

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, April 8, 2009
7:00 PM

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

MEMBERS ABSENT: None

STAFF PRESENT: Chad Bunger, Planner

CONSIDER THE MINUTES

Connie Hamilton moved to approve the minutes of the March 11, 2009, Board of Zoning Appeals meeting which was seconded by Joe Aistrup and passed with a vote of 5-0.

INTRODUCTION OF NEW BOARD MEMBER

Hardy recognized and welcomed new Board of Zoning Appeals member Ricci Dillon.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTIONS TO REDUCE THE MINIMUM REAR YARD SETBACK FOR DECKS GREATER THAN 30 INCHES IN HEIGHT ABOVE THE GRADE ON WHICH THEY ARE LOCATED FOR LOTS 12A AND 12B TO LOT 20A AND 20B, KIMBALL TOWNHOMES ADDITION; A REDUCTION OF THE MINIMUM REAR YARD SETBACK FOR A PRINCIPAL SINGLE-FAMILY ATTACHED RESIDENTIAL STRUCTURE (LOT 12A, KIMBALL TOWNHOMES ADDITION); AND TO ALLOW AN INCREASE OF THE MAXIMUM THIRTY-FIVE (35) PERCENT LOT COVERAGE TO UP TO FORTY-FIVE (45) PERCENT FOR LOTS 12B TO 20B, KIMBALL TOWNHOMES ADDITION FOR THE PURPOSE OF CONSTRUCTING SINGLE-FAMILY ATTACHED RESIDENCES WITH DECKS IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT.

Hamilton moved to approve a 180 Day Extension for approved Exceptions to reduce the minimum rear yard setback for decks greater than 30 inches in height above the grade on which they are located for Lots 12A and 12B to Lot 20A and 20B, Kimball Townhomes Addition; a reduction of the minimum rear yard setback for a principal single-family attached residential structure (Lot 12A, Kimball Townhomes Addition); and to allow an increase of the maximum thirty-five (35) percent lot coverage to up to forty-five (45) percent for Lots 12B to 20B, Kimball Townhomes Addition for the purpose of constructing single-family attached residences with decks in the R-2, Two-Family Residential District. Aistrup seconded the motion, which passed with a vote of 5-0

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A REQUEST FOR 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).

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A REQUEST FOR 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).

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A REQUEST FOR 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).

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A

REQUEST FOR 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)

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO TEN (10) 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. THESE REQUESTS ARE RELATED TO A MODIFIED SITE PLAN FOR THE PROPOSED DEVELOPMENT THAT THE BOARD OF ZONING APPEALS TABLED AT THE MARCH 11, 2009 MEETING. THE PROPOSED USE AND STRUCTURE HAS REMAINED UNCHANGED. (APPLICANT/OWNER: ROGER AND CONNIE SEYMOUR).

Hamilton made a motion to remove from the Table all 5 items.

Aistrup seconded the motion.

Considered Together.

Bunger presented the Staff Report with a recommendation for denial of the Conditional Use and Exceptions.

Hardy opened the Public Hearing.

Applicant Roger Seymour provided background information regarding the subject site and his intentions for its development. The applicant then described the changes he had made to the site plan

for the proposed development to address concerns expressed by the Board at the March 11th, 2009 public hearing.

Applicant's representative Joe Knopp spoke to the Board regarding past and current conditions at the subject site. He described the proposed building and showed pictures of other residential buildings in the area in order to illustrate his contention that the proposed structures would be consistent with the established neighborhood of the subject site.

Hamilton asked Knopp for clarification on some of the points he had brought up so that she could understand how to apply them to the Conditional Use Permit standards.

Knopp provided clarification, stating that he felt that the Traditional Neighborhood Overlay District creates an unnecessary hardship on the R-2 use of this particular property.

Hamilton stated that while she understood that Knopp was trying to ensure the proposed structures would be consistent with their surrounding neighborhood, the pictures he had presented to the Board were of structures built prior to the adoption of the Traditional Neighborhood Overlay District and did not meet the current standards for the district.

Hardy closed the Public Hearing and opened for Board discussion.

Aistrup asked City Staff for clarification on the regulations for second dwelling units in the R-2 district.

Bunger provided clarification, stating that the 600 foot maximum size for second dwelling units in the Traditional Neighborhood District was determined by consensus of the community members involved in the district's creation, and that to his knowledge, the standard was not based on any existing statutes.

Aistrup clarified that Traditional Neighborhood Overlay District defines the uses in the district where it is applied, including the subject site's R-2, Two-Family District designation.

Bunger affirmed.

Hamilton asked Bunger to address how gutters affect how roof overhangs are measured.

Bunger responded that roof overhang measurement is not explicitly defined in the Zoning Regulations, but that standard operating procedure for City Administration is to measure from the exterior wall of the building to the edge of the fascia board of the roof overhang, and that this procedure is uniformly applied.

Aistrup contended that since the applicant bought the property after the regulations were already in place and knew of them when he bought the property; he created the hardship addressed in the Variance proposal.

Hamilton asked Aistrup if he felt the same way about both lots.

Aistrup replied that the majority of his concerns pertained to the narrower lot.

