

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, March 11, 2009
7:00 PM

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

MEMBERS ABSENT:

STAFF PRESENT: Chad Bunger, Planner; Anne Antonini, and Stephanie Dikeman, Planning Interns

CONSIDER THE MINUTES

Hamilton moved to approve the February 11th, 2009 minutes which was seconded by Wigfall and passed with a vote of 4-0.

REMOVE FROM TABLE AND CONTINUE A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW A SECOND SIGN IN A RESIDENTIAL DISTRICT; AND TO ALLOW A PROPOSED INTERNALLY LIT BULLETIN BOARD SIGN LOCATED ALONG LOMBARD DRIVE FOR FRANK V. BERGMAN ELEMENTARY SCHOOL AT 3430 LOMBARD DRIVE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: BERGMAN ELEMENTARY PTO OWNER: MANHATTAN-OGDEN SCHOOLS USD 383 AGENT: JS SIGNS – JOHN STROH).

Hamilton motioned to remove from the Table a Variance request at 3430 Lombard Drive.

Wigfall seconded the motion, which passed unanimously with a vote of 4-0.

Since the item had been tabled from the February 11, 2009 Board of Zoning Appeals meeting, and since it is not customary to present staff reports a second time for items removed from the table, Chad Bunger asked the Board if they would like him to present any information regarding the item.

Hardy said that it was not necessary and opened the Public Hearing.

Applicant Lori Martin, Principal at Bergman Elementary School spoke to the requested Variance and provided information regarding the Parent Teacher Organization's efforts in planning for the sign. She also highlighted some of the organization's accomplishments and its

importance to the school. She also provided clarification on the proposal, stating that that the sign would not be internally lit, though it was a possibility that it could be lit externally.

Hamilton asked Principal Martin if whether she would object to a condition of approval for the proposed Variance that the sign not be internally illuminated.

Principal Martin stated that she would not.

Aistrup asked Martin whether the school had made plans to address potential complaints from neighboring residential property owners if the sign was externally illuminated and concerns arose.

Principal Martin said the school would happily keep the proposed sign unlit. She then reiterated the intent of the proposed sign and expressed that the school does not want the sign to annoy or inconvenience the surrounding neighborhood.

Wigfall asked Martin whether she was aware of any objections expressed about the proposed sign by surrounding property owners.

Principal Martin responded that one neighboring family had contacted her via email to express their reservations about the proposed sign.

Jody Schulp, 3433 Lombard Drive, spoke against the request. She showed the Board photographs and a brief video of the school and surrounding streets taken at dismissal time, in order to illustrate her concerns about the proposed sign's potential effect on the neighborhood. She expressed her contention that the sign would exacerbate already-congested street conditions. She also expressed concerns that the proposed sign would not be an effective form of communication because it would be blocked from view by cars and school buses that typically congregate at the location of the proposed sign.

John Schulp, 3433 Lombard Drive, also spoke against the request. He stated that he was disappointed that the applicant had not met with surrounding property owners during the planning phase for the proposed sign. Schulp expressed and elaborated on several areas of concern. He acknowledged the intention behind the applicant's proposal, that the school wished to increase communication, but expressed his contention that the school already had plenty of avenues of communication available. He reiterated Jody Schulp's contention that the proposed sign would not be an effective way to communicate with parents, because it would not be visible during the times when the greatest number of parents would be at the school. He expressed his belief that the proposed sign would interfere with traffic flow on Lombard Drive and would distract drivers' attention away from the road. Mr. Schulp presented to the Board calculations he had created to illustrate his contention that the surrounding property owners would suffer greater negative impact from the proposed sign than its intended audience would benefit from it. He also expressed concerns that the proposed sign and its potential exterior lighting would alter the residential character of the neighborhood surrounding the subject site. In addition, Mr. Schulp expressed to the Board that he was

confused about what the proposal entailed, and that he was concerned that the PTO might decide to illuminate the sign in the future.

Hamilton asked if Mr. Schulp had received a copy of the staff report, in which City Administration had addressed how the applicant's proposal met all standards for Variances.

Mr. Schulp stated that he had not.

Principal Martin commented that she was unaware of Mr. Schulp's desire to meet with the school, and that she would have been happy to arrange a meeting with him and other surrounding property owners to discuss the proposal.

Hardy closed the Public Hearing and opened Board discussion.

Aistrup commented that type of signage proposed is common at elementary and secondary schools nationwide. He also reiterated that the school had agreed not to light the sign and stated that the Board could add a condition of approval that the sign remain unlit. Aistrup responded to the contention raised during the public hearing that the proposed sign would present a safety issue at the school, stating that he had not found any evidence that similar signs at other schools have created such hazards. He further stated that the proposed sign would be permitted by right at the subject site if the applicant was to remove its current identification sign. Aistrup also expressed that there is an expectation that schools will have this type of signage, and therefore its presence at the subject site should have no negative impact on surrounding property values.

