

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, April 11, 2007**  
**7:00 PM**

MEMBERS PRESENT: Chairperson Connie Hamilton; Calvin Emig; Kate Watson; La Barbara J. Wigfall; and, Harry Hardy.

MEMBERS ABSENT: None.

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP.

**CONSIDER THE MINUTES OF THE MARCH 14, 2007 BOARD OF ZONING APPEALS MEETING.**

Emig moved to approve the March 14, 2007 minutes, which was seconded by Watson and passed with a vote of 5-0.

**TABLE A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM 25 FOOT FRONT YARD SETBACK FOR AN EXISTING ROOF OVERHANG IN ORDER FOR THE PROPERTY OWNER TO OBTAIN CLEAR TITLE FOR THE PROPERTY LOCATED AT 2005 GLADIOLA COURT. THE PUBLIC HEARING WILL BE RE-ADVERTISED. (APPLICANT/OWNER: JEFF HEWINS)**

Hardy moved that the Board table a Public Hearing from the April 11, 2007, Board of Zoning Appeals meeting to the May 9, 2007, meeting in order to re-advertise the application to consider an Exception of the minimum front yard and side yard setbacks at 2005 Gladiola Court. Emig seconded the motion, which passed on a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE EXISTING AND A PROPOSED EXPANSION OF THE AT THE MANHATTAN COUNTRY CLUB CLUBHOUSE AT 1531 N. 10<sup>TH</sup> STREET. (APPLICANT/OWNER: MANHATTAN COUNTRY CLUB)**

**A PUBLIC HEARING TO CONSIDER A VARIANCE OF OFF-STREET PARKING REQUIREMENTS TO ALLOW A REDUCTION OF THE MINIMUM REQUIRED NUMBER OF SPACES AND TO ALLOW OFF-STREET PARKING ON TEMPORARY OVERFLOW PARKING ON A PERMANENT BASIS ON THE GOLF COURSE GROUNDS IN AREAS OTHER THAN THE EXISTING PAVED OFF-STREET PARKING LOT AT THE MANHATTAN COUNTRY CLUB AT 1531 N. 10<sup>TH</sup> STREET. (APPLICANT/OWNER: MANHATTAN COUNTRY CLUB)**

Watson and Hardy stepped down due to a conflict of interest as both are members of the Manhattan Country Club.

Zilkie presented the staff reports recommending approval with conditions.

Emig asked the basis for the parking requirement and Zilkie explained the closest ratio in the Zoning Regulations is private clubs. City Administration deducts mechanical rooms and bathrooms, as well as other spaces that do not generate parking requirements and has to assume a certain amount of double counting. He asked about the cart storage and Zilkie said the use was not viewed as a demand in and of itself. He said it was unlikely that the entire floor space would be at capacity in every space at any given time.

Wigfall asked if landscape space lost is accounted for and access roads. Zilkie suggested the applicant address the landscaping and access road, but would consider the access road changes, if any, would be normal maintenance.

Hamilton asked the rationale for the reduction of number of spaces. Zilkie suggested that the parking would normally have to be provided on a permanent basis and built and maintained and that it appeared to staff that due to the surfacing and temporary nature of the additional required parking, due to the private club nature of the facility, that a Variance was applicable.

Hamilton opened the public hearing.

Tom Arpin, BG Consultants and Project Architect representing the applicant, provided a history of the clubhouse and golf course. He said the parking would not meet the current requirements if it was built today and temporary parking is provided in the same manner as proposed. He said some trees are lost due to the proposed building and other reasons.

Arpin said the golf course was built as a nine-hole course in 1916 and the original clubhouse was built in 1922. In 1923 the second nine holes was added. The original clubhouse was expanded in 1958 and destroyed by fire in 1963 and rebuilt in 1964. In 1968 another fire occurred and the existing footprint and configuration was then created. Since 1968, minor renovations have been built. A needs assessment was done in the recent past and the need for coordinated food and kitchen service demand drove the current project.

Wigfall complimented the applicant on maintaining the architectural character of the addition with the existing facility.

There were no other public comments and the public hearing was closed.

The Board concurred that they could support the expansion due to the history and changes to the zoning regulations.

The Board made the following findings of fact for the Conditional Use Permit:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed Conditional Use complies with all applicable regulations, except for the request and off-street parking associated with the expansion. The golf course is legally nonconforming and no change is proposed to expand the gold course. The golf course was a permitted use, prior to 1996, at which time the Zoning Regulations were amended and golf courses became a conditional use.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal impact on neighboring properties is expected. The clubhouse is part of the golf course and surrounding neighborhood and building permit history indicates the clubhouse has been on the site since approximately 1964. The expansion is on the northeast side of the existing clubhouse which is approximately 285 feet to the nearest residential dwelling located to the east of the clubhouse. Other residential properties to the west are separated by greater distance, or distance and slope, such as properties to the south. To the north is the golf course.

