

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, June 14, 2006
7:00 PM

MEMBERS PRESENT: Chuck Jackson, Chair Person; Connie Hamilton, Calvin Emig, Harry Hardy

MEMBERS ABSENT: Daniel Morin

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Jeremy Frazzell, Planner

CONSIDER THE MINUTES

Hamilton moved to approve the May 10, 2006 minutes which was seconded by Hardy and passed with a vote of 4-0.

Hardy moved to remove the item from the Table, which was seconded by Hamilton and passed with a vote of 4-0.

A CONTINUATION OF A PUBLIC HEARING TO CONSIDER A VARIANCE FOR 1001 WILSON CIRCLE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW PARKING IN FRONT OF THE FURTHEST POINT BACK ON THE FAÇADE FACING WILSON DRIVE AND THE FRONT LOT LINE; TO ALLOW A DRIVEWAY TO BE GREATER THAN TWENTY-FOUR (24) FEET IN WIDTH AND 960 SQUARE FEET IN AREA; AND, REDUCE THE MINIMUM LANDSCAPED AREA IN THE FRONT YARD, ALL FOR A PROPOSED PAVED ADDITION TO AN EXISTING DRIVEWAY. (APPLICANT/OWNER: JIM ZENGER)

Frazzell briefly explained the item and why it was tabled from the May 10, 2006 meeting.

Hamilton commented that properties north of Davis Drive could have had their driveway additions prior to the zoning regulation.

Jim Zinger, 1001 Wilson Circle, presented two photographs illustrating similar driveway additions throughout the surrounding neighborhood.

Hamilton asked the applicant if he would be willing to table the item once again as the fifth member was not present. Zinger asked if the board would discuss the request.

Jackson closed the Public Hearing and opened for Board discussion.

Hamilton proposed that the board go through each of the standards used for a Variance and make a vote on each. She stated all the Variance standards must be found satisfied to allow approval for the request.

CONDITIONS UNIQUE TO THE PROPERTY:

Emig found that Lot 117 is a corner lot with front yards along both Wilson Drive and Wilson Circle.

Hardy found that Lot 117 is a corner lot with front yards along both Wilson Drive and Wilson Circle. He found the lot is generally above grade of both Wilson Circle and Wilson Drive with slopes to the general north and east. Hardy found from Wilson Drive, the north portion of the lot has a fairly significant incline.

Hamilton found that being a corner lot was not specifically unique as there are corner lots all throughout every zoning district. She found the significant slope is not a factor in this case as the applicant expressly said he was not interested in putting any driveway off the north side of the lot. She found the lot was a corner lot with a fire hydrant that is on a cul-de-sac, which limits the on-street parking that might be available in front of the house. She did not find this was sufficient to make this lot unique from other properties in the subdivision.

Jackson was in general agreement with the findings of the other Board members.

The Board found the standard was satisfied with a vote of 3-1, with Hamilton in opposition.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Emig found that the addition would not have a significant or probable effect on adjacent properties as there are similar driveway additions at other locations on the street and within the subdivision.

Hamilton found the pad was not dissimilar to about six or so pads that are comparable throughout the subdivision. She found the ordinance was relatively new. She found that if the request was approved there would be little room from not treating other requests as an Exception becomes the rule fashion. She found that the probable effect is on future development. She found a car sitting on top of the proposed parking addition within the front yard along Wilson Drive would have a visual impact.

Hardy found that the addition would not have a significant or probable effect on adjacent properties. He found that the subdivision was a relatively new development, but there did not appear to be any opposition to the application.

Jackson was in general agreement with the findings of the other Board members.

The Board found the standard was satisfied with a vote of 3-1, with Hamilton in opposition.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

Hardy found the only unnecessary hardship would be the applicant would not be able to build the proposed driveway addition.

Hamilton found there was not an unnecessary hardship as the ordinance is designed to provide enough parking for a single or two-family home. She found that the applicant was not interested in a driveway located off of Wilson Drive, and it was not a hardship to not be able to do something he was not intending on doing.

Emig found although only one curb cut is recommended for a residential lot, another curb cut could be located on the north side of the lot, which would increase the amount of impervious surface and reduce the amount of landscape open space.

Rob Ott, City Engineer, explained the lot could technically meet the conditions for a driveway off of Wilson Drive based on the Manhattan Area Transportation Strategy, but he recommends that residential lots be restricted to one access point.

Jackson was in general agreement with the findings of the other Board members and did not find the standard satisfied.

The Board found the standard was not satisfied with a vote of 1-3, with Emig in opposition.

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

Hamilton said she had concerns but could support the standard.

Hardy said he could support the standard.

Emig said he could support it.

Jackson was in general agreement with the findings of the other Board members.

The Board found the standard was satisfied with a vote of 4-0.

RELATIONSHIP TO INTENT OF REGULATIONS:

Hamilton said she was concerned with how new driveways were dealt with and enforced under the new driveway regulation and found that she could not support the request.

Hardy found he could support the request as he understood what the regulation was intended to protect.

Emig found he could support it.