Hamilton explained the how the applicant's request met all conditions for a Variance as set forth in the Zoning Regulations. She explained that the zoning lot in this case is unusually large, which makes this request unique. Hamilton concurred with Aistrup's contention that the sign would not adversely affect adjacent property owners. She also expressed that she felt the proposal met the intentions of City sign regulations, which are to limit the size, placement, illumination, and number of signs.

Wigfall said she looked at the traffic pattern around the school. She noted that the proposed sign could potentially be read also during other times of the day by those not associated with the school, such as pedestrians, visitors to the school, and neighbors, who might also benefit from the information it contained. Wigfall also concurred with Hamilton's assessment that there would be no additional hardship presented to surrounding property owners.

Hamilton expressed that there were larger signs on larger roadways in the neighborhood surrounding the subject site that were not perceived as posing a safety hazard or detracting from the residential character of the neighborhood, and referenced a large identification sign along Churchhill Street for the Grande Mere residential development as an example to support her contention.

Mr. Schulp stated that he did not consider Grand Mere to be part of the neighborhood surrounding the subject site and asked for additional details about the proposed sign.

Bunger presented the sign proposal and provided clarification on the proposed location and size of the sign.

Hardy stated that all requests approved by the Board of Zoning Appeals contain a condition of approval that any improvements must conform to the site plan that accompanied the request. Therefore, if the proposed sign was approved, the applicant must construct it in the exact location and to the exact specifications presented in the Variance application, and that any deviations from the site plan would be in violation of Zoning Regulations and subject to zoning enforcement.

Aistrup stated that if a condition of approval was to be added to the request that the sign remain unlit, he could support the proposal.

Hardy said that while everyone had the opportunity to offer up their concerns about the sign, the Board is bound to only consider whether or not the applicant's request met the zoning standards in making their decision regarding the proposed Variance. He expressed that he felt that Hamilton had done a good job of explaining how she believed those standards had been met. Hardy stated that he, too, believed that the standards had been satisfied, and expressed that if the lighting condition were added, he could also support the proposal.

Mr. Schulp asked for clarification on the proposed condition regarding the lighting of the proposed sign.

Aistrup provided clarification.

Principal Martin asked the neighbors present if they would feel more at ease with the sign if the sign was moved to a different location on the subject site.

Mrs. Schulp said that she couldn't speak for the other neighbors.

Mr. Schulp said that the new location proposed by Principal Martin would be the best angle for them.

Hardy asked whether any more Board discussion was necessary prior to voting on the requested variance.

The Board made the following findings of fact for the Variance located at 3430 Lombard Drive:

- A. **CONDITIONS UNIQUE TO THE PROPERTY:** The site is a large school campus with a number of activities taking place at the school throughout any given day. The use of the site as an elementary school creates a need to ensure that there is adequate identification of the school building for visitors and to provide additional information

of upcoming events and activities that can be seen by students, parents and the public at different times of day.

B. PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse impacts on neighboring properties are anticipated. The sign will be located perpendicularly to the street and be setback approximately thirty-one (31) feet from the back of curb. The position and location of the sign should not be intrusive to adjacent properties.

C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The proposed sign will allow the school to better inform the students, their families and the general public of upcoming events and activities. Currently, the school does not have a sign or other mechanisms on the site to provide this information. If the Variance request to construct a second sign on the site is denied, Bergman Elementary School would not be permitted a sign to serve this function.

D. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be no adverse affects on the public health, safety or welfare by approving the proposed Variances. The sign is setback sixteen (16) feet from the front property line, which exceeds the minimum fifteen (15) foot setback for signs. The sign is outside of the vision triangle created by the intersection of the street and the driveway entrance.

E. 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 size, functional type and illumination of the sign meet the requirements of the sign regulations for residential districts. Considering the large size of the Bergman Elementary School site and the various events and activities held at the school, the request to construct a second sign to notify students, parents and the public is reasonable.

Aistrup moved to approve a Variance to allow a second sign in a residential district located along Lombard Drive at the Frank V. Bergman Elementary School located at 3430 Lombard

Drive in the R, Single-Family Residential District, with the conditions recommended by city staff:

1. The Variance shall only apply to the proposed site plan and the proposed sign.
2. All applicable permits shall be obtained.

And the additional condition:

1. The proposed sign shall never be internally or externally lit.

Wigfall seconded the motion, which passed with a vote of 4-0

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE AT 2438 VAUGHN DRIVE TO ALLOW FOR THE CONTINUED USE OF AN EXISTING RESIDENTIAL BUILDING AS A FINANCIAL OFFICE FOR THE MERCY REGIONAL HEALTH CENTER HOSPITAL. (APPLICANT/OWNER: MERCY REGIONAL HEALTH CENTER)

Antonini presented an abbreviated version of the staff report at the request of Hardy, who explained that the Board was familiar with the request as it had come before the Board several times previously.

Antonini recommended approval with seven (7) conditions.

Hamilton asked if city staff had received any neighborhood objections or comments regarding the proposed Conditional Use.

Antonini responded that there had been no objections or comments.

Hardy opened the Public Hearing.

Bunger provided clarification on the requested Conditional Use Permit. He stated that the item was not a typical 180-day extension, but rather was a new request to continue a use that was previously approved on a temporary basis, with the condition of a timeline that was about to expire.