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

- 1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** The clubhouse and addition are located in the southern part of the golf course site. The clubhouse is a tri-level structure approximately 26 feet to 36 feet in height constructed of pre-cast concrete and stone rubble façade, with an asphalt shingle roof. The main entrance is at the southwestern corner of the building. Existing interior space, which will be renovated, includes: locker rooms, offices, lounge, multi-purpose room, ballroom, kitchen, dining, and meeting rooms. The addition includes: a ground floor for cart storage, second floor pro shop, and third floor adult casual dining/bar with an exterior deck. The proposed renovation and addition are consistent with the historic use of the building and should not dominate use of adjacent property separated by distance and topography due in large part to the fact that the facility is a private club, open to members and guests versus the general public.
- 2. LANDSCAPING AND SCREENING:** Landscaping and screening are provided throughout the site. None is required specific to the proposed clubhouse and addition.

**ADEQUATE PROVISION OF PARKING AND LOADING:** There are 179 existing off-street parking spaces and the proposed expansion will require 264 off-street parking spaces. Two hundred and seventy (270) will be provided. A companion Variance to reduce the number of off-street parking spaces and to allow parking in areas other than a paved parking lot for overflow events must be approved.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Adequate public improvements and provision for drainage are provided.

**ADEQUATE PROVISION OF ACCESS:** The site is accessed from N. 10<sup>th</sup> Street and adequate access is provided.

Emig moved that the Board approve a Conditional Use Permit for the Manhattan Country

Club clubhouse at 1531 N. 10<sup>th</sup> Street, with the following conditions of approval:

1. The conditional use shall be limited to the site plan and building improvements for the renovation and expansion of the clubhouse, as proposed in the applicant's documents.
2. A Variance of off-street parking requirements shall be approved.

Wigfall seconded the motion, which passed on a vote of 5-0.

Emig asked the applicant what the driving need for valet parking is and how is the need determined.

William Elliott, Club Manager, said on occasions such as the 4<sup>th</sup> of July or big event days when a large number of members would be present, then valet or shuttle parking is provided. The need is based on experience. Elliott said that when the uses are full, such as the summer when the pool and course are full and the banquet room will be used, then the temporary parking is provided. Elliott said that when temporary parking is needed, the driver is directed to the temporary parking and is picked up by golf cart. He said actual valet is seldom used, but will occur sometimes. Most often, temporary parking is handled by existing staff. He also mentioned that additional parking was not considered due to monetary and feasibility factors.

Wigfall asked how often valet parking was used and Elliott said once a year and in the other manner, three or four times a year.

Emig said the feasibility of not providing additional parking, at this time, was acceptable, but future expansions of the facilities should be met with additional parking.

Hamilton said her comfort level with the request is that it has been going on and has worked well. She said the consensus of the Board is that future expansion and use of the golf course for temporary parking would not be well received by this, or future, Boards. She commented that the remarks by the club manager are a good record for the Board's basis for its decision of approval.

The Board made the following findings of fact for the Variances:

**CONDITIONS UNIQUE TO THE PROPERTY:** The property is a private golf course approximately 146 acres in area, which is unique to the community. The golf course is bounded by steep slopes on the northeast and south, as well as heavily wooded areas. The 18-hole golf course, driving ranges, clubhouse, parking areas and other improvements have been part of the established neighborhood for approximately 38 or more years. The clubhouse and golf course have been in existence since at least 1964. Off-street parking is provided to serve the membership of the Manhattan Country Club Golf Course. Areas on the golf course and access road/cart paths will provide some locations for overflow demand associated with special events. Golf course grounds are otherwise grass covered and well maintained in areas where overflow parking will occur beyond the existing parking lots.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal impact on adjacent property is expected. The overflow created by the use of space in the clubhouse is on an occasional basis versus a day to day operational basis. Use of the golf course grounds for overflow parking will satisfy the occasional demand. Existing parking otherwise serves the membership of the Country Club, which is a members and guests only facility and not open to the general public. Overflow parking is done by valet or shuttle service versus individual drivers. Overflow parking can be controlled when done by valet or shuttle service, as proposed.

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** The physical conditions of the golf course, steep slopes, wooded areas, and the golf course itself, limit the capacity of the site to provide additional parking for private golf course.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal impact on the public is expected with respect to the reduction of parking and occasional overflow for special events.

**RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the regulations is to ensure that adequate off-street parking is provided based on a proposed use and the parking demand created by that use and to ensure that off-street parking is on a paved surface. The calculated total of 264 assumes every floor space is at its maximum capacity at the same time, which is an unlikely scenario. The parking for the membership is provided by the 179 existing parking spaces. The intent is generally met.

Temporary on-site overflow parking will be on internal access drives/cart paths and golf course areas for special events, on a private golf course, on a limited basis. Portions of the overflow parking are on paved access road/cart paths. The permanent use of temporary parking for special events, as proposed, is a reasonable solution for the property given its unique conditions.

Emig moved that the Board approve a Variance for a reduction of the required number of off-street parking spaces from 264 to 179 and to allow overflow parking on a temporary basis for special events on access roads/cart paths and golf course grounds, all at the Manhattan country Club, 1531 N. 10<sup>th</sup> Street, with the following conditions of approval:

1. Overflow parking shall be limited to those areas shown on the applicant's site plan.
2. A minimum of 179 off-street parking spaces shall be provided as proposed in the applicant's documents.

Wigfall seconded the motion, which passed on a vote of 5-0.