Jackson was in general agreement with the findings of the other Board members.

The Board found the standard was satisfied with a vote of 3-1, with Hamilton in opposition.

Hardy said based on the votes, one of the standards was not met.

Hamilton moved for the reasons cited in the discussion and votes for each of the standards, that the requested Variance for 1001 Wilson Circle be denied.

Hardy seconded which passed with a vote 4-0.

Hardy moved to remove the item from the table which was seconded by Hamilton and passed with a vote 4-0.

A CONTINUATION OF A PUBLIC HEARING TO CONSIDER A VARIANCE FOR 902 FAIR LANE IN THE LM-SC, LIGHT MANUFACTURING SERVICE COMMERCIAL DISTRICT, TO NOT PROVIDE SITE OBSCURING SCREENING OF NOT LESS THAN SIX (6) FEET IN HEIGHT FOR PURPOSES OF SCREENING OUTSIDE STORAGE. (APPLICANT/OWNER: RONALD PARRICK JR., KENT CORMACK, AND WILLIAM PUGH/ KENT CORMACK, AND WILLIAM PUGH)

Frazzell briefly explained the item and why it was tabled from the May 10, 2006 meeting.

Hamilton asked if the whole lot would have to be screened, or only the portion holding the display or storage. Frazzell explained sight obscuring screening as defined would have to enclose the entire display or storage area. He said the storage area could be reduced which would reduce the amount of required screening.

Kent Cormack, 212 Carlisle Terrace, stated one of their primary concerns with providing the required screening was security. He said there were two conversations with City Staff. He said a compromise could not be met which would satisfy both parties, as a compromise would have to meet the standards of the code. He stated the lack of compromise was the reason for continuing to pursue the Variance.

Hamilton asked if Cormack was still interested in a limited Variance which would be restricted to their ownership. Cormack said they were interested. She asked why the applicants were not willing to pursue an option of moving the toppers to another location on the lot.

Ronnie Parrick, 504 Bronco, said to store the toppers on the rear portion of the lot, he would need about thirty feet of backing room to get the toppers on and off the display racks with a fork lift, and the screening would have to be half way up the lot. He stated he keeps the toppers orderly and the lot clean. He stated he only wanted to display truck caps and no other product.

Jackson closed for Public Hearing and opened for Board discussion.

Emig said he could not justify any of the standards for the Variance and would recommend denial based on the staff report.

Hardy said he was in a similar position as the only unnecessary hardship appeared to be a financial hardship. He further stated there are other options and possibilities and said the standards are not being met.

Hamilton said she did not see that the standards were being met. She said the good intentions of the applicant's don't make conditions unique to the property and that the unnecessary hardship isn't there. She said there are options available which would help to address the safety concerns being addressed with providing the screening.

Emig made a recommendation that the screening requirement along Fair Lane be relaxed. He stated he understood the requirement along Ft. Riley Boulevard and 9th Street, but Fair Lane is not an improved road with curb and gutter, it was once an alley, and he did not believe the screening requirement was necessary in this case.

The Board made a recommendation that screening be required along Fort Riley Boulevard and 9th Street, but not along Fair Lane.

Hamilton moved to deny the Variance request for 902 Fair Lane, which was seconded by Hardy and passed with a vote 4-0.

Hardy moved to remove the item from the table which was seconded by Hamilton and passed with a vote 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 1710 FAIRCHILD AVENUE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT, TO ALLOW A DRIVEWAY LEADING FROM A STREET TOWARDS A RESIDENTIAL BUILDING TO NOT BE PERPENDICULAR TO THE SIDE LOT LINE FOR THE PORTION OF DRIVEWAY LOCATED BETWEEN THE STREET AND A PARALLEL LINE DRAWN THROUGH THE NEAREST WALL OF THE FAÇADE THAT FACES TOWARDS THE STREET; ALLOW A DRIVEWAY TO TERMINATE IN FRONT OF THE FAÇADE THAT FACES TOWARDS THE STREET; A REDUCTION OF THE MINIMUM ROOF PITCH OF 6:12 TO 5:12; AN INCREASE OF THE MAXIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO ONE HUNDRED TWELVE (112) FEET; A REDUCTION OF THE MINIMUM REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TEN (10) FEET; ALL FOR A PROPOSED SINGLE-FAMILY RESIDENTIAL DWELLING UNIT. (APPLICANT/OWNER: PHIL AND DAWN ANDERSON)

Frazzell presented the staff report with a recommendation for approval of the Exception to the roof pitch with three conditions and denial for the other requests.

Phil Anderson, 1718 Fairchild Ave., further explained the idea and intent of the proposal, which is to place the structure at the north end of the lot and create a garden space in the south end of the lot, similar to that found at 1728 Fairchild. He made a correction to the staff report stating the lot drains entirely to the north. He read a petition with the names of neighbors in support of the request. He said the slope of the roof would slope east and west and the water runoff could be sent to the south instead of the north.

Jackson asked why not put the structure in the front of the lot instead.