Hamilton clarified that it was a new Conditional Use request.

Bunger provided additional clarification on a condition of the previously-approved

Conditional Use Permit that the subject site's use as a temporary accounting office would expire two years from its approval date. This condition requires a new Conditional Use Permit to be issued for the applicant to extend the temporary occupancy.

Hardy closed the Public Hearing and opened the Board discussion.

Hamilton commented that there had been initial concern about whether the temporary office use would be compatible with the residential neighborhood surrounding the subject site. She expressed that in all the time the office use had continued at the subject site, there had been no adverse impact on the surrounding neighborhood. She also expressed that the subject site is somewhat uniquely suited to temporarily house the hospital's accounting office because it abuts the hospital. Hamilton stated that she can support the extension of the Conditional Use for another two years.

Wigfall expressed that she was glad that after two years the item will have to return to the Board for reevaluation. She also expressed her agreement with City Administration's contention that the extension be approved for two (2) years instead of the 180 days initially requested by the applicant, because of the long timeframes typical for hospital development.

The Board made the following findings of fact for the CONDITIONAL USE located at 2438 Vaughn Drive:

A. Compliance with all applicable regulations: A Conditional Use Permit was sought and approved in 2000 for Mercy Regional Health Center to construct an addition to their existing facility. That permit was amended in 2005. An Exception was sought and approved in 2005 to reduce the minimum side yard setbacks to six (6) feet along the west property line and nine (9) feet along the east property line for the existing structure. The 2005 Conditional Use was extended in February of 2007 to allow the Accounting Department to temporarily remain in the residential structure at 2438 Vaughn Drive.

The subject site otherwise complies with all existing regulations, aside from the Conditional Use application in question.

B. Probable effect on adjacent properties: The Conditional Use has been at the subject site for several years, and during that time, there have been no recorded complaints against it. The subject site has not been associated with any increase in light, noise, or traffic during the nine (9) years it has been used as a temporary office. Therefore, no negative impacts are anticipated on its surrounding neighborhood if the requested Conditional Use Permit is approved. The subject site is perceived as consistent with the character of its established neighborhood because it is maintained as a single-family home and has not

been shown to have caused adverse effects to adjacent properties during the years it has been occupied by the Accounting Department and used as an office.

Adjacent properties to the general south, east, and west of 2438 Vaughn Drive are located in the R, Single-Family Residential District. These properties are older, single-family homes, some of which are owner-occupied and some of which are renter-occupied.

North of the subject site is the Mercy Regional Health Center, which is zoned R-1, Single-Family Residential District. Since the subject site is also owned and operated by the Mercy Regional Health Center, and because the subject site has been operating as its Accounting Department for the past four (4) years, it is perceived as compatible and is not anticipated to have negative effects on the Health Center.

C. Domination by use over neighboring properties:

1. Location, nature, and height of physical improvements: The structure at 2438 Vaughn Drive is an existing single story, single-family residential building located on a rectangular lot with an approximate area of 7,840 square feet. Seven (7) administrative personnel will temporarily occupy the facility during normal business hours of 8:00 AM to 5:00 PM, Monday through Friday, for approximately two (2) years.

Once the available office space is remodeled within Mercy Regional Health Center, the residential house will be utilized “as housing for Mercy Regional Health Center’s interns. Again the home will be maintained in a satisfactory manner, and neighborly relationships will be maintained,” according to application documents.

2. Landscaping and screening: The applicant has maintained the landscaping at the subject site in a manner consistent with its surrounding residential neighborhood. Perennial plants, groundcover, and shrubs were placed around the perimeter of the house along with an existing tree. There are existing wooden fences along the east and western property lines, and there is an ADA handicap ramp along the front, south side of the property. A large wooden deck has also been added to the rear, north side of the property.

D. Adequate provision of parking and loading: Adequate parking is provided for the proposed use. Mercy Regional Health Center clients will not be visiting or utilizing the subject site, which was and shall remain for use by office staff only. One (1) ADA parking space is provided on the property’s driveway from Vaughn Drive. According to documents submitted by the applicant, all other Accounting Department employees are using and will continue to use Mercy Regional Health Center’s off-street parking facilities, and on-street parking for the temporary Accounting Department facility is not allowed along Vaughn Drive.

E. Adequate provision of drainage, and other public utilities: Adequate utilities, including electric, gas, cable, and telephone services are available. Storm drainage flows to City

storm drains located on Vaughn Drive.

- F. Adequate provision of access:** Adequate provisions for access are available for the proposed temporary office. The subject site has frontage along Vaughn Drive. The front driveway on Vaughn Drive will provide parking for one car. The Mercy Health Center of Manhattan will provide additional parking for hospital personnel in its off-street parking lot, which has access from College Avenue and Kimball Avenue.

