

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, December 8, 2010**  
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Joe Aistrup, Vice Chairperson; Connie Hamilton; Ricci Dillon.

MEMBERS ABSENT: Catherine Lavis.

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

**CONSIDER THE MINUTES**

Hamilton moved to approve the November 10, 2010 minutes which was seconded by Aistrup and passed with a vote of 3-0.

**Table the PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot rear yard setback for an existing building to six (6) feet at 112 Harvard Place in the R, Single-Family Residential District. No additions or expansions are proposed for the structure. The exception is to address an existing condition so that the property can be replatted. (Applicant/Owner: Fredrick and Patricia Freeman).**

Aistrup moved to Table the public hearing for 112 Harvard Place which was seconded by Hamilton and passed with a vote of 3-0.

**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 zero (0) feet for a single-family home under construction at 122 S. Manhattan street in the R-1/TNO district, Single-Family Residential District and Traditional Neighborhood Overlay District (Applicant/Owners: Christopher Spaw).**

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

Hardy opened the Public Hearing.

Christopher Spaw, 1227 Colorado Street (applicant), said before beginning the design, his firm met with the City to make sure their project meet the design standards of the TNO because they wanted their project to be appropriate for the neighborhood. He believes that

through the project he has gotten to understand the TNO compatibility standards very well. His project design was varied to better serve the house and be energy efficient. They are trying to complete an appropriate example of how to build in the TNO area. He thinks the City might be overstepping the bounds of what is actually stated in the TNO regulations.

Aistrup asked Spaw about the design plans that were originally approved. Spaw said, he thinks the City is referring to the front elevation, which showed the roof overhang coming down, but it does not indicate how much. He mentioned his design build firm is acting as the designer, contractor, and builders for the project, so they have the ability to make adjustments on site; thus, there has been some refinement of the design during the building process.

Aistrup said there is the “letter of the law” and there is the “spirit of the law”. The overhang is thought of in a fundamental different way than how the applicant has done it. The overhang may follow the “letter of the law”, but he is not sure it follows the “spirit of the law” of the TNO district. Shaw followed up saying, if the structure looked exactly how it did in the permit, it would be very different from the surrounding structures and people could still make that argument.

Aistrup asked Spaw if he thinks he even needs an Exception for his project. Hardy said the applicant should have asked the City if the longer overhang was appropriate and followed the intent of the TNO. Spaw said he thought all criteria had been met, if he had known there were going to be issues, he would have come to the City ahead of time or asked for an Exception at the beginning.

Hamilton asked why the overhang was brought down so far. Spaw said it is to protect the façade from the heat, so the interior isn’t heated up during the summer, to help increase the energy efficiency of the structure. The overhang was adjusted on the front because of the porch, which addresses the street and provides neighborhood interaction.

Bunger clarified the North and South façades are most unique, but the East and West façades have zero roof eave overhang. The Exception addresses all of the sides of the building.

Aistrup said there is no overhang on the North and South façades. Bunger said yes, at least not in the Traditional Neighborhood sense, it goes beyond the building permit.

Bunger said the building permit application showed a one foot roof eave overhang along all sides. But what is there today has zero over hang on the front and back of the structure.

Hamilton asked if the City is accepting the argument that the drop of the roof over the sides of the house constitutes an overhang. Bunger said no, hence the Exception for all sides.

Hardy asked what if the one foot is required on the front and back, but the sides are okay. Spaw said he doesn’t necessarily want the one foot eave on the front and back, but if it is required, they will do it.

Hamilton said she is having a hard time conceptualizing what the plan is for the front and back. The sides of the house, she understands, the argument the roof overhang extending, but she has a hard time seeing the same argument for the front and the back. Spaw said the porch and screened in porch above it are over eight feet from the structure, providing protection from the sun and rain. On the back, the windows are pushed in four feet, so the façade protects the windows from the elements.

