approve an EXCEPTION to allow for the reduction of the minimum required front yard setback for a proposed off-street parking lot from twenty-five (25) feet to twenty-four (24) feet on the west front property line and fourteen (14) feet on the north front property line for an existing parking lot for a restaurant at 1709 Ft. Riley Boulevard in the C-5, Highway Service Commercial District, with the following conditions of approval:

1. The Exception request shall be limited to the proposed off-street parking lot improvements as explained in the application and shown on the site plan.
2. The subject site shall be developed as proposed, including all proposed landscape islands and plantings.
3. All applicable permits shall be obtained.

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

Respectfully submitted by

Chase Johnson, Planning Intern