

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, January 12, 2011
7:00 PM

MEMBERS PRESENT: Joe Aistrup, Vice Chairperson; Connie Hamilton; Catherine Lavis.

MEMBERS ABSENT: Harry Hardy, Chairperson; Ricci Dillon.

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

CONSIDER THE MINUTES

Hamilton moved to approve the December 8, 2010 minutes which was seconded by Lavis and passed with a vote 3-0.

CONTINUE a PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum front yard setback along S. 6th 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).

A PUBLIC HEARING to consider a VARIANCE to not pave an existing gravel off-street parking spaces as required between the front property line and the setback of the principle structure at 529 Pierre Street in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The parking spaces are associated with an approved Bed and Breakfast Home. (Applicant/Owner: Rebecca Herl)

Hamilton moved to remove the public hearing from the table and conduct a Public Hearing to consider the Exception request for 529 Pierre Street, which was seconded by Lavis and passed with a vote 3-0.

Aistrup asked Bunger to present the two items together. Bunger presented the Staff Report with a recommendation of approval for the Exception and Variance request.

Hamilton asked in 2003, an Exception was approved to have parking how far. Bunger replied the 2003 Variance was to allow the parking to encroach approximately six feet into the required set back, roughly thirty-one feet from the property line. This parking area was gravel because of the location of the parking stalls, pavement is only required if the parking is in front of the house or twenty-five feet in the rear, whichever is greater.

Hamilton said now the issue is the garden area in the back has been taken out and the whole area across the back has been covered in a gravel parking lot. Bunger said there is a curb cut, but there are no lines which direct the parking, so people park parallel or perpendicular to the alley.

Aistrup said the proposal today is to take out fifteen feet of the gravel, to protect the vision triangle and the sidewalk, but also accommodates the applicant to have the required parking spaces for the Conditional Use. Hamilton said that with the compromise an area now needs to be paved. Bunger said yes, technically only the ten foot space would need to be paved.

Aistrup opened the Public Hearing.

Rebecca Herl, applicant, is available for any questions.

Aistrup asked if Herl had any problems with the proposed compromise. Herl said she thinks the little bit of concrete would be an eyesore. She is fine with taking fifteen feet and turning it into a garden, even though it would eliminate the use of the parking as a driveway.

Jim Sherow, former owner of 529 Pierre who received the Conditional Use, said there was plenty of parking with the two rooms. They talked to Master Landscape to create a good parking service, who asked why the garden was in that location. Sherow did not know why the garden space was there, it was a lousy space for a garden and people would even drive over it. So they completely excavated out the garden, because there was a drive basically right into it and because it would have been difficult to excavate an area, but touch an area of twenty-five feet. He admitted he did not think about this area needing to be kept as a garden or grass. He knew that the area would very seldomly be used for parking, because most parking was done along 6th Street because that was the direct access into the house. Very few customers liked parking in the back and walking up along the house to the front. So would park along Pierre Street, even though he suggested they did not because the traffic was difficult. The gravel is a permeable surface, which drains well and does not add to storm water drainage. No one in the neighborhood reacted to the vision triangle; in fact, from his house at 617 he does not see any negative results from the change. He suggests the Board not make Herl pave the little fifteen foot portion, instead it would be nice if the City were to extend the curb out farther, which would create a nice vision triangle because there would be no extended grass parking there. If there curb had been extended, he would have extended the irrigation line that is in the area out farther. The gravel lot cost a few thousand dollars to install because the lot consists of deep gravel, not just a thin layer, which hold up to any parking on it except for WestStar trucks which crush the whole thing down and requires additional gravel to repair it. From his point of view, Herl should be left alone about the

gravel fifteen foot parking that is very seldom used and does not cause anyone any angst. Additionally, this is nicely screened now; the lilac bushes are growing out now and will continue to grow. So there is a nice vision triangle going on there now, especially with the irises and the day lilies.

Bonnie Lyn Sherow, former owner of 529 Pierre who received the Conditional Use, it was her decision to finish putting the gravel into the location and never occurred to her that it would require a Variance to continue the gravel to the edge of the curb cut. This was not intentional in any way, she thought that they had a Variance for parking especially because of the historic nature of the structure. At the time in 2003 the BZA agreed with that assessment. The so called "garden" was a bunch of tomato plants with some old railroad ties around it. It was never intended to be an actual formal garden. The entire yard was a mess due to the demolition party they had, so cleaning up the space for the tomatoes let her keep her sanity. Additionally, there is a telephone pole in the middle of the parking area with a guy wire, which impedes the parking area. She called WestStar if they would be willing to move the pole, but they wanted an astronomical amount of money to move it. Even though the parking was approved before, it was not useful. Two little cars could be very easily squeezed into the area to the east of the pole; thus it was logical to move the gravel to the west, which they thought they had a variance for anyway, to make up for the unusable space. Also, even if there was intentional gardening there, people ignored it and drove right over it. The residential neighborhood has changed since 2003; it is now a historic district and the house itself is on the National Registry of Historic Places. The National Park Service requires "properties to be maintained in such a way that at anytime the property can be returned to its former use, at the time it was constructed." By requiring Herl to pave a portion or all of the lot adds essentially a "commercial" layer to a residential lot, which makes it more difficult to return to the historic original structure. Furthermore, one of the reasons the area was done in gravel is because they always intended to put a garage. Gary Coates student designed a garage for them, but then they purchased 617 Colorado and did not follow through with those plans.

