

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, June 11, 2008**  
**7:00 PM**

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

MEMBERS ABSENT: None

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Anne Antonini, Planning Intern

**CONSIDER THE MINUTES**

Calvin Emig motioned for approval of the minutes of the May 14, 2008 Board of Zoning Appeals meeting.

La Barbara Wigfall seconded the motion, which passed unanimously.

**TABLE the PUBLIC HEARING to consider a request for a Variance to not provide sight obscuring screening of not less than six (6) feet in height for purposes of screening outside storage at 902 Fair Lane in the LM-SC, Light Manufacturing Service Commercial District, generally for that part of the outside storage along Fair Lane.**

Emig moved to table the public hearing to consider a request for a Variance to not provide sight obscuring screening of not less than (6) feet in height for purposes of screening outdoor storage at 902 Fair Lane in the LM-SC, Light Manufacturing Service Commercial District.

La Barbara seconded the motion, which passed with a vote of 5-0.

**A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum ten (10) foot rear yard setback to zero (0) feet and to allow a reduction of the minimum three (3) foot side yard setback to zero (0) feet for a new detached garage; to allow lot coverage to be increased from the maximum thirty (30) percent to thirty-one (31) percent due to the construction of a new detached garage; and, a reduction of the minimum eight (8) foot side yard setbacks for the existing house and deck for the owners to have clear title to the property; all for the property located in the R-1/TNO, Single-Family Residential District and the Traditional Neighborhood Overlay District at 1618 Houston Street.**

Steve Zilkie presented the City Staff Report with a recommendation for approval with three (3) conditions.

Emig asked Zilkie for clarification about a curb-cut and driveway visible in photos presented in the Staff Report Presentation.

Zilkie provided clarification.

Harry Hardy opened the public hearing.

Applicant John Casiano provided further clarification about the driveway in question, and about the setback encroachments on the subject property.

With no further public comments, Hardy closed the public hearing and opened Board discussion.

Connie Hamilton stated that she appreciated Emig's comments regarding the driveway, she expressed that they enabled the Board to determine that the applicant did not create the need for the Exception. She further stated that she could support the Exception request, and that the subject property was very well-maintained.

Emig stated that he could also support the requested Exceptions.

Joe Aistrup asked for additional clarification on the curb-cut visible in photos presented by city staff.

Casiano provided clarification.

With no further public comment, Hardy closed the public hearing.

The Board made the following findings of fact for the Exception at 1618 Houston Street:

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The property currently complies with all applicable requirements of the Zoning Regulations, other than the ones for which the Exceptions are being requested.

**2. PROBABLE AFFECT ON ADJACENT PROPERTIES:**

Properties to the east, south and west are located in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The properties to the north of the subject site along Poyntz Avenue are in the C-1, Restricted Business District.

Minimal impact on adjacent properties is expected. The applicant has proposed to locate the new garage in approximately the same location as the existing garage. The existing garage, located along the rear and east property line, has been a part of the residential neighborhood since 1945. The applicant has proposed to expand the garage approximately three (3) feet to the south. This minimal increase in width and building

height should not impact the adjacent neighbors or the surrounding area. Currently, a six (6) foot tall privacy fence exists along the east property line, which connects to the southeast corner of the existing garage. The height of the expanded portion of the proposed detached garage will have a rear façade of nine (9) feet or approximately three (3) feet taller than the existing fence. A mature cedar tree located south of the existing garage, along the east property line should provide landscaped screening from the added width and height of the new garage. The proposed location and size of the garage is in character with other properties in the area. Several properties to the east, west and south have garages in a similar location, including the properties directly to the east and west.

The Exception request to exceed the maximum lot coverage should not adversely impact the area. The interior lot has a total area of approximately 7,500, similar to other Ward District lots. The existing house, deck in the rear yard and detached garage, including roof overhangs, has a lot coverage of approximately 2,214 square feet or 29.5 percent. By replacing the existing garage with the proposed 21 foot by 20 foot garage, the total lot coverage would increase to approximately 2,299 square feet or 30.6 percent. The impact created by the increase of eighty-five (85) square feet should be minimal considering that the proposed garage will meet the character of the neighborhood and will be adequately screened by mature cedar trees and a privacy fence.

Reducing the side yard setbacks for the existing west side of the house and the existing deck should not adversely affect property as the improvements have been part of the neighborhood since 1945 and no adverse comments about the west side of the house or deck are of record. Furthermore, the deck in the back yard is screened by a six (6) foot tall privacy fence, which further reduces any adverse impact on the adjacent properties.