Hamilton said the finished product won't have many structural variations and will have a smooth façade. Spaw said yes, details weren't planned to just have details, the form follows the function of the building, doing the job it is supposed to do.

Spaw did say he talked to all of the adjacent neighbors and got signatures from a large number of them in support of the project. The general overall sense is that people are happy that the site is improving from what it was before.

Fred Landess, lives right next door to the project, said the site before the current project was overgrown and vacant for 10 years. This project is much better than the old site. He said if you walk around the neighborhood, there are several older homes with no overhang at all.

Hardy closed the Public Hearing and opened for Board discussion.

Hamilton finds this to be an interesting learning experience for all parties involved because the variation on the TNO is different in a functional building way, rather than a visual detail way. She understands Spaw's point of view and understanding of the TNO. This is the closest the Board has come to hearing appeals of the Zoning Administrator's interpretation of the Code. She is inclined to side with the City, by dropping the overhang; it is not reflecting the TNO expected overhang. But on the other hand, because the City accepted the initial design and the enthusiasm and interest to bring good, quality, new construction into the area. She thinks there is no bad faith here, but for future interactions with the City people need to clarify their thinking, so this problem doesn't happen again. She doesn't see the case has been made that the Exception should be denied in this case.

Hardy said that he struggles with the overhang argument, but by the same token, TNO is more of a visual thing, so he still sees the need to have to go through the Exception process. He believes this Exception could be supported.

Aistrup thanked Mr. Spaw for building on that particular site because it is much better than what was once there. He has no problem granting the Exception, but thinks Spaw should think about taking the roof out one foot on the front and back. He agrees with City Staff that he needs an Exception because there is no way to know what the next person will bring up, just as soon play it safe and get the Exception to see the cases one at a time.

Dillon can support the Exception as well; she personally does think the front does have an overhang because of the porch. She does feel Mr. Spaw has made a great investment and does

quality work. Spaw's vision may be different than the spirit of the TNO, but that is okay because it is bringing the City all along with the green movement.

Hamilton said it is big that Spaw worked to accommodate the TNO site restrictions.

The Board made the following findings of fact for the Exception at 122 S. Manhattan Avenue.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than the Exception request, the site and building design meet the minimum requirements of the R-1, Single-Family Residential District and TNO, Traditional Neighborhood Overlay District.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties to the south, east and west are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Immediately to the north is properties zoned R-1/TNO District. Further to the north, along Poyntz Avenue, is property zoned C-1, Restricted Business District and R-3, Multiple-Family Residential District (the City Park).

Minimal effects on adjacent properties are anticipated by approving the Exception, as the other TNO design standards are being met. As the applicant has stated, the design of the house is intended to provide an example of a modern design of an infill project that uses modern construction techniques. Any impacts on adjacent property owners would be from the perceived impacts of the modern design of the home. Not having the required width of the roof eave overhangs should not unduly impact adjacent properties or the values of these properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The Exception request does alter the public order of the residential neighborhood. The majority of residential structures in the area have traditional roof eave overhangs that are at least one (1) foot in width. The modern design of the home creating the need for the Exception would differ from the surrounding neighborhood with regard to the roof eave overhang. The design of the home is a function of the applicant's desire to create an energy efficient home using modern designs and construction techniques. The Building Design Standards is an authorized Exception request so that unique conditions or extenuating circumstances could be evaluated by the Board of Zoning Appeals for appropriateness and its impact on adjacent properties and the public. Minimal impacts to the public health, safety or welfare are anticipated by approving the Exception.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the regulation would require the applicant to alter the design of the home to add the required one (1) foot roof eave overhang to each of the four (4) facades of the home. The east and west facades do not have roof eave overhangs. The north and south facades have a facade overhang that is at least one (1) foot wide, however varies from one (1) foot to seven (7) feet from the ground. The north and south facades do not meet the general intent of the TNO District's design standard to create a design that is similar with the

traditional character of the older neighborhoods of Manhattan. The intent of the roof eave overhang is to provide a shadow line created by the leading edge of the roof projecting beyond the building, near the intersection of the roof plane and wall plane as generally characterized by other homes in these neighborhoods.