Anderson stated the front of the lot is sunny, and they want to place the structure back in the shade of large trees found in the north portion of the lot. He stated the Spanish style house at 501 N. 17th Street was close to the shared property line and the proposed location provided more space between the two structures.

Dawn Anderson, 1718 Fairchild Ave. stated placing the structure on the north portion of the lot would create a garden space in the front portion of the lot and would increase the property and aesthetic value of their adjacent property and the neighborhood.

Steve LaCasse, Bartlett and West Engineers (3021 Arbor Drive) represented Alice Stockwell the neighbor to the north and east. He stated they opposed the proposal based on drainage concerns and the standards. He said the majority of the block drains to Mrs. Stockwell's lot, and the proposed location for the roof would not help her drainage problems. He further stated there was nothing that would prevent the applicants from meeting strict application of the regulations.

Alice Stockwell, 515 N. 17th Street, read a letter expressing opposition to the proposed application.

John Daller, 1719 Fairchild, stated support for the proposed request stating the proposal would be an improvement to the neighborhood.

Kail Katzenmeir, 1083 Wildcat Circle, explained he was the property owner of the property directly to the north. He shared a concern with the water runoff to the north. He stated a concern that green space would be diminished at the rear of the lot if the proposal was granted, which could intrude on the neighboring property to the north.

Russ Weisbender, stated support for the proposed request as it was a practical project and would be an improvement to the neighborhood.

Jackson closed the Public Hearing and opened for Board discussion.

Emig said over the course of several years, with input from the development community and neighborhood associations, the Traditional Neighborhood Overlay District was created with specific design guidelines. He said the required roof pitch did not seem unreasonable

especially with the small design of the proposed structure. He said he would like to see the TNO design guidelines upheld and would recommend denial.

Hardy said he supported Emig's comments about the roof pitch. He stated he appreciated what the applicant was attempting to do by maintaining green space. He said he had problems with the rear yard setback and the driveway request.

Hamilton said the proposed house design is very small, the lot has two levels, there is an opportunity to provide for more space between the Spanish house, but supported the full twenty-five (25) foot rear yard setback. She recommended reviewing all the requests and making a vote on each.

Emig said he would not support a change in the roof pitch as there is an alternative. Hardy and Hamilton both agreed.

After discussion, none of the members would support the reduction in the minimum twenty-five foot rear yard setback.

Hamilton said she was swayed to reduce the front yard setback from 25-feet to 97-feet, by the overall concept of the proposal and how it fits into the existing home on the double lot to the west and found the beneficial effect of the neighborhood is greater than the damage to the TNO District in this situation. She further stated that the architectural cohesiveness of the three lots was the only reason holding her vote.

Hardy said what the applicant is proposing isn't totally out of character of the neighborhood and he could support the request to reduce the front yard setback from 25-feet to 97-feet.

Emig said he would not support the request to reduce the front yard setback from 25-feet to 97-feet, based on the TNO guidelines. He stated there was a previous house that existed which met the TNO and there could have been an alternative.

After discussion, none of the members could support the request for the driveway.

Hamilton moved to deny an EXCEPTION at 1710 Fairchild Avenue in the R-1, Single-Family Residential District and TNO, Traditional Neighborhood Overlay District to reduce the minimum roof pitch from 6:12 to 5:12.

Hardy seconded which passed with a vote 4-0.

Hardy moved to deny an EXCEPTION at 1710 Fairchild Avenue in the R-1, Single-Family Residential District and TNO, Traditional Neighborhood Overlay District to reduce the minimum rear yard setback from twenty-five (25) feet to ten (10) feet.

Hamilton seconded which passed with a vote 4-0.

Emig moved to deny an EXCEPTION at 1710 Fairchild Avenue in the R-1, Single-Family Residential District and TNO, Traditional Neighborhood Overlay District to allow a driveway leading from a street towards a residential building to not be perpendicular to the side lot line for the portion of driveway located between the street and a parallel line drawn through the nearest wall of the façade that faces towards the street.

Hamilton seconded which passed with a vote 4-0.

Hardy moved to approve an EXCEPTION at 1710 Fairchild Avenue in the R-1, Single-Family Residential District and TNO, Traditional Neighborhood Overlay District an increase of the maximum front yard setback from twenty-five (25) feet to ninety-seven (97) feet with the following conditions:

1. The single dwelling unit shall be constructed as proposed except for the modification of the roof pitch.
2. All applicable permits shall be obtained.
3. The dwelling shall otherwise conform to the requirements of the R-1, Single-Family Residential and TNO, Traditional Neighborhood Overlay Districts.

Hamilton seconded which passed with a vote 3-1 with Emig in opposition.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE FOR 1219 BLUEMONT AVENUE IN THE C-3, AGGIEVILLE BUSINESS DISTRICT TO ALLOW FOR A PROPOSED DRIVE-IN ESTABLISHMENT ASSOCIATED WITH A PERMITTED STARBUCK'S COFFEE RESTAURANT. (APPLICANT/OWNER: HOLLIS & MILLER/MANHATTAN ICE & COLD STORAGE INC.)