Hamilton stated that in order for the subject site to receive the requested Conditional Use Permit, it had to meet all lot width and lot area requirements. She contended that on the forty-five (45) foot interior

lot, these requirements were not met. She also stated that she was reluctant to approve the requested Variance, and expressed confusion about the City staff report's contention that conditions surrounding the lot width of the subject site were unique but that the lot area was not. Hamilton stated that as proposed she could not support the Conditional Use Permit on the forty-five (45) foot lot, explaining that though it might be feasible to develop a two-unit residential structure on that lot that met the Traditional Neighborhood Overlay Requirement that one or both units must be less than 600 square feet in area, the lot was too small to support a residential structure where both units were larger than 600 square feet. She stated, however, that she was possibly amenable to approving the Conditional Use Permit on the corner lot of the subject site. She explained that the conditions present at the corner lot, including the fact that it was near the terminus of a dead-end street, and the fact that there is a fairly uniform ten (10) foot setback along 11th street with which the proposed front yard setback Exception along 11th Street would be consistent, made it a more palatable proposal that stood a greater chance of being approved by the Board.

Wigfall addressed the applicant, stating that though he might feel like he had a hardship because he was not able to develop the subject site as he saw fit, there were still development options available to him for the lot, and thus he did not have a true hardship as defined by the Zoning Regulations. She stated that she concurred with Hamilton and Aistrup in their assessments of the Variance request.

Knopp asked the Board whether they would be more likely to approve the requests associated with the subject site if the proposal was modified so that the forty-five (45) foot interior lot could only be developed for single-family residential use.

Aistrup responded that in the current proposal, the proposed duplexes were massed in a way that would be detrimental both to users of the subject site and to the surrounding neighborhood, and that the duplex standards in the Traditional Neighborhood Overlay District were created specifically to address this type of scenario. He stated that if the proposal was modified so that the interior lot contained a single-family residential use, instead of a two-family use, that would alleviate concerns with the current proposal, and he would be more likely to support it.

Knopp reiterated his opinion of the 600 foot standard in the Traditional Neighborhood Overlay District.

Aistrup responded to Knopp, stating that the Board of Zoning Appeals was not charged with the task of creating and modifying the Zoning Ordinance, but rather with interpreting and applying its provisions. He stated that the current proposal violated those provisions. He further stated that the Board would happily review a modified proposal that showed less intense development for the zoning lot. He contended that in his opinion, the Board would prefer to see the entire subject site developed as one property, with one single-family home or duplex, rather than the currently proposed two-lot development.

Bunger provided clarification on terminology the applicant's agent had used to describe single- and two-family residential uses.

Aistrup asked Bunger whether the changes the applicant's agent proposed to the forty-five (45) foot interior lot would better meet the requirements of the Zoning Regulations.

Bunger contended that in order to answer the question, he would need to be shown a proposal showing the changes, but that regardless of the proposed use, a lot width Variance would still be necessary.

Hardy asked Bunger for further clarification on what Board of Zoning Appeals actions would still be necessary for the interior lot under a modified proposal.

Bunger provided further clarification. He recommended a modified proposal be brought back before the Board, if the applicant desired to modify the proposal to a single-family use.

Dillon stated that she did not have an issue with a duplex on the wider lot and a single-family structure on the narrower lot. She then asked the applicant if he would be amenable to that combination of uses on the subject site.

The applicant stated that he would be willing to modify the floor plan of the structure proposed for the interior lot to make it a single-family home.

Dillon provided information on advances made in modular housing construction, and expressed her feeling that the fact that the proposed structures were modular units would in no way indicate that they would be of inferior quality.

Hardy contended that the Board was not considering the merits of prefabricated versus site-built housing, but rather that they were addressing whether or not the applicant's proposal met the standards for the Variance, Exceptions, and Conditional Use Permits sought.

Dillon asked the applicant for clarification on the design of the now-proposed single-family home would be.

The applicant provided clarification, stating that the proposed single-family structure on the interior lot would be the same design as the proposed two-family structure on the corner lot, but without the interior walls which would separate the two units in the two-family structure.

Hardy expressed that his concerns pertained mostly to the narrower lot, but that he felt some concern about the roof overhang on the wider lot.

Hamilton asked the applicant if he wanted to the Board to vote on the items regarding the narrower lot or if he wanted to Table those items so he could submit a revised proposal.

Knopp commented that his applicant would be willing to withdraw or table the items, depending on which action would be more appropriate.

Hardy told Knopp that he would like to see the suggested revised proposal.

Bunger asked for clarification on whether the applicant would withdraw the requests for the narrower interior lot.

Knopp said that he and the applicant would withdraw the requests for the narrower lot.

Hamilton asked for clarification.

Bunger provided clarification, explaining that the Variance was advertised for a two-family dwelling and would need to be re-advertised for a single-family dwelling, because of the significant change in the proposal for the subject site. He suggested that the most appropriate route for the current public

hearing would be to either withdraw or deny the requests pertaining to the interior lot, since the new proposal would be for a different use of the property.

Hardy asked the applicant if he would be willing to withdraw the three items and resubmit them with a new proposal for a single-family use on the narrower lot.

The applicant affirmed that he would.

Hardy stated that the Conditional Use, Variance and Exception for the narrower lot (Lot 513) were withdrawn by the applicant, and no further action was required by the Board on those items.

Hamilton suggested that the remaining Exceptions for the corner lot be addressed first, because the Conditional Use Permit for the corner lot could not be discussed unless the Exceptions were granted. Hamilton asked Bunger for clarification on which items still needed to be addressed by the Board.

Bunger provided clarification.