The applicant was aware of the minimum building design standards required by the TNO District. The approved building permit showed the required roof eave overhangs. Sometime during the construction phase of the project the design of the building was altered to eliminate the east and west roof eave overhangs and change the depth of the north and south overhangs to be as close as one (1) foot from the ground. Only after the framing and sheathing of the north and south facades did the City Administration discover the change in the building plans.

The home is intended to provide a modern design, using modern building construction techniques to create an energy efficient home. Considering the unique, modern design and intent of the home; and the further alteration to the building's design that would be need to provide the required roof eave overhang as intended, the strict application of the regulation may be unreasonable.

Aistrup made a motion to approve 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 zero (0) feet for a single-family home under construction at 122 S. Manhattan Avenue in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions of approval:

1. The Exception shall apply to the single-family house as shown on the site plan, floor plans, and architecture elevations and outlined in the application documents.

Hamilton seconded the motion, which passed by a vote of 4-0.

Hamilton appreciated the clarifying materials submitted to the Board and the outreach to the neighborhood provided by Spaw.

**A PUBLIC HEARING to consider a CONDITIONAL USE to allow a bed and breakfast home at 529 Pierre Street within a R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. (Applicant/Owner: Rebecca Herl).**

**A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum front yard setback along S. 6<sup>th</sup> street from fourteen (14) feet to zero (0) feet for existing off-street parking spaces associated with a proposed bed and breakfast home at 529 Pierre Street in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. No addition or expansion of the parking area long the alley is proposed and will bring the property into compliance with the Manhattan Zoning. (Applicant/Owner: Rebecca Herl).**

Hardy asked Bunger to present the two together.

Bunger presented the Staff Reports with a recommendation of approval for the Conditional Use and Exception request.

Hamilton asked Bunger about the 2003 Exception for the parking in the back, which was expanded at some point beyond what was granted. How much was that expansion? Bunger said, twelve feet, which were done by variances, which equals about one and half stalls. The expanded parking holds six spaces. Hamilton asked with the six spaces, is there a need for screening or paving? Bunger said more than six is the cut off for needing screening, so this project with the six stalls does not need screening. Hamilton asked if the new parking in 2004 should have been paved. Bunger said, yes, we will need to be taken care of at some point. Hamilton remembers the importance of the garden from the 2004 Exception, but can't remember specifics without the Staff Report.

Hardy opened the Public Hearing.

Rebecca Herl, 529 Pierre Street (applicant), stated she purchased the home from the Sherows specifically for a bed and breakfast, but was not aware that she needed to reapply for zoning. She wishes she would have been aware of the necessity and she would have done it when she actually purchased the house.

Hamilton asked about the number of bedrooms being used for the bed and breakfast. Before there were two and now there are three. Herl said yes, she lives in the room on the first floor labeled music room/library and the three bedrooms on the second floor are for guests. The Sherows used the music room/library as an office.

Hardy closed the Public Hearing and opened for Board discussion.

Aistrup said he supports the application because the conditions were laid out before she purchased the property and she was acting in good faith. The only issue in it is whether or not to pave the parking spaces. He thinks it would be unfair to ask her to pave the spots considering how she came into the property. The previous owners should have followed the codes and gotten the appropriate Exception.

Hardy said he can support the application, but is irritated that the prior applicant removed the garden for parking. The former applicant knows the rules and they are applied to everyone. But again, that is not applicable to this particular applicant.