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

Adverse impact on the public is not expected. No vision triangle or public easements are encroached upon by the proposed garage, existing house or existing deck. The design and location of the proposed garage will result in the owners having to back their vehicle out of the garage parallel to the alley before entering the alley, thus reducing possible collisions with vehicle traveling in the public alley when compared to backing directly into the alley. This garage and driveway design will result in a safer driving environment in the alley.

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

The strict application of the accessory structure setback regulations would require the applicants to locate the garage to the south and west to be outside of the side and rear yard setbacks. The applicant has stated in the application materials that moving the

proposed garage would result in “having to remove two mature cedar trees and a portion of the back yard.” A previous site plan showed the garage located near the west property line outside of the required setbacks. The applicants later determined that this proposed location “may impact storm water run-off from the adjacent neighbors because the grade of that property is approximately one (1) to two (2) feet higher than the subject property.” By placing the proposed garage in this location, storm water run-off may back up onto the adjacent property or erode the foundation of the new garage. The applicant could repair the existing detached garage and maintain the existing footprint to meet the requirements of legal nonconforming improvements and the maximum lot coverage regulation. Considering all facts and circumstances, requiring the strict application of the maximum lot coverage regulations and accessory structure setback requirements is unreasonable.

In regards to the Exception requests for the side yard setbacks of the existing house and deck, the property owner did not own the house when it was originally constructed in 1945. The minimum side yard setback was 6 feet when the house was built. The building plan for the dwelling or deck on the property could not be located. It is unreasonable for the owner to remove the exterior wall, roof overhang and deck encroachments, which were not created by the applicant. The setback regulations are intended to provide open yards free of principal structure. The side yards are open and maintain a minimum separation distance from neighboring properties. Without the Exceptions for the existing house and deck, the applicant cannot have clear and marketable title to the property.

Emig motioned for approval of an EXCEPTION to allow a reduction of the minimum ten (10) foot rear yard setback to zero (0) feet and to allow a reduction of the minimum three (3) foot side yard setback to zero (0) feet for a new detached garage; to allow lot coverage to be increased from the maximum thirty (30) percent to thirty-one (31) percent due to the construction of a new detached garage; and, a reduction of the minimum eight (8) foot side yard setbacks for the existing house and deck for the owners to have clear title to the property; all for the property located in the R-1/TNO, Single-Family Residential District and the Traditional Neighborhood Overlay District at 1618 Houston Street with the following conditions:

1. The Exceptions shall be limited to the detached garage as proposed in the application materials, the existing west roof overhang and the existing deck as shown on the application site plan.
2. The detached garage shall be constructed according to the application and site plan documents.
3. All applicable permits shall be obtained.

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

**A PUBLIC HEARING to consider a request for an EXCEPTION to allow a driveway to be greater than ten (10) feet in width for a proposed paved driveway leading to a new detached garage at 223 North 14<sup>th</sup> Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District.**

Zilkie provided the staff report, which recommended approval with four (4) conditions.

Hamilton asked Zilkie for clarification on the proposed design of the driveway.

Zilkie provided clarification.

Emig asked Zilkie for clarification about the proposed width of the driveway.

Zilkie referred the question to the applicant.

Hardy opened the public hearing.

Applicant Jeff Hasler provided information about the existing width of the driveway, and about the reasons for the Exception request.

Hardy commended the applicant for the improvements he had made to the subject property.

Emig asked the applicant whether he would back out of the proposed driveway upon completion, or whether the driveway provided a turn-about.

Hasler stated that cars would back out of the proposed driveway upon completion.

Zilkie provided clarification of traffic and visibility conditions along Fourteenth Street

Emig expressed that the driveway would improve visibility conditions at the subject property.

Hasler provided additional information about street conditions along Fourteenth Street.

With no further comments, Hardy closed the public hearing and opened for Board discussion.

Wigfall stated that she appreciated the applicant's attempts to resolve the design challenges present at the subject property.

Hamilton stated that she can support the request, because it is consistent with improvements in the neighborhood.

Hardy closed the public hearing.

