

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, July 13, 2011**  
**7:00 PM**

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

MEMBERS ABSENT: Ricci Dillon and Harry Hardy.

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

**CONSIDER THE MINUTES**

Hamilton moved to approve the June 8, 2011 minutes, which was seconded by Lavis and passed with a vote of 3-0.

**CONTINUE 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).**

**CONTINUE 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).**

Hamilton moved that the public hearing to consider the CONDITIONAL USE and the public hearing to consider the EXCEPTION, both for 615 Leavenworth, be removed from the table. Lavis seconded, and the motion passed 3-0.

**A PUBLIC HEARING TO CONSIDER A VARIANCE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, FOR THE REDUCTION OF THE MINIMUM REQUIRED LOT WIDTH FROM SIXTY (60) FEET TO FIFTY (50) 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).**

Aistrup suggested that the three items be heard together.

Credit presented the Staff Report with a recommendation of approval for the CONDITIONAL USE, EXCEPTION, and VARIANCE requests.

Aistrup opened the Public Hearing

Jeff Hancock, SMH Consultants, said that he was there on behalf of the applicant.

Hamilton asked, out of curiosity, whether the enclosed front porch would be upgraded in any way. Hancock explained that there was a front porch on the front of the house, and an enclosed area beyond that, which is a foyer into the different apartments on the side of the building.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said that she can support all three of the motions, but wanted to qualify that she would do that only because there are no significant changes to the structure, and that the requests were required to rectify a life safety concern. She expressed that it is important that the occupancy is not increasing, and that this building is not being torn down to make way for a new multi-family structure. She then expressed that she had a concern in the VARIANCE request—she could not support the reasons given for “unnecessary hardship” in the Staff report. She explained that the sixty (60) foot lot width requirement was a very important way to control multi-family development, and she did not want to see the reason given to justify reducing it as simply that the applicant doesn’t have the financial means to purchase the property next door. The unnecessary hardship comes, rather, from the fact that it is a long-established use in the neighborhood. She suggested redacting the portion in the Staff Report about acquiring the extra ten (10) feet of property.

Aistrup commented that it depends upon the timing for him. If the four (4) family dwelling was in place before the sixty (60) foot lot width came into existence, then asking them to go out and buy ten (10) more feet to come up to standards is, in fact, an unnecessary burden on them. However, if the sixty (60) foot requirement had been in place beforehand, and the apartments were built afterward, then, he agreed, at that point Hamilton was exactly right.

Hamilton replied that she sees the burden for the VARIANCE more as, if somebody wanted to take this house and tear it down and put another four-plex up, and then they needed a VARIANCE because the lot is only fifty (50) feet wide; this could be any fifty (50) foot lot.

Aistrup replied again that to him it’s all about timing, and that the situation that Hamilton is describing, where something is being proposed to be built after the requirements came into effect, is a fundamentally different situation. Hamilton then explained that the Staff Report, while mentioning the fact that this is an existing use and that it should continue because it was

built before the sixty (60) foot lot width requirement came into existence, it does not explain that fact in the language of the “unnecessary hardship.” She then recommended to the Staff to add that caveat to the language of that section. Lavis and Aistrup agreed.

Bunger asked about the specific wording—should they just interject the idea that the building could not be maintained as a four (4) family unit before mentioning the purchase of an additional ten (10) feet? Hamilton agreed that the new phrasing sounded better.

The Board made the following findings of fact for the Conditional Use at 615 Leavenworth Street.

**A. Compliance with all applicable regulations:** According to the Riley County Appraiser’s Office, the principal structure was built in 1900 as a single-family home, prior to the adoption of Zoning Regulations in the City of Manhattan. Sometime between 1925 and 1940, the structure was converted into four (4) individual dwellings, according to a Building Permit on record with the City of Manhattan Code Services Department—a permissible use at the time under the “B” Residential Zoning District. The nonconforming condition was originally created in 1969, when the subject site’s Zoning classification changed to C-1, Restricted Business District, before being changed to C-4, Central Business District, in 1970. The Zoning designation of the subject site then changed back to its current status, C-1, Restricted Business District, in 1987.

In order to comply with current Zoning Regulations, the applicant is proposing the removal of the detached accessory structure—a wood frame shed—that, as of now, violates Section 5-103 (B). The applicant is also proposing to create eight (8) off-street parking spaces and erect a six (6) foot fence along the west property line to screen these spaces from public view, which will complement the existing six (6) foot fence currently screening the east side.