Hamilton asked Bunger whether the side yard setback could be withdrawn if the ten foot front yard setback was granted.

Bunger responded that the Exception would either have to be withdrawn or voted and denied, because otherwise it would still be an open application.

Hamilton asked if a condition could be placed on the ten foot front yard Exception along 11th Street stating that would resolve the side yard setback request.

Bunger responded that the side yard setback Exception still needed to be addressed by denial or by the applicant withdrawing it.

Hardy asked the applicant which method he would prefer.

The applicant stated that he would prefer to withdraw the side yard setback Exception request.

Hardy clarified before the Board that they still needed to make determinations on the Conditional Use, front yard Exception, and roof overhang Exception for the corner lot at 1105 Yuma.

Hamilton reiterated her support for the front yard Exception request.

Hardy also expressed his support for the item.

Hamilton asked Bunger for clarification on whether the Exceptions were to be decided together by the Board or Separately.

Bunger provided clarification.

Hardy asked the Board if there was further comment or discussion on the remaining requests for 1105 Yuma Street.

The Board decided to vote separately for the Exceptions at 1105 Yuma Street.

Hamilton moved to grant a front yard setback Exception...

Bunger interjected that as City Staff had not recommended approval for the item, the Board needed to determine Findings of Fact and conditions of approval to reflect the Board's decision.

Hamilton suggested that in the future, City Administration might consider preparing alternate findings of fact, in case the Board did not go with City Administration's recommendation, to ensure that findings of fact were available for the Notice of Decision, which is finalized the night of the public hearing.

Bunger explained that City Administration prepared findings of fact to match its recommendation, and that it would not be able to anticipate when the Board might choose to override that recommendation, or on what basis; and therefore City Administration would not be able to generate alternate sets of findings of fact to match the Board's decisions or their reasoning.

Hardy asked Bunger for clarification on the alternate conditions submitted in the staff report.

Bunger provided clarification.

The Board took a moment to review the findings of fact and the alternate conditions in the City staff report for the Exception.

Hardy contended that he agreed with the City's finding regarding Compliance with Existing Regulations in the staff report for the Exception.

Hamilton proposed that the City's finding regarding Probable Affect on Adjacent Properties be changed to include that the subject site's location near the terminus of a dead-end street, and the consistency of the proposed setback with other properties along 11th Street indicated that the proposed Exception would not adversely affect adjacent properties. Hamilton also proposed that the finding of fact regarding the Strict Application of Existing Regulations be changed to read that the strict application of existing regulations would be unreasonable for the above-mentioned reasons regarding the location of the subject site and setbacks along 11th Street.

Hardy confirmed that Bunger understood and would make the requested changes.

Bunger affirmed that he understood and would make the changes and reiterated those changes for the Board.

Hamilton and Hardy provided clarification on the requested changes to the findings of fact.

Bunger asked for further clarification on the changes proposed to the findings of fact, which the Board provided.

Hamilton proposed corrections to the alternate conditions suggested by City Administration.

The Board made the following findings of fact for the front yard setback Exception located at 1105 Yuma Street:

- A. The proposed two-family dwelling consists of two-bedroom units, each totaling 900 square

feet in floor area. The TNO Regulations require that two-family dwellings with a second unit larger than 600 square feet in floor area be granted a Conditional Use Permit. The applicants have requested a Conditional Use to allow the development of the two-family dwelling as proposed. Other than the stated Exceptions and the Conditional Use requests, the proposal meets the applicable requirements of the Zoning Regulations.

Brad Claussen, the City of Manhattan's Building Official, has provided a memorandum explaining the City's building code requirements for factory built housing, which includes that structures are required to be built to the 2006 International Residential Code and be verified by a third party inspector (*See attached memo*). The memo indicates that the buildings were constructed using the 2003 International Residential Code, which do not comply with the current requirements. The structures will need to be modified and inspected by a third party to meet the City's building code prior to being issued a permit to locate the structures on the site.

Since the time the item was tabled at the March 11, 2009 meeting, Brad Claussen, the City of Manhattan's Building Official, has received a 3rd party inspection certification from the factory of the modularly constructed building, stating that the structure proposed for the site now meets the City's current residential code. The proposed Condition of Approval with the original staff report "The modular structures shall conform to the current City Building Code" has been removed from this updated staff report.

- B. The site and surrounding properties to the north, east, south and west are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. Two (2) Residential Planned Unit Developments (PUD) are also located in the area. The neighborhood is a mix of owner occupied homes, two-family dwellings and multi-family dwellings. Property immediately to the south of the site across El Paso Lane is vacant land that is owned by the City and used as a parking lot. To the east of the site is a PUD that consists of four apartment buildings and has a total of twelve (12) living units. A PUD to the northwest of the site consists of three (3) apartment buildings and has thirteen (13) living units. Over half of the properties in the immediate area are rental units. The majority of the properties along the 1100 block of Yuma Street are rental units.

Minimal adverse impacts are anticipated on adjacent properties by approving the Exception for the front yard setback and the TNO Building Design Standard. The property fronts along S. 11th Street, which dead ends a block to the south near Fort Riley Boulevard. Encroaching four (4) feet towards this front property line should not impact the minimal traffic along S. 11th Street or the property to the east of the site. The property to the east is a twelve (12) unit apartment complex that has a small parking lot along S. 11th Street in the general area across from the proposed two-family dwelling. The house on the property to the north of the site, which was building in the late 1890's, has a similar building setback on S. 11th Street as the proposed structure on the site.

