

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, August 11, 2010**  
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Joe Aistrup, Vice Chairperson; and Catherine Lavis.

MEMBERS ABSENT: Ricci Dillon and Connie Hamilton

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II

**CONSIDER THE MINUTES**

Aistrup moved to approve the July 14, 2010 minutes which was seconded by Lavis and passed with a vote of 3-0.

**A PUBLIC HEARING to consider an EXCEPTION to allow for a reduction in the minimum required number of off-street parking spaces from 63 parking spaces to 3 parking spaces for a proposed self-storage unit business on property located in the I-3/AO, Light Industrial District and Airport Overlay District. The property is located at 4850 Eureka Drive. (Applicants/Owners: K & M Holdings, Inc).**

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

Aistrup asked why the development last month had more parking spaces than the current proposal. Bunger replied the other development had five parking spaces because it had a larger office building.

Hardy opened the Public Hearing.

Matthew Kohls, BG Consultants, reiterated that clients will be parking for short periods of time and the office parking is adequate.

Hardy closed for Public Hearing and opened for Board discussion.

Lavis said there is plenty of room to load and unload.

Hardy said there was similar case last month and it makes sense.

The Board made the following findings of fact for the Exception at 4850 Eureka Drive:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject site and the proposed development comply with all applicable regulations, other than for the Exception request.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is zoned I-3/AO, Light Industrial and Airport Overlay District. The Eureka Addition industrial park is located to the southeast and is zoned I-2/AO, Industrial Park District and Airport Overlay District, I-3/AO, Light Industrial District and Airport Overlay District, C-6/AO, Heavy Commercial District and Airport Overlay District and the Penny’s Concrete PUD/AO, Industrial Planned Unit Development and Airport Overlay District. To the east are properties zoned U/AO, University District and Airport Overlay District and County G-1. Other surrounding properties are located in Riley County. To the south are properties zoned County A-1, Single-Family Residential District, A-2, Single-Family Residential District, A-3, Single-Family Residential District and G-1, General Agricultural District. To the north and west are properties zoned G-1.

The proposed use is permitted in the I-3 District. The proposed Exception request is to reduce the minimum required number of off-street parking from sixty-three (63) parking spaces to three (3) parking spaces. The application documents state that “vehicles will be loading and unloading for minimal lengths of time, with low numbers of vehicles at any given time.” The three (3) parking spaces provided are located near the proposed business office and will accommodate the business activities of the development. The office building and the southern four (4) of the buildings are under construction. The sizes of each unit within these buildings range from 5 feet by 5 feet up to 28 feet by 12 feet. No information has been provided for the other buildings.

It is unlikely that clients would be using two (2) adjoining storage units at the same time. In the event that this would happen, the site is large enough that one of the clients could park nearby and still have access to the storage unit. The site plan shows a minimum distance of twenty-five (25) feet between each building. The width between buildings will provide adequate distance for vehicles to park next to or near the rented storage unit and still provide for access for other clients of the self-storage business. Considering the size of the subject site, normal daily use would not use adjacent residential streets to the south. The adjacent property owners should not be impacted.

Eureka Drive, to the south, is a county, two-lane road. The rural section of roadway currently does not provide enough room on the gravel shoulders to allow for parking. Eureka Drive is to be widened in the near future to provide wider gravel shoulders. Riley County officials have confirmed that no parking will be permitted on Eureka Drive, except for emergency purposes. There is no possibility for unforeseen overflow parking from the subject site to use Eureka Drive. The Exception request should not adversely impact adjacent property owners.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exception request should not affect the public health, safety or welfare. The subject site is designed to provide loading and unloading areas for the clients, even in the rare event that two (2) adjoining storage units are being used at the same time. The design of the development will reduce the need for the clients to use the adjacent streets to parking their vehicles and trailers. No parking is permitted on Eureka Drive.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the Parking Regulations would require that the parking be provided. The site is large enough to provide the needed sixty-three (63) off-street parking spaces in between the middle section of buildings and the buildings to the north. Eleven (11) off-street parking spaces were shown on the building permit site plan for the first four (4) buildings and the office to comply with the Zoning Regulations. Considering the use of development and that clients are loading and unloading in front of the units, rather than using a parking space and walking to the unit, the requirement may be unreasonable. Any needed normal business parking is provided in front of the office building. The three (3) off-street parking spaces meet the minimum off-street parking requirement for the size of business office (1 space per 300 square feet of floor space, Section 7-103(B)(8)) and are adequate for the use of the office building.