Hardy and Watson rejoined the Board.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A PROPOSED EXPANSION OF THE MANHATTAN SURGICAL CENTER AT 1829**

**COLLEGE AVENUE. (APPLICANT/OWNER: MANHATTAN SURGICAL PROPERTIES LLC/ MERCY HEALTH CENTER OF MANHATTAN INC.)**

Zilkie presented the staff report recommending approval with conditions.

Hamilton opened the public hearing.

Scott Chapman, Administrator of the Manhattan Surgical Center and representing the owner of the facilities, explained the proposed expansion.

There were no questions and the public hearing was closed.

Hardy said the applicant's proposal was put together very well and is a benefit to the community. Hamilton added that the additional parking is also a benefit.

The Board made the following findings of fact for the Conditional Use Permit:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed surgical center expansion requires a Conditional Use Permit and is otherwise in compliance applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed addition and parking will face a detention basin, public street, and hospital and driveways. Minimal impact is expected on adjacent property. To the north is a detention basin serving the hospital, surgical center complex, and Kimball Avenue. To the east is College Avenue and K-State football parking. To the south is Mercy Health Center and off-street parking. To the west is driveway to Mercy Health Center and the vacant former St. Joseph Senior Community.

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

- 1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** The expansion is the same height as the existing center and will be constructed with exterior materials like the existing center. The expansion will be setback approximately 117 feet from the front lot line along College Avenue. The expansion will not dominate the use of adjoining land.
- 2. LANDSCAPING AND SCREENING:** The site is well landscaped and no additional landscaping or screening is required.

**ADEQUATE PROVISION OF PARKING AND LOADING:** Hospitals must provide at least one and one-half (1 ½) parking spaces for each hospital bed. The existing center was required to provide at least 39 parking spaces and 85 were proposed and 90 were built. The additional demand for the expansion would fit within the existing parking; however, the applicant will expand the parking on the north side of the center with 29 additional parking spaces for patients and personnel. A total of 119 parking spaces will be provided.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Adequate public utilities serve the site. The site drains to an existing drainage pond to the north of the surgical center. Storm water detention was designed to conform to the Storm Water Management Master Plan (SWMMP).

**ADEQUATE PROVISION OF ACCESS:** Access to the proposed surgical center will be provided by existing access roads off Kimball and College Avenues and is adequate.

Hardy moved that the Board approve a Conditional Use Permit to allow construction of a proposed expansion of the Manhattan Surgical Center, 1829 College Avenue, with the following conditions:

1. The Conditional Use Permit shall only apply to the proposed site plan and expansion and shall be developed as proposed in the application documents.
2. Future expansions shall require a new Conditional Use Permit.

Emig seconded the motion, which passed on a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER A VARIANCE FOR A SECOND SIGN, A PROPOSED INTERNALLY LIT POLE SIGN, AND A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FOR THE SIGN ALONG WALTERS DRIVE. THE PROPERTY IS AT EISENHOWER MIDDLE SCHOOL, 800 WALTERS DRIVE. (APPLICANT/OWNER: EMS BOOSTER CLUB/USD383)**

Zilkie presented the staff report recommending approval with conditions. He described the revised site plan and that the need for the sign setback reduction was not required.

Hamilton opened the public hearing.

Tonya Woods, representing the Eisenhower Booster Club and school, spoke in favor of the request and said the funds for the sign were raised by the students and families mainly from concession stand sales.

Watson asked if there was any neighborhood response to the application. Woods said petitions were provided with the application and her knowledge of responses is that they have all been positive.

Wigfall asked if Woods knew if there was a timer on the sign and Woods said there was.

Lou Wojunski, 801 Walters Drive, said he was opposed to the Variance and an additional lit sign because of there is already quite a bit of light from existing signs, as well as the appearance of the sign, which looks like a strip mall sign.

Watson asked if the sign was directly across from his property and Wojunski said his home

would face the sign as his house was to the east of the sign's face. He said he had lived at the house for five years and was an owner as opposed to most of the neighborhood being rental.

Woods said there are existing light poles that were built with the school and are on all night.

Watson asked if the petition list included the neighbors across the street from the school. Woods said her understanding was that the students had been up and down the street, but did not know the times when the students went to the homes. It may have been at a time when many people are at work.

There were no other comments and the public hearing was closed.

Hardy said he understood the neighbor's concern about additional light, but the area is very bright at night, notwithstanding the sign. He said other similar signs have been considered with timers. He said the additional light would not be an appreciable amount of light and that Wojunski moved in with knowledge about the existing lights.

Wigfall said she appreciated the efforts of the students to contact the neighborhood and based on the existing amount of light she could support the request.

Watson said she appreciated Wojunski's comments and she didn't believe the list submitted with the application was indicative of neighborhood support, but given the description of the existing amount of light, she could support the request.

Hamilton said she supports the request, but with the same reservations applicable to similar requests' that have been approved for churches and schools in residential neighborhoods, because it is a different kind of look. She said the proposed sign conveys information to the motoring public in a significant manner. She said the proposed sign falls within previously approved and similar signs for churches and schools. She said a timer will help and the proposed sign provides significant information.

