

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, January 12, 2005**  
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson, Connie Hamilton, Daniel Morin, Chuck Jackson, and Calvin Emig.

MEMBERS ABSENT: None

STAFF PRESENT: Steve Zilkie, Senior Planner, and Julie Kruse, Planner

**CONSIDER THE MINUTES**

Hamilton moved to approve the December 8, 2004. Jackson seconded the motion, which passed with a vote of 5-0.

**A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE FROM THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO NOT PROVIDE A SIX (6) FOOT FENCE WHICH IS REQUIRED WHEN OFF-STREET PARKING AREAS CONTAINING MORE THAN SIX (6) PARKING SPACES AND IS LOCATED WITHIN TWENTY-FIVE (25) FEET OF ADJACENT PROPERTY SITUATED IN A RESIDENTIAL DISTRICT.**  
*(APPLICANT: BERTRAND PROPERTIES)*

Kruse presented the staff report and recommended denial.

Hardy opened the public hearing.

Matt Zeimen, 1106 Bertrand. Lives in the house immediately adjacent to the apartment building on the east side. He stated that the bedroom, living room and bathroom are adjacent to the parking lot at 1114 Bertrand and the headlights of the cars shine directly into their home. Their house is only 13 feet from where cars park. Also, stated that without the fence the trash blows into their backyard.

George Kennedy, 1029 Bertrand. Explained that he used to help do the yard work for the elderly lady that previously lived at 1106 Bertrand and was always picking up trash that had blown over. He stated that there was a fence at one time and that the cars did hit it and eventually knocked it down. He expressed his feelings that screening the parking lot is the neighborly and right thing to do.

Hardy closed the public hearing.

The Board members expressed their appreciation for the neighbors coming and speaking on the issue to create a public record and raise concerns. Hamilton stated that the standards for a Variance are definitely not met: conditions unique to the property, strict application of the regulations creates a hardship on the owner, and it does not meet the intent of the property. Hardy added that there is adverse effect on the adjacent properties without screening and that inconvenience of maintenance does not meet the standards. Jackson and Emig both commented that the screening was required from the beginning and it is still required. Morin pointed out that there may be an economic hardship but that is not a reason for approval. The Board agreed that the standards are not met.

After the discussion the Board made the following findings of fact:

**1.** The applicant's letter states that conditions unique to this specific property (Ward 3, Lots 693-693) are the inability of the property owner to maintain the fence as a result of the parking configuration and the fence was vandalized by tenants' careless parking. Sight obscuring screening is required throughout the entire city, for all parking areas with six (6) or more parking spaces within twenty-five (25) feet of a residential property. This was a requirement when this site was first constructed and continues to be a requirement today. There are no conditions unique to this property that would prevent the owner from meeting this zoning requirement that would be unique from other properties that meet this requirement.

**2.** The lack of screening would cause adverse effects on adjacent properties. Since cars do park in the stalls facing the adjacent properties the front of the cars can easily cross over the property line with no barrier to stop them. The screening would prevent the light from headlights from shining onto adjacent properties.

**3.** No unnecessary hardship is placed on the property owner as a result of the strict application of this zoning requirement. This is a citywide regulation and applies to all zoning districts and to all properties that have more than six (6) parking spaces that are adjacent to properties in a residential district. The applicant states that the cost of constructing a fence creates an unnecessary hardship upon the property owner. However, the fence was a requirement with the original construction of the building. There is evidence of fence posts from the fence that are still in the ground showing that it did exist at one time and was removed.

**4.** The lack of screening probably does not have an adverse effect on the public health, safety, and welfare of the general public. The screening prevents any nuisances that may occur as a result of what occurs on one property affecting another property.

**5.** The intent of the regulations is to mitigate the negative impact of parking lots, including the light and noise produced by automobile traffic, so that the quality of life for residents of

adjacent properties is not diminished. Without the screening in place the immediate adjacent property owners will be adversely affected by the nuisances of the parking area.

Hamilton moved that the Board deny the requested Variance to not construct a six (6) foot screening fence that is required when off-street parking areas containing more than six (6) parking spaces are within twenty-five (25) feet of adjacent property situated in a residential district, between the parking area and the adjacent residential property, for the property located at 1114 Bertrand.

Jackson seconded the motion, which passed on with a vote of 5-0.

Emig stepped down due to a conflict of interest.

**A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW A REDUCTION OF THE REQUIRED MINIMUM LOT AREA OF 15,000 SQUARE FEET TO 7,500 SQUARE FEET; A REDUCTION OF THE REQUIRED LOT WIDTH OF ONE HUNDRED (100) FEET TO FIFTY (50) FEET; A REDUCTION IN THE REQUIRED NUMBER OF PARKING SPACES BASED ON SQUARE FOOTAGE FROM SEVENTEEN (17) REQUIRED SPACES TO EIGHT (8) PARKING SPACES; A REDUCTION OF THE REQUIRED EIGHT (8) FOOT SIDE YARD SETBACK TO FOUR (4) FEET ALONG THE EAST PROPERTY LINE; AN INCREASE OF THE REQUIRED MAXIMUM LOT COVERAGE FROM THIRTY (30) PERCENT TO THIRTY-EIGHT (38) PERCENT; AND THE REDUCTION OF THE REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO ONE (1) FOOT ALONG 15<sup>TH</sup> STREET. ALL IN THE C-1, RESTRICTED BUSINESS DISTRICT, FOR A PROPOSED OFFICE BUILDING. (APPLICANT AND OWNER: TIM CLARK.)**

Kruse presented the staff report and recommended denial of the variance.