The property directly to the west of the site is part of Lot 513 that the applicants are proposing to move in an identical two-family dwelling. The original proposal was to have the two-family dwelling located four (4) feet from the side property line for a total of ten (10) feet separating the two (2) structures. The revised site plan alleviates any adverse affects on the adjacent tenants.

- C. The requested Exception for the building setback is consistent with the setbacks of the

buildings along the west side of S. 11th Street. The property to the north is setback approximately (10) feet from the S. 11th Street property line. The houses on the east side of the street are setback further from S. 11th Street (approximately 18 – 20 feet). The proposed setback should not disrupt the order of the established building lines. The proposed building should also not cause significant impacts on traffic along S. 11th Street. To the south of the subject site, the street dead end as it reaches Fort Riley Boulevard. All that exists to the south of the subject site is a vacant lot owned by the City and used as a temporary parking lot.

The proposed structure will not encroach on any easements and is outside of the thirty (30) foot vision triangle created by the Yuma Street and S. 11th Street intersection.

- D. The strict application of the setback requirement would not allow the two-family dwelling to be moved onto the site as proposed. Because of the width of the modular building and the fact that the site is a corner lot, the applicants do not have the ability to adjust the location of the proposed structure to conform to the applicable regulations. Because the modular structure is already built, there is no opportunity to decrease the width of the two-family dwelling. The Exception request to reduce the roof eave overhang requirement is also a function of the structure already being built. The width of the fascia board could be increased by two (2) inches by using a wider fascia board or tacking on additional board to the existing fascia board to technically meet the requirements.

Given that the location of the subject property is along a dead end street and that the proposed front yard setback will be consistent and maintain the established order of the buildings of S. 11th Street to the north of the property, the strict application is unreasonable.

Hamilton moved to approve an Exception to allow a reduction in the front yard setback from fourteen (14) feet to twelve (12) feet along S. 11th Street for a proposed two-family dwelling to in the R-2/TNO District, Two-Family Residential District and Traditional Neighborhood Overlay District for property generally located at the southwest corner of the intersection of Yuma Street and S. 11th Street with the following conditions and findings of fact as modified by the Board.

1. The Exception shall be limited to what is shown on the revised site plan as dated March 15th 2009.

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

Hamilton stated that she would not support an Exception for the Roof Overhang at 1105 Yuma Street.

Hardy contended that the Board has historically been fairly consistent in determining that cases where feasible options exist within the regulation do not merit Exceptions. He concurred with Hamilton's opinion of the roof overhang Exception request.

The Board made the following findings of fact for the Conditional Use at 1105 Yuma Street:

A. Compliance with all applicable regulations: The proposed location of the structure on the property is ten (10) feet from the front property line along S. 11th Street. The proposed location of the structure encroaches into the fourteen (14) foot front yard setback. The applicants have requested the Exception for this issue. The design of the dwelling meets the minimum Building Design Standards for the TNO District, with the exception of the minimum one (1) foot roof eave overhang width. The modular designed structure was built with ten (10) inch overhangs on all sides of the building. The applicant is required to meet the TNO Building Design Standards. Other than the stated Exception and the Conditional Use requests, the proposal meets the applicable requirements of the Zoning Regulations.

Brad Claussen, the City of Manhattan's Building Official, has provided a memorandum explaining the City's building code requirements for factory built housing, which includes that structures are required to be built to the 2006 International Residential Code and be verified by a third party inspector (*See attached memo*). The memo indicates that the buildings were constructed using the 2003 International Residential Code, which do not comply with the current requirements. The structures will need to be modified and inspected by a third party to meet the City's building code prior to being issued a permit to locate the structures on the site.

Since the time the item was tabled at the March 11, 2009 meeting, Brad Claussen, the City of Manhattan's Building Official, has received a 3rd party inspection certification from the factory of the modularly constructed building, stating that the structure proposed for the site now meets the City's current residential code. The proposed Condition of Approval with the original staff report "The modular structures shall conform to the current City Building Code" has been removed from this updated staff report.

B. Probable effect on adjacent properties:

The site and surrounding properties to the north, east, south and west are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. Two (2) Residential Planned Unit Developments (PUD) are also located in the area. The neighborhood is a mix of owner occupied homes, two-family dwellings and multi-family dwellings. Property immediately to the south of the site across El Paso Lane is vacant land that is owned by the City and used as a parking lot. To the east of the site is a PUD that consists of four dwelling unit buildings and have a total of twelve (12) living units. A PUD to the north and west of the site consists of three (3) dwelling unit buildings and has thirteen (13) living units. Over half of the properties in the immediate area are rental units. The majority of the properties along the 1100 block of Yuma Street are rental units.

Prior to demolition, a single-family dwelling that had been historically owner occupied was on the east forty-five (45) feet of Lot 513. Lot 512 functioned as an open yard. The house had fallen into an extreme state of disrepair and the Code Service Department ordered the structure to be demolished to address safety and health hazards. The applicant's development plan will replace the demolished house with new construction, which should be an improvement to the neighborhood.

The applicant's proposal is to re-establish Lot 512 and part of Lot 513 so that a two-family dwelling can be placed on each lot. The proposed development will match the characteristic use of the neighborhood which has a relatively high number of rental units that include two-family and multi-family dwellings. The proposed use should have minimal adverse affects on adjacent properties.