Hamilton moved to approve a CONDITIONAL USE PERMIT to allow for the continued use of an existing residential building at 2438 Vaughn Drive as a financial office for the Mercy Regional Health Center Hospital in the R-1, Single-Family Residential District with the following conditions:

1. The Conditional Use at 2438 Vaughn Drive shall be for a temporary accounting office for two (2) years from the date of the Notice of Decision, at which time the use shall cease, unless the applicant submits an application for a Conditional Use to extend the temporary occupancy. The application shall be submitted and considered by the Board of Zoning Appeals prior to the date on which the temporary use expires.
2. The temporary office shall only be used by hospital personnel and shall be limited to seven (7) employees.
3. Off-street parking shall be provided on the Mercy Regional Health Center's parking lot, except that the existing driveway off 2438 Vaughn Drive shall accommodate one (1) ADA accessible off-street parking space.
4. On-street parking for the temporary office shall be prohibited along Vaughn Drive.
5. Temporary office hours shall be limited to normal business hours from eight (8) a.m. to five (5) p.m., Monday through Friday.
6. Landscaping shall be maintained as proposed in the landscape plan and maintained in good condition.
7. The residential building with structural improvements shall be maintained in good condition.

Wigfall seconded the motion, which passed with a vote of 4-0

A PUBLIC HEARING to consider an EXCEPTION to allow reduction of the required fifteen (15) foot minimum front yard setback to zero (0) feet for a proposed sign along Sunset Avenue at 1001 Sunset Avenue in the R-M/U-O, Four-Family Residential District with a University Overlay District. (Applicant/Owner: United Methodist Campus Ministry at Kansas State University).

A PUBLIC HEARING to consider a VARIANCE to allow a proposed internally illuminated ground sign to be located along Sunset Avenue at 1001 Sunset Avenue in the R-M/U-O, Four-Family Residential District with a University Overlay District.

(Applicant/Owner: United Methodist Campus Ministry at Kansas State University).
(Considered together)

Dikeman presented the staff report with a recommendation for approval of the Exception with one (1) condition and the Variance with three (3) conditions.

Hamilton asked for clarification on the location of the proposed sign.

Dikeman provided clarification.

Hardy asked for further clarification on the location of the proposed sign, which was provided by City Staff.

Hardy opened the public hearing.

Applicant Scott Kulp with Schurle Signs spoke to the request and provided clarification the location of the sign.

Hamilton asked staff whether it would still be necessary for the applicant to go through the Board of Zoning Appeals Exception process if the sign was externally lit instead of internally lit.

Staff responded that an Exception would still be needed for the location of the proposed sign, but a Variance would not be required for the lighting.

Applicant Matthew Stone, Pastor of United Methodist Campus Ministry at KSU, spoke further about the request.

Hardy asked Stone if he had received any comments from neighbors regarding the proposed sign.

Stone responded he had not.

Hardy closed Public Hearing and opened Board discussion.

Hamilton expressed that she had initially been concerned about the proposed location for the proposed sign, but that her concerns had been addressed by City staff. She stated that she was prepared to support the Exception regarding the location of the sign, but was concerned about the proposed internal illumination. Hamilton said that she disagreed with City staff's finding that the residential character of the neighborhood has been compromised by fraternity and multi-family uses. She also contended that the internally illuminated signs referenced by City staff in the presentation of the staff report, located north of the subject site along Sunset Avenue, were not comparable to the proposed sign as stated by City staff. She explained that the signs referenced were located along cross streets with greater traffic volumes, faced the university parking lots, and were further from the residential uses surrounding the subject site. She expressed that she was not comfortable supporting the Variance for an internally illuminated sign.

Wigfall stated that she too had been initially concerned with the location of the proposed sign because of the awkwardness of the intersection at College Heights and Sunset Avenue. She also expressed her concern that the sign could be a distraction at night if internally illuminated. Wigfall concurred with Hamilton that the internally illuminated signs referenced by City staff were not comparable to the subject site. She also expressed concerns about the sign being lit and so close to Sunset Avenue.

Aistrup voiced that he was not concerned with the sign being internally lit, expressing that Sunset Avenue is a busy street containing many uses. Aistrup stated his contention that the proposed sign was consistent with those of already present on the properties of similar organizations located throughout Manhattan. He expressed that he could understand why the applicant desired an internally illuminated sign for the subject site, and that it internal illumination could likely make the sign safer for drivers travelling at night, as it could be easily read. He reiterated his view that the proposal was consistent with other churches and not out of character with Sunset Avenue because of its various uses.

Hamilton further discussed the differences between internal and external illumination. She explained that internally lit signs are more commercial in appearance than externally illuminated signs. She said that the Board needed to consider all parties who could potentially be affected by the approval of an internally illuminated sign at the subject site. She expressed discomfort with the idea of the Board approving an internally illuminated sign without conditions addressing the duration or intensity of illumination. She stated that she could

understand why the applicant would want the sign lit, but still would not comfortable with approving the request for internal illumination.

Hardy expressed that he was not bothered by idea of approving an internally illuminating sign as proposed, and stated that he was leaning toward approving the Variance. He referenced internally illuminated signs the Board had approved in the past, and referenced some of their conditions of approval.

Aistrup brought up the concern of vandalism that might occur if the sign was externally illuminated.

