

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, June 8, 2011
7:00 PM

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

MEMBERS ABSENT: Ricci Dillon

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II; Kevin Credit, Planning Intern

CONSIDER THE MINUTES

Hamilton moved to approve the May 11, 2011 minutes, which was seconded by Hardy and passed with a vote of 4-0.

CONSIDER A REQUEST TO TABLE A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR AN EXISTING FOUR (4) UNIT MULTIPLE-FAMILY DWELLING IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT: JEFF HANCOCK—SMH CONSULTANTS, OWNER: VICTOR OLSON).

Hardy moved to approve the tabling, which was seconded by Hamilton and passed with a vote of 4-0.

CONSIDER A REQUEST TO TABLE A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO NINETEEN (19) FEET FOR AN EXISTING FOUR (4) UNIT MULTIPLE-FAMILY DWELLING IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT: JEFF HANCOCK—SMH CONSULTANTS, OWNER: VICTOR OLSON).

Hardy moved to approve the tabling, which was seconded by Hamilton and passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A TEMPORARY GRAVEL DRIVEWAY AND PARKING AREA; AND THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FOR THE PROPOSED TEMPORARY PARKING AREA FROM TWENTY-FIVE (25) TO ZERO (0) FEET ALONG BLUEMONT AVENUE AND N. 8TH STREET ALL FOR THE BLUEMONT ELEMENTARY SCHOOL IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: MANHATTAN/OGDEN USD 383—DR. ROBERT SEYMOUR).

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

Hamilton asked whether there has been a history of allowing temporary gravel parking lots.

Bunger replied affirmatively that GTM has had two, and that his understanding of this type of request is usually for those who might have enough funds to construct the building, but might not have the funds to finish out the parking lot.

Hardy replied that this was done at St. Thomas Moore Church on Kimball, and Hamilton concurred.

Bunger asserted that the Board is required to set a time limit on the presence of the gravel parking lot if allowed.

Aistrup opened the Public Hearing.

Aistrup noted for the record that Bob Seymour, Associate Superintendent for USD 383, is in attendance.

No one else spoke.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said she thought the staff report was well-drafted and that she could support it.

Hardy concurred that the “strict application” had been sufficiently justified, due to the safety concerns for the children.

The Board made the following findings of fact for the EXCEPTIONS at 714 Bluemont Avenue:

PRESENT USE: Bluemont Elementary School

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

Based on the current number of employee at the elementary school, fifty (50) off-street parking spaces would be required (Section 7-103(C)(2)). Thirty-one (31) spaces currently exist, a total of thirty-three (33) spaces are proposed. Many of the schools in the City that are being renovated and added onto do not meet the minimum off-street parking requirement for elementary schools. City Administration has taken the policy that as long as the number of employees did not increase with the building renovations, the nonconforming conditions would not need to be address. The same policy has been applied to the Bluemont Elementary School building renovation.

The Board of Zoning Appeals approved a number of EXCEPTIONS and VARIANCES at the

May 11, 2011 meeting to address existing conditions and proposed parking along N. 8th Street and Vattier Street.

Other than the issue with the amount of off-street parking and the proposed EXCEPTIONS, the site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject site and surrounding properties to the west, south and east are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. To the north are properties zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. The Moro PUD, a Residential Planned Unit Development, consisting of sixteen (16) dwelling units is located to the southwest along N.8th Street and Moro Street. The area is a mix of owner-occupied single-family homes, renter occupied, single-family homes, two-family dwellings and a few multiple-family dwellings.

Temporary Parking

The temporary off-street parking lot is proposed because a majority of the existing parking lot will be used for construction staging. Of the thirty-one (31) existing parking spaces, twenty-eight (28) are proposed to be eliminated during the construction period. The two (2) ADA accessible spaces and one (1) other parking space will remain to ensure the school is ADA compliant. On-street parking in the surrounding neighborhood is congested in part because the subject site does not have adequate off-street parking for the employees of the school. The temporary parking lot will accommodate the displaced parking spaces and provide an additional seven (7) parking spaces for the duration of the construction period, which should positively impact the surrounding properties during the construction period.