Aistrup made a motion to approve an Exception to allow a reduction in the minimum required number of off-street parking spaces from 63 parking spaces to 3 parking spaces for a proposed self-storage unit business on property located on Lot 2, Eureka Drive Storage Addition I-3/AO, Light Industrial District and Airport Overlay District, with the following conditions:

1. The Exception shall be limited to the proposed self-storage unit development and accessory off-street parking as outlined in the application documents and shown on the applicant's site plan.
2. Building permits shall be obtained within 180 days of the date of approval and each subsequent permit must be obtained within 180 days of the initial permit.
3. All applicable permits shall be obtained.

Lavis seconded, which passed with a vote of 3-0.

**A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to twenty (20) feet along S. 14<sup>th</sup> Street for a new addition to the school building; and an Exception for the reduction of the minimum twenty-five (25) foot front yard setback to three (3) feet along S. 15<sup>th</sup> Street for an existing accessory structure; an increase in the maximum height of the building from thirty-five (35) feet to forty (40) feet for the original 1923 school building so the owners have clear title to the property. The property is located in the R-1/TNO, Single-Family Residential District and the Traditional Neighborhood Overlay District. (USD 383 - Manhattan – Ogden School District).**

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

Hardy opened the Public Hearing.

Bob Seymour, Associate Superintendent of USD 383, remarked that there were a great number of people involved in the design of the addition and they tried many arrangements, but the proposal is the best arrangement they could come up with.

Hardy closed for Public Hearing and opened for Board discussion.

Aistrup said it was fairly straight forward.

Hardy said a lot of it is just clearing up the title, which he doesn't have a problem with.

The Board made the following findings of fact for the Exception at 1401 Houston:

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

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Properties surrounding the subject site are located in the R-1/TNO, Single-Family Residential District and the Traditional Neighborhood Overlay District. Properties located half a block to the north of the subject site along Poyntz Avenue are in the C-1, Restricted Business District.

Two properties to the East along S. 14<sup>th</sup> Street, which have functional side yards, will be minimally impacted by the addition. The functional side yards are separated from the current 1950 building by approximately seventy-eight (78) feet. As proposed, the addition would continue along this vertical line cause the separation to continue at approximately seventy-eight (78) feet.

If the Exception request is approved and the proposed addition was constructed in line with the current building, the street facing façade would be continuous; however, it would also present

a visual barrier of the playground to these residents. If the building was built at the full length of the setback requirement (Exception denied), the building would have an offset appearance between the new and old sections of the school and would be approximately eighty-three (83) feet from the functional side yards. Also the existing windows and cabinetry would be disturbed and the building would still present a visual wall into the playground for residents with the functional side yards.

The accessory use storage shed was placed on the site in 1990, while the greenhouse was installed on the site in 2008. Both structures have had minimal affect on adjacent property thus far; therefore, minimal impact on adjacent properties is expected from the continued use.