C. Domination by use over neighboring properties: The surrounding area is one of the original neighborhoods in the community. The 1100 block of Yuma is comprised of several single-family homes that have been renovated into two-family family dwellings or are single-family homes being used as rental units, which are consistent with the intent of the R-2, Two-Family Residential District, which is to promote low density residential uses that include single-family and two-family dwellings. The intent of the Traditional Neighborhood Overlay (TNO) District is to conserve the traditional character of the older neighborhoods through Compatibility Standards which requires that new infill residential buildings, and additions or modifications to existing residential buildings, incorporate basic design and site layout elements characteristic of homes in the traditional neighborhoods. The proposed structure fails to meet the requirements for the second dwelling unit to be 600 square feet or less in floor area in the TNO District. The decision is a close call, especially because this is new construction on vacant land, but given the unique placement in the already established use around the proposed site, the Board cannot find that granting the Conditional Use to allow a 900 square foot second dwelling unit would dominate neighborhood and prevent its development consistent with the Traditional Neighborhood Overlay District.

1. Location, nature, and height of physical improvements:

The proposed two-family dwelling will be approximately 64 feet long and 33 feet wide and is to be sixteen (16) feet tall to the roof peak. The lot coverage of the house will be approximately 2,112 square feet in area or 28 percent. The building will be oriented to the north and south with a northern and southern dwelling unit. The north dwelling unit will have one (1) door facing Yuma Street and a second door facing east toward S. 11th Street. The southern dwelling unit will have a door facing south towards the parking lot and El Paso Lane and a second door facing east toward S. 11th Street. The structure will be situated nineteen (19) feet from the Yuma Street front property line, ten (10) feet from the S. 11th Street front property line, six (6) feet from the west side property line, and sixty-four (64) feet from the south (side) property line.

2. Landscaping and screening: Landscaping on the site was neglected for a number of years prior to the applicant purchasing the site. The applicant has removed a number of bushes and trees that were overgrown to clean up the site. According to the site plan, several mature trees located along the west property line of property will remain. No specific landscaping plans have been proposed with the provided site plan. The front yard area along Yuma Street should be repaired and maintained as a grass lawn.

D. Adequate provision of parking and loading: The site plan provides for four (4) off-street parking spaces at the rear of the site, which meets the required number of off-street parking spaces, which are two (2) spaces per dwelling unit for a two-family dwelling. The parking lot will be accessed off El Paso Lane, a named alley. To the southwest of the site, along El Paso Lane, a single-family home gains access from the alley, so it functions as somewhat of a narrow public street. Other properties along Yuma Street use El Paso Lane to gain access to parking areas. On-street parking along Yuma Street is restricted to only the north side of the street.

E. Adequate provision of drainage, and other public utilities: Storm water drainage flows to the south towards the alley as well as to the north and east along the street frontages. Utilities are present to serve the property. Adequate drainage and public utilities are provided for the proposed use.

F. Adequate provision of access: The site has frontage along Yuma Street, S. 11th Street, and an alley located at the south property line. The parking provided in the rear yard will be accessed from

the alley. No curb cut is proposed off either Yuma Street or S. 11th Street. Adequate access is provided for the proposed use.

Aistrup moved to approve a Conditional Use Permit to allow for construction of a 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 for property generally located at the southwest corner of the intersection of Yuma Street and S. 11th Street with the following conditions:

1. The modular constructed structure shall be moved to the property as proposed.
2. All applicable permits shall be obtained prior to the construction and location of the house.
3. The site shall be developed as proposed and shall be maintained in good condition.
4. A residential lawn shall be planted in the open landscape area and shall be maintained in good condition.

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

The Board made the following findings of fact for the roof overhang Exception at 1105 Yuma Street:

- A. The proposed two-family dwelling consists of two-bedroom units, each totaling 900 square feet in floor area. The TNO Regulations require that two-family dwellings with a second unit larger than 600 square feet in floor area be granted a Conditional Use Permit. The applicants have requested a Conditional Use to allow the development of the two-family dwelling as proposed. Other than the stated Exceptions and the Conditional Use requests, the proposal meets the applicable requirements of the Zoning Regulations.

Brad Claussen, the City of Manhattan's Building Official, has provided a memorandum explaining the City's building code requirements for factory built housing, which includes that structures are required to be built to the 2006 International Residential Code and be verified by a third party inspector (*See attached memo*). The memo indicates that the buildings were constructed using the 2003 International Residential Code, which do not comply with the current requirements. The structures will need to be modified and inspected by a third party to meet the City's building code prior to being issued a permit to locate the structures on the site.

Since the time the item was tabled at the March 11, 2009 meeting, Brad Claussen, the City of Manhattan's Building Official, has received a 3rd party inspection certification from the factory of the modularly constructed building, stating that the structure proposed for the site now meets the City's current residential code. The proposed Condition of Approval with the original staff report "The modular structures shall conform to the current City Building Code" has been removed from this updated staff report.

- B. The site and surrounding properties to the north, east, south and west are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. Two (2) Residential Planned Unit Developments (PUD) are also located in the area. The neighborhood is a mix of owner occupied homes, two-family dwellings and multi-family dwellings. Property immediately to the south of the site across El Paso Lane is vacant land that is owned by the City and used as a parking lot. To the east of the site is a PUD that consists of four apartment buildings and has a total of twelve (12) living units. A PUD to the northwest of the site consists of three (3) apartment buildings and has thirteen (13) living units. Over half of the

properties in the immediate area are rental units. The majority of the properties along the 1100 block of Yuma Street are rental units.

