

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, April 13, 2005
7:00 PM

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

MEMBERS ABSENT: None.

STAFF PRESENT: Steve Zilkie, Senior Planner, and Cam Moeller, Planner.

CONSIDER THE MINUTES OF THE MARCH 9, 2005, BOARD OF ZONING APPEALS MEETING.

Hamilton moved that the Board approve the minutes. The motion was seconded by Hardy, which passed 4-0.

Hardy stepped down for the request for a Variance at 2900 Kimball Avenue.

REMOVE THE REQUEST FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW INTERNALLY ILLUMINATED SIGNAGE AND A REDUCTION OF THE MINIMUM FIFTEEN (15) FOOT FRONT YARD SETBACK FOR SIGNAGE, BOTH FOR ST. THOMAS MORE CATHOLIC CHURCH, WHICH IS LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. THE PROPERTY IS LOCATED AT 2900 KIMBALL AVENUE. (APPLICANT: ROGER SCHULTZ; OWNER: ROMAN CATHOLIC DIOCESE OF SALINA KANSAS) (NOTE: THIS ITEM WAS TABLED AT THE MARCH 9, 2005, BOARD OF ZONING APPEALS MEETING, TO THE APRIL 13, 2005, BOARD OF ZONING APPEALS MEETING.)

Hamilton moved to remove the item from the table. Emig seconded the motion, which passed 3-0.

Zilkie presented the Staff Report, recommending approval of the Variance, with conditions.

Emig asked if churches are allowed in the R District. Zilkie indicated churches are permitted in all residential district and commercial districts. He mentioned that most churches are primarily in residential districts. Emig asked if the church was in a commercial district, would an internally lit sign be permitted. Zilkie said it would be permitted.

Jackson opened the public hearing.

No one spoke.

Jackson closed the public hearing.

Emig said an illuminated sign is easier to read from the street, and, if it were in a commercial district, it would be permitted.

Hamilton said she could support the request and there is a history of the Board's consideration of internally illuminated signage in residential districts, with the Board's focus of concern being the illumination impact on residential property.

The Board made the following findings of fact:

1. The subject property is an unplatted tract of land in Section 2, Township 10, Range 7, located at 2900 Kimball Avenue, consisting of 7.7 acres. The current use of the property is a church. The subject property abuts Kimball Avenue a four lane arterial street. The subject property has approximately 635-feet of frontage along Kimball Avenue. A sign permit, which was issued for the existing sign in the time period between 1985 and 1989, indicates the sign would be semi-illuminated. Between 1985 and 1989, the Manhattan Zoning Regulations, regarding illumination of sign in residential districts, stated that, "No sign shall be illuminated except that bulletin board and PUD Identification signs may be indirectly illuminated with incandescent or fluorescent light." The existing sign is internally illuminated sign with back lit cut out letters. The sign is nonconforming to the current sign regulations for signs in residential districts, which states, "No sign shall be illuminated except that bulletin board and identification signs may be externally illuminated with incandescent or fluorescent light." The existing sign is an identification sign and the proposed sign is a bulletin board sign.

2. There should be no adverse effects on adjacent properties. The existing sign was erected between 1985 and 1989 and has been internally illuminated since then. There are no complaints on record for the existing internally illuminated sign. The proposed signage will be internally illuminated. The proposed is setback 20-feet from the front lot line along Kimball Avenue and 27.5-feet from the back of the curb. The proposed bulletin board sign will be at the same setbacks. The signs are slightly elevated above the right-of-way and should have no adverse impact on vehicles traveling on the street. Residential properties south of Kimball Avenue, to the east and west are separated by distance. To the north is the church.

3. The existing sign was erected between 1985 and 1989 has been internally illuminated since that time. The zoning and permit history of the existing, and physical conditions of the property, are unique to the area. The proposed sign is consistent with other internally illuminated signs that have been approved by the Board of Zoning Appeals for churches and other public uses such as schools.

4. There should be no adverse effects on the public. The signs will be setback 27-feet from the driving lanes along Kimball Avenue. An externally illuminated sign is permitted. The

existing and proposed sign have no less effect than an externally illuminated signage. Internal illumination affords better readability of the bulletin board sign. The impact of the internally illuminated sign is mitigated by the four lane arterial street and its significant right-of-way width, as well as the significant distance of the sign to residential dwellings on the south side of Kimball Avenue.

5. The intent of the regulations to prohibit internally illuminated signs in residential districts is to allow signs that are commonly residential in character versus commercial. Residential signage tends toward wall mounted letters on buildings or supporting accessory structures at subdivision entrances. Ground lit signs are commonly found at entrances to residential subdivisions, whereas larger public uses, such as churches and schools, which require a bulletin board for messages, tend to desire internally illuminated signs for better readability. External or internal lights both allow light in residential areas. The existing internally illuminated sign may have been considered a permitted type of illumination when the sign permit was issued.

Hamilton moved that the Board approve a Variance to allow an existing and proposed internally illuminated sign for St. Thomas More Catholic Church, at 2900 Kimball Avenue, with the following conditions:

1. A sign permit shall be obtained prior to construction of the sign.
2. The sign shall be constructed and maintained as proposed.
3. Internal illumination shall only apply to the existing and proposed sign.

Emig seconded the motion, which passed 3-0.

Hardy and Morin joined the meeting.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW AN INCREASE OF THE MAXIMUM LOT COVERAGE FROM FORTY (40) PERCENT TO FIFTY-THREE (53) PERCENT; A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO TWELVE (12) FEET ALONG KEARNY STREET; A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO NINE AND A HALF (9 ½) FEET ALONG NORTH MANHATTAN AVENUE; A REDUCTION OF THE REQUIRED ONE (1) FOOT ROOF EAVE OVERHANG ON A RESIDENTIAL BUILDING FOR PORTIONS OF THE ROOF; AND, THE BUFFERING REQUIREMENTS FOR OFF-STREET PARKING LOTS WITHIN TWENTY-FIVE (25) FEET, AND VISIBLE FROM, A PUBLIC STREET. ALL OF THE EXCEPTIONS ARE FOR A PROPOSED APARTMENT BUILDING, WHICH WILL BE LOCATED IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT, WITH UO, UNIVERSITY OVERLAY DISTRICT, AND M-FRO, MULTI-FAMILY REDEVELOPMENT OVERLAY DISTRICT. THE PROPERTY IS LOCATED AT 1000 NORTH MANHATTAN AVENUE. (APPLICANT AND OWNER: STAN AND ROSEMARY HOERMAN)

Zilkie presented the staff report and recommended approval, with conditions.