Off-street parking and drives and aisles are required to be paved surfaces because they control dust and soil erosion, while making buildings more handicapped accessible. The gravel parking area being requested may generate an increased amount of dust and erosion, which could have a potential impact on surrounding properties. However, the subject site will also be a construction site for a substantial building addition and renovations, where dust may be generated regardless of the temporary parking lot.

Parking Lot Setback

Impacts on adjacent property owners would most likely be in the form of headlights from cars in the temporary parking lot facing the adjacent properties to the south and west of the subject site. The proximity of the parking lot to the front property line would move the vehicles closer to the adjacent properties. A similar condition exists with the current parking lot on the north side of the subject site. That parking lot is approximately eight (8) feet from the front property line along Vattier Street. Bluemont Avenue, an arterial street, is a heavily travelled roadway. The location of the temporary parking lot should not be as impactful on the properties to the south and west of the subject site compared to the existing traffic on Bluemont Avenue.

The temporary parking lot is to be removed near the end of the construction period, which is expected to last up to eighteen (18) months. Any potential adverse impacts would be eliminated once the temporary parking lot is removed.

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

Temporary Parking

The temporary parking lot will help lessen the impacts of the building construction process on the general public. By providing the temporary parking lot, the amount of parking displaced by the construction staging area will not be forced to use on-street parking in the area.

Parking Lot Setback

The location of the temporary parking lot may impact drivers on Bluemont Avenue and N. 8th Street by vehicle headlights shining across the roadway. Properties to the east and west of the subject site on Bluemont Avenue have conditions similar to what is proposed on the subject site. Commercial properties on the south side of Bluemont Avenue in the Aggieville Business District have off-street parking located at the front property line along the arterial street. Likewise, commercial properties near the intersections of N. 3rd Street and Bluemont Avenue and N. 4th Street and Bluemont Avenue have similar parking locations. Although this is not a characteristic of this area, it is a characteristic of Bluemont Avenue. It does not appear that the location of the temporary parking spaces in the front yard setback should adversely impact the public health, safety or well being.

An existing sanitary sewer main is running west-east from N. 8th Street to N. Juliette Avenue in the middle of the subject site and under the existing building (approximately where the alley is located on the adjacent blocks). City policy prohibits a building to be built over City utility infrastructure, such as a sanitary sewer main, so that needed maintenance can be done to the infrastructure without having to damage a building. The applicant is required to dedicate a utility easement and relocated the sanitary sewer main to accommodate the addition. The applicant and the Public Works Department are in the process of determining the best route for the location of the required utility easement and sanitary sewer main.

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

Temporary Parking

The strict application of the parking regulation would require the temporary off-street parking lot that is to be used during the construction period to be paved with concrete or asphalt. Gravel would not be permitted for the parking lot surface. The proposed parking lot is only to be used during the construction period of the building addition and renovations and is to be removed once the construction is over, which will be less than 18 months. Considering that the temporary parking lot will offset the number of parking spaces displaced by the construction staging area and will be removed after the construction is completed, requiring the temporary parking lot to be paved appears to be unreasonable.

Parking Lot Setback

The location of the temporary off-street parking lot was chosen to minimize its affects on the playground and outdoor learning areas of the school and other limitations of the site. The temporary parking lot cannot be moved further east without impacting the playground and

lawn area used for outdoor learning and recess. The parking lot cannot be moved to the north because of the location of a temporary classroom located to the south of the school building. The applicant had discussed using the area chosen for the temporary parking lot for the construction staging area, but it was determined that the existing parking lot would be a better choice because of its proximity to the construction area and also because it is the furthest away from the playground, which was a safety concern. Considering these factors, the strict application of the front setback requirement for the temporary parking lot seems unreasonable.

Hardy made a motion to approve of EXCEPTIONS to allow for a temporary gravel driveway and parking area; and the reduction of the minimum required front yard setback for the proposed temporary parking area from twenty-five (25) feet to zero (0) feet along Bluemont Avenue and N. 8th Street, all for the Bluemont Elementary School in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions.