The reduction of the roof eave overhang by two (2) inches should be undetectable by the adjacent property owners or the general public and would not cause an adverse impact on the adjacent properties.

- C. The proposed structure will not encroach on any easements and is outside of the thirty (30) foot vision triangle created by the Yuma Street and S. 11th Street intersection.

In regards to the Exception for the width of the roof eave overhang; starting in 2001, the community spent a considerable amount of time discussing and creating a zoning strategy to conserve the traditional character of the older neighborhoods. The result is the Traditional Neighborhood Overlay District, which in part created minimum Building Design Standards. These standards regulate the minimum design of remodeled or newly constructed residential buildings based on basic characteristics of homes in the traditional neighborhoods. Although the request is only a minor deviation from the minimum requirement, the proposed ten (10) inch roof eave overhang may deviate from the order of the traditional neighborhood as defined by the TNO District. There is no compelling basis to grant the Exceptions. The applicants have not demonstrated that no building could be constructed on the site, which meets the R-2/TNO District requirements.

- D. The Exception request to reduce the roof eave overhang requirement is a function of the structure already being built. The width of the fascia board could be increased by two (2) inches by using a wider fascia board or tacking on additional board to the existing fascia board to technically meet the requirements.

The Exception request is a function of the proposed structure already being constructed without regard to the property or the zoning district that it will be located in. The structure does not completely conform to the TNO requirements, which the community established in an attempt to preserve the older, traditional neighborhood. Considering these facts and circumstances, the strict application of the regulation is reasonable and necessary to preserve the older, traditional neighborhoods.

Hamilton moved to deny 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 dwelling to in the R-2/TNO District, Two-Family Residential District and Traditional Neighborhood Overlay District for property generally located at the southwest corner of the intersection of Yuma Street and S. 11th Street

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO TWENTY (20) FEET ALONG TUTTLE STREET FOR A PROPOSED COVERED PORCH TO BE ADDED TO AN EXISTING HOUSE. THE PROPERTY IS ZONED R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: WILLIAM R. AND MELINDA

GAMMILL)

Bunger presented the Staff Report with a recommendation for approval of the Exception.

Hamilton asked Bunger if the proposed deck was less than thirty (30) inches in height.

Bunger deferred to the applicant's contractor, Wynn Craig, who stated that the deck would be approximately twenty (20) inches tall.

Hamilton asked Bunger if an approval condition should be added that states that the porch must remain unenclosed.

Bunger stated that that condition would be appropriate.

Hardy opened the Public Hearing.

Wynn Craig stated that the applicant did not intend to enclose the porch at that time or in the future, and would be open to adding the condition suggested by Hamilton.

Hardy closed for Public Hearing and opened for Board discussion.

Aistrup said that he could support the Exception with the additional condition.

Wigfall concurred with Aistrup.

Hamilton asked Bunger to modify the staff report so that would state that the proposed deck would be less than thirty (30) inches in height.

The Board made the following findings of fact for the Exception at 2316 Tuttle Circle:

- A. The existing covered landing encroaches into the front yard setback by approximately two (2) feet. It appears that this portion of the house was constructed at the same time the house was built in 1957. The Zoning Ordinance in effect at the time the house was constructed, Ordinance No. 1201, allowed one-story porches with three (3) unenclosed sides to project ten (10) feet into the front yard. It is assumed that the existing covered landing met the definition of a one-story porch, and is considered to be legally nonconforming. Other than the proposed Exception request, the property conforms to all applicable regulations.
- B. The subject site and surrounding properties are zoned R-1, Single-Family Residential District. The subject site is a wide corner lot at the entrance of the small Tuttle Circle cul-de-sac. A majority of the houses in the neighborhood were built in the late 1950s and early 1960s with the same ranch-style architectural design. The location and the design of the proposed addition to the front of the house should not adversely impact adjacent properties. Other properties in the neighborhood have similar additions to their front facades as proposed for the site; specifically a house with a similar porch design is located along Tuttle Circle to the southwest. The existing, legally nonconforming covered landing along Tuttle Street is located approximately twenty-three (23) feet from the front property line. This landing has been a part of the established neighborhood since it was first constructed in 1957 with no recorded complaints or violations. The proposed addition, which will replace the existing landing, will

encroach an additional two (2) feet toward Tuttle Street and extend the length of the house.

The property directly to the east of the site fronts Brockman Street with the side of the house, the attached garage, and driveway facing Tuttle Street. The proposed addition should not adversely impact this property. The proposed addition should not adversely impact the properties across the street to the north or the west.

Placing the proposed addition twenty-one (21) feet from the front lot line along Tuttle Street may disrupt the order of the building line along the street. The four (4) properties along Tuttle Street from Brockman Street to Kraig Road follow the same building setback distance of approximately twenty-five (25) feet. The proposed addition will be covered but not enclosed. The impact on the building line along the street may be lessened because the addition will be open and will allow vehicles and pedestrians to see the established building line.