The house on the subject site does not meet the minimum twenty-five (25) foot front yard setback or the minimum lot width of sixty (60) feet required for multiple family homes in the R-3 District, as described in Sections 4-106 (C)(2) and 4-106 (D)(2). The applicant is also requesting an Exception and a Variance in order to bring the property into full compliance with the Zoning Regulations: an Exception to reduce the minimum twenty-five (25) foot front yard setback to nineteen (19) feet, and a Variance in order to allow a reduction in the minimum lot size from sixty (60) to fifty (50) feet. Other than these conditions, the property complies with all applicable regulations.

**B. Probable effect on adjacent properties:** The subject site and properties to the immediate east and west are zoned C-1, Restricted Business District. To the south are properties zoned C-4, Central Business District, and to the north are properties zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area generally consists of a mix of single- and multiple-family dwellings, both owner- and renter-occupied, as well as commercial buildings (such as banks and a grocery store) and an elementary school, Woodrow Wilson Elementary. In accordance with the application procedure for Conditional Uses, the applicant held a neighborhood meeting to discuss the proposed use of the subject site. Neighbors within 200 feet of the subject site were invited to attend the meeting. Only

Randy Anderes attended the public meeting, and, according to the applicant, inquired about the impact to surrounding trees, the proposed fence, and paving. No significant issues were raised with the proposed Conditional Use.

Seeing as the building has been in use as a four (4) unit multiple family dwelling on the same lot since at least 1940—and the applicant does not intend to change that use—the proposed Conditional Use will not cause a significant impact on the surrounding area, which already contains a varied mix of uses, including multiple family housing. Also, the proposed Conditional Use is in conformance with the Future Land Use Section of the Manhattan Urban Area Comprehensive Plan, which recommends that the subject site and its immediate neighbors along Leavenworth Street develop into Medium/High Density Residential, which the subject site currently is and proposes to stay. No increase in traffic or related congestion is expected to come from the proposed Conditional Use, as it will not change the number of dwelling units or size of the multiple family home on the subject site; in fact, the proposed provision of eight (8) paved required off-street parking spaces will most likely alleviate any on-street parking congestion that is currently present and attributable to the subject site.

**C. Domination by use over neighboring properties:** The proposed use should not dominate over neighboring properties. The subject site has been used as a multiple-family dwelling since at least 1940 and no change in use or intensity from that has been put forward. The purpose of the Conditional Use is simply to ensure that the subject site is brought into full compliance with the Zoning Regulations.

- 1. Location, nature, and height of physical improvements:** The existing building is a two (2) story structure located roughly in the middle of the northern half of the lot, and is proposed to remain as it currently is. At present it has a lot coverage of approximately 1,350 square feet in area, or eighteen percent (18%) of the total lot. An existing shed, located in the extreme southwest corner of the lot, currently has a lot coverage of approximately 250 square feet—however, it is proposed to be demolished. An existing six (6) foot wooden fence currently runs along the east property line. The applicant has proposed to add another six (6) foot wooden fence along the west property line, as well as a paved off-street parking lot containing eight (8) spaces.
- 2. Landscaping and screening:** The existing landscaping of the property includes two street trees and grass lawn in the front and side yards. According to the applicant, there is no plan to change the existing landscaping. In order to maintain compliance with Section 7-102(E)(5) of the Zoning Regulations, the applicant is proposing to erect a six (6) foot wooden fence along the rear west property line in order to screen the proposed parking lot.

**D. Adequate provision of parking and loading:** The site plan submitted with the application indicates that the subject site will contain four (4) one-bedroom dwelling units. Thus, in order to maintain compliance with Section 7-103 (A)(3) of the Zoning Regulations, which stipulates 2 provided parking spaces per one-bedroom unit, the applicant has proposed to construct a paved parking lot in the southern end of subject site abutting the rear alleyway

containing eight (8) off-street spaces as required, and measuring roughly 3,430 square feet in area. Thus, adequate off-street parking is provided for the proposed use.

**E. Adequate provision of drainage, and other public utilities:** Adequate drainage and utilities exist for the site and no changes are proposed.

**F. Adequate provision of access:** Vehicular access to the proposed off-street parking lot is provided via the rear alleyway. On-street parking along Leavenworth Street provides additional vehicular access to the subject site. Pedestrian access is provided via the front sidewalk, which is in fair condition, with a paved pathway connecting the front porch to the street sidewalk.