Aistrup closed the Public Hearing and opened the Board Discussion.

Hamilton appreciates the Sherows explaining comments; however, specific conditions are applied to things the Board grants that are tied specifically to the site plan and it seems like these conditions were not taken seriously by the owners and was not caught by the City, nor anyone who was involved. Which is disturbing for the Board, if the conditions of approval are not being met; what is the Board doing? If the Sherows had come back and asked for the conditions to be modified, it most likely would have been approved. She remembers from 2003, the garden was considered a landscape buffer to help define and limit the parking from the front yard into 6th Street, which was ignored or allowed to be ignored. She is reluctant at one level, because the request is to ignore the conditions applied to the property and this could have been fixed before the construction was completed rather than after the fact. That being said, she thinks the Sherows explained the migrating parking, the curb cut driveway, or a garage makes sense. As much as she found the City's compromise appealing, she is more swayed to the notion that it makes sense to allow the parking all the way out to the curb cut

and is also reluctantly persuaded to permit gravel only because it would not have to be paved all the way back. She wishes there was a way to approve the request and require some sort of barrier and/or landscaping helps define the parking area enhancing the property and stop the parking migration.

Aistrup concurs with almost everything Hamilton said, except for the last part about the vegetation. The curb cut ruins it causing the vegetation to look unnatural there. Hamilton restated she meant along the north side. Sherow said there are lilacs growing there right now. He is okay allowing it as is. It is frustrating a new owner inherits the problem because people ignore the site plan causing the property to be non-conforming.

The Board made the following findings of fact for the Exception at 529 Pierre Street.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other than the requested Exception and a Variance request to not pave the existing gravel parking, the subject site complies with all applicable regulations. The subject site received Variances on January 8, 2003 to reduce the minimum required 10,000 square foot lot area, a reduction in the minimum required twenty-five (25) foot front yard setback, a reduction in the minimum required eight (8) 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 for the bed and breakfast home.

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.

Minimal adverse impacts should be felt by adjacent property by approving the Exception. It is unclear when the gravel off-street parking area was installed. The parking area has existed since at least 2008 when aerial photos taken in the fall/winter of that year shows the off-street parking spaces in place. Photos taken by the City in the summer of 2004 shows the curb cut adjacent to the alley, but the area in question is landscaped with a garden. The Community Development Department has not received a complaint about the location off-street parking spaces in the front yard area. By having the parking spaces in the front yard, an adequate amount of off-street parking is provided for the existing use of the subject site as a bed and breakfast home with three (3) guest rooms. This reduces the need for on-street parking along S. 6th Street and Pierre Street.

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 agreed with the administrative review of the Conditional Use and Exception request, determining that "the proposed project will not encroach upon, damage, or destroy any listed historic property or its environs."

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal adverse affects on the public health, safety or welfare should be seen by approving the Exception request. The existing parking condition does provide for adequate off-street parking for the bed and breakfast home. It also provides for adequate vehicle maneuvering space onto the alley to the south and to S. 6th Street to the west.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application would require that the parking area within the first twelve (12) feet of the required front yard be removed. The Board of Zoning Appeals previously approved parking extend approximately six (6) feet beyond the point which is on the side of the principal structure furthest from the front lot line, yet still facing the front lot line. The condition was created by the previous property owners some time prior to 2008, and not by the applicant/current owner. The area does provide for the minimum required off-street parking spaces for a three (3) guest room bed and breakfast (a total of 5 spaces are required), which reduced the impact of the use of on-street parking spaces in the neighborhood. Considering these facts, the strict application of the regulation would be unreasonable and unnecessary

Hamilton made a motion to approve an Exception to reduce the minimum front yard setback along S. 6th 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 with the following conditions of approval:

1. The Conditional Use for the three (3) guest room bed and breakfast home shall be approved.
2. The off-street parking area shall be maintained in good condition.

Lavis seconded the motion, which passed by a vote of 3-0.