Hamilton said she echoes some the frustration that has been voiced by the Board regarding the previous owners. She suggested any time a property is coming before the Board again for a Conditional Use, the previous Staff Reports, Findings of Fact, and Minutes would be helpful for the Board members to be reminded of the past regarding the property. She takes some exception to the Staff Report because it is written like the use is continuing, when in fact the number of guest rooms are increasing from two to three, which is not the same continuing level of use. Even so, she thinks the house would be able to accommodate the three rooms, but is concerned that it is treated as a continuation, when it is actually not. If this property

were treated as a new project, she thinks the Board should request information regarding landscaping and improvement of the gravel parking.

Bunger said yes the front yard parking should have been addressed. If the standard was applied, the entire area of the parking would not have to be paved, as a minimum, just the area located in the front yard, where the building is setback. The area in front of the building setback would require a Variance to allow gravel rather than concrete. Location of parking is an Exception; the requirement for the paving is a Variance. The argument could be made, that with tonight's Exception, the Variance would not be needed because the setback is being reduced to zero for the parking.

Aistrup said this instance happens often, where a new land owner discovers that a previous one did something to make the property out of compliance and typically the Board gives the land owner the benefit of the doubt.

Hamilton would be willing to go with that argument, except this applicant has expanded the use of the Bed and Breakfast by adding a room. And therefore needs the extra space and is taking advantage of something. She doesn't think the Board is a rubber stamp to approve everything that went wrong before.

Dillon said the applicant went into this situation without all of the information. She can support the bedroom issue—the increasing the number of rooms by one—but the parking issue needs to be addressed. She does feel like the use is increasing.

Hardy said the Board could table the Exception for the location of the parking to have the City Staff readdress the parking issue. Bunger said most likely a Variance would be needed for the parking, so it would be in complete compliance with regulations.

Dillon suggested to the applicant looking at the parking, adding in some more green space, landscaping, or screening—a little more detail.

The Board made the following findings of fact for the Conditional Use at Pierre Street.

**A. Compliance with all applicable regulations:** The property complies with all applicable provisions of the Zoning Regulations, except for the Exception request to reduce the minimum fourteen (14) foot front yard setback to zero (0) feet along S. 6<sup>th</sup> Street for the existing off-street parking spaces as previously described.

Variance were granted on January 8, 2003 to allow a reduction in the minimum required twenty-five (25) foot front yard setback, a reduction in the minimum required 10,000 square foot lot area, a reduction in the minimum required fifteen (15) foot side yard setback, and to allow off-street parking between the front lot line and a line parallel to the front lot line drawn through a point which is on the side of the principal structure furthest from the front lot line, yet still facing the front lot line.

**B. Probable effect on adjacent properties:** The subject site and surrounding properties are in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The subject site is also a contributing property to the Houston-Pierre Historic District. The surrounding neighborhood consists of a mix of single-family dwellings, two-family dwellings, multiple-family dwellings, and public use buildings. Directly across S. 6th Street to the west is the new Municipal Court Building. A block to the west, on the northeast corner of S. Juliette Avenue and Pierre Street, is Seven Dolars Catholic Church. A block to the east, on the southeast corner of S. 5th Street and Pierre Street, is Carlson Plaza apartments.

There appear to be no adverse impacts on adjacent properties as a result of the proposed bed and breakfast home. A bed and breakfast home has existing at the subject site since 2003, under different ownership, with no known complaints. The proposed use for the property will be similar in nature and intensity as the previous bed and breakfast home under the previous ownerships and in comparison to other properties within the surrounding neighborhood.

The subject site is a contributing structure to the Houston & Pierre Street Residential District and within the environs of several other properties on the state and federal lost of historic places. A local administrative review was conducted for the Conditional Use and Exception request. The administrative review found that the requests meet The Secretary of Interior's Standards for Rehabilitation (*see attached*). The State Historic Preservation Office is in the process of reviewing the requests. The Conditional Use should be conditions on the approval of the request by the State Historic Preservation Office.

**C. Domination by use over neighboring properties:** The proposed use should not dominate over neighboring properties. The subject site has had a bed and breakfast home operating since 2003. For the most part, the use of the dwelling as a bed and breakfast will be limited to weekends. Even with the addition of guests, the number of total occupants within the structure should remain similar to the number of occupants residing within neighboring dwellings.