- C. The proposed covered porch is not located within any utility easement and is outside of the vision clearance triangle created by the intersection of Tuttle Street and Tuttle Circle. Approval of the setback reduction is not anticipated to have an adverse effect on the health, safety, and general welfare of the community.
- D. The strict application of the front yard building setback would not allow the applicant to construct the covered porch as proposed. The applicants have the option of repairing or replacing the existing concrete landing or constructing a porch that is less than thirty (30) inches in height and not covered. That type of porch could be located as close as fifteen (15) feet to the front lot line. The legally nonconforming covered landing is only permitted to be repaired or replaced in its existing location. Considering that the proposed covered porch should not adversely affect the adjacent properties, and that the existing covered landing already is located within the twenty-five (25) foot building setback, and a uncovered porch that is not over 30 inches in height could be as close as fifteen (15) feet from the front property line, strictly applying the regulation would be unreasonable for this situation.

Aistrup moved to approve an Exception to allow for the reduction of the minimum twenty-five (25) foot front yard setback to twenty (20) feet along Tuttle Street for a proposed covered porch to be added to an existing house at 2316 Tuttle Street in the R-1, Single-Family Residential District with the following conditions of approval.

1. The Exception shall apply only to the proposed covered porch as outlined in the application documents and shown on the site plan.
2. All applicable permits shall be obtained prior to construction of the covered porch.
3. The covered porch shall not be enclosed.

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

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A HEALTH AND FITNESS CLUB IN THE I-2, INDUSTRIAL PARK DISTRICT. THE PROPOSED ACTIVITY IS FOR THREE (3) SOFTBALL FIELDS AND AN INDOOR MULTI-USE ATHLETIC FACILITY ASSOCIATED WITH THE OPTIMIST CLUB BALLPARK. (APPLICANT/OWNER: MANHATTAN OPTIMIST FOUNDATION, INC.)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A TEMPORARY DRIVEWAY AND PARKING LOT ASSOCIATED WITH THE OPTIMIST CLUB BALLPARK TO BE LOCATED ON GRAVEL FOR A PERIOD OF TWO (2) YEAR. THE PROPERTY IS LOCATED IN THE I-2, INDUSTRIAL PARK DISTRICT. (APPLICANT/OWNER: MANHATTAN OPTIMIST FOUNDATION, INC.)

Aistrup recused himself from the public hearing due to a conflict of interest.

Considered Together.

Bunger presented the Staff Report recommendations for approval of the Conditional Use and the Exception.

Hamilton remarked that the Board does not typically consider phased projects or conceptual projects.

Bunger provided further information on the proposal associated with the requests, explaining that the proposed phasing of the project was because it would be dependent on future donations and volunteer efforts.

Hamilton asked if it would be appropriate for the Board to only consider phases one and two of the proposal, since the applicant has committed itself to constructing these fields.

Bunger replied that it might be appropriate and deferred the question to the applicant.

Tom Bennett, member of the Manhattan Optimist Foundation and project leader for the park construction, spoke to the request, explaining the need for the new park configuration and providing additional information on the layout proposed in the requests. Bennett expressed his organization's willingness to have the Board only consider the first two phases of the project.

Wigfall asked if the proposal would improve the maintenance of the playing fields.

Bennett responded that it would.

Nancy Nagy, 800 Wildcat Ridge, spoke in opposition to the requests. She presented a letter to the Board (attached). She contended that the fill associated with the applicant's proposal would increase the impacts on surrounding properties from flooding. Nagy presented pictures to the Board showing the significance of flooding the area received in 2007 to support that claim. She also expressed concern that the applicant's proposal would cause an increase in noise and light, which would negatively impact the wildlife present in Wildcat Creek. Nagy cited examples of noise pollution already present in the neighborhood surrounding the subject site as evidence.

Hamilton asked Nagy to clarify whether the garage band mentioned as an example of noise pollution held their practices at the subject site.

Nagy responded that they did not.

Hamilton asked if Nagy could currently hear the activities associated with playing fields currently on the subject site.

Nagy answered that she could not, but contended that she would be able to hear them if the fields were relocated as proposed by the applicant.

Dale Schruben, 800 Wildcat Ridge, spoke in opposition to the applicant's proposal. He provided a letter to the Board from himself, Nancy Nagy of the same address and Judy Stehley of 805 Wildcat Ridge. Schruben commented that he had spoken with Bunger before the meeting, and claimed that Bunger expressed to him at that time that he wished the flooding issue had been addressed more thoroughly.

Bunger responded that his comment was in regard to the Division of Water Resource (DWR) Floodplain Permit, over which the City has no authority.

Schruben addressed the DWR permit, expressing concern that the permit was issued on the basis of flood modeling calculations that were not accurate. He also contended that more studies of the Park's impact on the wildlife and riparian area of Wildcat Creek and of the creek's archeological significance were needed prior to the development of the site. Schruben read a letter addressing these concerns (attached). Schruben challenged findings in the City staff report regarding the chronology of development in the area and whether area property owners had complained to the City about impacts of new development in the Wildcat Creek valley. To wit, he claimed that his father addressed the City Commission with his concerns of the development of the valley 50 years ago. Schruben asked that the Board table the request until he could review the engineering notes of the flood modeling of Wildcat Creek associated with the DWR floodplain permit.

Sally Yahnke, 2627 Georgetown Place, also expressed concerns about the potential impact of the proposed development on the flooding of Wildcat Creek. Yahnke presented photographs to illustrate the impact of flooding already present in the area surrounding the subject site. Yahnke also stated that she did not receive a letter notifying her of the meeting, nor did her two neighbors to the east.