1. The EXCEPTIONS shall only apply to the temporary parking lot as described in the application materials and shown on the site plan.
2. Thirty-eight (38) off-street parking spaces shall be located in the temporary parking lot.
3. The proposed addition shall be built according to the site plan and maintained in good condition.
4. All applicable permits shall be obtained prior to the construction of the new building.
5. The temporary parking lot shall be removed and planted with grass prior to the issuance of a final Certificate of Occupancy for the building additions and renovations.
6. The curb cut and sidewalk shall be replaced along N. 8th Street as proposed in the application site plan once the temporary parking lot is removed.

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

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR AN ADDITION TO A LEGALLY NON-CONFORMING RADIO BROADCASTING STUDIO WITHIN AN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT (APPLICANT/OWNER: MANHATTAN BROADCASTING COMPANY – RICH WARTELL).

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

Aistrup opened the Public Hearing.

Rich Wartell, President and General Manager of the Manhattan Broadcasting Company, talked about the history of the radio station building and its currently-cramped conditions. He also discussed the fact that the proposed addition would facilitate more space for administrative offices, a meeting room, and internet broadcasting inside the structure, as well as to provide additional security by creating a natural front entryway.

Aistrup closed the Public Hearing and opened Board discussion.

Hardy stated that he had no issue with the application, gave credit to City Administration, and thus offered to support the request.

Lavis agreed, saying that the issue was straightforward.

The Board made the following findings of fact for the CONDITIONAL USE at 2414 Casement Road.

PRESENT USE: a legally non-conforming radio broadcasting studio.

1. **SIZE OF ZONING LOT:** The subject site is Lot 1, Hackberry Addition. It is a large, rectangular shaped lot to the east of Casement Road and north of Butterfield Road. The platted lot is approximately 385 feet wide and 412 feet deep, with a total area of 156,404 square feet (3.54 acres). The lot size is not to increase from currently exists. The lot will be replatted to remove a portion of the platted "No Access" along Casement Road for the proposed curb cut for the new parking lot to the north of the building addition. The Final Plat of KMAN Addition will be presented to the Manhattan Urban Area Planning Board on June 20th, 2011.
2. **THAT EITHER: (A) THE CURRENT EXISTING USE DOES NOT HAVE A SIGNIFICANTLY ADVERSE IMPACT UPON EITHER THE SURROUNDING NEIGHBORHOOD OR THE PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, AND THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL NOT WORSEN SUCH IMPACT; OR, (B) THAT THE CURRENT EXISTING USE DOES HAVE SUCH A SIGNIFICANTLY ADVERSE IMPACT AND THE GRANTING OF THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL BE MORE LIKELY TO REDUCE OR ELIMINATE SUCH IMPACT THAN A DENIAL OF SUCH PROPOSAL.**

The subject property and surrounding properties are R-1, Single-Family Residential District. Also in the area are properties that are zoned R-2, Two-Family Residential District. To the west of the subject site, across Casement Road is the Butterfield PUD and the Kingdom Hall Addition PUD. The Butterfield Addition is a single-family residential development and the Kingdom Hall PUD is a church. The area is mostly single-family residential district, with the exception of the subject site and the R-2 Districts in the area.

The radio broadcast station has been at the subject site since 1969, with no known complaints filed with the Community Development Department. The subject site is a large lot, with over 3.59 acres of area. The proposed building addition will be on the north side of the existing building, which increases its separation from the single-family homes to the south of the subject site. The addition will be over 145 feet from the single-family home to the north. The homes to the east are over 280 feet from the proposed building addition. This area is where the radio station's broadcasting tower is

located.

Currently, the majority of the vehicle traffic for the radio station is off of Butterfield Road, where the building entrance is currently located. Employee parking is located in the parking lot to the north of the building. Because of the new main entrance proposed with the building addition, a majority of the vehicle traffic for the radio station will be to the north of the building. The employee parking will most likely be in the both parking lots. The change in visitor and employee parking lots should improve any traffic impacts on the residential properties. The majority of the trips to and from the radio station will occur away from the adjacent residential properties.