The Board made the following findings of fact for the Variance at 529 Pierre Street.

CONDITIONS UNIQUE TO THE PROPERTY: The unique condition of the property is the circumstances regarding the expansion of the off-street parking area. The previous property owners received a Conditional Use for a bed and breakfast home for two (2) guest rooms. They also received a number of Variances, one of which was to allow parking beyond

the point which is on the side of the principal structure furthest from the front lot line, yet still facing the front lot line. The Board of Zoning Appeals made no requirements that this area or the entire off-street parking area be paved. Sometime after 2004, the entire rear yard along the alley was converted from a garden to a gravel parking area. The new gravel parking area led to an existing curb cut along S. 6th Street. At that time, the Conditional Use would have been required to be amended and the added parking area in the front yard would have been required to be paved.

The applicant purchased the property to continue the use as a bed and breakfast home. The applicant has expanded the use from two (2) guest rooms to three (3) guest rooms. The gravel parking area installed by the previous owner is needed for the required number of off-street parking spaces for the bed and breakfast home. A minimum of five (5) off-street parking spaces are required for the three (3) guest room bed and breakfast home. The gravel area encompasses the entire width of the lot and is wide enough to provide for six (6) parking spaces. The unique condition is that the applicant "inherited" the nonconforming condition from the previous owner. The area is, in part, is needed for the expanded bed and breakfast home to meet the minimum parking requirements. However, if the applicant had not expanded the use from two (2) guest rooms to three (3) guest rooms, the area in question would still be required to be paved, because it could still be used as a driveway or be converted back to green space.

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 Dollars Catholic Church. A block to the east, on the southeast corner of S. 5th Street and Pierre Street, is Carlson Plaza apartments.

Minimal adverse impacts should be felt by adjacent property by approving the Variance. It is unclear when the gravel off-street parking area was installed. The parking area has existed as gravel since at least 2006 when aerial photos taken in the fall/winter of that year shows the off-street parking spaces in place. Photos taken by the City in the summer of 2004 shows the curb cut adjacent to the alley, but the area in question is landscaped with a garden. The Community Development Department has not received a complaint about the location of the off-street parking spaces in the front yard area or that the parking spaces have not been paved as required. By having the parking spaces in the front yard, an adequate amount of off-street parking is provided for the existing use of the subject site as a bed and breakfast home with three (3) guest rooms. This reduces the need for on-street parking along S. 6th Street and Pierre Street.

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 list 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 agreed with the administrative review of the Conditional Use and Exception request, determining that "the proposed project will not encroach upon, damage, or destroy any listed historic property or its environs." The need for the Variance was not reviewed the local Historic Resource Board or the State Historic Resource Board as the local Historic Resource Board liaison determined that the review including the existing condition of the parking area. Requiring the area to be paved would be required by the Zoning Regulations and is not subject to the historic environs review.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The strict application would require that the off-street parking from the front property line along S. 6th Street to a point twenty-five (25) feet from the property line be paved for the existing parking spaces. The circumstances surrounding the expanded gravel parking by the former owners, as previously describe, maybe a hardship for the applicant. Although most likely not intentional, the applicant has stated that she was led to believe that the bed and breakfast home complied with all regulations when she purchased the property and the business. This is not the case. The previous owner's actions created the condition on the subject site and the hardship for the applicant.

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

Minimal adverse affects on the public health, safety or welfare should be seen by approving the Variance request. The existing parking condition does provide for adequate off-street parking for the bed and breakfast home. It also provides for adequate vehicle maneuvering space onto the alley to the south and to S. 6th Street to the west. The existing condition of the parking area has been gravel since at least 2006 with no known issues. The gravel parking is in adequate condition.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the regulation is to ensure a uniform front yard appears throughout the City and to create a permanent all-weather surface for driving and parking of vehicles on property for the property owners and visitor. Additionally, the purpose of requiring driveways or parking areas in the front yard to be paved is to reduce the possibility of gravel and other debris from migrating onto the roadway.

The existing driveway is made out of compact limestone screenings and is in good condition to handle the parking demands for the bed and breakfast home. The condition of the parking area and the existing sidewalk and concrete curb cut provide adequate control to prevent gravel from migrating onto the road. The gravel parking area has been present sometime after 2004 with no known issues to the Community Development Department.

It is in the applicant's best interest to keep the gravel parking area in good condition to satisfy the bed and breakfast home guest's needs. If the parking area became in disrepair, the overall

satisfaction of her guests would be an issue. Considering these factors, the intent of the regulation is met.