The height of the 1923 building has had minimal affect on adjacent property thus far; therefore, minimal impact on adjacent properties is expected from the continued use.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The request is not anticipated to negatively affect the public health, safety, or welfare. An existing vacated alley has a fifteen (15) foot sanitary sewer easement and sanitary sewer line running east-west from S. 14<sup>th</sup> Street to S. 15<sup>th</sup> Street in it. Formally a movable classroom was straddling the sanitary sewer line, but has since moved leaving the sanitary sewer line and easement uncovered by structure. The applicant is proposing to vacate the easement and move the sanitary sewer line to accommodate the addition. The planned utility easement and sanitary sewer line is to be located approximately ten (10) feet from the property line along Pierre Street. If the easement and sanitary sewer line are not moved, the addition cannot be built in its proposed location because City Ordinance does not permit the construction of buildings over a utility easement. City Public Works has reviewed the preliminary plans and determined the move may be appropriate and feasible; however, more specific information is required to facilitate the shift.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** If the Exception was denied, the portion of the school that was built in 1950 would still encroach upon the current setback. This encroachment would be legal because it was constructed before the current regulations were adopted and was legal at the time of construction according to the 1941 Zoning Regulations. The applicant is trying to positively address the streetscape of S. 14<sup>th</sup> Street by aligning the addition with the current building. If the buildings were not aligned the façade would have a discontinuous and inconsistent frontage causing an odd curb side appearance and disturbing the internal floor plan.

If the proposed addition were to follow the required twenty-five (25) foot front yard setback, the addition would intrude into the existing playground and open space. This intrusion would cause playground equipment to be moved reducing the open space on the site. The playground equipment, consisting of a slide structure and a set of swings, have been located in this position for a while and have had minimal affect on adjacent property thus far, hence there is no need to relocate the equipment. The preliminary site plan states the playground will be

modified, but the final design will not be verified until construction is nearing completion. The resulting playground will be for kindergartners only.

Aistrup made a motion to approve an Exception to allow a reduction of the minimum twenty-five (25) foot front yard setback to twenty (20) feet along S. 14<sup>th</sup> Street for a new addition to the school building; and an Exception for the reduction of the minimum twenty-five (25) foot front yard setback to three (3) feet along S. 15<sup>th</sup> Street for an existing accessory structure; an increase in the maximum height of the building from thirty-five (35) feet to forty (40) feet for the original 1923 school building so the owners have clear title to the property. The property is located in the R-1/TNO, Single-Family Residential District and the Traditional Neighborhood Overlay District, with the following conditions:

1. The utility easement and sanitary sewer line must be vacated and relocated with approval of the City Commission before a Building Permit is issued.
2. All applicable permits shall be obtained prior to the construction of the new building.
3. The Exceptions shall be limited to the proposed addition, storage shed, greenhouse and 1923 portion of the building as shown on site plan and as outlined in the application documents.
4. The proposed addition shall be built according to the site plan and maintained in good condition.

Lavis seconded, which passed with a vote of 3-0.

**A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to zero (0) feet for a proposed fence in the R, Single-Family Residential District at 2713 Leslie Lane (Applicants/Owners: Shellee Brokenicky).**

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

Hardy opened the Public Hearing.

Shellee Brokenicky, 2713 Leslie Lane, had one minor issue. She doesn't not believe the fence creates an unsafe position for the residents of 1828 to back out of their driveway. She has tested their driveway and has taken pictures of the site. Before the fence was constructed she spoke to the next door neighbors regarding the fence changes of which they had no issues. Also, in her opinion the fence doesn't impact the traffic on Browning Avenue.

Hardy closed for Public Hearing and opened for Board discussion.

Hardy notes that there is a letter from the resident of 1828 Browning basically saying three points: 1) the fence is totally out of character, 2) contrary to printed regulations, and 3) would cause a safety hazard.

Hardy thinks that strict application of the regulations isn't always appropriate causing the need for the Exception, Variance, and Conditional Use process. Also, apparently the applicant spoke with the

property owner who wrote the letter. And he has driven Browning Avenue and noted the character of the fence lines in the neighborhood are at the zero foot setback, thus the proposal is not out of character of what is currently there, so he can support the application.

Aistrup concurs with Hardy, he used to Browning often and believes the fence line is in character of the neighborhood. The existing fence does need to be moved back because of right-of-way issues and can support the application.

The Board made the following findings of fact for the Exception at 2713 Leslie Lane:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than the proposed Exception and the issue with the location of the fence in the Browning Avenue ROW, the property complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties are zoned R, Single-Family Residential District. Minimal adverse impacts on adjacent properties should be created by approving the six (6) foot tall wooden fence once it is moved outside of the Browning Avenue ROW. Other similar wooden privacy fences are located along Browning Avenue and are placed in approximately the same location as where the fence is proposed to be. The wooden privacy fence will not be out of character with the surrounding neighborhood.