There is currently an access point on to Casement Road, an arterial street. The proposed access point and driveway will be similar to the existing one, only approximately seventy-one (71) feet to the north (measured at the center line of the 2 driveways.). The driveway will need to have a pipe designed that is adequately sized to ensure that storm water in the open ditch along the roadway is not impeded. This new driveway should not impact the public health, safety or welfare.

Because of the distance of the building addition to adjacent residential neighbors and the change to the off-street parking lots, minimal adverse impacts should occur on neighboring properties.

3. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS, EXCEPT EXISTING LEGALLY NONCONFORMING CONDITIONS AND ANY NECESSARY EXCEPTION OF THE REGULATIONS:** The existing conditions of the property were given EXCEPTIONS in 2003 and 2005 for the location of the building, fence, off-street parking and sign. The proposed addition and off-street parking lot comply with all applicable regulations.
4. **THE EXISTING USE WILL CONTINUE IN SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE THE PROPOSED USE MORE MODERN OR EFFICIENT:** The use on the subject site as a radio broadcasting studio will remain in its current form. The existing broadcast studios are not proposed to be changed. The building addition will add a more pronounced main entrance into the building, offices, a conference room, and an internet broadcast studio. The addition will also provide a higher level of security for the radio stations, which is an important aspect of the building addition design for the property owner. The intent of the addition is to provide both a more modern and efficient use of the building devoted to the legally nonconforming use.

Hardy made a motion to approve of a **CONDITIONAL USE** to allow for an addition to a legally non-conforming radio broadcasting studio within an R-1, Single-Family Residential District, with the following conditions of approval:

1. The **CONDITIONAL USE** shall apply to the radio broadcast studios.
2. The proposed building and site shall be constructed as shown on the site plan and described in the application documents.

3. All applicable state and local permits and licenses shall be obtained.
4. The KMAN Addition Final Plat shall be approved by the Manhattan Urban Area Planning Board.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A REDUCTION OF THE MINIMUM REQUIRED OFF-STREET PARKING FOR A PROPOSED CHURCH WITH TWO-HUNDRED (200) FIXED SEATS FROM FIFTY (50) SPACES TO TWENTY-THREE (23) SPACES IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT/OWNER: MANHATTAN MENNONITE CHURCH—RICHARD GEHRING).

Bunger presented the Staff Report with a recommendation of denial for the EXCEPTION request.

Aistrup asked Bunger to read one of the Zoning Regulations that was referenced in the staff report, Section 14-602.

Bunger complied, noting that technically, the building permit and application for EXCEPTION must be filed together, but that it is often the case that City Staff, after reviewing an applicant's site plan, recommends approval for an EXCEPTION without the required building permit, under the assumption that the applicant will soon be in the position to begin construction.

Aistrup noted that the application is the result of a bit of a catch-22, in which the Church needs to know their site plan would be approved in order to commit to purchasing the subject property, but technically cannot be granted an EXCEPTION until a building permit has been obtained.

Hardy explained his understanding of the matter, that this condition of approval—to obtain a building permit—if granted, would not be different than most applications that come before the Board with that same condition for approval.

Bunger concurred, with the qualification that this case is unusual in that the applicant has openly admitted that the proposed site plan may change, and that they are not in a position to begin construction immediately.

Aistrup inquired as to what would happen if the Board approved the current EXCEPTION, and then the Church changed the proposed site plan or layout.

Bunger explained that any major alterations—certainly a change in the number of seats—would trigger a requirement for the applicants to come before the Board of Zoning Appeals once again.

Hamilton asked if it would be an issue if there were changes in the use of the building after approval by the Board of a conceptual site plan.

Bunger replied that the EXCEPTION would be tied to the use as proposed, as a church, and most likely to the specific applicant.

Hamilton explained that her primary concern was along the precedent-setting lines.