Hamilton made a motion to approve a Variance to not pave existing gravel off-street parking spaces as required between the front property line and the setback of the principle structure along S. 6th Street at 529 Pierre Street for off-street parking spaces associated with an approved Bed and Breakfast Home in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District with the following conditions:

1. The Variance shall apply existing off-street gravel parking area on the approved site as modified.
2. The gravel parking area shall be maintained in good condition.
3. The landscape area shall be maintained in good condition.

Lavis seconded the motion, which passed by a vote of 3-0.

CONTINUE a PUBLIC HEARING to consider an EXCEPTION 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)

Hamilton moved to remove the public hearing from the table and conduct a public hearing to consider the Exception request for 401 Westwood Drive, which was seconded by Lavis and passed with a vote 3-0.

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

Hamilton asked if the building is built as the retaining wall, it will still have to have the eight foot setback from the property line. She asked if the hillcut is at the eight foot line or not? Bunger said the applicant would know the answer. Aistrup asked if the retaining wall would have to be at the eight foot setback line. Bunger said no, it is a fence or a wall, so it could be at zero. There may be an issue with the utility easement.

Hamilton asked about the new driveway. Bunger said the driveway to the south is shared and is conditioned to be paved, but the new one to the north would not be shared.

Aistrup opened the Public Hearing.

Steve Springer, applicant, explained they would like to make a loop with the two driveways and is agreeable to paving the shared driveway. They purposely picked out a house plan for the property. He spoke to the neighboring property last night, who had concerns with garbage disposal. In 30 days, he will own the property to the east, so the set back issue will be not a problem.

Bunger said the new property to the east is zoned residential; thus, the property would need to be rezoned commercial before it could be combined with the existing commercial site. The retaining wall is not specific to the zoning district, so it could be put on either property, once the applicant owns it. But the combination of the two lots could not happen until it was rezoned and subdivided.

Springer said he is very sensitive to the urban trail and is thinking about incorporating it into the design.

Aistrup closed the Public Hearing and opened the Board Discussion.

Hamilton said she really appreciates the work Springer has done: talking to the neighbors, purchased property, taking care of issues from last month. The retaining wall location is up to Springer. She thinks the proposal makes sense with the circumstances and the eight foot line is what would have been a side yard if the property had not been separated into two parcels. He has demonstrated an exceptional regard for beautifying the area and in tune with the neighbor's needs and desires.

The Board made the following findings of fact for the Exception at 401 Westwood Drive.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The proposed development complies with all applicable regulations of the C-1 District other than for what the Exception is requested for.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and the property to the immediate south are zoned C-1, Restricted Business District. To the north, east and west are single-family homes zoned R, Single-Family Residential District. Directly across Westwood Road is a multiple-family development, zoned PUD, Residential Planned Unit Development. The Westwood Motel is zoned R District. To the south of Fort Riley Boulevard are properties zoned C-5, Highway Service District and I-3, Light Industrial District.

Minimal adverse affects on adjacent properties are anticipated. The site has been zoned C-1, Restricted Business Commercial District and used as a commercial use since at least 1992. The previous commercial business on the subject site was Lakin's Metal Polishing Business. The business and buildings associated with it are no longer on the site.

Because of the irregular shape of the subject site, few options are available to locate a new building. The former buildings were located along the west property line. These buildings received Exceptions to reduce the front yard setback in February, 2000. The subject site received a Variance to reduce the minimum lot depth from 150 feet to 114 feet prior to it being subdivided by a Lot Split in October, 2008. Any configuration of the location of the new building would most likely require a Board of Zoning Appeals action to reduce a required setback.

The proposed location of the building should not impact the adjacent residential properties to the north or east. The residential properties to the east are significantly higher in elevation than the subject site. The hillside is also heavily tree lined, which provides screening and buffering. A retaining wall or building will be required to be designed and certified by a structural engineer to protect the proposed building and hill side to the east. The residential property to the north is also higher in elevation (to a lesser extent than the properties to the east) and is also screened by trees on the site and on the adjacent properties. The proposed building will be approximately forty (40) feet from the north property line. The properties to the west will be approximately eighty (80) feet from the proposed building (measured to the property line) and will be screened by existing trees on the site. The property to the south is a similar commercial business office and was once a part of the subject site. The subject site shares a driveway onto Westwood Road with the property to the south. To date, a cross access easement has not been filed with the Riley County Register of Deeds to ensure that both sites would have access. The applicant should consider creating a private cross access easement with the owner of the adjacent property to ensure access to the subject site is maintained.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal impacts on the public health, safety or general welfare are anticipated. The building is located outside of the eight (8) foot wide utility easement at the rear of the lot. The existing driveway leading to the subject site is currently made of compacted gravel. The Zoning Regulations require that all off-street parking areas, parking spaces, travelways, driveways, ingress and egress shall be paved (Section 7-102(E)(3)(a)). It appears that the gravel driveway is an existing nonconforming condition. With the approval of the building permit, the driveway, travelways and parking spaces on the subject site is required to be paved. The Board of Zoning Appeals should consider conditioning the approval of the Exception on the applicant having the existing driveway and travelway that is on the adjacent site that will lead to the subject site paved. The condition of approval would bring the driveway into compliance and ensure that a good driving surface is provided for the new development and the existing business.

