

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, December 13, 2006**  
7:00 PM

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

MEMBERS ABSENT: None

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

**CONSIDER THE MINUTES**

Hardy moved to approve the November 8, 2006 minutes which was seconded by Hamilton and passed with a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 1330 YUMA STREET TO REDUCE THE MINIMUM FOURTEEN (14) FOOT FRONT YARD SETBACKS ALONG 14<sup>TH</sup> ST. AND YUMA ST. TO ZERO (0) FEET FOR EXISTING FENCES IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT AND TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: PAULINE BARR)**

Frazzell presented the Staff Report with a recommendation for approval of the Exception with two conditions.

Hamilton asked for clarification of the fence locations.

Lynn Goodridge, 922 Pottawatomie, stated he was the son of the applicant and clarified that the current fence was installed for safety reasons. He further stated that the fence has been in its present location for fifteen to twenty years and has never caused a problem. He said there was not a vision obstruction with the location of the fence. He said the south portion of the fence allows for the safety of children using the yard.

Emig inquired on the type of improvements being done to the house under the HOME program.

Goodridge stated there were small improvements which would be made to help with accessibility.

Burke Bayer, 736 Crestline Drive, said he is the owner of two lots to the north and said that he had lived in the area a long time ago, but has retained the properties. He stated support for the request.

Marry Anne Flemming, 215 S. 8<sup>th</sup> Street, stated her support for the request and said the present location for the fences was not a deliberate action. She said there has not been any problem with the location of the fence and said the older neighborhood is full of similar types of situations. She asked the Board for tolerance of the fence.

Kay Cardella, 323 S. 14<sup>th</sup> Street, said she lives south of Pauline Barr and explained that Pauline had applied for assistance and was told her fence was in violation. She continued stating her support for leaving the fence in its present location. She provided a letter of support to the Board from Jim Sherow and provided pictures of the property to the Board. She read a letter she wrote in support of the request and said it was unnecessary to move the fence as it provides for safety.

Jackson closed the Public Hearing and opened for Board discussion.

Hamilton stated for the record that there was a lot of support for the request from the neighborhood. She said if the fence was new, it would be a different issue. She said she felt open fencing would have to be required along the west side of the lot, but that she could support the request and appreciated the pictures Ms. Cardella provided.

Hardy said he could support the request given the abundant neighborhood support and the fact that the fence has had a long history without affecting safety.

Emig said he could support the request for the existing south fence, but could not support the request for the west fence in its present location. He stated the west fence would have to be moved to the property line and out of the right of way.

Hamilton asked why the fence could not stay in its existing location.

Karen Davis, Director of Community Development, said the HOME program is a federally funded program which requires compliance with all applicable regulations in order to receive assistance. She said that the fence in its present location is in violation and it can not be ignored. She said the reason for the exception was to address the situation and to put the fence into compliance with the regulations.

Emig commented that the fence according to the site plan appeared to be located within the vision clearance triangle.

The Board discussed options of handling the fence and the vision clearance triangle in hopes of maximizing the amount of usable space for the applicant. It was discussed that the fence could be reduced in height to comply with the vision clearance triangle requirements.

Hardy said there appeared to be room for the applicant to work with staff to satisfy the vision clearance triangle issue.

Pauline Barr said she did not want the assistance from the City if she was going to have to move the fence. She said the fence was put up for the safety of the children and there have not been any issues with the fence.

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

A. The property currently complies with all applicable regulations other than the ones for which the Exceptions are being requested.

B. Surrounding properties are generally single-family residential and have had no known issues with the present location of the existing fencing. A number of corner lot properties located within this area, Ward 6, have existing fences located at or close to a zero (0) foot front yard setback. Approval of the Exception for a reduction with regards to the front yard setback along the two frontages of this property will be copasetic with the surrounding neighborhood. The approval of these Exceptions are not expected to obstruct the view or line of sight from neighboring lots since the purposed western fence will be chain link and the existing southern fence is at a height of forty (40) inches tall. No adverse impacts to adjacent properties or surrounding neighbors are anticipated with granting the proposed Exceptions.

C. The existing fence along the west property line is located within the public right-of-way and is not in compliance with the vision clearance triangle regulations at this location. The relocation of this fence will result in the correction of these problems and improve public safety at this location. The proposed Exceptions are not anticipated to have an adverse effect on the public's health, safety, or general welfare.

D. 1330 Yuma is a corner lot with two front yards each requiring a fourteen (14) foot setback. The strict application of these regulations would greatly reduce the useable space within the front and rear yards. The only other option would be to remove the existing fences, which would result in an unusable front yard and a small rear yard restricting the safety and usability of the property. The strict application of the setback regulations is unnecessary when all facts and circumstances are considered.