The Board made the following findings of fact for the Variance:

**CONDITIONS UNIQUE TO THE PROPERTY:** The property is a large school campus with a number of activities taking place on the premises throughout any given day. The use of the property as a middle school creates a need to ensure there is adequate identification of the school building for visitors and to provide additional information about upcoming events and activities that can be seen by students and parents at different times of the day.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Under existing conditions, the front of the school building is well lit by light poles and bollard lighting. While this lighting appears to be downcast with limited glare onto the single-family attached homes on the south side of Walters Drive, it is evident that these residences currently experience a higher level of lighting than many other residential neighborhoods. In addition, the adjacent Eisenhower Baseball Complex is used for ballgames at night during baseball season and also contributes to



some light spillover onto the surrounding neighborhoods.

Residents are accustomed to substantial lighting in front of Eisenhower School and from the Eisenhower Baseball Complex, and it appears unlikely that the addition of a second sign that is internally illuminated will have a significant adverse impact. The placement of the sign, set back over thirty (30) feet from the back of the curb and oriented perpendicular to the street so it does not face the residential properties directly, will also help to minimize any negative impacts on adjacent residential properties. Externally lit signs are permitted within residential districts. It is uncertain whether the proposed internally lit sign will produce more or less light pollution than an otherwise similar externally lit sign.

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

The proposed sign would allow the school to place notices of school functions and activities on the sign to better inform school patrons and the general public. Currently the school does not have a sign or other mechanism on the site to provide this type of information. If the request for a second sign were to be denied, Eisenhower Middle School would not be permitted a sign serving that function.

It is suggested by the applicant that internal illumination will afford better readability of the bulletin board sign. If the request for internal illumination is denied, a non-internally lit sign may be more difficult to read during evening hours.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** There should be no adverse effects on the public. The proposed sign will be set back greater than the minimum 15-foot setback required for a sign in the residential district and will not encroach into any vision clearance triangle.

**RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the Sign Regulations within residential districts is to limit the size, placement, number, and illumination characteristics so that residential properties are not negatively impacted. The intent of the restriction regarding the number of signs is to not have signs dominate the surrounding residential neighborhood. The intent of the restriction on internally illuminated signs is to control signs that are considered “commercial” in character. The intent is also to control the amount of potential light pollution or spillover into residential areas.

Considering the large size of the Eisenhower Middle School campus and the various activities that take place at the school, the request for a second sign serving this type of function seems to be reasonable. Generally, externally lit ground signs are considered more compatible with the aesthetic character of residential settings. However, it appears that the proposed internally lit sign is compatible with the character that has been established in this particular neighborhood. It is not evident that the amount of light pollution or spillover from the proposed sign will be greater than that of an externally lit sign.

Hardy moved that the Board approve a Variance to allow a second sign and to allow the proposed sign to be internally illuminated within a residential zoning district, with the

following conditions:

1. The Variance shall only apply to the proposed site plan and the proposed sign.
2. The internal illumination shall be turned off by 10 p.m. each night.

Emig seconded the motion, which passed on a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER EXCEPTIONS TO ALLOW A REDUCTION OF THE MINIMUM 25 FOOT REAR YARD SETBACK TO 20 FEET FOR PROPOSED DECKS AND A REDUCTION OF THE MINIMUM 25 FOOT REAR YARD SETBACK TO 15 FEET AND A DECK AT 5 FEET FOR ONE RESIDENTIAL STRUCTURE. THE PROPERTIES ARE LOCATED WEST OF THE INTERSECTION OF NEWFOUNDLAND DRIVE AND KIMBALL AVENUE, MORE SPECIFICALLY SINGLE-FAMILY ATTACHED RESIDENTIAL LOTS ALONG THE WEST SIDE OF NEWFOUNDLAND DRIVE. (APPLICANT/OWNER: BAYER CONSTRUCTION CO.)**

Zilkie presented the staff report recommending approval with conditions.

Hamilton opened the public hearing.

Leon Brown, Schwab-Eaton Engineers representing the applicant, explained the project and the difficulties developing the site. He also said the developer thinks the larger decks will make the project more marketable.

Watson said Brown had indicated bigger decks would make the development more marketable and asked bigger than what. Brown said the original thought was 8 foot patios, but with respect to the terrain, the larger decks were less cramped. In addition, the decks would be 8-10 feet above grade and the feel would be like being on a small pedestal. He also mentioned the market was for pre-retirees and that market wanted the proposed amenity.

There being no further comments, the public hearing was closed.

Hardy and Hamilton said they could support the request with Hamilton adding that the basis for the Exception may include all of the circumstances, including market related findings, unlike a Variance, which could not be supported by economic factors. She said that based on topographical concerns were sufficient reasons to support the Exception, but her support was a bit of a hurdle because a 7 foot deck could be built without an Exception. However, she appreciated the feel and height concerns for a deck, which meets the minimum requirement.

The Board made the following findings of fact for the Exceptions:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The properties comply with all applicable requirements of the Zoning Regulations, other than the ones for which an Exceptions are being requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimum impact on the public is anticipated. The structures are out of public easements and separated from multiple-family homes to the west by a large conservation and drainage easement approximately 120 feet in width. Other surrounding properties are separated by public street and common area.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Structures will remain outside public easements. Decks on the rear will be at the same setback to maintain a consistent order along the rear yards. The reduced rear yard for the home on Lot 12A is outside of public easement and generally consistent with the rear yard development of Lot 12B to 20B.