Frazzell presented the staff report recommending approval with seven conditions.

Emig asked about the parking spaces located on property to the west and how they obtain access. He questioned whether there was a shared easement which provides access to those parking spaces. Frazzell stated he was not aware of a cross easement. Emig continued by suggesting that if there was difficulty in accessing parking spaces on the west lot, perhaps a reconfiguration could occur.

Jackson said he believed the concern is that it would be difficult to govern designated parking spaces for each of the businesses and a drive through could add to the congestion.

Jeff Pfanneisfiel, 1222 Moro St., Secretary of the Aggieville Business Association Board of Directors, read a statement of opposition to the request from the Aggieville Business Association Board of Directors.

Dr. Brad Vince, 10103 Metcalf Ave., provided an overview of the request, discussing the Starbuck's operation, traffic into the site, proposed drive through operation, and proposed architectural changes.

Hamilton asked about Vince's experience with Starbuck's and if he had seen the operations

work as expected. She continued by asking whether the presentation had been given to the Aggieville Business District.

Vince said the numbers were based on internal Starbuck's operation and from regional offices. He continued by stating he had not given the presentation to Aggieville as he was unaware of the business association.

Randy Buller, 2301 Anderson, stated delivery trucks would potentially have conflict with the proposal as delivery to the properties to the west is typically between the hours of 7 and 11. Emig asked Buller if patrons or workers park in the spaces to the west.

Buller responded saying lots of patrons use those spaces and the existing Gambino's spaces, but there has always been a working relationship. He continued by stating that he had more concern about the delivery trucks as they can stack three to four deep in the alley and on both properties. He said he could discuss reconfiguring their parking spaces if needed.

Rob Ott, City Engineer, stated that an Aggieville traffic study was being done to determine needs along Bluemont Avenue.

Jackson closed for Public Hearing and opened for Board discussion.

Emig stated support for the request. He said it did not fit in the Campus Edge Plan, but utilizing the existing building makes sense.

Hardy stated support for the request. He said that stacking did not appear to be as big of a problem. He said delivery could be an issue, but he felt it could be worked around.

Hamilton said she wished the applicant could have communicated with the Aggieville Business District. She said bringing outside seating and improving the look of the building might help. She said the traffic flow should not affect the alley that much and should not be a problem. Her main concern was the right turn to get into the site from Bluemont Avenue and reminds her of the Quick Shop intersection at 14th and Anderson Ave. She said she could support the proposal as the peak times and activity would be minimal on surrounding businesses.

The Board made the following findings of fact for the Conditional Use at 1219 Bluemont Ave.

A. The proposed conditional use complies with all applicable regulations, including lot size requirements, bulk regulations, and use limitations.

B. Properties to the east, west, and south are all in the C-3 Aggieville District. The adjacent property to the west is the Coco Bolo's restaurant (1227 Bluemont Ave.) which offers an outdoor patio eating area. 1219 and 1227 Bluemont Ave. share the west driveway access off of Bluemont Avenue. Although limited, off-street parking stalls for 1227 Bluemont are generally located adjacent to the 1219 Bluemont west property line. There is 12-feet of space between

the west property line and the edge of the drive thru lane. Recommended backing distance for a 90 degree configuration is 26-feet. The presence of stacking vehicles for the proposed drive-in window could temporarily restrict backing movements from vehicles parked in one of the adjacent west parking stalls.

Further to the west are a combination of restaurants and retail shops. Directly to the east is a City parking lot, followed by a car wash, 12th Street, a gas station, liquor store, convenience store, Arbys fast food restaurant, bank and 11th Street. Across the street to the north is an R-3, Multiple-Family Residential District with the M-FRO, Multi-Family Redevelopment Overlay and UO, University Overlay Districts. The University is to the northwest. An alley is to the south, followed by the rear of a mix of retail shops and restaurants. The proposed use at peak hours may slow eastbound Bluemont Avenue traffic.

C.

1. The proposed restaurant will occupy the existing facility which is approximately 2,364 square feet on a single floor and located generally to the south of Bluemont Avenue, west of 12th Street, and east of Manhattan Avenue. A drive-in/pick up window currently exists on the east side of the restaurant building. Two existing off-street parking stalls are proposed to be replaced by a new outdoor eating area. An approximate 5-foot 11-inch menu board is proposed to be located in the southwest corner of the existing building. A trash receptacle enclosure is proposed in the southeast corner of the existing building, three feet from the south property line.
2. Sight obscuring screening is required for the trash receptacle proposed in the southeast portion of the site. The applicants have proposed to screen the trash enclosure with "integral concrete block with a solid wood gate". No landscaping or screening is required for the drive-in window.

D. Currently there are a total of twenty-one off-street parking spaces. Three of the existing, internal parking spaces are proposed to be removed to accommodate for an ADA accessible parking stall and seasonal outside seating. Eleven angled, off-street parking spaces are proposed along the east lot line, providing a total of seventeen off-street parking spaces for the proposed restaurant use. No off-street parking is required by the C-3 District and no extra parking stalls would be necessary for a drive-in window. The applicant stated in the application documents that an estimated 30-40% of the business will be obtained through the drive-in window with an estimated 240 cars per day. The applicant states that deliveries would be limited and scheduled for after hours (between midnight and 5:00 a.m.).