Bunger agreed that, while the Mennonite Church was unlikely trying to swindle anything out of this process, the setting of the precedent of an EXCEPTION being granted by the Board of Zoning Appeals on the basis of speculative plans, was the Staff's primary area of concern.

Aistrup admitted that he was not as concerned about the possibility of setting a precedent, based on the fact that any changes to proposed site plan would have to be brought before the Board, at which time they could deny them if so inclined.

Hamilton then clarified the potential risks—such as the possibility that a future Board might deny an extension—to the applicant of the process entailed by a granting of the EXCEPTION request by the Board.

Bunger explained that the limits of extensions might be a topic of discussion for the Board in the future, as indefinite extensions can become impactful to the neighborhood.

Hamilton asked how often an applicant to the Board of Zoning Appeals is not the property owner.

Bunger answered that it is fairly rare, but that it is more common in the case of applications brought before the Planning Board.

Aistrup opened the Public Hearing.

Richard Gehring, Co-Pastor of Manhattan Mennonite Church, spoke on the potential benefits that a church might bring to a currently vacant lot in the downtown area, in a way that would have a relatively minimal impact on the surrounding neighborhood. He intimated that it is not feasible, financially, for a small, non-profit, religious organization to produce the full set of building documents necessary to obtain a building permit without first knowing that the conceptual site plan would be approved by the Board of Zoning Appeals. He said that no one would like to see this project move forward quickly more than himself; also, he explained that they have strong support from the neighborhood for the project, including letters from the South Manhattan Neighborhood Association and a cross-easement agreement with the Arthur Greene Law Firm.

Hardy asked a hypothetical question: if the Board grants this EXCEPTION, what would the timetable be for obtaining a building permit?

Gehring replied that while 2 or 3 months would not be a feasible timeline, they have begun discussion with an architecture firm on how long the process might take. As far as he understands, it would be well into next year before they had the full documentation needed to apply for a building permit. He added that, as a church, their decision-making process takes longer than it might if they were another kind of organization, governed by a sole-proprietor or a Board of Directors—the church has to go to the congregation to get a full vote to move forward on any major decision, a process which takes a couple of weeks.

Hardy clarified that if the Board were to grant the EXCEPTION, the church would not be in a deliberative mode, still deciding what they wanted to do—rather, as he understands it, as soon as the church is granted the EXCEPTION, they will immediately begin to move out and start the ball rolling.

Gehring confirmed that they have things ready to set in motion if the Board grants them the EXCEPTION.

Aistrup then asked about the general timeframe: a year for the building permit?

Gehring replied that Aaron Dyck, a member of the congregation and architect, may have a better idea of the specifics.

Hamilton asked what the closing date on the property would be if the EXCEPTION is approved.

Gehring answered that the closing date would be towards the end of July.

Aistrup asked whether being granted the EXCEPTION as a condition for purchasing the property was a condition made by the church themselves or by the sellers of the property.

Gehring explained that it was negotiated with the seller, but that the church proposed it.

Monty Wedel, a member of the Manhattan Mennonite Church, explained the situation further, placing emphasis on the fact that they are in a practical dilemma: being granted the EXCEPTION for parking is foundational to them being able to use the site effectively. He also reiterated the fact that they very much want to move forward on the project as quickly as possible.

Aaron Dyck, architect and Manhattan Mennonite Church member, presented 2 timelines for the project, starting with the decision to move to Poyntz, and moving all the way through the construction of the building. He explained that July, August, and September would be spent doing schematic design, October through January would be spent in design development, and construction documents would begin to be made in January, taking somewhere between 2-4 months to complete.

Aistrup clarified that it looks like a building permit might be obtained anywhere from next Spring to sometime in June under ideal circumstances.