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

If not for the steep slope of the rear yard and the impracticality of filling the yard to street grade, the decks could likely be constructed to within 10 feet of the rear lot line. Decks are treated as accessory structure subject to the requirement of Section 3-405 (A) and if the deck does not meet the requirements of Section 3-405 (A), it is subject to the principal structure minimum rear yard setback, or 25 feet. Lot 12A, a pie shaped lot creates a rear yard inconsistent with the rear yard of Lot 12B making the construction of the dwelling and deck an impractical and unreasonable condition.

Hardy moved that the Board approve a reduction of the minimum rear yard setback from 25 feet to 20 feet for decks on Lots 12B to 20 B, Kimball Townhomes Addition; a reduction of the minimum rear yard setback from 25 feet to 5 feet for a deck on Lot 12A, Kimball Townhomes Addition; and, a reduction of the minimum 25 foot rear yard setback to 15 feet for a single-family attached structure on Lot 12 A, Kimball Townhomes Addition, with the following conditions:

1. The Exceptions shall be according to the site plan shown in the application documents.
2. The first building permit shall be obtained within 180 days of the date of approval and each subsequent permit must be obtained within 180 days of the previous permit.

Emig seconded the motion, which passed on a vote of 5-0.

The Board recessed for an ADA break and resumed five minutes later.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM 25 FOOT FRONT YARD SETBACK TO 17 FEET ALONG TUTTLE CREEK BOULEVARD FOR A PROPOSED COMMERCIAL BUILDING ADDITION AT 1601 TUTTLE CREEK BOULEVARD. (APPLICANT/OWNER: TODD CALVIN/TJMJ LLC)**

Zilkie presented the staff report recommending approval with conditions.

Hamilton opened the public hearing.

Sean Ruve, applicant and owner, said in response to a question about the volume of expected business said that most business would be on an appointment basis and the store was not intended as a high volume retail use, but more on a consultation basis.

Wigfall asked for the square footage of the addition and Ruve said it was 1,800 square feet. She asked if he had considered a reduction. He said he pre-ordered the building by buy-a-building.com and now he has the building because he is not a builder or architect.

There being no further comments, the public hearing was closed.

The Board indicated the Exception could be supported based on the standards.

The Board made the following findings of fact for the Exception:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property complies with all applicable requirements of the Zoning Regulations, other than the one for which an Exception is being requested. An Exception of the minimum front yard setback for an accessory structure was approved by the Board of Zoning Appeals in 2202 to reduce the minimum 60 foot front yard setback to 0 feet along Holiday Drive for an accessory building for an auto detail shop and service area. The structure was not built and the Exception expired 180 days after it was approved in July 2002, because no building permit was applied for. The proposed site plan provides adequate parking for the addition and must provide landscaping as required by the Zoning Regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** No adverse impacts to adjacent properties are expected. Due to the proposed addition's location on the north and east part of the site, the addition will be screened by hillside for vehicles traveling south on Tuttle Creek Boulevard. To the east is Tuttle Creek Boulevard. The adjacent property to the west and north of the site is vacant and most likely cannot be developed due to the extreme incline of the land. The land further to the north is a portion of the golf course owned by Manhattan County Club. The property to the south, across Holiday Drive, is also within the C-5 District and is developed as a motel.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** No adverse impacts to the public are expected. The proposed addition does not encroach into any public utility easements.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** A very steep slope is located in the west, northwest portion of the property making it impossible to locate the proposed addition further to the north and out of the setback. It is unreasonable to require the existing building to be moved to the west 7 feet to so that the addition would conform to the front yard setback. A previously approved Exception of the front yard along Holiday Drive was not fulfilled and the proposed Exception does not increase

structures in the front yard. The addition is a minimal encroachment in the front yard along Tuttle Creek Boulevard and will be approximately 67 feet from the street, a distance greater than commonly found on many commercial streets due to Tuttle Creek Boulevard being an expressway with a right of way width greater than normal.

Emig moved that the Board approve a reduction of the minimum 25 foot front yard setback to 17 feet for a proposed commercial building addition at 1601 Tuttle Creek Boulevard, with the following condition of approval:

1. The Exception shall be limited to the approved site plan.
2. Requirements for off-street parking shall be complied with including, design, minimum number of off-street parking spaces, and landscaping.

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

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A PROPOSED CLUBHOUSE AND POOL AT THE PROPOSED STONE POINTE APARTMENT COMPLEX. THE CLUBHOUSE AND POOL ARE GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION N. SCENIC DRIVE AND HIGHLAND RIDGE DRIVE. (APPLICANT/OWNER: STONE CREST LAND CO.)**

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM NUMBER OF REQUIRED OFF-STREET PARKING SPACES FROM 720 TO 537 AND A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FOR AN ACCESSORY CARPORT FROM 60 FEET TO 28 FEET ALONG STONE POINTE DRIVE. THE APARTMENT COMPLEX IS GENERALLY LOCATED EAST OF THE INTERSECTION N. SCENIC DRIVE AND HIGHLAND RIDGE DRIVE. (APPLICANT/OWNER: STONE CREST LAND CO.)**

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW OFF-STREET PARKING BETWEEN THE FRONT LOT LINE AND THE FURTHEST POINT ON THE FRONT OF APARTMENT BUILDINGS IN THE PROPOSED STONE POINTE APARTMENT COMPLEX. THE APARTMENT COMPLEX IS GENERALLY LOCATED EAST OF THE INTERSECTION N. SCENIC DRIVE AND HIGHLAND RIDGE DRIVE. STREET. (APPLICANT/OWNER: STONE CREST LAND CO.)**

Zilkie presented the staff reports recommending approval with conditions.