Ken Ebert, architect representing the applicant, described the project and illustrated the presentation with overheads, which emphasized the finer details of the site and building. He described the 53 % lot coverage as 45% for the building, with the remaining 8% coverage by balconies, steps, stoops, overhang and fence. He indicated 21% of the site was landscaped space. He said the attempt was a personal goal to make an architecturally significant solution using the M-FRO guidelines.

Hamilton asked Ebert to review the lot coverage and what percent of coverage is included by parking. Ebert reviewed the coverage. It was noted that parking coverage was not included, since it is not a lot coverage requirement. He indicated roof eave overhang was architectural license.

Hamilton asked Ebert to explain the roof overhang because she understood architectural license, but in the BZA's context buildings have been presented without the greatest architectural credits and had no overhang in order to fit the lot. Consequently requests were made for exceptions in the setback to add overhang so that the building would look better and wouldn't be an eyesore to the neighbor She said it appears the proposed request is simply based on the idea that the building won't look right with overhangs. She said the requirements are now reversed, and the Board is being asked to grant an exception of overhang simply because it won't look right. If the Board is faced with future requests with less architectural finesse, which emphasize that 40%-60% of the roof overhang is not included due to architectural decision, then the Board will have to distinguish that request from the current request. Based strictly on architectural license, is a difficult fact for the Board to consider.

Ebert said that a piece of roof edge that was not an overhang, was a parapet. He said the building is virtually symmetrical and described the areas where roof overhang is due to the symmetry of the building, which balances the roof ends and central sections of the roofs that have roof overhangs. He said the site is not perfectly square and shifting of the building would not create front yard encroachments due to roof overhang. Ebert showed the Board the example of an apartment building on the cover of the M-FRO user document. The photograph depicts a fairly interesting rooflines and similar architectural elements. He said when he says architectural license he means that he wants to provide some variety of architectural elements that conveys some individuality and identity to a six unit dwelling. He described variation in window size and placement, which are architectural license. He said the twelve inch overhang an across the board requirement and it is under the requirement for consideration for an exception.

Hamilton asked if roof overhangs were on the two ends, which are the parapets, just on the north and south sides, then those overhangs would not impact the setbacks. Ebert said they would not encroach.

Hamilton asked if the purpose of eliminating the overhangs was to minimize lot coverage. Ebert said no and if that was the purpose they could have taken away more if that was the

purpose. He said it was an aesthetic architectural decision to reduce the roof overhang, which enhances the appearance of the building. It was noted that the west front yard would not be impacted if roof overhang was added, since an exception of the front yard was already requested, but lot coverage would be increased due to the additional roof overhang. The added roof overhang, if required, would add approximately forty four more square feet to lot coverage.

Emig asked what the width of the driveway entrance is on the east side of the site. Ebert said it is 14 feet. Emig asked Ebert if he received the parking lot dimension guidelines that were recently created by city administration. Ebert thought that he had not seen the guidelines. Zilkie said the driveway width is consistent with the guidelines, which requires a minimum aisle width of 12 feet at the street connection and two way aisle widths are a minimum of 20 feet.

Emig asked if any consideration had been given to any additional parking spaces beyond the minimum requirement. Ebert said no.

Hamilton asked if fire personnel and code services reviewed the plan with respect to the parking under the building. Ebert indicated there were several meetings and described the design and no objections were voiced. She said her concern was over whether access could be blocked, but there has been no apparent objection by emergency services and residents will need to learn how to maneuver to and from the site

In response to a question, Ebert described the trash collection area under the building.

Hamilton asked if the proposed buffering replaced a continuous 30 inch tall shrubbery with a 30 inch tall continuous wall topped by wrought iron fence and foundation plantings. Ebert said that was correct.

Jackson opened the public hearing.

No one spoke.

Jackson closed the public hearing.

Emig commended the architect and applicant for an architecturally pleasing project. He mentioned the three story apartment building in Aggieville, which was approved by the BZA, and the eight story apartment building recently reviewed by the Planning Board. In both instances, additional parking was considered in addition to the minimum required off-street parking. He said the demand for on street parking is limited and visitor parking has not been considered with the proposed project, except for on street parking covered by permit associated with the site being in a green zone. He expressed a concern about no off-street parking beyond the minimum required by the M-FRO District.

He said his other concern is that the staff report is using the Campus Edge guidelines that have

not been implemented by the community. He thought this proposal may be premature in anticipating that the proposed project meets future Campus Edge guidelines, when it is unknown what the actual guidelines will be.

Emig also expressed a concern about the width of the driveway and the safety issues related by a single wide driveway. He questioned if issues regarding the public health and safety are adequately addressed. In his mind, the primary issue to consider is maximization of lot coverage.

Hardy commended the architect and applicant on the progressive design and the project appears to be reflecting the direction the city appears headed. He said the parking solution is taking cars off the congested local area streets and protecting them in a safer manner. Parking is always a problem for guests and that was not a major concern. He said staff's comments on future requirements were only advisory.

Hamilton said the Campus Edge plan was based on consideration to provide higher density near KSU, and with that goal in mind, the project is an exciting concept. It will provide secure parking, and the look of parking and pavement, were not emphasized. She expressed concern about the staff findings that the project sets a standard for development, rather than for design. She said she wasn't convinced that if the project was five dwelling units then it could also reflect an exceptional design and fit the site. She said that if the project sets the standard for development, in the manner that is proposed, then the Board will be beset by similar requests for exceptions of steps, stoops, and similar encroachments. She also said that she likes the appearance of the project, with respect to parking location and that 21% of the site is landscaped area, as well as the foundation plantings to soften the impact of the buffering wall.