The proposed northern driveway has been approved by the Public Works Department on December 14, 2010.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the setback regulations would not allow the building to be constructed as proposed. The building could be reduced in size or be relocated on the site. The irregular shaped lot was granted a Variance in August, 2008 to reduce the lot depth from 150 feet to 114 feet. Because of the irregular shaped lot and the shorter than required lot depth, moving the proposed building or a smaller building may still require a Board of Zoning Appeals action to reduce a yard setback. Considering this and that the proposed building should not impact adjacent properties, the strict application of the rear yard setback is unreasonable.

Hamilton made a motion to approve an Exception 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 Road in the C-1, Restricted Business District with the following conditions.

1. The Exception shall apply to the proposed building as shown on the site plan and outlined in the application documents.
2. All applicable permits shall be obtained.
3. The driveway and travelway on the adjacent property to the south that leads to the subject sit shall be paved.

Lavis seconded the motion, which passed by a vote of 3-0.

CONTINUE a PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum eight (8) foot side 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)

Hamilton moved to remove the public hearing from the table and conduct a Public Hearing to consider the Exception request for 112 Harvard Place, which was seconded by Lavis and passed with a vote 3-0.

Bunger clarified that the site is no longer being proposed to be replatted. So this Exception request is to give the applicant clear title to the property.

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

Aistrup opened the Public Hearing.

Jeff Hancock, representing the applicant, said he would be willing to answer any questions.

Aistrup closed the Public Hearing and opened the Board Discussion.

Hamilton said that the existing fence is an interesting issue eventually and the Board always faces something new. The issue before the Board is addressing an error made in 1974. She thinks the Board consistently grants these requests because there is no principle reason to not grant them, so she would accept the Staff's recommendation.

The Board made the following findings of fact for the Exception at 112 Harvard Place.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The adjacent property owners, Darrell and Molly Hills, were in the process of purchasing a portion of the applicant's land and combine it with their single-family lot to the south. In anticipation of this, the Hills constructed a privacy fence and metal gate on the applicant's property. The fence and gate are approximately zero (0) feet from the front property line along Harvard Place. The Hills' property is located within a Residential Planned Unit Development (PUD). The proposed rezoning request would have accommodated the location of the fence by including it into the PUD amendment. Because the request to rezone and subdivide the applicant's land to finalize the land transfer between the two (2) parties has been abandoned, it is unclear of what the plan for the fence. The applicant and the adjacent property owner will need to decide what the future holds for this area of the subject site and bringing the property into conformance with the Zoning Regulations.

The existing house on the subject site was constructed approximately 3.5 feet into a platted utility easement. This portion of the utility easement will need to be vacated by a Final Plat or Ordinance with the City Commission to correct the issue.

Other than the issues described above and the Exception request, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject site and properties located to the north, east, and west are zoned R, Single-Family Residential District. The property located immediately to the south is the Cherry Hill PUD, Planned Unit Development.

The Community Development received a letter of protest against the proposed zoning from a neighboring property owner (3006 Cherry Hill) "requesting the zoning be left as it is to avoid future building on a lot that is already congested with a pool, pool house, dog house and fencing. When we purchased our home, the privacy of the back yard and the view was one of the reasons we chose this home. This would alter that considerably." It is apparent that the protest letter is in regard to the now withdrawn rezoning and subdivision request, and does not specifically address the issue of the existing house on the subject site.

The location of the structure has had minimal affect on adjacent property thus far (since 1974) as a side yard. The Exception request is to give the applicant a clear title of the property. Minimal adverse impact on adjacent properties is expected from continued use.

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

The continued location of the structure and reduction of the eight (8) foot side yard setback should provide minimal adverse affects the public health, safety or welfare. The structure is located within a ten (10) foot utility easement; a portion of this easement must be vacated by

Final Plat or by Ordinance to correct the encroachment.

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

The strict application of the Zoning Regulations would require removal of a portion of the structure to provide for the appropriate eight (8) foot side yard setback. This would disturb the internal layout of the residence, which has been in existence since 1974, and would be unreasonable. Considering these factors; requiring the strict application of the side yard setback for the existing residential structure would be unreasonable.