Hamilton opened the public hearing.

Tim Schulz, representing the owner Stone Crest Land Co., said similar requests were approved in Highland Ridge to the west. He said the future owner and builder, Mike Hill, was also present.

Mike Hill requested the Board allow him nine months, or 270 days, to obtain the first building

permit and six months for each subsequent permit, rather than the 180 day requirement for the first building permit. He said the reason he is involved in another project and wants to be sure he can get the other project done before getting the first permit. He also said the market is in flux due to military deployments.

The Board said granting a 270 day period for the first permit would set a precedent for applications. After further discussion, the Board found no basis for the request and would be sympathetic to an extension, based on the applicant's reasons

There being no further comments, the public hearing was closed.

Hardy said the request was like the project in Highland Ridge, which was approved.

The Board made the following findings of fact for the Conditional Use Permit:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed clubhouse/pool complies with all regulations, except a Conditional Use Permit must be approved.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal impact is expected on adjacent properties. To the north and south is the proposed apartment complex. To the west is N. Scenic Drive. The proposed clubhouse/pool will be separated from duplex development to the east by a public street. The proposed swimming pool will be surrounded by a fence, which must conform to Building Code requirements for safety purposes.

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

- 1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** The one-story clubhouse and pool are part of the proposed Stone Pointe apartment complex, which will serve the tenants of the apartment complex. Its location and the nature of the improvements will not dominate the neighborhood.
- 2. LANDSCAPING AND SCREENING:** Landscaping and screening are not required, although the pool must be enclosed by fence, subject to building code requirements.

**ADEQUATE PROVISION OF PARKING AND LOADING:** The Manhattan Zoning Regulations do not specifically address parking requirements for the proposed clubhouse and swimming pool. National standards requirements vary from 1 to 4 spaces for every 200 square feet of pool surface area. The proposed swimming pool may be approximately 25 feet in width by 40 feet in length, or 1,00 square feet in surface area, which would typically result in 5 to 20 potential required parking spaces. The applicant has made provisions for 17 parking spaces on Lot 4. Given the fact that the swimming pool is designed for use by residents and guests of the apartment complex, many of whom will walk to the pool, and the availability of off-street parking associated with the apartment complex, the off-street parking spaces provided should be a reasonable number.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Adequate provision for drainage and public facilities were considered with the approval of the Preliminary Plat and Final Plat of the Stone Pointe Addition. No additional public improvements are needed to serve the proposed use.

**ADEQUATE PROVISION OF ACCESS:** Vehicular access is from Highland Ridge Drive and is adequate. Sidewalk is required and provided along neighborhood streets. Pedestrian access is otherwise through parking lot aisles.

Hardy moved that the Board approve a Conditional Use Permit for the installation of a swimming pool and clubhouse on Lot 4, Stone Pointe Addition, with the following conditions:

1. The applicant shall obtain all necessary building permits prior to construction of the swimming pool and clubhouse.
2. The conditional use shall apply to the proposed site plan.
3. The first building permit shall be obtained within 180 days of the date of approval and each subsequent permit must be obtained within 180 days of the initial permit.

Wigfall seconded the motion, which passed on a vote of 5-0.

The Board made the following findings of fact for the Exceptions:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The site otherwise complies with all applicable regulations other than those addressed through this application and the concurrent requests for a Variance related to location of off-street parking and a Conditional Use Permit for a clubhouse/pool.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** No adverse impacts on adjacent property owners are expected. The number of parking spaces provided should be more than adequate to handle the parking demand and tenant market and there is no reason to expect that residents will be forced to use adjacent neighborhoods for parking. The reduced setback for the carports is greater than the 25 foot front yard setback and the structures are behind the proposed apartment building facades.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Negative impacts on the public are not expected. There is no reason to expect that the number of parking spaces provided will be insufficient to handle the parking demand. The off-street parking requirements of the Zoning Regulations are largely intended to address the parking situation inherent in apartment complexes that are occupied predominately by students. Apartment complexes occupied by students normally have at least one car per occupant and therefore require a higher number of

parking spaces per dwelling to account for guests and other visitors. Apartment complexes targeted to a different demographic, as is the case with proposed apartment complex, generally do not require as many parking spaces per dwelling unit to meet the parking demand. Similar reductions have been approved in the Pebblebrook apartment complex and Highland Meadows apartment complex, both of which are in the general neighborhood of the site.

Current tenancy is generally one person per bedroom when occupied by unmarried persons . An example of this trend is reflected in the parking requirements of the M-FRO, Multi-Family Redevelopment Overlay District west of KSU campus, in which one parking space is required per bedroom.

In addition, a benefit of reducing the amount of parking required is the fact that more of the development that would otherwise be paved will be maintained as green space.