- 1. Location, nature, and height of physical improvements:** No exterior improvements are proposed for the structure as part of the application.
- 2. Landscaping and screening:** The site is heavily landscaped with landscape beds and existing mature trees.

**D. Adequate provision of parking and loading:** A Bed and Breakfast Home is required to provide a minimum of two (2) off-street parking spaces, plus one (1) space for each guest room (Section 7-103(A)(7)). A minimum of five (5) off-street parking spaces are required of the three (3) guest room bed and breakfast. There is currently adequate area for at least six (6) off-street parking spaces located off of the alley. The amount of off-street parking being provided should be adequate for the proposed use.

**E. Adequate provision of drainage, and other public utilities:** Adequate provision for drainage and other public utilities are provided.



**F. Adequate provision of access:** Off-street parking will be accessed from the alley. Sidewalks are provided throughout the neighborhood, and around the property; which provides for pedestrian access.

Dillon made a motion to approve a Conditional Use for a proposed Bed and Breakfast Home at 529 Pierre Street, with the following conditions:

1. The associated Exception request shall be approved.
2. If the applicant sells the property, the new owner shall reapply for a Conditional Use for a Bed and Breakfast Home, prior to operating the use.
3. The Bed and Breakfast Home shall be limited to three (3) guest bedrooms as proposed.
4. The Bed and Breakfast Home shall conform to the use limitations associated with Bed and Breakfast Homes in the R-M, Four-Family Residential District.
5. The State Historic Preservation Office shall find that the proposed Bed and Breakfast Home meets The Secretary of Interior's Standard for Rehabilitation.

Aistrup seconded the motion, which passed by a vote of 4-0.

Hamilton moved to Table the Exception to reduce the minimum front yard setback along S. 6<sup>th</sup> Street from fourteen (14) feet to zero (0) feet for existing off-street parking spaces associated with a proposed Bed and Breakfast Home at 529 Pierre Street in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District.

Dillon seconded the motion, which passed by a vote of 3-1.

**A PUBLIC HEARING to consider an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the city of Manhattan, Kansas, to allow a reduction of the minimum twenty-five (25) foot rear yard setback to eight (8) feet for a proposed office building at 401 Westwood Drive in the C-1, Restricted Business District. (Applicant/Owner: Steve and Chris Springer).**

Dillon recused herself from this Exception request due to her relationship with Steve Springer. Bunger presented the Staff Report with a recommendation of approval for the Exception request.

Hamilton asked Bunger to clarify where the Exception is located.

Hardy opened the Public Hearing.

Mike Watson, 2035 Rockhill Circle, said his property runs along the back side of the applicant's property. The grade for the property is very steep; he has a beautiful view of the Konza Prairie. He has a couple of concerns regarding the project:

- 1) Height of the building impeding on his view of the Konza,

- 2) He thinks the easement is actually on the Watson property, not on the Spring property, so he thinks there may be issues as to where the actual property line is located,
- 3) As Springer cleared the old buildings, he also excavated into the side of the hill, he is worried about the possibility of sliding—a retaining wall is necessary,
- 4) The easement located on the property is most likely the last remnant of the railway that went from Manhattan to Fort Riley, which had an old stone retaining wall still there, which is technically on the Watson property.

Hamilton asked Watson if he has talked to Springer about sharing the cost of surveying the property line. Watson said yes, they have talked about it some.

Lisa Pullman, 2041 Arthur Drive, said her property is just north of the project, which will affect her view. She is concerned the property values of the homes decreasing because of the large size of the office building.

Hamilton said that the proposed building is actually farther away from the buildings that were torn down. Pullman said the difference here is the size of the building because the old ones were relatively small.

Aistrup asked how many stories tall the proposed structure would be.