A chain-link fence was located approximately zero (0) feet from the sidewalk and fifteen (15) feet into the Browning Avenue ROW. It is not known how long the chain-link fence was in that location before it was removed and the existing fence was installed.

The current location of the wooden privacy fence does impact adjacent properties because it restricts the vision of drivers backing out of the adjacent property's driveway onto Browning Avenue. This unsafe condition is created by the location of the privacy fence. When the fence is moved out of the Browning Avenue ROW, the privacy fence should not be in the line of sight of the neighboring property's driveway and will be outside of any vision clearance triangles created by the fence and the adjacent driveway.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Once the fence is moved and is entirely on the subject site, there should be minimal adverse impacts on the public health, safety or general welfare. The current location of the fence that is in the Browning Avenue ROW restricts the vision of the adjacent property's driveway, creating an unsafe condition when backing out of the driveway onto Browning Avenue. When the fence is moved approximately ten (10) feet to the east to remove it out of the ROW, the line of site issues should be eliminated.

The proposed fence will not change the order or character along Browning Avenue. Several corner lots along the collector street have fences in approximately the same location as the fence's proposed location.

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

The strict application would not allow the applicant to construct the fence as proposed. The subject site is a corner lot at the intersection of Browning Avenue and Leslie Lane. Corner lots have two (2), twenty-five (25) foot front yard setbacks. To meet the minimum setback requirements, the western side of the fence would need to be in line with the west side of the house.

Considering the circumstances of the fence and property; the strict application of the regulation maybe unreasonable. A previous chain link fence was located approximately zero (0) feet from the sidewalk along Browning Avenue, which is approximately fifteen (15) feet into the street ROW and completely within the required front yard setback. The current, wooden privacy fence is also in the Browning Avenue ROW, but not as far (10 feet instead of 15 feet). The applicant is required to move the fence to the east to be completely on the subject site.

According to the application documents and conversations with the applicant, she had tried to confirm that replacing the chain link fence in approximately the same location would meet the City's regulations. Unfortunately, she was given misinformation from a City Department that was not familiar with the Zoning Regulations for fence setbacks and was not advised to check with the Community Development Department. Following the misinformation, the applicant illegally constructed the fence in the ROW and within the front yard setback.

The fence, once moved to be entirely on the subject site, will not be out of character nor should adversely impact the adjacent properties.

Aistrup made a motion to approve an Exception to allow a reduction of the minimum twenty-five (25) foot front yard setback to zero (0) feet for a proposed fence in the R, Single-Family Residential District at 2713 Leslie Lane, with the following conditions:

1. The Exception shall apply to the fence as shown on the site plan and outlined in the application documents.
2. The existing fence shall be removed from the Browning Avenue right-of-way, so that the entire fence is located on the property within thirty (30) days of the date of approval.
3. The fence shall be maintained in good condition.

Lavis seconded, which passed with a vote of 3-0.

**A PUBLIC HEARING to consider a VARIANCE to allow for a business to have more than one (1) wall sign and to allow more than one (1) awning sign in the C-4, Central Business District; and to allow for the increase in maximum gross surface area of all signs from 110 square feet to 245 square feet. The building has an existing wall sign. The applicant is proposing installation of a second wall sign. The awning on the building**



**is proposed to be enlarged and two (2) signs are proposed to be located on the new awning. The property is located at 318 Poyntz Avenue (Applicants/Owners: Mr. P's Party Outlet – Walter and Dorothy Pesaresi).**

Bunger presented the Staff Report with a recommendation of denial for the Variances requests.

Aistrup asked if the awning will there be an extension of the existing one or will it be a new one? Bunger deferred the question to the property owner.

Hardy opened the Public Hearing.