Hamilton moved to approve the EXCEPTIONS to allow a reduction in the minimum fourteen (14) foot front yard setback to (0) feet along Yuma Street for an existing fence, and 14<sup>th</sup> Street for the proposed relocation of an existing fence, located at 1330 Yuma Street, in the R-2, Two-Family Residential District within the TNO, Traditional Neighborhood Overlay District with the modification to maintain a thirty (30) foot vision clearance triangle and the following conditions:

1. The Exception shall be for the fences as outlined in the application documents.
2. The fences shall be maintained in good condition.

Hardy seconded and was passed with a vote 5-0.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE/EXCEPTION FOR  
1310 N. 11<sup>TH</sup> STREET TO ALLOW FOR A MODIFICATION OF AN EXISTING**

**LEGAL NONCONFORMING USE, FOR PURPOSES OF REPLACING AN EXISTING TWO-FAMILY RESIDENCE WITH A NEW TWO-FAMILY RESIDENCE; AND AN EXCEPTION TO REDUCE THE MINIMUM FOURTEEN (14) FOOT FRONT YARD SETBACK TO SEVEN (7) FEET FOR PROPOSED STAIRS IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: VICTOR OLSON)**

The Board moved to Table the request until the January 10, 2007 meeting based on the applicant's request.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR LOTS 7 AND 8, EUREKA ADDITION TO ALLOW FOR A REDUCTION OF THE MINIMUM TWENTY (20) FOOT SIDE YARD SETBACK TO ONE (1) FOOT AND THE MINIMUM TWENTY (20) FOOT REAR YARD SETBACK TO EIGHTEEN (18) FEET FOR A PROPOSED SCREENING FENCE FOR WASTE MANAGEMENT IN THE I-2, INDUSTRIAL PARK DISTRICT AND AO, AIRPORT OVERLAY DISTRICT. (APPLICANT/OWNER: SCHULTZ CONSTRUCTION, INC.)**

Frazzell presented the Staff Report with a recommendation of approval for the Exception with two conditions.

Emig asked for clarification of where the flood plain was located on the lot. Frazzell explained the floodway was primarily within a drainage easement located along the south portion of the Lot 8.

Roger Schultz, Developer, stated the lots to the west are in the flood plain and were part of the County buy out several years ago and they are now zoned General Agriculture. He said the Eureka Addition is divided into three different zones. He said the lots are 150-foot wide and with a twenty foot setback on either side for a fence, one would have forty feet of space between two different fences. He said the twenty foot setback is highly restrictive. He said the lots to the north are adjacent to residential property to the west and so a greater setback was understandable.

Watson asked if Schultz was referring to open space running north to south or east to west and asked for clarification to the proposed setback reductions.

Schultz clarified stating he was referring to the east to west and that the west property line is proposed to be reduced by two feet.

Darrell Wood, owner of property southwest of Lots 7 and 8, stated he was concerned that the first development into the addition was asking for an exception. He asked for clarification to where the flood plain was located in relation to the lots and reiterated that the property to the west was in the flood plain.

Jackson closed for Public Hearing and opened for Board discussion.

Hamilton stated she appreciated Wood's concerns with the first development applying for an exception. She said she could support the request to reduce the setback not because the applicant wanted to utilize more of the property but because the property backed up to the flood plain. She said she could not agree with a finding that the applicant needed extra space.

Hardy stated he could support the request based on the staff report with Hamilton's concerns.

Watson said she agreed with Hamilton and could support the request.

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

A. The property currently complies with all applicable regulations, other than that for which the exception is requested.

B. Neighboring properties to the north, south, and east are currently unimproved, platted, vacant lots zoned I-2, Industrial Park District. Property further to the north, across Eureka Drive, contains the Job Corps Center which is zoned U, University. Properties adjacent to the west are zoned County G-1, General Agriculture and are currently vacant, unimproved, platted lots. The proposed reduction in the rear and side yard setbacks to accommodate for a screening fence is not anticipated to have an adverse effect on existing or future neighboring properties.

C. A portion of floodway and floodway fringe are located generally along the south and southeast portion of Lot 8. A platted 60-foot utility and drainage easement which crosses the south property line of Lot 8 in an east to west direction generally includes the portion of floodway located on Lot 8. The proposed location of the fence is located outside of the 60-foot drainage easement and generally along the floodway boundary. A 30-foot utility easement extends along the west property line of Lot 7 and Lot 8 in a north to south direction. The proposed location of the fence encroaches into the west utility easement. The applicant is informed if access into the easement is required; the costs associated with replacement of the fence would be the applicant's responsibility. The proposed location of the fence is not anticipated to have an adverse effect on the public's health, safety, or general welfare.