Hamilton made a motion to approve an EXCEPTION to allow a reduction of the minimum eight (8) foot side yard setback for an existing building to six (6) feet at 112 Harvard Place in the R, Single-Family Residential District, with the following conditions:

1. The existing residential structure shall be maintained as outlined on the site plan and application documents.
2. The existing fence along Harvard Place shall be addressed by either removing the portion of the fence that encroaches into the front yard setback or request an Exception to allow it to remain.

Lavis seconded the motion, which passed by a vote of 3-0.

A PUBLIC HEARING to consider an EXCEPTION to allow a driveway to be greater than ten (10) feet in width for a proposed paved driveway expansion and to allow a reduction of the minimum side yard setback for the existing house from eight (8) feet to six (6) feet. Both Exceptions are for a single-family dwelling unit located in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. No additions or modifications to the existing house are proposed. The Exception for the side yard setback for the house is for the owner to have clear title of the property. (Applicant/Owner: James T. Lindemuth).

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

Hamilton clarified the curb cut would not be expanded. Bunger said correct, the existing curb cut would be used and not be modified.

Aistrup opened the Public Hearing.

Tim Lindemuth, applicant, wanted to thank the Board for consideration of his application and

the Board's service to the City, advancing and protecting the integrity of the City. He also thanked Bunger for helping him through the process. He did mention that both the house and the garage are on the six foot line, which he does not know if that means the application will have to be amended or what the appropriate course of action will be. He has been a resident of the home for thirty-three years, seven times in recent years his car has been vandalized because it was parked on the street. If the Exception is granted, he intends to return to the Board for a Conditional Use permit for use of one bedroom in the home as a guest room for the University; therefore the third off-street parking space would be necessary for the arrangement. Before Christmas, he made nearly thirty one-on-one visits with neighbors discussing his ideas and the Exception request; everyone supported his ideas.

Bunger clarified, the detached garage would have a different side yard setback of three feet. So the Exception request is only for the house.

Jamie Morris Hardeman, supports the Exception request. She said normally she would not be in favor of anything in exception to the TNO, because they fought very hard to get the TNO established. But she believes Tim has the best intentions with this proposal and he has worked very hard to ensure that the neighborhood agrees with his proposal. She enjoys Tim's garden and does not believe it is a good idea to remove the garden in order to get off-street parking. She said Tim's driveway is not consistent with the rest of the neighborhood, his is very short and narrow, not allowing stacking of cars in the drive. She read a letter of support from Phil and Donna Anderson.

Aistrup closed the Public Hearing and opened the Board Discussion.

Hamilton said she does not think she has ever had an application with so much neighborhood support. It is really refreshing. She agrees with Hardeman that the option of taking over the garden for parking is not agreeable and is favor with supporting the Exception.

Aistrup wanted to echo Hamilton's remarking and he cannot imagine destroying the garden for anything.

The Board made the following findings of fact for the Exception at 500 Denison Avenue.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other than the Exception requests, the property complies with all applicable regulations. In 2001, the fence surrounding the backyard and garden on the subject site was granted an Exception to be located in the front yard along Denison Avenue.

The existing house is located approximately six (6) feet from the east side property line. At

the time of the 2001 BZA hearing, the subject site was zoned R-2, Two-Family Residential District, which has a side yard setback of six (6) feet. In May, 2003, the subject site and the surrounding areas were zoned from R-2 to R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The R-1 District has a side yard setback requirement of eight (8) feet. The rezoning of the property and surrounding area caused the house to be nonconforming to the side yard setback requirements of the R-1 District.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-1/TNO. Properties to the west and immediately north are zoned UO, University Overlay District. The area is a mix of single-family owned homes, single-family rental units, two-family dwellings, multiple-family dwellings and fraternity and sorority houses.

Minimal adverse affects on adjacent properties should occur by approving the Exception. As stated by the applicant, the mix of housing densities and the proximity to the Kansas State University campus creates challenges in finding on-street parking for property owners and tenants of the rental units. On-street parking on Denison Avenue is limited to only the west side of the street. Parking is limited to only the north side of Fairchild Avenue. By allowing the driveway to be constructed as proposed, the applicant would be reducing his need to park a vehicle on the already congested streets in the area.

There are a number of driveways in the area that are similar in width as to what the applicant is proposing or larger. 512 Denison Avenue, 1743 Laramie Street, 1742 Laramie Street, 1800 Laramie Street and 1745 Anderson Avenue (Lutheran Campus Ministries) all have similar wide driveways that can accommodate two (2) vehicles parked side by side.

The applicant's property is very well landscaped with manicured flower beds and an English garden. In the application documents, he has stated that he plans to landscape around the new driveway "to harmonize the Colonial Saltbox home, gardens and its surroundings," which help to visually soften the added driveway width.