The Board made the following findings of fact for the EXCEPTION at 223 North 14<sup>th</sup> Street:

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

According to the Riley County Appraisers Office, the two-story house was built in 1910,

prior to the adoption of the City of Manhattan Zoning Regulations in 1926. The north façade of the house along Leavenworth Street is setback approximately ten (10) feet from the front property line. This is a legally nonconforming improvement because of the time of construction. Other than this issue and the Exception request, the subject site complies with all applicable regulations

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The subject property and all properties to the north, west and south are zoned R-1/TNO, Single-Family Residential and Traditional Neighborhood Overlay District. To the west, across North 14<sup>th</sup> Street is the City Park, which is zoned R-3, Multiple-Family Residential District. The neighborhood is a mix of owner occupied, single-family houses, and single-family, two-family and multi-family rental units. A twelve (12) unit, multi-family apartment building is located directly west of the subject site.

The proposed design of the driveway is similar in nature with properties in the area. The property directly to the north at the corner of North 14<sup>th</sup> Street and Leavenworth Street has a driveway leading to a two-car detached garage that is wider than ten (10) feet. The multi-family apartment building directly to the west of the property has two curb cuts, both of which are wider than ten (10) feet. This apartment building also has a majority of the front yard area paved and stripped for off-street parking spaces. Other properties in the areas, including several along Humboldt Street to the south of the subject site, have similar driveway designs as described above.

A short, raised flower bed is located along the north property line along the sidewalk. The applicants has proposed to retain a majority of this flower bed with the construction of the driveway and detached garage. Although the height of the flower bed will not screen a vehicle when it is parked in the parking pad of the garage, it should provide a visual barrier of the wide driveway and parking area for adjacent properties to the north. Finally, removing the deteriorating, detached garage and replacing it with a new garage will improve the appearance of the property and the surrounding neighborhood, which should positively impact the adjacent properties and neighborhood. Based on these circumstances, minimal adverse affects are anticipated on adjacent properties from the granting of the Exception request.

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

The proposed driveway design will not encroach on existing easements or disrupt the public order in the area. Several properties near the subject site have driveways that exceed the maximum driveway width regulated by the Traditional Neighborhood Overlay District. The applicants' state that the proposed driveway would improve public safety by reducing the number of vehicles parked on Leavenworth Street and North 14<sup>th</sup> Street. On-street parking on Leavenworth Street is restricted to permit parking only on the north

side of the roadway. Parking on North 14<sup>th</sup> Street is restricted to the east side of the street between the hours of 8:00 am to 5:00 pm. By allowing the construction of the driveway and detached garage, at least two (2) fewer cars will be parked on the congested streets. The granting of the Exception for the new driveway should not have an adverse effect on the public health, safety, morals, order, convenience, prosperity or general welfare.

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

The strict application of the Traditional Neighborhood Overlay (TNO) District Design Standards would require that the driveway be no wider than ten (10) feet from the front property line to a point in line with the house's front façade along Leavenworth Street, or approximately ten (10) feet from the front property line. Based on design of the proposed detached garage, the applicants would not be able to safely maneuver a car into or out of the second bay of the two-car garage by following the TNO Design Standards. The proposed garage could be redesigned to a one-car garage, which would need a driveway that could meet the TNO District requirements. The redesigned, one-car garage would not meet the needs of the applicants since they are proposing a two-car garage. The two-car garage could be designed in such a way to reorient the garage entrance to the east or west. An east facing garage would require a long driveway gaining access off of North 14<sup>th</sup> Street. The west facing garage would require the structure to be located closer to the house and an irregular shaped driveway off of Leavenworth Street that leads to the west garage doors. Both of these options may limit the width of the driveway and meet the TNO Design Standards, but may consume larger amounts of green space on the property or create more of an impact on adjacent properties and the neighborhood. Based on these facts and circumstances, the strict application of this regulation is unreasonable.

Wigfall motioned for approval of an EXCEPTION to allow a driveway to be greater than ten (10) feet in width for a proposed paved driveway leading to a new detached garage at 223 North 14<sup>th</sup> Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with the following conditions:

1. The Exceptions shall be limited to the proposed driveway.
2. The proposed driveway shall be maintained in good condition.
3. The applicants shall obtain all necessary building permits.
4. The proposed driveway shall be constructed as outlined in the application materials and site plan.

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

**A PUBLIC HEARING to consider a request for a CONDITIONAL USE to allow for the renovation of an existing single-family dwelling unit to a two-family dwelling unit, located within a R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay, in which one or both of the dwelling units is greater than six-hundred (600) square feet in floor area and where one or both of the dwelling units has more than two bedrooms for the property located at 505 South Juliette Avenue.**

Anne Antonini provided the staff report, and recommended approval with four (4) conditions.

Hardy opened the public hearing.

Applicant Bill Von Elling provided additional information on the Conditional Use Permit request.

Wigfall asked Von Elling for clarification on fencing and proposed landscaping at the subject property.