Steve Springer, applicant, said the old stone home on the property is important because of his family history. He implemented a plan to work around the stone home. The first phase was to divide the land and sell a portion, while the second phase consisted of taking down the metal shop. His wife wants to put a chiropractic office into the lot. He wants to blend the office building with the stone house, with the same roof line and limestone. They wanted the biggest footprint that was possible on the site; he doubts the actual building will be that large. The design would have a large vestibule in the center, with two sides that look like houses, so the entire property will look like three homes. He wants to blend his new building with the Master Landscaping building, so the whole site flows. Springer said he has had it surveyed three times, so he feels pretty certain about the boundary line. He is sympathetic to the railway; they purposely did not put the building in that area. The setback has always been eight feet back there, but when they split the lot, the front and rear setbacks have to be facing westward, when they used to be facing Fort Riley Boulevard, which made the setbacks switch around. He has visited with the neighbors and he doesn't want to put any building in the site that would be a problem. It looks like there has been excavation, but there hasn't been any yet. The old buildings that were there were built into the hill, so now that they are gone, it looks like it was excavated. He doesn't think they will excavate anymore, but if they do since it is a commercial building, the engineers will take care of drainage and the rest of all applicable items.

Hardy said that normally the application has a lot more detail. He knows that Springer made the comment that they are asking for the most and will be happy with whatever you end up

with. He would hate to see them have to come back to the Board later to get more Exceptions beyond the eight foot one. The height is not something the Board would look at.

Bunger said this application should be really close to being finalized. The site plan was acceptable to him based on a 3,000 square foot building. But if the footprint is going to change, it will need to be addressed. The maximum height for C-1 is 30 feet.

Springer said the building can't be any bigger than the proposed site plan because of the parking, if anything it will be smaller.

Hamilton asked how long it would be before more design information would be available. Springer said within the next month or two. There is an architect working on the interior design now, but the floor plan is almost done. They were trying to get the process going to get building. Springer said he just got verbal permission to put in a second driveway.

Hamilton asked if they are planning to have two driveways. Springer said yes.

Lisa Pullman, 2041 Arthur Drive, asked for the purpose of the twenty-five foot setback. Bunger said to ensure there is enough separation between the building and the property line for a variety of reasons. Pullman said she thought the driveway was denied. Bunger said it originally was denied, which is why it doesn't show the second driveway. After the packet was sent out the City Engineers felt the site needed another access point. It doesn't meet any of the standards that the engineering department has, but it is based on common sense and traffic safety concerns.

Hardy closed the Public Hearing and opened for Board discussion.

Hamilton said she would feel more comfortable with more information and an updated plan. The only thing before the Board is the rear yard setback, but if the Exception was denied it would impact the parking and building size allowed. The huge hillside behind the property minimizes any impact that the rear yard setback would be trying to protect property owners from. She would like to know more about the entire property and the retaining wall.

Aistrup likes in some respects a preliminary plan and then the developer lives within the boundaries the Board sets up without the applicant spending a fortune on plans.

Hardy would like a little more information, but the question is how much more is needed to justify the Exception. But, he is concerned that the proper conditions need to be put on the property to make the 8 ft Exception have some teeth to it to protect the adjacent property.

Hamilton said usually water and drainage type issues are addressed before the application, but that is not the case this time, so the Board doesn't know.

Springer said the back of the building will be the retaining wall, which will be addressed by the engineers before construction actually begins.

Hamilton suggested tabling the item for at least a month in order to get City Staff to assure the Board about what kinds of things will need to be addressed during the building process. She would like to see a plan with relation to hillside. Aistrup would like to know where the inter-urban railway is on the plan.

Aistrup moved to Table the public hearing for 401 Westwood Drive in order for more information to be gathered and a more explicit site plan, which was seconded by Hamilton and passed with a vote of 3-0.

Hardy adjourned.

Respectfully Submitted,

Ashley Myers, Planning Intern

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