D. Lot 7 and Lot 8 are recently platted lots located in the general southwest portion of the Eureka Addition Development. In the I-2 District, outdoor storage is permitted provided that it is screened with a minimum of six (6) foot high sight obscuring screening and provided that it meets the bulk regulations of the district. In this case, if a fence is to be placed on the lot, it will have to be setback a minimum of twenty (20) feet from the side and rear property lines, leaving unusable space to the applicant outside of the fence. In other zoning districts, fences are allowed to be located as close as zero (0) feet along the side and rear property lines. The general intent of the regulation is to provide landscape open space between different uses in the I-2 District. When all facts and circumstances are considered, strict application of the regulations is unnecessary.

Hardy moved to approve an EXCEPTION to allow a reduction of the minimum twenty (20) foot side yard setback to one (1) foot and the minimum twenty (20) foot rear yard setback to eighteen (18) feet for a proposed screening fence for Waste Management in the I-2, Industrial Park District and AO, Airport Overlay District with the following conditions:

1. All applicable permits shall be obtained.
2. The fence shall be maintained in good condition.

Hamilton seconded which passed with a vote 5-0.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR LOTS 16-18, EUREKA ADDITION TO ALLOW FOR A PROPOSED WHOLESALE DISTRIBUTION WAREHOUSE AND HOME IMPROVEMENT CENTER IN THE C-6, HEAVY COMMERCIAL DISTRICT. (APPLICANT/OWNER: SSF DEVELOPMENT, LLC.)**

**A PUBLIC HEARING TO CONSIDER A VARIANCE FOR LOTS 16-18, EUREKA ADDITION TO INCREASE THE SIZE OF A PROPOSED ACCESSORY STORAGE AREA ASSOCIATED WITH A PROPOSED WHOLESALE DISTRIBUTION WAREHOUSE AND HOME IMPROVEMENT CENTER IN THE C-6, HEAVY COMMERCIAL DISTRICT. (APPLICANT/OWNER: SSF DEVELOPMENT, LLC.)**

Frazzell presented the staff reports concurrently and recommended approval for both with two conditions for the conditional use and three conditions for the variance.

Hamilton confirmed that the C-6 District does not have a requirement limiting the amount of accessory storage.

Tom Harpin, 1832 Erickson, said the development was anticipated to be a series of phases. He said eventually the site would be fully developed. He said that the proposed lumber yard is not going to be a home improvement center like Home Depot or others in the City, but would cater to contractors. He said in addition to the lumber yard, the development would contain wholesale construction supplies. He said this location would provide the best opportunity to serve both Manhattan and the surrounding communities.

Watson asked for clarification of the principal structure and the site. Harpin indicated that the site would be entirely screened except the north wall of the principal building and the area to the west of the building.

Roger Schultz, Developer, stated that lumber yards are not specifically addressed in the zoning regulations and so the use was determined based on the type of operation. He further explained the difference between a home improvement center which would cater to the general public and the lumber yard which would service contractors.

Jackson closed for Public Hearing and opened for Board discussion.

Hardy said he could support both of the requests based on the staff report and conditions.

Hamilton said she could support both based on the staff report with the conditions provided that a modification be made to the variance staff report removing a statement about there not being an adverse effect on surrounding properties because the use was one of the first to the development.

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

A. The proposed conditional use requires compliance with the C-5 and C-6 District regulations, including lot size requirements, bulk regulations, and use limitations. A companion Variance has been proposed to allow the area used for accessory storage for a Home Improvement Center to exceed one-half (1/2) the floor area of the principal structure.

B. To the west and south are unimproved platted lots zoned I-3, Light Industrial, and C-6, Heavy Commercial District respectively, located within Eureka Addition. To the north is Eureka Drive, followed by the Job Corps which is zoned U, University District. To the east is an agricultural field located within the County and zoned County G-1, General Agriculture.

C. The proposed use is consistent with the intent of the C-6, District and surrounding industrial districts. Given the proposed hour of operations and intent to cater to building contractors, the proposed use is not anticipated to dominate the neighborhood.

#### 1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:

Physical improvements consist of a 13,500 sq. ft. principal structure with an office, showroom, and warehouse storage use with loading dock. The proposed structure is a metal fabricated type building with a width of 90-feet, depth of 144-feet, and maximum height of twenty-six (26) feet. The principal structure is located generally in the west portion of Lot 16. Two additional open lumber storage structures are proposed on Lot 17, generally in the center and east side of the lot. Both structures contain storage racks for storing lumber, contain a roof, and have open sidewalls. The largest structure is an 11,040 sq. ft. structure which is 92-foot wide and 120-foot deep. The smaller structure is 4,800 sq. ft. and is 40-foot wide and 120-foot deep.