E. Adequate public utilities are currently provided to the site. The proposed change in use should not have an adverse affect on the current drainage of the site.

F. Adequate entrance and exit drives currently exist off of Bluemont Avenue. There is alley access to the site from the south. The west driveway provides shared access to 1219 and 1227 Bluemont Avenue. Although the west driveway is generally used as an entrance, the driveway does provide an opportunity for two-way traffic. The east driveway is typically limited to exit

only.

There is approximately 20-feet of open space between the drive thru lane at the drive-in window and the angled parking spaces on the east side of the building. The west and south sides of the lot allow approximately 12-feet of open space from a vehicle in the proposed drive thru lane to the west and south property lines. This area will allow patrons to either exit the site via the alley or to drive around the building and exit the site using the east driveway onto Bluemont Avenue.

The proposed location for the drive-in window, menu board, and associated stacking lends itself well to good internal traffic flow. The applicant has stated that an estimated 240 cars could be anticipated to utilize the drive-in window throughout the course of a day. Peak usage of the drive-in window is expected in the morning hours, before 10:00 am. As indicated within the application documents and site plan, five vehicles are anticipated to be the maximum number of vehicles to be stacked between the drive-in window and the proposed location for the menu board (southwest corner of the existing building) during peak hours. An estimated turn around time is 2½ minutes per vehicle. With the close proximity to the University, the applicant anticipates a large amount of walk-in business.

A traffic report was submitted with the application to determine the proposed project's impact on the existing level of service of Bluemont/Anderson Avenue. The report specifically evaluated Bluemont Avenue/Anderson Avenue during morning peak times (7:15 a.m. to 8:15 a.m.) and evening peak times (4:30 p.m. to 5:30 p.m.). The report found that on a Level of Service (LOS) scale of A to F the intersection of Manhattan Avenue and Bluemont/Anderson Avenue experiences generally an average Level of Service (LOS C). The report indicates during peak times, westbound traffic on Bluemont Avenue stacks past the intersection of 12th Street and Bluemont Avenue, indicating that a left-turn from the site would be difficult. Similarly, westbound Bluemont Avenue traffic turning into the site may also increase the difficulty of turning left out of the site. The report identifies that making the exit out of the site a right-turn only, will reduce the number of conflicts with westbound Bluemont Avenue traffic.

Based on the traffic report, the City Engineer has requested that the applicant shall physically change the exit drive to only allow vehicles to exit eastbound only from the site, and install a private sign similar to that found at the Arby's drive through. There are similar markings on the pavement at the intersection of 12th Street and Bluemont Avenue, which restricts traffic from going straight and making left turns.

Emig moved to approve a Conditional Use Permit at 1219 Bluemont Avenue in the C-3, Aggieville Business District to allow a drive-in establishment (drive-in window) to be associated with a proposed permitted restaurant with the following conditions:

1. The east drive shall be physically changed to allow vehicles to exit eastbound only (Right Turns Only) from the site.
2. The physical change to the exit shall be reviewed and approved by the City Engineer prior to issuance of a building permit.

3. A private sign shall be installed as shown on the site plan, near the east driveway, identifying a “No Left Turn”.
4. White paint shall be used for the guidelines, parking stalls, and painted arrows as shown on the site plan.
5. The Conditional Use Permit shall be limited to the Starbuck’s Coffee drive-in establishment.
6. The Conditional Use Permit shall only apply to the site plan as proposed. Any future additions or expansions shall require a new Conditional Use Permit.
7. The applicant shall obtain all necessary permits.

Hardy seconded which was approved with a vote 4-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE FOR 925 ENOCH LANE IN THE C-6, HIGHWAY COMMERCIAL DISTRICT TO ALLOW FOR A PROPOSED KENNEL USE. (APPLICANT/OWNER: KELLY NEEL /DAVID DREILING)

Frazzell presented the Staff Report recommending approval with four conditions.

Hamilton asked about the concern letter. Frazzell explained he believed the concern was regarding the different types of permitted uses in the C-5 district.

Kelly Neel, 1853 Yard Rd., explained the doggy daycare concept.

Jackson closed for Public Hearing and opened for Board Discussion.

Hamilton stated she could support the request with a modification to one of the conditions.

Hardy stated he could support the request.

The Board made the following findings of fact for the Conditional Use at 925 Enoch Lane.

A. The subject property complies with all applicable regulations including lot size requirements, bulk regulations, use limitations, and performance standards.

B. The subject property is located within a C-6, Heavy Commercial District. The adjacent property to the north is zoned I-2, Industrial Park District; the adjacent property to the south is RSC Equipment Rental zoned C-5, Highway Service Commercial District; the adjacent property to the west is GTM Sportswear warehouse also zoned I-2; and the adjacent property to the east across Enoch Lane is a car dealership zoned C-5. Lot 1 of the Enoch Addition, the subject property, has split uses with the western half of the lot used as a parking area for GTM Sportswear adjacent to the west side of the existing structure.