The applicant has contacted his surrounding neighbors to inform them of the proposed driveway and gather their feedback. Four (4) neighbors have provided letters and emails of support of the applicant's proposed driveway.

In regards to the setback of the existing house, the Exception request should not impact adjacent properties. The house has been in that condition since 1938. The house only became noncompliant with the Zoning Regulations when the site and surrounding properties were zoned to R-1/TNO, which increased the side yard setback from six (6) feet to eight (8) feet. The Exception request will give the property owner a clear title of the subject site. No expansions or additions are proposed to the house.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal adverse impacts on the public health, safety, order or general welfare should be created by approving the Exception. By

approving the request, the applicant will be able to remove one (1) car from parking on the congested streets of Denison Avenue and Fairchild Avenue, which will be an improvement for the public.

There is an existing utility pole located immediately south of the existing driveway. To have the pole relocated would be the applicant's responsibility and would be cost prohibitive. The applicant has designed the driveway addition to angle away from the pole and has stated that he would park his own car in the new parking space, allowing guest to use the 90 degree parking space. No adverse impacts on the public health, safety and welfare should be seen on approving the Exception for the location of the existing house. The house is located outside of any utility easements.

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

The strict application of the driveway width regulation in the TNO District Site Design Standards would not allow the expansion of the driveway as proposed. The existing driveway is approximately nine (9) feet wide and could only be widened to ten (10) feet.

No other alternative exists for the applicant to provide for additional off-street parking. The lot does not have alley access as other properties to the south have. Also because of the location of the house and detached garage, parking could not be provided to the rear of the house as other lots that are interior in the block could do. For interior lots, a driveway could lead from the street to the rear of the property, where the entire rear yard could be used as off-street parking spaces. The detached garage and the existing driveway could be removed to provide for this type of parking configuration that would meet the minimum requirements of the TNO District. However, it would be more of a visually impact on the neighborhood than the proposed plan, especially if the removal of the existing garden is considered.

Considering these factors, the positive impact the proposed plan would have on the on-street parking situation in the area and the minimal impacts on adjacent properties; requiring the strict application of the Site Design Standards for driveway widths in the TNO appears to be unreasonable.

The strict application of the location of the existing house would require the house to be removed or altered to eliminate the encroachment into the side yard setback. The condition was created by the rezoning of the site to R-1/TNO, which created the nonconforming situation. The Exception gives the applicant a clear title of property. The strict application of the regulation is unreasonable.

Hamilton made a motion to approve an EXCEPTION to allow a driveway to be greater than ten (10) feet in width for a proposed paved driveway expansion and to allow a reduction of the minimum side yard setback for the existing house from eight (8) feet to six (6) feet. Both Exceptions are for a single-family dwelling unit located at 500 Denison Avenue in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions:

1. The Exceptions shall be limited to the proposed driveway expansion and the existing single-family home as outlined in the application documents and shown on the applicant's site plan and architectural plan.
2. All applicable permits shall be obtained.

Lavis seconded the motion, which passed by a vote of 3-0.

A PUBLIC HEARING to consider a CONDITIONAL USE to allow for construction of a two-family dwelling unit, at 530 Fremont Street, located within a R-2/TNO, Two-Family Residential District with Traditional Neighborhood Overlay District, in which both of the dwelling units are greater than six-hundred (600) square feet in floor area and where both of the dwelling units have more than two bedrooms. (Applicant/Owner: Matt Karstetter – Alliance Developments, LLC)

A PUBLIC HEARING to consider an EXCEPTION to allow for an increase of the maximum thirty (30) percent lot coverage to thirty-five (35) percent for a proposed two-family dwelling at 530 Fremont Street in the R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. (Applicant/Owner: Matt Karstetter – Alliance Developments, LLC)

Aistrup asked Bunger to present the two items together. Bunger presented the Staff Report with a recommendation of denial for the Conditional Use request and the Exception request.

Hamilton asked why the parking can be in front of the building. Bunger said technically it is not, it is in line with the building. The fourteen feet in front the building must be green space.

Aistrup opened the Public Hearing.

Matt Karstetter, applicant, explained the lot is 7500 square feet, so it meets the requirements to be considered to be rezoned RM. Everything else besides the Exception request, lot coverage, meets the requirements. He would like to include porches on the project, but they would encroach into the setback. Property will have a timeless look, because it is going to be done in all stone. Parking should not be an issue. He is going to live in one of the units and rent the other side. Mr. Plumberg, to the east, is in favor of doing the project and is willing to work with the applicant to install a fence. Along the fence would be a place to store the trash receptacles and a bike rack. He would like to get it professionally landscaped. He has spoken to several directly adjacent neighbors and they are in favor of the project, while there are some

others who are not. He had two public meetings to discuss the plan. He demolished the current building because squatters would light fires in the old house and on the porch and because it was in utter disrepair. He is interested in renting to young professionals or military families, not really college students. He concluded by saying he is willing to do what the Board tells him to do.