Floodway along Wildcat Creek, which is to the north of apartment buildings on the north side of Highland Ridge Drive, could be utilized for parking, but the Floodway is intended to convey flood waters. The Floodway will be preserved as a part of the proposed site plan.

Reduced front yard setback of the accessory carports are not in a utility or other public easement. The carport on Lot 8 is outside of a stream bank setback from Wildcat Creek.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:**  
The strict application of the regulations would require the applicant to provide many more parking spaces than what is realistically needed, likely requiring the applicant to create parking areas within the apartment complex that are maintained as open green space.

The carports are beyond the 25 foot setback at a proposed 28 foot setback and to the side of nearby apartment buildings. Although the structure on Lot 3 could be located along the N. Scenic Drive yard, there does not appear to be any adverse impact created by the structure, which forms a part of a complex and the request is reasonable. The carport on Lot 8 cannot be located to the rear of the building due to the stream bank setback.

Emig moved that the Board approve an Exception to allow for a reduction of the minimum required number of off-street parking spaces for a proposed multiple-family complex on Lots 1-11 in the Stone Pointer Addition, from a total of 720 off-street parking spaces based on two-bedroom units, to 537 off-street parking spaces; and, a reduction of the minimum 60 foot front yard setback to 28 feet for a proposed accessory carport on Lot 3 and on Lot 8, with the following conditions:

1. The Exceptions shall be limited to the proposed site plan and number of dwelling units and bedrooms per dwelling unit, and carport locations set out in the application documents.
2. A minimum of 537 off-street parking spaces shall be provided.
3. A companion Variance for the proposed off-street shall be approved.



4. The first building permit shall be obtained within 180 days of the date of approval and each subsequent permit must be obtained within 180 days of the initial permit.

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

Watson said the buildings provide for variation on the façade and did not want the requirement to be a penalty in order to meet the standard. Hardy also commented that the creek setback is a unique factor and the setback requirement imposes design restrictions.

The Board made the following findings of fact for the Variance:

**CONDITIONS UNIQUE TO THE PROPERTY:** A large portion of the northern parts of Lots 5,6, 8, 9 and 11 are located within the Floodway portion of the 100 Year Flood Plain, which is an unbuildable area; however parking areas are a permitted use allowed in the Floodway. Wildcat Creek is immediately north of the lots and is a natural limitation on space available for parking. While parking is allowed in the Floodway, subject to local and state flood plain regulations, it is discouraged so as to maintain the Floodway flow of flood waters free of obstructions. Floodway areas are proposed to be maintained as open space and drainage easement. By maintaining this open area, less land is available and the site is more restricted in how the parking areas are arranged in relation to the apartment buildings. In addition, the flood plain is being used for a siltation basin to control storm water run-off into Wildcat Creek, as required by the State of Kansas, and to comply with the Clean Water Act.

The location of parking on Lots 1,2, and 3 is a function of the street patterns restricting the depth between N. Scenic Drive and Stone Pointe Drive.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal adverse impact is anticipated to adjacent properties. Front yards are maintained as open space along Stone Pointe Drive and Highland Ridge Drive.

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** Strict application of the Regulations would require the applicant to redesign the site layout of the proposed apartment complex, likely forcing the applicant to add fill to a portion of Floodway in order to develop areas within the 100-Year Flood Plain and re-design a siltation basin. In addition, the property has been Final Platted and development of duplexes is beginning to the east of Lots 1, 2, and 3.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** No adverse impact to the public is expected with the Variance request. Realistically, the only parking area associated with this request that may have an impact on the public is the permitted parking areas adjacent to N. Scenic Drive and that impact is visual

**RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the off-street parking

regulations is to reduce the visual impact of large parking areas to passers-by and adjacent residential uses. The proposed site plan meets the spirit and intent of the regulations. All parking is behind the minimum front yard setback. The apartment buildings are located so that they face the fronting street and the parking areas are to the side and rear of the buildings, although not technically the furthest point on the facade. This type of development pattern is generally consistent with the intent of the regulations.

Buildings could be constructed with flat facades and no relief so that the literal requirement is met; however, to provide buildings with relief and varying façade depths, the regulation imposes a standard which is generally unreasonable.

The specific requirement requiring the Variance was created in the mid-1980's as a result of paved parking being placed in front of apartment buildings in the older grid street patterned portion, or Ward Districts, of the City. The regulation in that part of the City was to preserve front yards along primarily rectangular lots and grid street patterns. The proposed development is consistent with modern development patterns versus street patterns created in the late 1800's.

Emig moved that the Board approve a Variance of the location requirement of off-street parking in the Stone Pointe Addition for Lots 1-3 and 5, 6, 8, 9 and 11, associated with a proposed apartment complex, with the following conditions:

1. The Variance shall be according to the proposed site plan shown in the application documents and shall be limited to those lots on the proposed site plan.
2. The Variance shall be approved concurrently with the application for an Exception.
3. The first building permit shall be obtained within 180 days of the date of approval and each subsequent permit must be obtained within 180 days of the initial permit.

Wigfall seconded the motion, which passed on a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT TO ALLOW A DRIVE-IN RESTAURANT FOR A PROPOSED COFFEE/ESPRESSO RESTAURANT IN THE BLUEHILLS SHOPPING CENTER AT 2304 TUTTLE CREEK BOULEVARD. (APPLICANT/OWNER: MARK SAMARRAI-S&S DEVELOPMENT)**

Zilkie presented the staff report recommending approval with conditions.