Walter Pesaresi, property owner, explained the history of the building. He said the awning will be completely new and would like to take the existing sign that is teal and paint it white and use it as a sign. He would like to have one continuous sign to make it look like one large party store rather than two separate stores. He further explained that he would like to take the awning off of 318 Poyntz Avenue and start over with a new awning across the entire front structure. Instead of all the lettering across it, as it is currently, they would like to have two small signs over each door, which would reduce the amount of lettering.

He would like to point out window sign regulations and that there is a business in downtown that has twelve signs on the outside of the window. There are several businesses that have four or five signs on the outside. Downtown Manhattan wrote a letter supporting the sign/awning package and a petition was signed by the area he was told to notify within the historical area. He said the sign is being put in by his money, not tax payer money to make Downtown Manhattan look nicer. It would be expensive to move the current sign to center it because of the historical nature and the large tree. He then compared his sign to the Steve's Floral sign.

He then noted that inside window signs are not regulated, while if the sign is outside of the window it is regulated. Which Bunger confirmed.

Lavis asked about making the sign visible? And if the signage is trying to implement what the signage was when the building was the old Woolworth building? Pesaresi said the signs would be more visible with the new design and carry out the historic theme.

Hardy closed for Public Hearing and opened for Board discussion.

Hardy asked Bunger about the signs. Pesaresi replied the new sign will be exactly the same material abutting the old sign. Hardy asked Bunger is it an issue of semantics? Bunger said yes it is a matter of semantics, if Pesaresi took down the old sign and put up one large sign it would be okay.

Aistrup clarified if he ripped out the old sign and put in one continuous sign. Bunger said that a continuous sign would not need a variance. Aistrup asked if it would need a variance for the size. Bunger replied, yes and for the two small awning signs because that would be a total of 3 signs for 1 business.

Hardy asked if it is possible to have one continuous awning. Bunger said the question is the two individual signs on the awning.

Aistrup said he understands the awning issue because of the tree. He is fine with the two signs on the awning, but has issues with large sign that goes all the way across. He remarked that his issue is an issue of taste, which he can't regulate through.

Bunger said the Board must adhere to the size, place, and manner of signs.

Hardy says he wants to be constant with the Boards decisions, but notes the uniqueness of the property with the two addresses. He remarked that Variances must meet all five of the Variance conditions in order to get a Variance. The Board doesn't care that it is going to cost more money to comply- it isn't a hardship. He doesn't think the sign is in character of the neighborhood.

Lavis says the tree is a catch-22, because we all want shade, but it is in the way and it is tough.

Aistrup asked Pesaresi if he would be willing to come back to the Board with another design with one large sign.

Aistrup said the existing sign is pretty weathered and it would be noticeable that there are two signs.

Hardy is concerned with the precedent of abutting two signs together.

Bunger said the sign company will most likely will abut the new with the old sign so it looks like one sign.

Hardy cares if it is one sign or two signs. He doesn't want to support two signs.

Aistrup says the size of the sign is too big.

Aistrup said the design of the sign can be done so it doesn't take up as much space across the façade.

Pesaresi doesn't want to leave the ugly base up there and doesn't have the money to completely redo the building façade.

Aistrup would like to table the item to hear from other members of the Board. And ask the applicant to speak with City staff more about alternatives to the issue.

Lavis agrees with Aistrup; however, the signage will bring more people into the building.

Hardy is somewhat reluctant to table the issue because he thinks that tabling the issue may prolong the inevitable. He does think there maybe some alternatives that need to be explored. He advised the applicant to put more focus on the uniqueness of the site, not the cost, when working with City staff. Again, since this is a Variance, it must meet all five of the requirements and he is struggling with number three- the strict application and number five- opposed to general spirit and intent of regulations. He would like City staff to look into outside window signs.

Aistrup would like to look into the Woolworth sign design.

Hardy said the amount of lettering is what is counted in regards to zoning regulations.

Aistrup motioned to table the item until the next meeting so the full Board could be present and to see if the applicant can proposed an alternative sign proposal that would better comply with the district sign regulations.

Lavis seconded which passed with a vote of 3-0.

Respectfully Submitted,

Ashley Myers, Planning Intern

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