Hamilton asked if Karstetter considered changing the design of the building after he became aware of the TNO lot coverage requirements. Karstetter replied, yes, initially the lot coverage was over 35%, but he shrunk it down as much as he could to make it still be functional, 600 feet is pretty small for two bedrooms.

Aistrup asked if Karstetter has thought about a two story structure, which would fit into more of the character of the neighborhood and would accommodate a nice porch. Karstetter said he would consider a two story structure.

Hamilton asked if Karstetter would be willing to table the item so he can come up with alternative designs. Karstetter said he needs to get to work. Bunger said, if the second unit was smaller than 600 feet, the Board would not need to approve a Conditional Use, but if it is a traditional duplex, then the Board would need to approve it. Hamilton said two stories with four bottom and three or four bedrooms on the top would require a Conditional Use.

Hamilton explained the proposed stretched out eight bedrooms does not fit within the character of the neighborhood, which is why the City is suggesting denial for the request. The Board thinks about the impact of the project on the development, look, and feel of the neighborhood. A two-story building with a porch, which looked homier than the utilitarian approach, might get past the concern of how it might impact the neighborhood.

Aistrup said he would look on that type of design favorably, especially because it would most likely address all of the lot coverage issues. The purpose of the TNO is to prevent plain duplexes from going further in the neighborhood. Karstetter's current design does not fit in the neighborhood.

Karstetter asked if the neighborhood character is going to last, as everything changes over time. Aistrup said it is there now and it is the rules we have to deal with. Aistrup said he is not inclined to support the proposal because he thinks a two-story structure would be easy to

do.

Hamilton said Karstetter has the option of building a smaller space for him to live and then not need the Board's approval for the other four bedrooms. Hamilton wishes there was a way to minimize the time for the project and expedite the process, rather than waiting until next month.

Aistrup thinks Karstetter did the right thing tearing the structure down, but wishes he continue to improve the lot.

Betty Baylor, 618 Osage, agrees that the old structure was an eyesore, but takes offense to the sentiment that anything is better. The neighborhood worked hard to get the TNO to keep out "just anything" from the neighborhood. The structure does not fit into the neighborhood and the parking is not right. If the applicant brings back an application without adequate parking, he is going to compound the parking issue as it spreads throughout the neighborhood. She thinks it is unfortunate the applicant did not do his homework before coming before the Board, but that is his problem.

Sarah Fisher, East Park Neighborhood Association, made three points. One, why bend, ignore, change rules. Two, need to slow the creep. Third, slowing or stopping the creep through the spirit of the TNO. She is happy to see the Board thinks the design does not fit the character of the neighborhood.

Kay Ring, is happy the Board told Karstetter everything she already mentioned to him during the neighborhood meeting. The neighborhood does not need any more density. There is a potential parking problem, besides Woodrow Wilson Elementary; there is a well attended church which fills several blocks with parking. The design is one of barracks or dormitories. Porches and landscaping would be nice, but it would not hide the largeness of the building. The design needs to architecturally fit into the neighborhood and not look like barracks or new construction.

Chris Banner, 618 Osage, said one story barracks do not fit into the character of the neighborhood. Approximately, 1/3rd of the buildings along the street are one story along Fremont Street from Juliette Avenue to Fifth Street. Stone is only a building material, how you use it makes a difference. Banner said at the neighborhood meeting Karstetter said he

would move out of the residence after a year, thus he cannot claim it will be taken care of. The building will be there forever, thus it needs to be designed for it. The City has no way of controlling who Karstetter rents to. Finally, the Board needs to consider the parking issue.

Aistrup closed the Public Hearing and opened the Board Discussion.

Hamilton appreciates the discussion and the comments from the neighbors, which should help the applicant's understand and also helps clarify the Board's thinking. She still would support tabling the request to give the applicant a chance to bring forth something that might fit the neighborhood in a more acceptable way.

Lavis agrees.

Aistrup concurs, but wants to make sure the new design has an old time feel to it, with porches and such. The neighbors are correct it is creep.

Hamilton moved to Table the Conditional Use and Exception request for 530 Fremont Street for further consideration at the next meeting.

Lavis seconded the motion, which passed by a vote of 3-0.

Bunger announced further notice or information regarding the Public Hearing for 530 Fremont Street will not be given unless the Conditional Use and Exception request change. The meeting will be held on the second Wednesday, February 9th, 2011.

Aistrup adjourned.

Respectfully Submitted,

Ashley Myers, Planning Intern

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