Morin verified that anything in the R-3 zoning district is allowed as a conditional use in the C-1 zoning district and that the applicant could construct two-family dwelling. Kruse confirmed that statement.

Hamilton question why this item is being recommended for denial rather than tabling the item until all the questions are answered.

Kruse explained that the applicant wanted to go further with this and that the applicant responded to staff with I don't know when questions were asked. She also pointed out that if anything is approved tonight and the applicants applications for building permits do not conform with this site plan that he would have to come back before the Board. Hardy pointed out that this brings the chance of denial of the entire application.

Morin asked if the plans do conform to this site plan and if tenants change in the future and the company changes that change parking needs, employee numbers, etc. and it does not fit well with the neighborhood what then. Kruse explained that they would not have to come

back before the Board if tenants change. However, it may or may not be possible to make that a condition of approval or unless this were a conditional use which it is not.

Hardy opened the public hearing.

Darrell Hills, property owner of 1431 Poyntz stepped forward and explained the history of him purchasing this property and there was a residence that was torn down. He was unaware of difficulties of developing this lot when it was purchased.

Tim Clark, 224 Poyntz, applicant, stated he wanted to explain the zoning history of this property, previous site plan ideas that were brought to the city and discuss the staff report. He did go through the zoning history. He showed and described initial site plan ideas and why they were not acceptable to staff. He expanded on several points that were made in the staff report such as lot coverage, off-street parking, and the buildable area. The lot coverage is currently at 33 percent and would only be 38 percent if shading material were used on all sides of the building. If the shading devices were removed it would only be over the 30 percent lot coverage by 11 square feet, expressing that if it helps it pass they will be removed. If all of the setbacks are met there is only 1,989 square feet of buildable area, only allowing a 17-foot wide building but does not take into account the room needed for parking. It would be difficult to put a building on this lot and meet off-street parking requirements. Residential would also be difficult because the minimum size for an apartment in the R-3 district is 1000 square feet. Creating very small apartments when parking spaces are added to the site plan, the applicant is not doing this. He continued on addressing the standards for the Variance. He agreed that there were conditions unique to this property such as the lot width and area. The setback requirements make it almost impossible to develop this lot and meet the requirements. The effect on the general public is minimal and that this building will benefit the downtown area. The design of this building will allow them to "cherry pick" the tenants. Lastly, the intent of the regulations are met since this is one of six allowed uses. He explained that they have recently contacted Capitol Federal and may be able to use some of their parking if the unbuilt portion of Capitol Federal is built with this project. He concluded with the comment that they are willing to limit what is being asked for. They are willing to reduce the lot coverage by removing balconies and shading devices. The parking can be resolved through an agreement with Capitol Federal.

Darrell Hills explained that he rarely sees parking on the street even though the City cannot recognize it as parking for this building.

Morin and Clark discussed if a two-family was possible, whether or not residential is appropriate at this site and underground parking possibilities. Hamilton asked if a mixed-use building would face the same issues.

Hamilton raised the issue of parking options if the Board approves all but the reduction in off-street parking. Clark and Hills explained the possibility of agreements for shared parking with Capitol Federal Bank and the Manhattan Arts Center. The Board expressed concern over the potential high intensity uses that could occupy the building, and questioned the possibility of a

deed restriction. The applicant re-stated that they would be able to “pick” the potential tenants.

Roger Seymour, 1181 Rock Spring Lane, owns rental properties and received a notice of the public hearing in the mail and expressed his concern for the lack of available off-street parking. He did explain that there was parking proposed with the Capitol Federal application that was never built. This parking could be seen on the plans that Mr. Hills had, and it does not exist. He does not oppose the proposed building. He asked the Board to consider a deed restriction to control the type of offices that are in this building such as medical, to be able to keep parking under control. His main concern was the parking that would be forced onto the street because the on-street parking is used before and after school, and during functions at the school.

Hardy closed the public hearing.

Hamilton asked staff if shared parking with Capitol Federal and/or the Arts Center is allowed and if it would meet the standards. Hardy asked if the Board approved all but the parking would the applicants have to come back with a solution and another application. Or condition that off-street parking satisfy city satisfaction.

Zilkie explained that the Board would want something in writing and is a permanent/long term agreement. The other issue is that any shared parking must be within the same zoning district and within 600 feet of this property.

Jackson raised the issued of tabling the item until a parking agreement with a surrounding property can be worked out. He also pointed out that this lot has been zoned C-1 for some time and that neither staff nor the city are responsible for this lot. The property owner did not do his homework before purchasing the land.

Hardy and Hamilton agreed with tabling the item. Morin explained that a variance is suppose to be difficult to receive and that there are other reasonable options for development of this lot and can not support the application but will agree to table it, in order to ponder the issues more.

After the discussion, the Board decided to table the item.

Jackson moved that the Board table the public hearing for a Variance to allow a reduction of the required minimum lot area of 15,000 square feet to 7,500 square feet; a reduction of the required lot width of one hundred (100) feet to fifty (50) feet; a reduction in the required number of parking spaces based on square footage from seventeen (17) required spaces to eight (8) parking spaces; a reduction of the required eight (8) foot side yard setback to four (4) feet along the east property line; an increase of the required maximum lot coverage from thirty (30) percent to thirty-eight (38) percent; and the reduction of the required twenty-five (25) foot front yard setback to one (1) foot along 15<sup>th</sup> Street. All in the C-1, Restricted Business District, for a proposed office building at 1431 Poyntz Avenue.

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

Respectfully Submitted,

Julie Kruse, Planner

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