She expressed concern that the parking underneath the building may have an adverse impact on the tenants living in the established apartment building to the north. She said that normally the building would be adjacent to the adjoining property, rather than the parking area. She said noise and light impacts might adversely affect the neighboring use.

Jackson said he is comfortable with the entire project and that it will create more and similar development.

The Board made the following findings of fact:

A. The proposed structure and use of the subject property (the west 125-feet of the south 25 feet of Lot 759 and the west 125-feet of Lot 760, all in Ward 3) conforms to the requirements of R-3, Multiple-Family Residential District, with UO, University Overlay District, and M-FRO, Multi-Family Redevelopment Overlay District, except for the following Exceptions of the Zoning Regulations: to allow an increase of the maximum lot coverage from 40 percent to 53 percent; a reduction of the minimum front yard setback from fourteen (14) feet to twelve (12) feet along Kearny Street; a reduction of the minimum front yard setback from fourteen (14) feet to nine and a half (9 ½) feet along North Manhattan Avenue; a reduction of the

required one (1) foot roof eave overhang on a residential building for portions of the roof; and, the buffering requirements for off-street parking lots within 25-feet, and visible from, a public street.

B. There should be minimal effect on adjacent properties. To the west are North Manhattan Avenue, a four lane street, and large open yards on the Kansas State University campus. Located to the north and east are multiple-family apartments. To the south of Kearny Street are residential dwellings that have been converted to apartments. One (1) off-street parking space is required per bedroom and eighteen (18) parking spaces are provided. Any visitors would have to park on the street and off-street parking is not allowed on North Manhattan Avenue. Kearney Street is a green zone and on-street overnight parking is prohibited without a parking permit. The proposed apartment building occupants and guests would be eligible for permits.

In addition, the draft Aggieville-Campus Edge District Plan suggests buildings closer to the street, increasing lot coverage, and other lot and bulk requirements, all of which would be implemented by zoning regulation amendments. The applicant is also attempting to design a more downtown urban streetscape and pedestrian oriented environment

Lot Coverage

The increase of lot coverage is a result of the architectural design of the building and maximization of density. The increase of lot coverage by thirteen (13) percent is a function of the benefit of a creative architecture design outweighing the maximum lot coverage considerations. Building coverage is approximately 45 percent, with the remainder of coverage consisting of open porches, roof eave, stairs and stoops, and fencing. Minimum green space in the M-FRO District is fifteen (15) percent and 21 percent of the site is green space. The increased lot coverage has the impact of reducing the visible parking and driveway look of the development.

Front Yard Setbacks

The effect of the reduction in front yard setback on adjacent properties is minimal. The setback reduction along North Manhattan is for a security/screening wall for the parking area. The applicant's choice of using a wall is to provide an architectural context that relates to the wall along the eastern edge of the Kansas State University property. The reduction in setback along Kearny Street is a result of front steps and stoops. The design of the stoops fit well with the architectural design of the building and is consistent with surrounding proprieties. The benefits of creative architectural design outweighing the reduction of front yard setbacks along both North Manhattan Avenue and Kearny Street.

Because the buildings are at the minimum front yard setback, and, if design integrity is maintained due to the stoops, steps and balconies, and the setback reduction is as minimal as proposed, then the probable affects on adjacent properties is minimal.

Buffering of Parking Lots

The proposed buffering plan exceeds the requirements of the M-FRO District and off-street parking will be less visible than the standard requires. Property to the south and west should not be adversely affected.

Roof Eave Overhang

A one (1) foot overhang is provided on approximately 60 percent of the building roofline, or a majority, except where architecturally impractical. The reduction of roof eave should not cause any adverse effect on adjacent properties.

C. No adverse effect on the general public is expected. Vision triangles are protected and no public easements are encroached upon. There should be a positive effect on the general welfare of the public. The quality of design meets the intent of the M-FRO building design standards. The project could be used as an example for future development in the neighborhood. The site is adjacent to KSU and will be a convenient location for residents that are enrolled at KSU.

Because the buildings are at the minimum front yard setback, and, if design integrity is maintained due to the stoops, steps and balconies, and the setback reduction is as minimal as proposed, then the probable affects on the public is minimal.

D. The subject property (the west 125-feet of the south 25-feet of Lot 759 and the west 125-feet of Lot 760, all in Ward 3) is a corner lot with a south frontage along Kearney Street and west frontage along North Manhattan Avenue. The opposite north and east yards are side yards. Minimum lot width and depth in the R-3 District are 60-feet and 100-feet respectively. The subject property is 9,430 square feet in area. Minimum lot area in the R-3 District is 1,000 square feet per family, with no lot being less than 6,000 square feet in area.

The subject property was rezoned to R-3/UO/M-FRO District on January 11, 2005. Prior to rezoning, the City Commission directed City Administration to expand the proposed Aggieville-Campus Edge Plan into a formal District Plan for consideration for adoption as an amendment to the Comprehensive Plan, and to develop the necessary design guidelines and/or other implementation tools to implement the District Plan. That process is ongoing, but no specific timeline for adoption of the Plan or implementation by zoning amendments of design standards is set.

The building design standards of the M-FRO District are unlike any other requirements applicable in a stand alone R-3 District. The applicant is attempting to meet the current M-FRO standards with a design that anticipates potential future design standards that may occur with the Aggieville-Campus Edge District Plan.

The applicant's proposal is for a project that sets a standard consistent with the intent of the M-FRO District and envisions the M-FRO building design standards. The subject property

may have Aggieville-Campus Edge design standards applied at a later date, which proposes the adoption of design standards that more closely mirror those of the proposed apartment building.

Hamilton, Hardy, and Emig expressed reservations about the design and that there are reasonable alternative designs, but density is a factor in the area.