Wigfall stated that her decision to vote for or against an internally illuminated sign would rest upon how much light the proposed sign would create.

Hamilton mentioned ways the applicant could control the amount of light produced by the proposed sign if it was to be internally illuminated.

Aistrup asked the applicant if they would have any objections to a condition requiring them to turn the sign off at 10:00pm.

Hamilton interjected that since the primary purpose of the proposed sign was identification, it might be more appropriate to require the applicant to use a dimmer after a certain hour.

Stone expressed that he was amenable to the idea of a dimmer, but was uncomfortable about a condition requiring the sign to be turned off, because of the amount of foot traffic along Sunset Avenue after dark. He expressed concern about the idea of external illumination, explaining to the Board that the public hearing signs he was required to display for twenty days prior to the Board of Zoning Appeals hearing had been knocked down several times, and stating that he was worried that any external lighting might suffer a similar fate. He stated that his organization was willing to use a dimmer on an internally illuminated sign, if approved.

Hamilton expressed that she was not in favor of a condition of approval being added to the request requiring the applicant to use a dimmer switch because such a condition would be difficult for the Board to enforce.

Hardy expanded on Hamilton's contention, stating that the applicant would be allowed to use a dimmer switch if he so chose, but the Board could not require him to do so.

The Board made the following Findings of Fact for the EXCEPTION at 1001 Sunset Avenue:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site currently complies with all applicable regulations, except for what is being requested by the Exception and Variance. The applicant is also requesting a Variance to allow for an internally illuminated sign to be located in a Residential District.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Adjacent properties include a mixture of single and multiple family residences, and fraternities. Probable effects on the neighboring properties should be minor. The sign will be located approximately one (1) foot from the property line located along Sunset Avenue and twenty-one (21) feet from the front of the building. The existing building will obscure the sign from neighbors to the west and north. The property located immediately south of the sign is owned by the church and is currently a parking lot. Properties east of Sunset will be approximately sixty-one (61) feet from the sign and should not be impacted by the proposed sign location.
3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exception for the subject site is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare, and no public easements are affected. The proposed sign will not obstruct any vision clearance triangles.
4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of these regulations would require the applicant to place the sign approximately fifteen (15) feet from the front façade of the building, causing it to be less visible and hindering the ability for posted events and dates to be read from the road. Existing landscaping and a mature tree hinder the ability to move the sign further back on the property, while still being visible from Sunset Avenue.

Hamilton moved to approve the EXCEPTION to allow for a reduction of the required fifteen (15) foot minimum front yard setback to one (1) feet for a proposed sign along Sunset Avenue in the R-M/U-O, Four-Family Residential District with a University Overlay District, with the following conditions:

1. The Exception shall apply for the sign outlined in the staff report and as shown on the site plan.

Wigfall seconded the motion, which PASSED unanimously.

The Board made the following Findings of Fact for the VARIANCE at 1001 Sunset Avenue:

1. **CONDITIONS UNIQUE TO THE PROPERTY:** The building is located along Sunset Avenue which is a collector street. Due to the volume of traffic of this road, sign readability becomes an issue, especially at night. The applicant has stated that the internally illuminated sign will allow important events and dates posted on the sign to be more easily read, as compared to the uneven lighting effect external illumination might cause. The subject site is located approximately one block from campus and surrounded by mainly fraternity houses, multi-family structures, and two medical centers.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Adjacent properties include a mixture of single, multiple-family residences and fraternity houses. Probable effects on the neighboring properties should be minor. The sign will be located one (1) foot from the property line located along Sunset Avenue, twenty-one (21) feet from the front of the building and sixty-five (65) feet from the southern property line along College Heights Road. The existing building will obscure the sign from neighbors to the west and north. The property located immediately south of the sign is owned by the church and is currently a parking lot. Properties east of Sunset Avenue consist of mostly multi-family structures. They will be approximately sixty-one (61) feet from the sign and should not be impacted by the proposed internally illuminated sign.

An internally illuminated sign would not be out of character for the neighborhood. Approximately one block north along Sunset Avenue, there are three other internally illuminated signs, two located in front of the Lafene Health Center and the other located on the corner of Sunset Avenue and Claflin Avenue in front of Pawnee Mental Health.

3. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The church currently has no sign and the proposed sign would not only identify the church, it would also relate information on activities of interest to the public traveling on Sunset Avenue.

The proposed illumination is appropriate for this type of sign and the visual message it is relating. Sunset Avenue is a busy collector street. It will create less glare and will be less obtrusive than an externally illuminated sign that would normally be required. The proposed sign will be placed in the front yard, perpendicular to Sunset Avenue. The internal illumination would make the sign and its messages easily visible to those traveling down Sunset Avenue, without causing people to slow down or strain to read the sign.

Strict application of the Zoning Regulations would not allow construction of a visible and readable sign along Sunset Avenue, especially during evening hours.

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

The effects on the health, safety, morals, order, convenience, prosperity, or general welfare of the neighborhood should be minimal. The proposed internally illuminated sign should have little or no effect on the public. Internal illumination of the proposed sign should not change the order of the neighborhood. The proposed sign will not obstruct any vision clearance triangles.

5. RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the Sign Regulations within residential districts is to limit the size and illumination characteristics so that residential properties are not negatively impacted. Identification and bulletin board signs are allowed to be externally illuminated, ground lit for example. The intent is of an aesthetic nature to maintain a residential character. However, the residential character in this particular location has already been compromised by fraternity houses, multi-family structures, medical centers and other campus-related uses.

Ground lit signs are generally less commercial in appearance. Internally illuminated signs are found in or adjacent to residential areas throughout the City. Sunset Avenue

is a collector street, not a local street where internally illuminated signs may be less appropriate.

Aistrup moved to approve a VARIANCE to allow an internally illuminated ground sign to be located along Sunset Avenue at 1001 Sunset Avenue in the R-M/U-O, Four-Family Residential District with a University Overlay District with the following conditions:

1. The Variance should only apply to the proposed Site Plan and the proposed sign.
2. A sign permit should be obtained prior to construction of the sign.
3. An Exception of the front yard setback should be approved and all conditions of approval should be met.

Hamilton seconded the motion, but expressed disagreement with City Administration's findings of fact. Specifically, that the sign would not be out of character and it is distinguished from the signs located north end because it is not the same neighborhood. Also disagreed with staff findings that the residential character has already been compromised.

The motion PASSED unanimously.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR CONSTRUCTION OF A PROPOSED TWO-FAMILY DWELLING UNIT, LOCATED WITHIN A R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT WITH TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT, 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. THE PROPERTY IS GENERALLY LOCATED APPROXIMATELY FIFTY (50) FEET WEST OF THE INTERSECTION OF YUMA STREET AND S. 11TH STREET ALONG THE SOUTH SIDE OF YUMA STREET. (APPLICANT/OWNER: ROGER AND CONNIE SEYMOUR).

A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW A REDUCTION OF THE MINIMUM REQUIRED LOT WIDTH FROM FIFTY (50) FEET TO FORTY-FIVE (45) FEET; AND TO ALLOW THE REDUCTION OF THE MINIMUM REQUIRED LOT AREA FOR A TWO-FAMILY DWELLING FROM 7,500 SQUARE FEET IN AREA TO 6,700 SQUARE FEET IN AREA FOR A PROPOSED TWO-FAMILY RESIDENTIAL BUILDING. THE PROPERTY IS

LOCATED IN THE R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT WITH THE TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE PROPERTY IS GENERALLY LOCATED APPROXIMATELY FIFTY (50) FEET WEST OF THE INTERSECTION OF YUMA STREET AND S. 11TH STREET ALONG THE SOUTH SIDE OF YUMA STREET. (APPLICANT/OWNER: ROGER AND CONNIE SEYMOUR).

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED ROOF EAVE OVERHANG OF THE TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT BUILDING DESIGN STANDARDS FROM ONE (1) FOOT TO TEN (10) INCHES FOR A PROPOSED TWO-FAMILY DWELLINGS IN THE R-2/TNO DISTRICT, TWO-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE PROPERTY IS GENERALLY LOCATED APPROXIMATELY FIFTY (50) FEET WEST OF THE INTERSECTION OF YUMA STREET AND S. 11TH STREET ALONG THE SOUTH SIDE OF YUMA STREET. (APPLICANT/OWNER: ROGER AND CONNIE SEYMOUR).

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR CONSTRUCTION OF A PROPOSED TWO-FAMILY DWELLING UNIT, LOCATED WITHIN A R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT WITH TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT, 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. THE PROPERTY IS GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF YUMA STREET AND S. 11TH STREET. (APPLICANT/OWNER: ROGER AND CONNIE SEYMOUR)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO TWELVE (12) FEET ALONG S. 11TH STREET; A REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FROM SIX (6) FEET TO FOUR (4) FEET; AND TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED ROOF EAVE OVERHANG OF THE

TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT BUILDING DESIGN STANDARDS FROM ONE (1) FOOT TO TEN (10) INCHES FOR A PROPOSED TWO-FAMILY DWELLING TO IN THE R-2/TNO DISTRICT, TWO-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE PROPERTY IS GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF YUMA STREET AND S. 11TH STREET. (APPLICANT/OWNER: ROGER AND CONNIE SEYMOUR).

(Considered together)

Bunger presented an overview of the existing property and its history, along with the first three (3) staff reports for the east lot of 1105 Yuma.

Aistrup asked staff if the zoning regulations permitted the applicant to develop the two zoning lots as one single lot and built a two story structure with four apartments.

Bunger responded that the district would not allow this type of use.

Hamilton asked for clarification regarding whether a duplex containing one (1) 900 square foot single unit, and one (1) unit with less than 600 square feet would still need a Conditional Use for the second unit.

Bunger responded that it in the R-2/TNO, Two-Family Zoning District with a Traditional Neighborhood Overlay, duplexes are permitted by right if the second unit was less than 600 square feet of floor area; and that therefore, if the second unit proposed for the subject site was less than 600 square feet, a Conditional Use Permit would not be required.