Nancy Hardy, 2623 Georgetown Place, stated that she was not opposed to the Optimist Park, but was concerned about potential flooding.

Robert Buel, owner of Gardenway Apartments, stated that he was not contacted by the applicant about the modifications associated with the requested Exception and Conditional Use. Buel expressed his issues with a recent burn permit for the Park area and its impact to his property. He also spoke to flooding in the area surrounding the subject site. Buel further contended that the lights associated with the applicant's proposal would have a negative impact on surrounding properties.

Mildred Polley, 2625 Georgetown Place, expressed her concerns that Wildcat Creek will flood with any more development or modifications in the surrounding area.

Applicant's agent Tom Bennett explained the lighting plan associated with the proposed request, noting that the lights would be directed toward the fields. He contended that they would not shine into the homes surrounding the subject site, though they would be visible to them. Bennett provided information about a burn permit issued to the subject site in the summer of 2008, which had been brought up by one of the property owners who spoke against the applicant's proposal. Bennett contended that many of the trees burned in association with that burn permit had been destroyed by the June 2008 tornado. Bennett then discussed the Division of Water Resources letters included in the

application packet. He also explained that the calculations that one of the property owners had accused DWR of missing were addressed by a Flood Rate Insurance Map created by the Federal Emergency Management Agency map.

Jim Morrison, an Optimist Club member, and help the Club raise funds for the Park. He explained the phasing of the project and spoke to why the Conditional Use Permit was sought at the time of the Public Hearing and request that the Board consider the entire proposal and have it conditioned upon all phases completed by 2011. Morrison further explained the project and his opinion that the project would not impact flooding in the area and proposed that the flooding actually was caused by flood waters backing up from areas downstream.

Mildred Polley invited the Board to come look at the subject site from her property.

Robert Buel asked the Board for clarification as to how the Conditional Use and Exception process work.

Hardy explained the process.

Schruben reiterated to the Board to table the request until he could review the flood modeling of Wildcat Creek.

Applicant's agent Tom Bennett provided clarification on flooding terminology and provided additional information on the applicant's proposal.

Hardy closed the Public Hearing and opened for Board discussion.

Hamilton stated that she shared Hardy's concern that the Board had not been provided enough information to make an informed decision about the requested Exception and Conditional Use. She contended that the Board would need more time and additional information in order to reach a decision on those items. She also expressed concern that the property owners in the immediate area were not contacted about the requests. Hamilton asked City Staff for clarification on its property owner notification procedures.

Bunger provided clarification on those procedures, explaining that the City sent letters to the owners of all property within a 200 foot radius of the subject site, and that in this case, for reasons beyond the City or applicant's control, the letters were not received by all property owners within that 200 foot boundary.

Wigfall stated that though she understood some of the concerns expressed by the residents, the Board's task was to evaluate the applicant's proposal against the standards for Exceptions and Conditional Uses, and that they had no authority over the water issues brought up during the public comment period. She contended that she understood how it could appear to the surrounding property owners that the flooding issues already present in Wildcat Creek Valley were interrelated to the applicant's request because they are adjacent. She further stated that though the water issue was not related to the applicant's request, she would like to be presented with more information on the flooding conditions in the area surrounding the subject site in order to make a decision. Wigfall expressed that she was leaning toward tabling this item.

Dillon asked for clarification as to whether there was an environmental study performed.

The Board responded that one was not performed.

Dillon stated that she would have liked to have seen an environmental study done in association with the applicant's requests.

Hardy expressed his concern that not all residents on the mailing list received notification of the public hearing. He elaborated on his concerns about drainage at the subject site and asked City staff to provide the Board with more information about the Division of Water Resources permitting process.

Bunger provided clarification on the issue of flooding at the subject site as it pertained to the phasing of development. He explained that applicant was currently filling the site, as it had obtained a valid permit to do so, but that it needed a Conditional Use Permit in order to use the site for baseball or softball fields.

Hardy asked City Staff to provide more information about the Conditional Use Permit Standard that there is adequate provision for drainage and other utilities. Hardy expressed that he was in favor of tabling this request so staff could provide more information.

Bunger asked for clarification of what information the Board required of City Staff in association with the Exception and Conditional Use.

Hardy provided clarification, stating that the Board would need more general information on the proposal.

Wigfall added that the Board would also need information about the lighting and shielding associated with the applicant's proposal in order for the Board to make a determination about whether there would be a negative impact on surrounding properties.

Hamilton concurred with Wigfall's request for more information about the proposed lighting. She asked for clarification as to whether Tabling the item would interfere with Optimist's recreational use of the property.

Bunger stated that tabling would cause no negative ramifications to Optimist's current use of the property.

Hamilton moved to Table the Conditional Use Permit and Exception request located at the Optimist Club Ballpark so that the Board could get more information on the DWR permit and the impacts of the proposed lighting of the ball fields.

Bunger stated that the City normally does not send new public hearing notification letters to surrounding property owners when items are tabled, and asked the Board whether in this case, because not all property owners had been notified of the current hearing, new notification letters ought to be sent to all surrounding property owners about the tabled requests.

Hardy stated that the Board felt that new letters ought to be sent.

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

Respectfully Submitted,
Anne Antonini and Stephanie Dikeman, Planning Interns and Chad Bunger, Planner

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