Noise generated by dogs at the proposed kennel facility could potentially be a nuisance to neighboring properties. Barking dogs within the facility could potentially be heard outside the

facility. Similarly, barking dogs utilizing the outdoor exercise area could potentially have an adverse effect on adjacent properties. According to the applicant, the identified outdoor exercise area on the site plan and application materials will primarily be used as a restroom for the dogs. The applicant states that the dogs will likely utilize the outdoor area several times throughout the day. The applicant also states the dogs would only be out long enough for them to have sufficient time to use the restroom.

The current RSC Equipment Rental use to the south generates noise associated with heavy, mobile, motorized equipment. An existing driveway, adjacent to the south boundary of the subject lot, is used primarily by employees and employee vehicles utilizing an on-site filling station, and accessing the heavy, mobile, motorized equipment. The lot currently used by RSC Equipment Rental, as well as other lots to the south, are zoned C-5, Highway Service Commercial, therefore any of the permitted uses could potentially replace the current use. The noise associated with a kennel potentially could have an adverse effect on other permitted uses in the C-5 district.

Parking lots to the north and west are associated with GTM Sportswear and generate noise associated with passenger vehicles and their occupants. The proposed outdoor exercise area is separated from the GTM Sportswear parking lot on the west portion of Lot 1, by a mesh-screened chain link fence. The proposed outdoor exercise area is approximately sixteen (16) feet north of the south lot line bordering RSC Equipment Rental. Noise from dogs using the outdoor exercise area (only during the day as stated by the applicant) will be kept to a minimum as mesh screening on a 12-foot high chain link fence, further screened by bamboo, will exist to the south, minimizing distractions of surrounding uses and keeping barking of dogs to a minimum. Also, the applicant states that an employee will be with or near the dogs at all times when using the outdoor exercise area to distract them if they are barking. With existing commercial and industrial surrounding uses, and methods of alleviating potential noise generated by dogs, the kennel's use of the outdoor exercise area is not anticipated to have an adverse effect on surrounding uses. The proposed screening surrounding the outdoor exercise area should obscure dogs and occupants/patrons at surrounding businesses from seeing each other. The proposed screening has a potential of minimizing distractions of dogs or others nearby, lessening the potential for barking dogs.

Noxious odors potentially generated by the proposed use will likely be minimal with dogs' limited amount of time in the proposed outdoor exercise area to the south of the existing structure. The applicant states that waste will be disposed of promptly and properly into a trash container.

C. The proposed use is likely to be less intense than many permitted uses in a C-6, Heavy Commercial District; or an I-2, Industrial Park District. Kennels are permitted uses in an I-2, Industrial Park District, which are adjacent to Lot 1 on the west and north. The C-5, Highway Service Commercial District has a long list of permitted uses which potentially could have an adverse effect from a kennel use. The hours of operation for the proposed facility are no more extensive than the hours of operation for surrounding uses. Any noise generated by dogs located at the proposed facility should be minimal compared with noise generated by existing

surrounding uses, especially the lot to the south closest to the proposed outdoor exercise area generating noise with heavy, mobile equipment. The proposed kennel use should not dominate the neighboring properties.

1. The subject property is an existing 1.15 acre lot with a 4,596 sq. ft. structure setback approximately 167 feet, well beyond the minimum 25-foot front yard setback. The existing structure is also setback well beyond the zero (0) foot rear and side yard setbacks required for a property and structure within the C-6 District at approximately 212 feet from the rear lot line, 16 feet from the north side and 41 feet from the south side. The proposed addition of a 549 sq. ft. enclosed outdoor area adjacent to the south side of the structure is also well beyond the required setback of zero (0) feet from the side yard property line at approximately 25 feet, 9 inches and well beyond the south side utility easement at approximately 17 feet, 9 inches. The proposed enclosed fenced addition adjacent to the south side of the structure is the only alteration requested by the applicant. This fence is proposed to enclose an area with a width of 15 feet, 3 inches and a depth of 36 feet enclosing a total area of 549 sq. ft. according to the site plan. The fence enclosing this area is proposed to be 12 feet in height and is to be of the chain link form. Aside from these, no other structural improvements are proposed by the applicant.

2. A series of bamboo plants running east and west is proposed to screen the proposed fence and enclosed outdoor exercise area from view to the south of the property. The applicant states that this bamboo will be planted directly to the south of the fenced area. According to the City Forester, a yellow groove variety of bamboo is currently utilized at Sunset Zoo and has been found to reach 8-feet in height, be fast growing, and winter hardy to the area. Different varieties of bamboo may have a tendency of spreading and should be closely monitored. Aside from this proposed improvement, there are a few small trees near the property lines, a couple of small planting beds, and no bushes located on the property. The purpose of placing bamboo on the south side of the 12-foot high chain link fence is to screen both dogs from the view of occupants and equipment to the south and those occupants from the view of dogs utilizing the enclosed outdoor exercise area. When planted, the applicant states that the bamboo will be about one (1) to two (2) feet in height but will grow to maturity and at a height of eight (8) to twelve (12) feet by the summer of 2007. The timing to maturity was not able to be verified by the City Forester. The intent of providing the bamboo screening is to prevent any excess noise coming about from the distraction of dogs by surrounding activities and to screen the view of dogs in the outdoor area from surrounding occupants/patrons.