The intent of maximum lot coverage is to maintain open yards and reduce the impacts of density and provide off-street parking, as well as provide uniformity in a neighborhood. More landscaped space is provided than required in the M-FRO District and off-street parking is provided as required. Sufficient lot area is provided to meet minimum lot area requirements for the number of dwelling units.

The proposed reductions in front yard setbacks are critical to the design of the project and, without approval the architectural integrity of the design, the project would be greatly compromised. The majority of the yards are maintained and encroachments are minimal.

Because the buildings are at the minimum front yard setback, and, if design integrity is maintained due to the stoops, steps and balconies, then the setback reduction is a minimal reduction.

Buffering requirements are intended to soften the visual impact of off-street parking when viewed from the public street. The proposed buffering is substantially more effective than the specific M-FRO requirement.

The intent of the building design standards, which requires at least one-foot of roof eave overhang, is to ensure design compatibility with the surrounding neighborhood and provide architectural interest. Removal of the roof eave overhang on some of the roof perimeter does not circumvent the intent of the regulation. Roof eave is included where architecturally appropriate. Hamilton expressed a reservation about reducing roof eave overhang; however, the elimination of the roof eave overhangs are for design reasons, as explained by the architect, and are set out in the next two paragraphs below.

The architect Ken Ebert said that a roof edge that was not a roof overhang, was a parapet, which are on the east and west rooflines of the end dwelling units. Ebert said the building is virtually symmetrical and described roof areas where roof overhang is provided, it is due to the symmetry of the building, which balances the roof ends and central sections of the roofs that have roof overhangs. Ebert said the site is not perfectly square and shifting of the building would not create front yard encroachments due to roof overhang. Ebert showed the Board an example of an apartment building on the cover of the M-FRO Users Guide. The cover photograph depicts fairly interesting rooflines and similar architectural elements. Ebert said when he says architectural license he means that his intent is to provide some variety of architectural elements that conveys some individuality and identity to a six unit dwelling. Ebert described variation in window size and placement, which are architectural license. Ebert said the twelve inch roof overhang is an across the board M-FRO District requirement. Since

an exception can be considered, one has been requested for consideration.

Ebert said the purpose of eliminating the roof overhangs was not to minimize lot coverage and if that was the purpose more roof overhang could have taken away more. Ebert said it was an aesthetic architectural decision to reduce the roof overhang, which enhances the appearance of the building. Ebert noted that the west front yard would not be impacted if roof overhang was added, since an exception of the front yard was already requested, but lot coverage would be increased due to the additional roof overhang. Ebert said the added roof overhang, if required, would add approximately forty four more square feet to lot coverage.

The site could be developed subject to the requirements of the R-3/UO/M-FRO District, but would unlikely be designed with the same effort as the proposal. Minimum standards are required for construction. The proposal exceeds minimum requirements and is an imaginative and well conceived development. The community will benefit by the proposal, which may set a standard for design in the neighborhood.

Hardy moved that the Board approve Exception to allow an increase of the maximum lot coverage from forty (40) percent to fifty-three (53) percent; a reduction of the minimum front yard setback from fourteen (14) feet to twelve (12) feet along Kearny Street; a reduction of the minimum front yard setback from fourteen (14) feet to nine and a half (9 ½) feet along North Manhattan Avenue; a reduction of the required one (1) foot roof eave overhang on a residential building for portions of the roof; and, the buffering requirements for off-street parking lots within twenty-five (25) feet, and visible from, a public street, at 1000 N Manhattan Avenue; the west 125 feet of the south 25 feet of Lot 759 and the west 125 feet of Lot 760, Ward 3, with the following conditions:

1. The building shall be constructed as proposed and a building permit shall be obtained prior to any construction.
2. The site shall be developed as proposed.

Morin seconded the motion, which passed 5-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW AN INCREASE IN THE NUMBER OF SIGNS PERMITTED ON A ZONING LOT, FOR A PROPOSED GROUND SIGN IN THE C-1, RESTRICTED BUSINESS DISTRICT. THE PROPERTY IS LOCATED AT FIRST UNITED METHODIST CHURCH, 612 POYNTZ AVENUE. (APPLICANT AND OWNER: FIRST UNITED METHODIST CHURCH)

A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW A REDUCTION IN THE REQUIRED SIGN SETBACK FROM TEN (10) FEET TO THREE (3) FEET, FOR A PROPOSED GROUND SIGN IN THE C-1, RESTRICTED BUSINESS DISTRICT. THE PROPERTY IS LOCATED AT FIRST

UNITED METHODIST CHURCH, 612 POYNTZ AVENUE. (APPLICANT AND OWNER: FIRST UNITED METHODIST CHURCH)

Moeller presented the Staff Report, recommending approval of the Variance and Exception, with conditions.

Jackson opened the Public Hearing.

Bruce McMillan and Mike Loesch, architects with Bruce McMillan Architects, provided an overview of the proposal and described the appearance of the proposed sign.

Morin asked if it had ever been considered to place the sign directly on the steps.

Jan Todd, Associate Pastor at First United, explained why that was not a feasible option and also discussed the reasons for the Exception and Variance requests.

Hamilton asked why the way-finding directions and map could not be placed on the existing message board sign on the west side of the steps. Todd said the proposed placement of the sign fits the flow of pedestrian traffic better. Todd also said the existing message board sign, which provides service times and titles of the sermon of the week, serves a different purpose than the proposed way-finding sign and they would prefer not to include all that information on a single sign (way-finding directions and map, in addition to service times and sermon titles).

Jackson closed the Public Hearing.

Hardy said he could support both the Variance and Exception requests.

Hamilton said she could support both requests. Hamilton applauded the coordinated signage. Hamilton said she would like the findings to reflect that the First United campus consists of multiple buildings located on different lots that span across streets and alleys. Hamilton also wanted it emphasized that this is a pedestrian-oriented sign and is not targeted for drive-by automobile traffic. Hamilton also referred to the placement of the sign being more accessible for the handicapped and disabled.