#### 2. LANDSCAPING AND SCREENING:

Landscaped yard is proposed generally along the north twenty-five (25) feet of Lot 16, along the west twenty-five (25) feet of Lots 17 and 18, and generally along the south seventy-five (75) feet of Lot 18. Two trees are proposed within the west twenty-five (25) feet of Lot 17. Four landscape islands with one tree in each are proposed within the proposed parking areas on Lots 16 and 17. A six (6) foot high chain link fence with screening and three strand barb wire is proposed to be located at the minimum twenty-five (25) foot front yard setback along the west and north property lines and at zero feet along the south and east property lines. The proposed fence will provide screening of the two outdoor storage structures, the outdoor storage area, the south and east sides of the principal structure, and the additional parking area.

D. Two parking areas are proposed. Eight (8) off-street parking spaces, including two ADA parking stalls are proposed within an approximate 4,875 sq. ft. parking area located directly to the west of the principal structure on Lot 16. To the south of the principal structure on Lot 17, an additional 16,900 sq. ft. parking area with thirty-six (36) off-street parking spaces is proposed. A loading dock is proposed on the northeast corner of the principal structure. Given the nature of the proposed operation and targeted clientele, adequate parking and loading is provided on the site plan.

E. Eureka Addition has been final platted and an adequate provision of drainage, and other public utilities will be provided.

F. Access to Lots 16-18 is proposed through a 40-foot wide driveway off of Eureka Terrace which is accessed from Eureka Drive. Adequate access to the lot will be provided once road improvements have been created.

Emig moved to approve a CONDITIONAL USE PERMIT to allow for a proposed Wholesale Distribution Warehouse and Home Improvement Center located generally at the northeast corner of the intersection of Eureka Drive and Eureka Terrace in the C-6, Heavy Commercial District with the following conditions:

1. The Conditional Use Permit shall apply to a wholesale distribution warehouse and home improvement center.
2. All necessary permits shall be obtained.

Hardy seconded which passed with a vote 5-0.

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

1. There are no specific physical conditions which are unique to the property, preventing strict application of the regulations. In this case, the unique condition is contractor type lumber yards are not specifically outlined in the Manhattan Zoning Regulations. Utilizing the "Home Improvement Center" and "Wholesale Distribution Warehouse" use designations create the condition which require the Variance and companion Conditional Use Permit.

2. To the west and south are unimproved platted lots within Eureka Addition, zoned I-3, Light Industrial, and C-6, Heavy Commercial District respectively. To the north is Eureka Drive, followed by the Job Corps which is zoned U, University District. To the east is an agricultural field zoned County G-1, General Agriculture.

3. As previously mentioned, the proposed use itself is unique as the Lumber Yard use is not specifically outlined in the Manhattan Zoning Regulations. The "Home Improvement Center" and "Wholesale Distribution Warehouse" designations were determined based on similar types of uses and general operations of the proposed use. Although the C-6 District does not have a requirement on the amount of outdoor storage area allowed, a Use Limitation in the C-5 District limits the amount of accessory storage space to one-half (1/2) the floor area of the



principal structure. Accessory storage is defined as “outside storage, outside display, and storage in any structure other than the principal structure.” To require strict application of the regulations, the smaller 4,800 sq. ft. storage structure could be allowed, but the additional storage structure and additional outdoor storage area necessary for the operation would not be permitted. As outlined in the application documents, “Outside storage is an essential component to successfully operating a lumber yard. Bulk storage of materials and vehicle maneuvering space is necessary for this project to proceed. Not granting this Variance would create a hardship to the applicant.”

4. The proposed use is generally consistent with the intent of the C-6, District and surrounding industrial districts. Given the site is proposed to be generally enclosed with sight obscuring screening, the proposed outdoor storage area is not anticipated to have an adverse effect on the general public.

5. The general intent of the C-5, Use Limitation is to create a balance between the amount of accessory storage associated with a publicly accessed Home Improvement Center and the principal structure itself. In this case, the zoning District is C-6, which is designed to cater to construction type uses and are not intended to cater to the general public. Similarly, the C-6 District does not regulate the size of accessory storage areas, but does require outdoor storage to be screened with sight obscuring screening. Lumber Yards are not specifically identified in the Manhattan Zoning Regulations therefore a classification was given to the use. Given that the proposed use is more than a typical “Home Improvement Center” for the general population, it appears the regulation in this case is unnecessary.