Von Elling provided clarification.

With no additional comments, Hardy closed the public hearing and opened for Board discussion.

Aistrup stated that the applicant's proposal presented a significant improvement to the subject property, and that he could support the application.

Hamilton stated that she could also support the application, and that it was an improvement to the subject property.

Hardy expressed that he could also support the application, and that it manifests the intention of the Traditional Neighborhood Overlay District.

The Board made the following findings of fact for the Conditional Use at 505 South Juliette:

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject property complies with all applicable regulations, except for Section 411-(B) (2) (c), which is that the proposed two-family dwelling will consist of... "Both of the dwelling units are greater than six-hundred (600) square feet in floor area and the other dwelling unit has more than two bedrooms."

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

*NORTH:* Properties north of the subject property on Yuma Street consist of one- and two-family homes zoned R-M/TNO, Four-Family Residential with a Traditional Neighborhood overlay. There are several two-family dwellings on the blocks immediately north of the subject property that front onto Yuma. Thus the proposed conditional use should not appear out of character with the established neighborhood.



*SOUTH:* The property to the immediate south of the subject property is a single-family home in the Four-Family Residential District with a Traditional Neighborhood Overlay. Properties south of El Paso Lane are commercial businesses zoned LM-SC, Light Service Commercial.

*EAST:* Properties to the East of the subject consist of single-and two-family homes, and are in the Four-Family Residential District with a Traditional Neighborhood Overlay.

*WEST:* Properties to the west of the subject property consist of one- and two-family homes and are zoned R-1/TNO, Single-Family Residential with a Traditional Neighborhood Overlay, and R-2/TNO, Two-Family Residential with a Traditional Neighborhood Overlay. Properties along Yuma west of Juliette Avenue are zoned R-2, Two-Family Residential District, and are not in the Traditional Overlay District.

The subject property is within the environs of the Hulse-Daughters House, located at 617 Colorado. The Hulse-Daughters House was recently added to the National Historic Register and is currently under renovation. The applicant's proposal has reviewed by the State Historic Preservation Office, and was issued a letter of compatibility with the historic character of the Hulse-Daughters House.

With the proposed change in composition of the subject property, there should be minimal impact on surrounding properties. There are currently several two-family homes in the established neighborhood, within close proximity of the subject property. Many of these two-family homes were evidently constructed prior to the establishment of the Traditional Neighborhood Overlay District, and do not contain features that are consistent with the District Design Standards. The applicant is maintaining the existing front façade and character of the structure, and none of the improvements to the subject property will be visible from Juliette Street.

### **3. DOMINATION BY USE OVER NEIGHBORING PROPERTIES:**

Though significant changes are proposed to the existing structure, the front elevation shall remain the same. The number of bedrooms will actually decrease from six (6) to five (5) upon completion. This may result in a slight decrease in the number of residents that can live comfortably at the subject property. It is likely that the number of cars at the subject property will increase, but the applicant proposes two (2) more parking spaces than required by the Manhattan Zoning Regulations.

- a. **Location, nature, and height of physical improvements:** The height of the two-story structure is similar to adjacent properties and does not dominate adjacent uses in the established neighborhood. No change to the front façade of

the building is proposed, and is historically part of the neighborhood as a two-story building.

- b. **Landscaping and screening:** The applicant proposes to make significant changes to the landscaping and screening of the subject property. In email correspondence, he explained that the subject property does not currently have maintained landscaping, and he described what changes he proposes to make:

“I am going to build raised planting beds around the front porch and reseed the yard. There are some very nice mature trees in the front yard which we have cleaned up from storm damage caused by last winters ice storm. In the back yard, there are trees along the perimeter lot lines that are not desirable species and are not in very good health. I have had a horticulturalist look at the trees and he recommended that I remove them as they are a liability and could damage the neighboring properties. Additionally, most of them will need to be removed to install privacy fence along the east and south property boundaries. There is existing privacy fencing along the north side of the property and I will match this fencing on the east and south. The proposed addition will be barely visible from the surrounding streets and properties as it is screened by the existing neighboring buildings.”

#### **4. ADEQUATE PROVISION OF PARKING AND LOADING:**

Two family dwellings require a minimum of two (2) off-street parking spaces per unit off the alley in the RM/TNO, for a total requirement of four (4) parking spaces. Six (6) parking spaces are proposed by the applicant, which exceeds the parking requirement. Screening of the parking area is only required for more than six (6) parking spaces. Though no screening is required for the parking area, there is an existing fence along the north side of the property, and the applicant proposes to continue this fence along the east and south property lines. The proposed parking area will cause a reduction to green space in the rear yard, which will not be visible from the street, or from adjacent properties.