With respect to the Variance, the Board made the following findings of fact:

1. The property is unique in that it serves as a central focal point for a larger multi-building campus located on several different lots, and which spans across a street, an alley, and two zoning districts. The proposed sign would provide information related to the campus as a whole, and serve a function not provided by other signs on the property. Of the existing ground signs located on the property, one is a large identification sign that displays only the name of the church and the other is a message board sign that conveys information related to upcoming worship services.

The property is relatively large, at 43,415 square feet in area, in comparison to other lots within the C-1 District. The perception of sign clutter is likely to be less on a lot of this size than it would be for a smaller-sized lot.

2. There should be no negative impact on adjacent properties as a result of granting the Variance. The sign is relatively modest in size and has been designed to be consistent with the character of the Church and with other signs on the campus. The sign should not be overly obtrusive and is part of an overall signage plan that is intended to create a cohesive campus appearance.

First United Methodist Church is within the environs of three properties listed on the National Register of Historic Places: the Mattie M. Elliot House at 600 Houston Street; the E.A and Ura Wharton House at 608 Houston Street; and the Manhattan Carnegie Library Building at Fifth Street and Poyntz Avenue. The Manhattan Historic Resources Board and the Kansas State Historic Preservation Officer (SHPO) reviewed the proposed signage plan (including those signs not requiring an Exception or Variance) and each found that the proposal “meets the Standards and Guidelines for Evaluating the Effect of Projects on Environs and will not encroach upon, damage or destroy listed historic properties or their environs.” (See attachments).

3. Strict application of the regulations would prevent First United Methodist Church from locating a pedestrian-oriented, wayfinding sign on the property without the removal of one of the two existing ground signs. If the Church were to remove one of the other two signs, the Church would have to do without either a large identification sign or a message board sign.

4. No adverse effects on the health, safety and welfare of the public are expected. The sign should have a positive effect in that it will provide assistance to visitors to the Church who may not be familiar with the layout of the campus. The sign does not encroach on a public easement or a vision triangle.

5. The intent of the regulations is to limit sign clutter and to protect the aesthetic character of the district. Due to the large size of the lot and the modest size of the sign, the proposal will not add an excessive amount of clutter to the property. In addition, much thought and attention has been paid to ensure that the design of the sign is in keeping with the character of the Church campus. The proposed sign should not detract from the aesthetic integrity of the district.

Hamilton moved that the Board approve the Variance to allow an increase in the number of ground signs from two (2) to three (3), in the C-1, Restricted Business District, for the property located at First United Methodist Church, 612 Poyntz Avenue, with the following conditions:

1. The applicant shall obtain a sign permit.
2. The Variance shall apply only to the proposed sign.

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

With respect to the Exception, the Board made the following findings of fact:

A. Various Exception and Variance requests have been granted for First United Methodist over the years, including a similar Exception request to allow a seven (7) foot reduction in the required sign setback for a message board ground sign located to the west of the front steps leading to the Sanctuary. The Board of Zoning Appeals granted the Exception on February 10, 1999 (see attached minutes). The property otherwise complies with all applicable regulations.

B. There should be no negative impact on adjacent properties as a result of granting the Exception. The sign will be no closer to the front property line than the front steps leading to the Sanctuary. Considering that the sign is relatively modest in size and has been designed to be consistent with the character of the Church and with other signs on the campus, it should not be overly obtrusive. The setback of the sign will be the same as the existing message board sign located just to the west, on the other side of the front steps leading to the Sanctuary.

First United Methodist Church is within the environs of three properties listed on the National Register of Historic Places: the Mattie M. Elliot House at 600 Houston Street; the E.A and Ura Wharton House at 608 Houston Street; and the Manhattan Carnegie Library Building at Fifth Street and Poyntz Avenue. The Manhattan Historic Resources Board and the Kansas State Historic Preservation Officer (SHPO) reviewed the proposed signage plan (including those signs not requiring an Exception or Variance) and each found that the proposal “meets the Standards and Guidelines for Evaluating the Effect of Projects on Environs and will not encroach upon, damage or destroy listed historic properties or their environs.” (See attachments).

C. No adverse effects on the health, safety and welfare of the public are expected. The sign should have a positive effect in that it will provide assistance to visitors to the Church who may not be familiar with the layout of the campus. The placement of the sign will be accessible to the handicapped and disabled. The sign does not encroach on a public easement or a vision triangle.

D. Strict application of the Regulations may be unreasonable because if the sign were placed ten feet from the property line in order to meet the setback requirement, it would likely require the Church to remove additional landscaping on the east side of the front steps. It would also reduce the visibility of the sign for people exiting the church steps, thus reducing the effectiveness of the sign’s intended function, and may be less accessible for the handicapped and disabled.

Hamilton moved that the Board approve an Exception to allow a reduction in the required sign setback from ten (10) feet to three (3) feet, for a proposed ground sign in the C-1, Restricted Business District for the property located at First United Methodist Church, 612 Poyntz Avenue, with the following conditions:

1. The applicant shall obtain a sign permit.
2. The exception shall apply only to the proposed sign.

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

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW A REDUCTION OF THE MINIMUM 20,000 SQUARE FOOT LOT AREA TO 7,500 SQUARE FEET FOR A PROPOSED COMMERCIAL BUILDING IN THE LM-SC, LIGHT-MANUFACTURING-SERVICE COMMERCIAL DISTRICT. THE PROPERTY IS LOCATED ON AT 610 SOUTH JULIETTE AVENUE. (APPLICANT: CARLOS E. AVILES; OWNER: MARTA'S JANITORIAL SERVICE, INC., A KANSAS CORPORATION)

Zilkie presented the staff report and recommended approval, with conditions.

Emig asked about the curb cut and Zilkie said the curb cut was referring to a curb cut from S. Juliette Avenue, rather than the alley. Emig asked if there would be curb and gutter on the parking lot. Zilkie said the applicant would need to respond to the question. Emig also asked if the parking space in front of an overhead door could count towards the minimum required for the use. Zilkie said the space can be counted to meet the requirement.