Hamilton opened the public hearing.

Mark Samarrai, S&S Development and applicant, said he would be a co-owner of the coffee shop with Duane Lewis.

Steve Shields, Meadowlark Hills, expressed how pleased he was with the improvements to Bluehills Shopping Center. He was concerned about the access road to the shopping center from Tuttle Creek Boulevard and its maintenance. He was also concerned that the proposed use would add traffic that would increase problems with maintenance and that Bluehills Shopping Center should be responsible for its maintenance.

Emig asked if Meadowlark granted an access easement to Bluehills and Shields said that was correct and the easement does not address maintenance. Emig asked if S&S had been contacted about maintenance. Shields generally indicated that S&S had been busy and they had not been contacted. Emig said the Board had no ability to impose a maintenance requirement on S&S.

Hardy said the Board would have to find that the proposed coffee shop would add a significant volume of traffic, which would wear down the access road, and didn't think that was the case. He said Shields' concerns were oriented more towards the entire shopping center. If the applicant was building a restaurant, the Board would not even be considering a request.

Samarrai said he would work with Meadowlark to work things out.

There being no further comments, the public hearing was closed.

Hamilton said the standards would allow for domination of use and that was not present, as well as access. She said she thought the access road could handle the proposed use, but maintenance was a private issue.

Watson asked if the Board was saying that the traffic generated by the proposed use did not warrant a condition of approval. Hamilton said the Board is saying that it cannot reach a conclusion that the amount of traffic is such that the proposed use will generate more traffic than the existing shopping center, in turn, creating the need for a condition that the applicant maintain the access road.

Wigfall wanted the record to note S&S's willingness to work with the neighbor regarding maintenance of the road.

The Board made the following findings of fact for the Conditional Use Permit:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

2304 Tuttle Creek Blvd, The Blue Hills Shopping Center, Lot 1 is a large regularly shaped lot located within the C-2, Neighborhood Shopping District. Lot 1 is currently under redevelopment, consisting of the rehab of the existing Blue Hills Shopping Center, a proposed convenience store with a car wash, and the proposed drive up coffee/espresso restaurant. The parking lot and property's landscaping will also be improved. Other than the proposed Conditional Use the subject property complies with all applicable regulations

**PROBABLE EFFECT ON ADJACENT PROPERTIES:**

2304 Tuttle Creek Boulevard is generally located on the corner of Tuttle Creek Blvd and Kimball Avenue, with Tuttle Creek Boulevard running parallel to the northeast property line and Kimball Ave running parallel to the southeast property line. To the general northeast and southwest of the subject property is the Meadowlark Hills PUD. To the general southeast there is a gas station with an attached liquor store located in the C-5, Highway Service Commercial District. To the general northeast are single family homes located in the R-1, Single Family Residential District. The addition of the proposed drive up coffee/espresso restaurant is not foreseen to have a negative effect on adjacent properties due to its proposed location and general design.

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

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

The proposed structure at 2304 Tuttle Creek Boulevard will be a single story commercial building located generally in the central northeast portion of the lot with an approximate area of 300 square feet. No more than two (2) employees will occupy the establishment during business hours (6 a.m. to 8 p.m.) seven (7) days a week.

**2. LANDSCAPING AND SCREENING:**

The applicant is proposing landscaping on either end of proposed structure. Each proposed area will be a half circle shaped containing approximately 77 square feet of landscaping. Landscaping along Tuttle Creek Blvd is also proposed with an approximate area of 6,000 square feet, as well as five (5) landscaped islands located in the parking lot, each with an estimated area of 288 square feet. Adequate landscaping is provided for the site.

**ADEQUATE PROVISION OF PARKING AND LOADING:**

The proposed location of the drive in restaurant currently is in part of the Blue Hills Shopping Center parking lot. Six parking spaces were provided associated with the issuance of a building permit for the restaurant only, which are to the north of the restaurant. Although the overall site meets the required number of ADA stalls, there are none located within a reasonable distance of the proposed coffee/espresso restaurant.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:**

Adequate utilities including electric, sanitary sewer and water service is readily available to this site. The proposed location of the restaurant is currently paved and the proposed structure will not result in any additional impervious surface area. The current storm drainage flows to the northeastern portion of the site to a drainage ditch along Tuttle Creek Blvd.

**ADEQUATE PROVISION OF ACCESS:**

The subject property currently has frontages along Tuttle Creek Blvd to the general northeast and Kimball Ave to the general southeast. Each frontage contains an access point to and from their respective streets. These two access point provide adequate accessibility to the subject property.

Emig moved that the Board approve a Conditional Use Permit for a proposed drive in coffee/espresso restaurant at 2304 Tuttle Creek Boulevard, Blue Hills Shopping Center, Lot 1,

with the following conditions:

1. The drive-in coffee/espresso restaurant shall be constructed according to the site plan and accompanying application documents.
2. A new building permit shall be obtained.
3. If ADA parking is required in the vicinity of the drive-in restaurant, the ADA parking space shall be provided.

Wigfall seconded the motion, which passed on a vote of 5-0.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Steve Zilkie, Senior Planner