Aistrup asked for clarification on the 600 foot standard.

Bunger provided information on the intent of standard.

Bunger continued with the remaining two (2) staff reports for the corner lot of 1105 Yuma and recommend DENIAL for all five requests.

Hamilton asked for clarification on the findings for the Lot 512 Exception, and pointed out that the staff report contained an error, referring to a front yard setback as a side yard setback.

Hardy opened the Public Hearing.

Applicant Roger Seymour spoke to the request. He provided history of the neighborhood surrounding the subject site and of the subject site. He expressed that the previous structure on the subject site had been in very poor condition, and that the proposed duplexes would positively impact both the subject site and its surrounding neighborhood. He expressed disagreement with the City's contention that the previous structure on the subject site had been used as a single-family home, stating instead that it had been used as a duplex. He expressed that his intention for the subject site was to provide for Manhattan's unmet affordable housing needs, but that as a developer, he needed to be able to justify the expense of developing the site. He stated that utilizing the prefabricated units would allow him to do just that. He expressed his view that the duplex size restrictions in the Traditional Neighborhood Overlay District were arbitrary and not based on market preferences which clearly favored the development of two-bedroom duplexes. He also stated because the prefabricated structures had initially been built for another property in Junction City, he had a unique hardship that did not allow him to meet the strict application of Manhattan Zoning Regulations.

Seymour also spoke to the zoning regulations concerning the duplexes' overhangs, stating that their degree of noncompliance was minimal. He also cited other duplexes in the neighborhood that were not in compliance with the Traditional Neighborhood Overlay District to demonstrate his contention that his proposal was consistent with the established neighborhood.

Seymour then discussed alternate development proposals for the subject sites, explaining why each would be in compliance with the strict application of zoning regulations, yet would be more intense or less desirable than his current proposal. He also discussed his attempts to meet parking regulations, and explained why he felt his proposal met the spirit of the Traditional Neighborhood Overlay Regulations.

Hamilton asked Seymour if he might be able to build two-bedroom duplexes on the subject sites that met zoning regulations if he did not use the prefabricated structures.

Seymour responded that site-built housing would be a less economical option for him than utilizing the prefabricated units.

Aistrup asked Seymour whether the prefabricated units had already been purchased.

Seymour stated that they had not yet been purchased, but that he had an option on them with Clayton Homes.

Neighboring property owner Larry Luntboche spoke to the applicant's request. He stated that the applicant's other properties were well-maintained. He discussed his own properties in the same neighborhood, expressing his contention that the neighborhood had no established character. He stated that because the neighborhood had no established character, his chief concern for the properties of his neighbors was that they were well-maintained. He contended that it would be to the community's benefit to approve the applicant's proposal, and expressed his sentiment that the proposal's deviation from city standards was minor.

Clayton Homes salesman, John Carson, presented the Board with a letter he had written to address concerns raised by the City's Building Official concerning the applicant's proposal.

Wigfall asked Carson with what materials were the prefabricated structures finished.

Carson stated that the structures were finished with concrete board.

Maryann Fleming of the South Manhattan Neighborhood Association spoke against the request. She spoke to the creation process of the Traditional Neighborhood Overlay District, with which she had been involved. She contended that the applicant's proposal was contrary to the spirit of the TNO, which was to promote infill development that was compatible with the established character of Manhattan's established neighborhoods. She stated that though the proposal was an improvement over the demolished structure that previously occupied the subject site, it was not the right proposal for the site, and contended that the applicant had been fully aware of the site's use limitations when he purchased it.

Neighboring property owner Angela Cardella also spoke to the Traditional Neighborhood Overlay District and against the applicant's request. She stated her preference for a single-family home on the subject site and encouraged the Board to uphold the intent of the TNO

District.

Hamilton clarified that two-family homes are permitted within the R-2/TNO, Two-Family Residential District with a Traditional Neighborhood Overlay.

Cardella expressed her wishes that the subject site be rezoned R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay.

Hamilton asked Cardella what type of development she would like to see on the subject site.

Cardella stated that she would like to see a single-family home.

Hamilton asked Cardella for clarification, which Cardella provided.

Neighboring property owner Mike Cardella spoke against the applicant's request. He provided additional background on the history of the neighborhood and spoke against duplexes. He expressed his opinion that duplexes create parking issues, traffic issues, and public safety issues.

Kathy Dzewaltowski, of the Manhattan Preservation Alliance also spoke against the request, and contended that it did not meet the spirit of the Traditional Neighborhood Overlay District.

Neighboring property owner Kay Cardella spoke against the request and expressed that she would not like to see duplexes on the subject site.

Applicant Roger Seymour addressed concerns raised by the neighbors and members of the community who spoke against his request. He provided additional information regarding sewer improvements he had made and that the City had made. He spoke about duplexes and about the proposed parking configuration for the subject site.

Mike Cardella disagreed with the applicant's contention regarding parking.

Seymour clarified his position on parking and on duplexes.

Mike Cardella reiterated his preference for the subject site to be developed as a single-family

home.