Tim Clark, 224 Poyntz Avenue, architect for the applicant, spoke in favor of the request and explained the design. He said there are no curbs on the parking area.

Brenda Bell, attorney for the applicant, spoke in favor of the request. She said the proposal reduces the lot coverage and ends the problem with the neighboring car lot owner allowing the applicant to use the car lot's parking for the applicant's customers. The project also relocates the front door to the rear of B& L Vacuum. Parking will then be adjacent to the front door as opposed to the current arrangement where parking is located behind the building. She asked the Board to approve the Variance.

Jackson opened the public hearing.

No one spoke.

Jackson closed the public hearing.

Hardy said the request is a good step forward and reduces lot coverage. Hamilton agreed.

Hamilton clarified that if a change in use is proposed, would the change be subject to those regulations in place when a change is proposed. Zilkie said that was correct.

The Board made the following findings of fact:

1. Lot 33, Ward 5, is an interior lot with a front yard along S, Juliette Avenue, side yards along its northern boundary and southern boundary and a rear yard to the west. The eastern 50-feet of Lot 33 abut S. Juliette Avenue, a 100-foot wide two-lane right-of-way. Lot 33 abuts Fair Lane, a fifteen (15) foot public alley, along the southern 150-feet of side yard frontage. Lot 33 is 150-feet in depth from east to west. Lot 33, Ward 5, was final platted with the original platting of Manhattan in the late 1800's. Lot 33 is 7,500 square feet in area. Lot 33 conforms to minimum lot width and depth requirements of the LM-SC District.

The Manhattan Zoning Regulations allow more than one principal building or use on a commercial lot. Existing lot coverage of the existing building, in which there are two permitted commercial uses, is 45 percent. Lot coverage in the LM-SC District is 50 percent.

Minimum lot area in the LM-SC District for lots obtaining access exclusively from an alley is 20,000 square feet. Lot 33 obtains its access exclusively from Fair Lane, a public alley. Based on current curb cut requirements, the Director of Public Works has indicated a curb cut permit off S. Juliette Avenue would not be issued by the City for street access to Lot 33. If a curb cut permit could be issued, minimum lot area in the LM-SC District is 10,000 square.

Lot 33 is a legal improved nonconforming lot established prior to 1989. Based on the application documents, the building improvements were created in the 1937. Lot 33 was zoned F, Heavy Industrial District in 1937. There were no building setback requirements and any proposed use was permitted in the F District.

Improvements devoted to a permitted use on a legal improved nonconforming lot may be used in its existing state as long it remains lawful. The improvement may be added to, enlarged, maintained repaired or remodeled so long as the addition, enlargement, maintenance repair or remodeling does not create additional nonconformity and increase the degree of nonconformity on the lot. The existing improvement on Lot 33 may be reduced in size as proposed, but due to minimum lot area requirement, the proposed auto service repair building requires the new improvement, which is separate and detached from the existing improvement, to conform to minimum lot requirements in the LM-SC District.

The LM-SC District requirements were established in 1989. Prior to 1989, Lot 33 was zoned I-4, Heavy Industrial District. The LM-SC District combined light industrial and service commercial uses into a single district in 1989, as a result of the construction of Ft. Riley Boulevard. The LM-SC District anticipated the area as a growth corridor along Ft. Riley Boulevard for service commercial uses, similar to the uses on Lot 33 described in the application.

2. Minimal effect on adjacent property is expected. The existing building coverage will be reduced in area from approximately 3,384 square feet, or 45 percent lot coverage, to approximately 3,000 square feet in area, or 40 percent lot coverage. Off-street parking required for the proposed uses of Lot 33 conforms to the requirements of the Manhattan Zoning Regulations. The proposed new building does not increase the degree of lot coverage

in the LM-SC District and is generally consistent with having more than one use on a zoning lot as found in commercial development along Ft. Riley Boulevard in the LM-SC District.

To the south of Lot 33 are Fair Lane, a public alley, and City street shops. Street shops do not access Fair Lane. To the east is S. Juliette Avenue. The proposed changes do not alter access to Lot 33. To the north is an auto sales lot. The proposed changes do not alter the existing conditions of that use or its access. To the west is a portion of the auto sales lot and vacant lots, which should not be adversely impacted. Alley access is anticipated in the LM-SC district.

3. Strict application of the regulations is a hardship on the applicant and owner due to existing lot size and zoning amendments, which were not created by the owner. The proposed improvements reduce lot coverage. Existing and proposed improvements are consistent with the current use of the property and the LM-SC District.

4. Minimal impact on the public is expected. The existing building encroaches into the fifteen (15) foot vision clearance triangle at the intersection of S. Juliette Avenue and Fair Lane. The existing building has been part of the neighborhood since around 1937 and was constructed prior to vision triangle requirements adopted in the 1996 Manhattan Zoning Regulations. No additional building is added to the vision triangle. No other effects on the public are anticipated. The proposed uses provide adequate parking in conformance with the Manhattan Zoning Regulations. Public alley access to commercial lots is anticipated in the LM-SC District

A change in use of either building may require additional off-street parking than proposed and may adversely affect the public street and alley, which may result in congestion on the public street or alley, due to a lack of off-street parking on Lot 33. Any change in use must conform to the off-street parking requirements prior to occupancy or a reduction of the off-street parking requirement for the change in use must first be approved by the Board of Zoning Appeals.

5. The LM-SC, Light Manufacturing-Service Commercial District, requires a minimum lot area of 20,000 square feet for all lots that abut a limited access arterial, a railroad, or that obtain access exclusively from an alley. The minimum lot area requirement for lots obtaining access exclusively from an alley was intended to apply to those lots bounded by alley, Ft, Riley Boulevard and no access to streets. Those lots would be only accessible from an alley. The mixture of commercial and industrial traffic in alleys with no street access was a concern when the regulations were adopted.

Curb cut requirements have changed since the adoption of the LM-SC District. A curb cut permit would not be issued for Lot 33, which fronts on a public street and from which access is not prohibited. Lot 33 can obtain access from an alley.