Derrick Roberson, one of the partners of the Arthur Green Law Firm, spoke to the proposed cross-easement for parking. He said that the Law Firm, being located directly to the east of the subject site, has been concerned for quite some time as to the development of the site, primarily due to the already-congested nature of the surrounding roads and parking lots. In his opinion, the Mennonite Church is the best possible developer of the current site, due to the fact that it is one of the few possible developments that might actually have a positive impact on the parking situation; they would be using the parking when no one else was, and, in turn, they would be building some parking that might be available for others to use at other times. He then explained the specific nature of the parking cross-easement, and offered that while he is attuned to the potential danger of precedent-setting and speculative applications, he does not believe that it is true speculation in this case, in which the Mennonite Church has been working for months towards the goal of developing this specific tract. He finished by explaining that the most important issue to the Law Firm was that this EXCEPTION, if granted, would be tied strictly to the proposed use as a Church, and, more specifically, the Mennonite Church in particular.

Mark Knackendoffle, CEO of the Trust Company of Manhattan, explained that while he has come before the Board many times to argue against reductions in parking, this is not one of them; he is very supportive of this application. He asserted that the surrounding businesses and the Mennonite Church might form a symbiotic relationship, and that they consider them an appealing neighbor. He reiterated the notion that the EXCEPTION should be tied only to this specific church.

Dixie West, member of both the South Manhattan Neighborhood Association and Historic Resources Board, spoke in support of the project. She explained the overall quality of the proposed design and its lack of impact on the area's historic structures.

Aaron Dyck returned to note that the proposed building, which is shown currently as one-story, has been discussed as potentially becoming two-stories.

Bunger then mentioned that if that is the case, they might want to check again with the Historic Resources Board, as well as make sure that the building remains within the height threshold of the C-1 District.

Aistrup closed the Public Hearing and opened Board Discussion.

Hardy reiterated his concern for the precedent, but stated that he had heard enough from the architect, neighbors, and applicant to feel confident that, with the specified conditions, he could support the application. He explained that it is a unique situation, and admitted that when he initially read the staff report, it seems as if they might be coming before the Board simply for a kind of advisory opinion, but with the timeline that has been shown, and the conditions set forth in the staff report, he could support the item.

Lavis echoed what Hardy said, mentioning that she believed the Board had control over setting a precedent.

Hamilton applauded the application and said that she would support the application. She explained that she wants the City to be very cautious, as they were here, of any application that seems to be strictly advisory or speculative in nature. She said that her support of this application was based on a lot of circumstances unique to the project. Her support hinges on the fact that they are ready to purchase the land, that it is a non-profit group, that the church is a complimentary use on Poyntz, and that they appear to have exceptionally strong support from a broad range of neighbors. She also suggested tying the language of the conditions of approval to the use.

Aistrup agreed, and suggested saying “use by the Mennonite Church” specifically.

Bunger explained that the use as a church is established in the motion, and that City Staff would certainly strictly apply the Mennonite Church as the applicant.

The Board then discussed necessary changes to the staff report based on their decision.

The Board made the following findings of fact for the EXCEPTION at 821 Poyntz Avenue:

PRESENT USE: Vacant land

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The site plan submitted with the application documents is a development plan that best represents the layout of the land for the church’s needs. The proposed building and off-street parking areas meet the minimum requirements of the Zoning Regulations in the C-1, Restricted Business District. The subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and adjacent properties to the north, east and west are zoned C-1, Restricted Business District. To the south of the subject site are properties zoned C-1 and R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Churches are a permitted use in the C-1 and R-1/TNO Districts.

The properties along Poyntz Avenue in the general area of the subject site are business and professional offices, which include doctor’s offices, insurance offices, banks and financial offices and law firms. There are also a number of churches in the area. Directly to the west of the site is an off-street parking lot associated with the Ninth Grade Center, which is located further to the west. To the south of the subject site are generally single-family residential uses. Immediate to the south of the subject site, across the alley is vacant land and an off-street parking lot owned by USD 383 Manhattan-Ogden School District.

Minimal impacts on adjacent property owners should occur from the proposed development and off-street parking plan. The application documents state that “The majority of our parking needs are for Sunday mornings, during the hours that adjoining property owners are not open. During regular business hours we would only use parking located on (the) property. We have not had large events during the week in the past and would continue that practice. This proposal would results in a situation similar to that of many of the churches downtown, none

of which are near enough to compete for parking.”