Hardy moved to approve a VARIANCE to increase the size of a proposed accessory storage area from 6,750 sq. ft to 151,000 sq. ft. for a proposed Wholesale Distribution Warehouse and Home Improvement Center generally located at the northeast corner of the intersection of Eureka Drive and Eureka Terrace in the C-6, Heavy Commercial District with the following conditions:

1. A Conditional Use shall be obtained.
2. All applicable permits shall be obtained.
3. The Variance shall apply to a wholesale distribution warehouse and home improvement center.

Emig seconded, which passed with a vote 5-0.

**A PUBLIC HEARING TO CONSIDER A VARIANCE FOR LOTS 37, 60-62 HIGHLAND MEADOWS UNIT ONE TO NOT PROVIDE THE MINIMUM SIX (6) FOOT HIGH SIGHT OBSCURING SCREENING REQUIRED FOR OFF-STREET PARKING AREAS CONTAINING MORE THAN SIX (6) PARKING SPACES LOCATED WITHIN TWENTY-FIVE (25) FEET OF ADJACENT PROPERTY SITUATED IN A RESIDENTIAL DISTRICT. THE PROPERTY IS A MULTIPLE-FAMILY APARTMENT COMPLEX WITHIN THE HIGHLAND MEADOWS ADDITION, UNIT ONE IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: HIGHLAND RIDGE PARTNERS, LLC.)**

Frazzell presented the staff report, recommending approval of the Variance with two conditions.

Hamilton clarified that the proposed variance only affected the screening along the west property line and not any other location.

Schultz presented a landscape rendering of the location for the decorative landscaping and illustrated the location of the retaining wall.

Jackson closed the Public Hearing and opened for Board discussion.

Hardy said he could support the request and applauded the applicant for speaking with the neighbors.

Hamilton agreed with Hardy and said she appreciated knowing that the applicant spoke with the church.

1. Lots 37, 60-62 are located between six and twelve feet below grade of the residential property to the west. The existing topography and the presence of an existing living plant retainer wall along the west property line of Lots 60-62 provides natural buffering of the parking area from the residential property to the west.

2. Property to the north and east are part of the multiple family residential development and will not be adversely impacted by the proposed Variance. Property to the south is Scenic Drive, which will partially be screened with the position of the residential buildings. The vacant residential property to the west is owned by New Hope Church, and they have expressed support for the proposed Variance. The application documents identify that neither the applicant nor the church wanted to have a sight obscuring fence along the west property line, therefore a dense row of pine trees were originally proposed along the adjoining property line. The application documents further state the church "wishes to preserve their exposure and view to the east and the pine trees would obscure that." "...both parties agree to change the landscaping to be more functional as decorative landscaping instead of site obscuring." The proposed Variance is not anticipated to have an adverse effect on adjacent properties.

3. The requirement for sight obscuring screening is created from the presence of off-street parking located along the west property line. In this case, there is a six to twelve foot grade change between the adjacent residential property and the off-street parking areas. The adjacent property is owned by New Hope Church and they have offered support of not providing the sight obscuring screening to preserve their exposure to Scenic Drive. The proposed decorative landscaping and existing topography in this case may be sufficient to buffer the multiple-family residential use and associated parking from the single-family residential property to the west.

4. The parking areas which create the condition requiring the sight obscuring screening are located along the west property line. Not providing the sight obscuring screening is not

anticipated to have an adverse impact to the general public.

5. The intent of the regulations related to the screening of off-street parking is to mitigate the negative impact of parking lots, including the light and noise produced by automobile traffic, so that the quality of life for residents of adjacent properties is not diminished. In this case, the six to twelve foot grade change and existing living plant retainer wall provides a general natural buffer of the multiple-family residential parking lots to the adjacent property the west.

Hardy moved to approve a VARIANCE to not provide the minimum six (6) foot high sight obscuring screening required for off-street parking areas containing more than six (6) parking spaces located within twenty-five (25) feet of adjacent property situated in a residential district. The property is a multiple-family apartment complex within the Highland Meadows Addition, Unit One in the R-3, Multiple-Family Residential District with the following conditions:

1. The decorative landscaping provided in the application documents and shown on the landscape plan dated 9-29-06 shall be provided.
2. The landscaping shall be planted within the first planting season and shall be maintained in good condition.

Emig seconded which passed with a vote 5-0.

Hardy said that Chuck Jackson was no longer going to be a member of the Board and thanked Jackson for his years of service and leadership. He stated he was going to be missed.

Jackson thanked the current and past Board members and general public.

With no further business, Jackson adjourned the meeting.

Respectfully Submitted,

Jeremy Frazzell, Planner

121306