D. The proposed site plan provides an existing twenty (20) off-street parking spaces. The existing structure has a gross floor area of 4,596 sq. ft. The proposed use will have a net floor area of 560 sq. ft. for the kennel use, 741 sq. ft. for office use, and 2,840 sq. ft. for the open floor daycare area. Parking requirements for commercial and industrial uses as mentioned in Section 7-103(B)(3) are that all business and commercial establishments, if not excepted by being designated as other uses mentioned in the same section, must have one (1) parking space for each 200 sq. ft. of floor area. It is possible and justified to compare and surrogate parking

requirements for this use with the parking requirements for the “Group day care centers and nursery schools” use in Section 7-103(C)(4) of the Zoning Regulations requiring “at least one (1) parking space for each employee and one (1) parking space for each five (5) children.” With a proposed maximum amount of six (6) employees and a maximum capacity of forty (40) dogs at one time, under this similar requirement, the facility needs a total of at least fourteen (14) available parking spaces. Adequate off-street parking standards are achieved with the existing parking capacity.

E. No provision of drainage or other public utilities is required for this proposed use different from the means of drainage and public utility service that already exists. Adequate utility, drainage, and other such necessary facilities already exist.

F. Adequate access is provided to the site from Enoch Lane. The proposed use is not likely to generate an excessive level of traffic to and from the site with a maximum capacity of forty (40) dogs at the facility at one time. With twenty (20) existing off-street parking spaces, there is sufficient parking capacity on-site.

Hardy moved to approve a CONDITIONAL USE at 925 Enoch Lane, in the C-6, Heavy Commercial District to allow for a proposed kennel with the following conditions:

1. All state and local licenses shall be obtained and maintained.
2. The Conditional Use shall be limited to the proposed kennel use as outlined in the site plan and application documents.
3. All necessary building and sign permits shall be obtained.
4. The kennel facility shall be maintained in good condition and operated as proposed in the application.

Hamilton seconded which passed 4-0.

A PUBLIC HEARING TO CONSIDER A VARIANCE FOR LOT 1 OF MILLER RANCH OFFICE PARK, UNIT ONE IN THE I-5, BUSINESS PARK DISTRICT TO ALLOW OFF-STREET PARKING WITHIN THE MINIMUM 50-FOOT FRONT YARD SETBACK ON A LOT THAT ADJOINS A RESIDENTIAL DISTRICT; AND TO NOT PROVIDE SCREENING OF AT LEAST FOUR (4) FEET IN HEIGHT, ALL FOR A PROPOSED USDA SERVICE CENTER OFFICE FACILITY. (APPLICANT/OWNER: MANHATTAN PROPERTIES OF KANSAS, LLC.)

Frazzell presented the staff report with a recommendation for approval with two conditions.

Leon Brown, Schwab-Eaton, briefly explained the request and the unique features of the site.

Jackson closed the Public Hearing and opened for Board discussion.

Hardy said based on the staff report and pictures, the uniqueness of the site is obvious and he could support the request.

Hamilton agreed and said this request was similar to what was approved at Hillcrest.

The Board made the following findings of fact for the Variance at Lot 1 of Miller Ranch Office Park, Unit One:

1. Lot 1 is an irregularly shaped, 8.9 acre site, located generally south of the intersection of Overhill Road and Miller Parkway. Miller Parkway is a unique, divided four lane collector street with varying right-of-way between approximately 100 to 145-feet along the portion of street adjacent to Lot 1 and subsequent residential properties to the general north and northeast. The collector street is divided by a large, landscaped median which varies from 40 to 90-feet in width along the portion of street adjacent to Lot 1. The east bound traffic lane of Miller Parkway is located along the northeastern leg of Lot 1. As indicated in the application documents, at this edge of the Miller Parkway right-of-way, "the elevation is 1203 (USGS). The elevation at the opposite end of the site is approximately 1143 at its lowest point. This difference is approximately 700-feet yielding an average slope of between 8% and 9% in an undeveloped condition." The approximate elevation where the additional parking lot is proposed to begin is 1195. The approximate elevation of the residential lots on the opposite side of Miller Parkway, across from Lot 1, is between 1200 and 1206. The grade change, distance, and rolling topography are unique conditions to the property.