The LM-SC District permits the combination of commercial uses on Lot 33. Off-street parking can be provided and maximum lot coverage is reduced for the two commercial uses. A

different combination of uses, or a single use, of Lot 33, may not be consistent with the lot size or the off-street parking regulations and could adversely affect adjacent property or the public.

Hardy moved that the Board approve a Variance to allow a reduction of the minimum 20,000 square foot lot area requirement for a lot that obtains access exclusively from an alley, to 7,500 square feet, in order to construct a proposed commercial building in the LM-SC, Light-Manufacturing-Service Commercial District, on Lot 33, Ward 5, which is located at 610 S. Juliette Avenue, with the following conditions of approval:

1. The Variance shall be limited to the proposed site plan.
2. A building permit shall be obtained prior to construction.
3. A change in use of the proposed and existing improvements shall conform to the requirements of the off-street parking regulations of the Manhattan Zoning Regulations.

Hamilton seconded the motion, which passed 5-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW A REDUCTION OF THE MINIMUM LOT AREA FROM 6,500 SQUARE FEET TO 5,400 SQUARE FEET; A REDUCTION OF THE MINIMUM LOT DEPTH FROM ONE HUNDRED (100) FEET TO NINETY (90) FEET; A REDUCTION OF THE MINIMUM EIGHT (8) FOOT SIDE YARD SETBACK TO SEVEN POINT EIGHT (7.8) FEET ALONG THE EASTERN SIDE YARD; AND, A REDUCTION OF THE MINIMUM SIDE YARD SETBACK FROM EIGHT (8) FEET TO SEVEN (7) FEET ALONG THE SOUTHERN SIDE YARD. THE VARIANCES ARE FOR A PROPOSED SINGLE-FAMILY DWELLING UNIT IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. THE PROPERTY IS LOCATED GENERALLY TO THE WEST OF 609 ALLEN ROAD, MORE SPECIFICALLY THE SOUTHEAST CORNER OF ALLEN ROAD AND GREEN AVENUE. (APPLICANT AND OWNER: ZENITH INC.)

Zilkie presented the staff report and recommended approval, with conditions.

Morin asked if Zilkie recalled why the change regarding common ownership was amended in 1996. Zilkie indicated he did not recall the specifics, other than the amendment cleared up some confusing language.

Emig asked if it was staff's understanding that both lots have been under the same ownership during the period of nonconformity. He said that was his understanding. Emig asked if the adjoining house encroached into the side yard setback. Zilkie said he believed that it did, but the house is on a separate lot. Zilkie said that was information the applicant had to demonstrate, specifically that the house was not built on the vacant lot. He also said the house on the adjoining property is an existing condition and the Variance does change the side yard setback encroachment of the house to the east, since it is a separate lot.

Brian Martine, applicant and owner, provided a floor plan to the Board. He said he asked the Utilities Department to check the sanitary sewer for problems and he was told that there have been none in the recent past. He said the site will be graded to direct drainage to the street and away from 609 Allen Road and from the house to the south.

Morin asked if Martine if he had the Utilities Department's remarks in writing. Martine said he could get them, but the issue was raised at the last minute.

Zilkie described sanitary sewer backup records, which were obtained from the Utilities Department, and that no backups were recorded in the area in 2003 and 2005. He said the document indicates that in 2004, there was a sewer main backup affecting 2000 Strong Avenue, which is approximately 750 feet from the site. Also, a second backup was recorded for a private sanitary sewer service line, which occurred at 2205 Green Avenue. The second location is about 700 plus feet from the site. He said no information prior to 2003 was provided. Zilkie said the list consists of about 143 properties for 2004.

Zilkie said the Utilities Department recommends the applicant connect to the main on Allen Road. The applicant indicated that was his intent.

Jackson opened the public hearing.

Chuck Heinz, 2036 Green Avenue, said he moved to the house in 1982 and could explain previous problems. He said he has had water and sewer backups in his basement. Mr. Tremain, to the south of his property, has also had sewer backups in his basement. The owners of 2032 and 2033 Green Avenue have also had sewer backups. He said he could not understand how adding an additional sewer connection to the sewer main would not be a problem. He said if a house is allowed it will also contribute to the problem of storm water runoff in the streets. Heinz also said the green space of the vacant lot should be maintained for the neighborhood.

Rick Altobello, 2033 Green Avenue, spoke against the request. He said he is adding fill to his property to improve drainage. He also has a toilet in the basement and has frequent sewer backups. His concern is that the proposed house will have an adverse impact on property values.

Don Tremain, 2040 Green Avenue, spoke against the request. He said he advised Altobello on how to plug up his toilet to stop sewer backups. He said that several years ago he called the City's sewer department and he was informed that it was a storm sewer problem. He then called the storm sewer people and was informed it was a not storm sewer problem. Tremain said he then called the EPA and within two hours the Assistant City Manager called him to find out what the problem was. He said he has lived in his house since 1996 and has had water in his basement every year and several times this year. He said he was told several years ago that storm water improvements would be made to Allen Road, but none have been made to

Green Avenue. He also said the house at 609 Allen Road has had water in the basement. He didn't think another house would help and he would have less access to his house.

Jeff Fowler, owner of 625 Allen Road, said he thought the proposed house would be an improvement to the neighborhood. Jackson asked if Fowler had any sewer or drainage problems. Fowler said he recently purchased the house and didn't live at the house. He said the house had a basement.

Jackson closed the public hearing.

Emig asked Martine if the house would have a basement or be built on a slab. Martine said the house would have a basement.

Morin asked if the standard regarding probable effect was open ended and if the proposed house would add to the problem. He further said that the standard asks if the rights of adjacent owners would be affected.

Emig said the additional sewer and runoff would not have a big affect on the area.

Hamilton said if the nonconforming standards were met, then a house could built without the Board's consideration. She also mentioned that no one has complained about the density or having another family in the area, rather the building of the site.