#### **5. ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:**

The slope of the subject property is relatively flat. The applicant proposes to add a gravel parking area to the rear of the property, which should have a minimal negative impact on the site’s drainage potential. The applicant stated in email correspondence that he chose gravel as a parking surface in order to reduce the amount of storm water runoff onto adjacent properties. There is no additional storm water drainage plan for the subject property. The application has been reviewed by the City Engineer, who has determined that the proposed improvements to the subject property should not create storm water runoff onto adjacent properties, as long as the parking area is surfaced with gravel, and as

long as the area between the parking lot and the southern property line remains green space.

**6. ADEQUATE PROVISION OF ACCESS:**

Both units of the subject property will gain access via an existing driveway that terminates at South Juliette Avenue. This driveway meets the requirements of the Zoning Regulations and the Traditional Neighborhood Overlay District.

Aistrup motioned for approval of a CONDITIONAL USE to allow for the renovation of an existing single-family dwelling unit to a two-family dwelling unit, located within a R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay, in which one or both of the dwelling units is greater than six-hundred (600) square feet in floor area and where one or both of the dwelling units has more than two bedrooms for the property located at 505 South Juliette Avenue with the following conditions:

1. The building floor plans shall be constructed as proposed in the site plan and application documents
2. All applicable permits shall be obtained.
3. The site shall be developed as proposed in the site plan and application documents and shall be maintained in good condition.
4. The parking area in the rear yard shall be surfaced with gravel, and the area between the parking lot and the southern property line shall remain as green space.

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

**A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty (20) foot rear yard setback to zero (0) feet to construct a proposed fence in the I-2, Industrial Park District at 1416 Hayes Drive.**

Antonini provided the staff report, which recommended approval with three (3) conditions.

Hardy opened the public hearing.

Applicant Brent Bowman provided further information on the exception request.

With no further comments, Hardy closed the public hearing and opened for Board Discussion.

Hamilton stated that the applicant's proposal was excellent, and that she appreciated the drawings submitted with the application materials for the exception request. She expressed that she could support this application.

Wigfall stated that the proposal made good use of otherwise unusable space on the subject property.

Hardy stated that a correction needed to be made to the staff report.

The Board made the following findings of fact for the Exception at 1416 Hayes Drive:

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The property currently complies with all applicable regulations except for the requested Exception.

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The subject site and surrounding properties are located in the I-2, Industrial Park District. The properties in the surround area include a mix of industrial and commercial service uses. The northern property line fronts along the Linear Trail, which is located on the flood plain levee. The proposed fence and courtyard is approximately 380 feet from the trail and should not adversely impact trail users. The property to the east is a large parcel where the Farrar Company is located. The industrial building is approximately 815 feet away from the proposed fence on the subject site. The area between the Farrar Company's building and the courtyard is a large, open area. The property to the southeast is an industrial use, with a large outdoor storage area adjacent to the subject property that is enclosed by a chain link fence. The location of the fence is behind the existing building and cannot be seen from nearby properties or vehicles along Hayes Drive. The proposed fence should not adversely impact adjacent properties because it matches the character of the industrial use area and that the proposed location of the fence will not affect the trail or existing uses.

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

Adverse impact on the public is not expected. No vision triangle or public easements are encroached upon by the proposed fence. The City Engineer has determined that the proposed fence will not affect the integrity of the flood plain levee (see attached memo).

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

The strict application of the accessory use regulations in the I-2, Industrial Park District would require that the fence to be located at least twenty (20) feet from the rear property line. The owners would like to utilize this space as a secure, outdoor area for their clients. Considering that this area does not impact adjacent properties and will not be used for outdoor storage, but rather for outdoor activities, the strict application of the accessory use setbacks is unnecessary.

Hamilton motioned for approval of an EXCEPTION to allow a reduction of the minimum twenty (20) foot rear yard setback to zero (0) feet to construct a proposed fence in the I-2, Industrial Park District at 1416 Hayes Drive with the following conditions:

1. The Exception shall be limited to the proposed fence as shown on the site plan.
2. The fence shall be constructed as shown on the site plan and the application documents.
3. The proposed fence shall be maintained in good condition.

Wigfall seconded, and the motion passed unanimously with a vote of 5-0.

**Adjourned.**

Respectfully Submitted,

Anne Antonini