Lot 1 is a challenging site, as the slopes surrounding Lot 1 quickly slope down from the north, northeast to the south, southwest. According to the applicant, "a 3:1 slope will be required below the Miller Parkway right-of-way, and steeper slopes (2:1) will be required behind the building and west parking area". There are numerous drainage and utility easements located throughout the lot. A 30-foot utility easement, is located along the general northeast lot line, and extends the length of the lot. A large drainage and utility easement is located along the western portion of Lot 1, which begins generally in the northwest corner of the lot and extends along the western portion of the lot, widening as it nears the general south lot line. A drainage easement is located along the general south portion of the lot, below the south parking area. The south drainage easement crosses the lot in a general east to west direction towards the west lot line. In addition, a Kansas Gas Line Easement crosses Lot 1 along the south lot line, in a general east to west direction.

2. With an I-5, Business Park District across from a residential district, adjacent property owners should anticipate vehicles, buildings, and associated parking areas. The combination of existing rolling topography; grade change between the proposed parking area and Miller Parkway; presence of a large landscaped median within a collector street; and the associated collector right-of-way width; should help to reduce any potential adverse effects the proposed off-street parking area might have on adjacent properties to the north, northeast, and east. Adjacent properties to the northwest and west are located within the I-5, Business Park District. The proposed parking area and elimination of a landscaped berm should not adversely impact these properties. Property to the south is within the County and zoned for General Agriculture. This lot currently is in an unimproved condition and contains the drainage basin for water draining off Lot 1. The southwest corner of Lot 1 is adjacent to Stonehaven Addition which is in the R, Single-Family Residential District. Single-family

residential lots are anticipated in this addition, but their proximity to the proposed parking area should not adversely affect these properties.

3. The additional off-street parking is a requirement of USDA in selecting a site for their offices. USDA provides seminars to the public, and the proposed additional off-street parking area would provide additional space for those attending the seminars. Foregoing the additional off-street parking could create parking problems on-site. The proposed parking area could be relocated behind the front yard setback, for instance north of the proposed location for the Service Center. This area has been identified however as the proposed location for a future building expansion and would not be feasible to USDA. The additional off-street parking area could potentially be located either to the general west or south of the proposed Service Center building. Placing the additional parking area in these locations would require large amounts of imported fill and potential removal of existing trees. The unique conditions both on-site and off-site, are an unnecessary hardship in fulfilling the need for off-street parking to serve the public.

4. The off-street parking area is proposed to be located 6 to 12-feet below grade of Miller Parkway, which may provide greater buffering of the proposed off-street parking area than the required 4-foot screening consisting of an earth berm and densely planted vegetation. If the parking area was located in another location behind the front yard setback, the screening would not be required. The proposed additional parking area is not located within a utility or drainage easement. The proposed Variances should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

5. The intent of not allowing off-street parking to be located within the front yard, is to prevent the required front yard from becoming dominated by pavement and preserving landscape open space. In areas where a portion of off-street parking is allowed in the front yard, the required screening provides a buffer from noise, light, and pollution associated with parking lots to the adjoining residential districts and passers-by.

Hardy moved to approve a VARIANCE for Lot 1 of Miller Ranch Office Park, Unit One, in the I-5, Business Park District, to allow off-street parking for a proposed USDA Service Center office facility within the minimum 50-foot front yard setback on a lot that adjoins a residential district; and to not provide screening of at least four (4) feet in height, which is required to consist of an earth berm with densely planted evergreen vegetation as measured from the grade of the parking lot with the following conditions,

1. The Variance shall apply to the USDA Service Center as proposed in the application documents and site plan.
2. All necessary permits shall be obtained.

Hamilton seconded which passed with a vote of 4-0.

TABLE A PUBLIC HEARING TO CONSIDER A VARIANCE FOR 1030 HOUSTON STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY TO ALLOW A REDUCTION OF

THE MINIMUM LOT AREA OF 6,500 SQUARE FEET TO 5,000 SQUARE FEET FOR A PROPOSED SINGLE-FAMILY RESIDENTIAL DWELLING UNIT. (APPLICANT/OWNER: BOWMAN BOWMAN NOVICK, INC./RENEWAL VENTURES)

TABLE A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 1030 HOUSTON STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY FOR A PROPOSED DRIVEWAY GREATER THAN TEN (10) FEET IN WIDTH, LOCATED WITHIN A FRONT YARD BETWEEN THE STREET AND THE FRONT BUILDING FACADE ALONG 11TH STREET; A REDUCTION IN THE MINIMUM FRONT YARD SETBACKS FROM FOURTEEN (14) FEET TO SEVEN (7) FEET ALONG 11TH STREET; AND, FROM FOURTEEN (14) FEET TO THIRTEEN (13) FEET ALONG HOUSTON STREET; AND AN INCREASE IN LOT COVERAGE FROM THE MAXIMUM 30% TO 43% FOR A PROPOSED SINGLE-FAMILY RESIDENTIAL DWELLING UNIT. (APPLICANT/OWNER: BOWMAN BOWMAN NOVICK, INC./RENEWAL VENTURES)

Hardy moved to Table the items until the July 12, 2006 meeting which was approved by Hamilton and passed with a vote 4-0.

Jackson adjourned the meeting.

Respectfully Submitted,

Jeremy Frazzell, Planner

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