Jackson said he agreed that one house connecting to a sewer main, and the adequacy of the main, is the City's responsibility, as well as storm sewer drainage. He stated that he agreed with the need for smaller homes.

Hardy said he agreed with Hamilton's remarks and suggested that common sense indicates that one new house adds to the system, but did not know the impact of the increase.

Hamilton said that if there had been no sewer or drainage comments, then there would not be much of an issue related to the proposed Variance. She and Hardy agreed that the private lot is not intended to provide the neighborhood more open space.

The Board made the following findings of fact:

1. Lot 2, Glendale Addition is a corner lot that is 60-feet in width from east to west and 90-feet in depth from north to south. Lot 2 is 5,400 square feet in area. Lot 2 has been owned in combination with Lot 1, to the east, which abuts Lot 2. The Final Plat of Lot 2 was filed with the Register of Deeds on January 14, 1960. Lot 2 was zoned A, First Dwelling House District in 1960. Minimum lot area for a single-family dwelling in the A District was 5,000 square feet. No minimum lot width or depth was required in the A District. Side yard setback for Lot 2 was six (6) feet in 1960. Lot 2 was rezoned to R-1, Single-Family Residential District in 1969 and has remained R-1 District to date. Minimum lot area in the R-1 District is 6,500 square feet, minimum lot width is 50 feet and lot depth is 100 feet. Minimum side yard

setback is eight (8) feet. A single-family dwelling could have been constructed on Lot 2 in 1983, subject to the Manhattan Zoning Regulations in effect on that date.

The north and south lot lines of Lot 2 are parallel but are not square to the east west lot lines, which are also parallel. The angle of the intersection at the southwest corner of Lot 2 is 89 degrees and is 90 degrees at the southeast corner. This creates a one (1) degree deflection in the north south lot line along the eastern boundary resulting in a slightly less than consistent eight (8) foot eastern side yard setback.

In any residential district, notwithstanding the regulations of the residential district, a single-family dwelling may be constructed on a lot that is legally nonconforming because of lot depth, width, area, or any combination, if the lot is at least 25-feet in width, has never been held in common ownership with adjoining property during its period of nonconformity, and the ownership has never transferred by voluntary sale of the lot, except by judicial sale. The Zoning Regulations for unimproved nonconforming residential lots were amended in 1996. Since 1996, if an unimproved nonconforming residential lot has been owned in combination with an adjoining lot, or the ownership changed during the period of its nonconformity, then an unimproved lot, such as Lot 2, is not considered a legal nonconforming unimproved residential lot on which a single-family dwelling can be constructed without prior approval by the Board of Zoning Appeals.

2. Minimal impact is expected on adjoining properties. Adequate driveway and a garage will be provided, which meets the minimum two (2) off-street parking spaces for a single-family dwelling unit. Residential lots to the north are separated from Lot 2 by Allen Road. Lots to the north are similar in size to Lot 2. The proposed single-family dwelling unit on Lot 2 will be oriented along a north south axis, with its maximum length of 56-feet consistent with the orientation of front entrances of dwelling units to the south, all of which enter from Green Avenue. The front yard setbacks of 25-feet will be maintained on Lot 2. To the west is a large open yard separated from Lot 2 by Green Avenue. To the east is Lot 1, Glendale Addition, which is owned by the applicant.

3. Strict application of the regulations would prohibit a single-family residential dwelling unit from being constructed on Lot 2. The unique physical conditions of Lot 2 and zoning regulation amendments are a hardship not created by the applicant. Lots 1 and 2 could be combined as a zoning lot and one (1) dwelling unit could be constructed on both lots. However, that would require the dwelling unit on Lot 1 be demolished.

4. No adverse effect on the public is expected. There is no encroachment upon utility or other easements by the proposed single-family dwelling unit on Lot 2. The 30-foot vision triangle at the Green Avenue and Allen Road intersection is preserved.

Adjoining property owners provided testimony during the public hearing of a historical record that flooding of storm water and sanitary sewage problems in the surrounding neighborhood, which may not have been fully rectified by the City's effort to improve run-off.

5. The intent of minimum lot area, depth and side yard setbacks is to ensure adequate space is provided for light, air and access. Minimal encroachment into south and east side yards is due to roof eave overhang. Building coverage is 28 percent, based on the proposed site plan. Maximum lot coverage in the R-1 District is 35 percent. A modest sized house can be constructed on Lot 2 which is ten (10) feet less than minimum 100-foot lot depth and 1,100 square feet less than minimum lot area (5,400-square feet versus 6,500 square feet). The proposed Variances will allow a single-family dwelling unit to be constructed on Lot 2, which is generally consistent with the character of the neighborhood. Lot 2 is more characteristic of the lot configuration to the north of Allen Road, which are platted at 65-feet in width and 80-feet in depth, and less characteristic than the lot configuration to the south of Lot 2, platted at 60-feet in width and 145-feet in depth. Subdivisions to the north were established prior to the Glendale Addition. The Final Plat of the Glendale Addition anticipated a dwelling unit on Lot 2. New construction would be consistent with that original intent. A single-family dwelling could have been constructed in 1983 subject to zoning requirements at that time.

Hardy moved that the Board approve a Variance, to allow a reduction of the minimum lot area from 6,500 square feet to 5,400 square feet; a reduction of the minimum lot depth from one hundred (100) feet to ninety (90) feet; a reduction of the minimum eight (8) foot side yard setback to seven point eight (7.8) feet along the eastern side yard; and, a reduction of the minimum side yard setback from eight (8) feet to seven (7) feet along the southern side yard, for a proposed single-family dwelling unit in the R-1, Single-Family Residential District, on Lot 2, Glendale Addition, with the following conditions :

1. The Variances shall be limited to the proposed site plan.
2. A building permit shall be obtained prior to construction.
3. The sanitary sewer service connection shall be made to the Allen Road sanitary sewer main.

Hamilton seconded the motion, which passed 5-0.

Respectfully Submitted,

Steve Zilkie, Senior Planner

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