Hardy closed the Public Hearing and opened for Board Discussion.

Hardy stated that the Board discussion would center on the zoning requests at hand, and would not address issues outside of the Board's decision-making authority, such as affordable housing or college students. He reiterated that duplexes are permitted by right in the R-2, Two Family Zoning District, and that the Board does not have the legal authority to prevent the applicant from developing his lot thusly.

Aistrup expressed that the decision before the Board would be difficult. He contended that the applicant was attempting to provide high-quality low-income housing, but the applicant's proposal does not meet zoning standards.

Hardy expressed his appreciation for the detail and depth contained in the staff report. He stated that he shared City Administration's issues as raised in the staff report. He stated that the Board could not consider economic hardship to meet the hardship requirement necessary for Variances.

Hamilton concurred with Aistrup's contention that the Board's decision in this matter would be difficult. She reiterated that the Board cannot address whether the subject site will be developed as a duplex because duplexes are permitted by right in the zoning district. She reiterated Hardy's contention that the Board also cannot consider economic hardship when making their decision. She stated that though the nonconforming interior lot was unique, no true hardship was presented because the applicant was not precluded from developing the site. She stated that other options exist for developing the site.

Hamilton addressed the Conditional Use request, stating that the applicant's proposal did not meet the intention of the Traditional Neighborhood Overlay District because of the size of both units in each proposed duplex. She emphasized, though, that a duplex that did meet the intention of the Traditional Neighborhood Overlay District would be allowed by right on the subject site. She also addressed the design standards of the TNO, stating that the applicant met all design standards except for the roof overhang, which was within inches of meeting the standard. She concurred with the applicant's contention that there would be sufficient parking at the subject site. She stated that many features of the applicant's proposal make sense within

the intention of the zoning regulations, but that the criteria to receive a Variance for lot width on the interior lot are not met. She stated that the proposed placement of the prefabricated housing unit on the corner lot was generally problematic, but that it would only have a demonstrably negative effect on the other proposed duplex. She asked the applicant if it would be possible to move the proposed duplex on the corner lot closer to 11th Street in order to provide more separation between the two structures.

Aistrup asked Bunger for clarification regarding the Traditional Neighborhood Overlay requirement for duplexes.

Bunger provided clarification.

Aistrup asked for additional clarification, which Bunger provided.

Hamilton asked for clarification on the potential impact of the duplex the applicant was proposing in contrast to the potential impact of a duplex that would be permitted by right in the zoning district.

Bunger provided clarification.

Wigfall expressed that the subject site was difficult to develop, and stated that the neighborhood surrounding the subject site was struggling to find an identity. She remarked that rather than expressing concern over potential issues with the intention of the regulations addressed in the Variances, Exceptions, and Conditional Use requests, the neighborhood had expressed concern regarding the style and character of the proposed development; and that those issues are outside of the Board's control. She expressed concern with the fact that landscaping was not clearly addressed in the staff report.

Hamilton asked Bunger whether a Variance would be required to develop the interior lot as a single-family home.

Bunger stated that it would need a Variance for lot width in order to develop anything on the lot. He stated that a single-family home would not need a Variance for lot area, which a duplex would need. He also stated that it was the applicant's decision to develop the subject site as two lots rather than as one single zoning lot, and that therefore the Variance

requirement that the unique condition creating the hardship was not caused by the applicant, was not met.

The Board discussed the order in which they would consider and issue their decision on the five (5) applications for the subject site.

Hamilton contended that the regulations for Variances state that the hardship on the subject site cannot be created by the applicant.

Aistrup asked whether the applicant created the hardship preventing him from developing the interior lot of the subject site.

Hamilton referenced the standards for Variances.

Bunger discussed the unique condition of the lot and City Administration's interpretation on whether the applicant's proposal met that standard for Variances. He explained that the situation was not initially created by the applicant, but that it had been abandoned by a previous owner and reinstated by the applicant.

Hamilton referenced the Findings of Fact in the Staff Report in order to establish whether the application met the hardship standard for Variances.

Aistrup contended that the hardship present on the subject site was created by the applicant. He also stated that it would not be possible to develop the lot as a single-family home, but that both platted lots, which had been previously considered to be one zoning lot, could be developed as one ninety-five foot zoning lot, and therefore there was no hardship preventing the applicant from developing the subject site.

Bunger concurred.

At this point, it was discovered by the Board that due to a clerical error, one page of one of the City Staff Reports for the five (5) items under consideration was omitted. After some discussion, the Board decided the hearing would need to be tabled until their next meeting so that they would have the full staff report to consider in making their determination.

Hardy moved to TABLE the above-referenced five (5) public hearings for a property generally located at the southwest corner of the intersection of Yuma Street and S. 11th Street and a property generally located approximately fifty (50) feet west of the intersection of Yuma Street and S. 11th Street along the south side of Yuma Street.

Wigfall seconded the motion which PASSED unanimously with a vote of 4-0.

ADJOURN

Respectfully Submitted,

Stephanie Dikeman and Anne Antonini, Planning Interns

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