As the application documents state, other churches along Poyntz Avenue, which are The First United Methodist Church, St. Paul Episcopal Church, First Lutheran Church and the First Congregational United Church of Christ, have similar parking conditions which do not provide the minimum required off-street parking.

The applicant has provided information from USD 383, Manhattan-Ogden School District, The Trust Company and Alternative Health Care stating that they will informally allow the church to use their off-street parking lot during non-business hours and days. These three (3) parking lots provide a total of 78 additional off-street parking spaces. The adjacent properties owners would be impacted in the event that a church function would occur during business hours. However, this is the case with several of the churches along Poyntz Avenue, many of which do not have the required off-street parking. It should be recognized that if any of the informal agreements are not honored, for whatever reasons, additional traffic may occur on adjacent public streets.

The subject site is within the 500 foot historical environs of the Women’s Club House, the Ulrich House, the First Congregational Church and the Houston & Pierre Streets Residential Historic District. The Manhattan Historic Resource Board reviewed the proposed EXCEPTION request on May 23, 2011 and forwarded a recommendation of approval to the State Historic Preservation Office finding that the proposal meets the *Standards and Guidelines for Evaluating the Effect of Projects on Environs* (see attached). The State Historic Preservation Office (SHPO) “has determined that the proposed project will not encroach upon, damage or destroy any listed historic property or its environs. As far as this office is concerned, the project may proceed” (see attached).

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The off-street parking located along the alley is designed to the minimum off-street parking standards. The amount of off-street parking for the proposed church is consistent with other churches along Poyntz Avenue. These churches have not adversely impacted the public. It should be recognized that if any of the informal agreements are not honored, for whatever reasons, additional traffic may occur on adjacent public streets; however, the added traffic from the amount of off-street parking, 17 spaces, which are not provided on the church property is minimal and should not adversely affect public streets. The proposed church and the EXCEPTION request should cause minimal affects on the public health, safety or welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the off-street parking regulations would not allow the church to be developed as proposed. The 200 fixed seat sanctuary would require a minimum of fifty (50) off-street parking spaces. Based on the proposed number of parking spaces on the subject site (23 spaces), the church could have a maximum of ninety-two (92) seats in their sanctuary.

The church could secure formal agreements with adjacent property owner to share parking if it meets the Collective Provision of the Parking Regulations (Section 7-102(E)(9)), which states:

Off-street parking facilities for separate uses may be provided collectively if the total number of spaces so furnished is not less than the sum of the separate requirements for each such use, and provided that all regulations covering the location of accessory parking spaces in relation to the uses served are adhered to.

It appears that adjacent property owners are unwilling to enter into such agreement with the applicant at this time, but rather informal agreements to use the spaces only when the businesses are not open.

Considering that the applicant has secured informal agreements from adjacent business and property owners to use up to seventy-eight (78) additional parking spaces when those businesses are not open and the applicant will mainly use those spaces on Sundays when the businesses are not open, the strict application appears to be unreasonable.

Hamilton made a motion to approve the EXCEPTION to allow for the reduction of the minimum required off-street parking for a proposed church with two-hundred (200) fixed seats to twenty-three (23) spaces at 821 Poyntz Avenue in the C-1, Restricted Business District with the following conditions:

1. The EXCEPTION shall apply to the proposed use and structure as outlined in the application documents and shown on the site plan.
2. A building permit shall be issued within 180 days of the approval of the EXCEPTION. If a building permit is not issued, a request for an extension shall be made within 180 days of the approval date and every subsequent 180 days until a building permit is issued. Failure to request and be granted an extension within 180 days of the approval date shall void the approved EXCEPTION.
3. The private Cross-Easement for Travel and Parking between the applicant and the adjacent property owner shall be filed at the time the deed is transferred to the applicant.

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

Aistrup adjourned the meeting.

Respectfully Submitted,

Kevin Credit, Planning Intern.