Hamilton made a motion to approve a Conditional Use to allow for an existing four (4) unit multiple-family dwelling in the C-1, Restricted Business District, with the following conditions:

1. The Conditional Use Permit shall apply to the existing and proposed development as shown on the site plan, floor plans, and stated in the application documents.
2. The associated Exception of the required front yard setback shall be approved.
3. The associated Variance shall be approved.
4. All applicable permits shall be obtained.

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

The Board made the following findings of fact for the Exception at 615 Leavenworth Street.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** According to the Riley County Appraiser's Office, the principal structure was built in 1900 as a single-family home, prior to the adoption of Zoning Regulations in the City of Manhattan. The front yard setback requirement of twenty-five (25) feet for structures in the "B" Residential District—the Zoning District in which the subject site was then located—was established with the initial Zoning Regulation Ordinance in 1926, thus creating the nonconforming condition.

In order to comply with current Zoning Regulations, the applicant is proposing the removal of the detached accessory structure—a wood frame shed—that, as of now, violates Section 5-103 (B). The applicant is also proposing to create eight (8) off-street parking spaces and erect a six (6) foot fence along the west property line to screen these spaces from public view, which will complement the existing six (6) foot fence currently screening the east side.

The house on the subject site does not meet the minimum twenty-five (25) foot front yard setback or the minimum lot width of sixty (60) feet required for multiple family homes in the R-3 District, as described in Sections 4-106 (C)(2) and 4-106 (D)(2). The applicant is requesting an Exception to allow a reduction in the minimum twenty-five (25) foot front yard setback to nineteen (19) feet. The applicant is also requesting a Variance in order to allow a reduction in the minimum lot size from sixty (60) to fifty (50) feet, as well as a Conditional Use to allow for the existing four (4) unit multiple-family dwelling in the C-1, Restricted Business District.

Other than these conditions, the property complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the immediate east and west are zoned C-1, Restricted Business District. To the south are properties zoned C-4, Central Business District, and to the north are properties zoned R-M, Four-Family Residential District. The area generally consists of a mix of single- and multiple family dwellings, both owner- and renter-occupied, as well as commercial buildings (such as banks and a grocery store) and an elementary school, Woodrow Wilson Elementary.

Minimal impact on adjacent properties is expected. The existing size of the front yard setback has been a part of the neighborhood since 1900 without any known complaints to the Community Development Department; the applicant's request for an Exception is simply so that the property can be brought into full compliance with current Zoning Regulations.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Adverse impact on the public is not expected. The six (6) foot discrepancy between the required twenty-five (25) foot and setback and the existing nineteen (19) foot setback is expected to have a negligible or nonexistent impact on public easements, vision clearance, open space provision, and/or overall visual appearance of the surrounding neighborhood.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the minimum front yard setback requirements would require the applicant to demolish or remove a portion of the existing principal structure, which has remained in its present arrangement without known complaint since 1900. The setback regulations are intended to provide open yard space free of principal structure. The side yards are open and maintain a minimum separation distance from neighboring properties. Without the Exceptions for the existing front yard, the applicant cannot have clear and marketable title to the property.

Hamilton made a motion to approve an Exception to reduce 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.

1. The Exception shall apply to the existing and proposed development as shown on the site plan, floor plans, and stated in the application documents.
2. The associated Variance of the required front yard setback shall be approved.
3. The associated Conditional Use Permit shall be approved.
4. All applicable permits shall be obtained.

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

The Board made the following findings of fact for the Variance at 615 Leavenworth Street.

**PRESENT USE:** Existing multiple-family home consisting of four (4) dwelling units.

**CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is part of the original Ward district of the City of Manhattan, the first lots in the City to be platted. At that time, the City of Manhattan had yet to adopt its first Zoning Regulations; thus, any standards for bulk regulations of any kind had yet to come into place. According to the Riley County Appraiser's Office, the principal structure was built in 1900 as a single-family home. Sometime between 1925 and 1940, the structure was converted into four (4) individual dwellings, according to a Building Permit on record with the City of Manhattan Code Services Department. Minimum lot width standards were first adopted with the 1969 Zoning Regulations. At this time, the property was zoned C-1, Restricted Business District, and became subject to the minimum sixty (60) foot lot width requirement for multiple-family dwellings in the R-3, Multiple Family Residential District, under which it would have been governed as a legally nonconforming use.

The width for original Ward lots in the City of Manhattan is uniformly fifty (50) feet. As was stated previously, this structure was built and converted into a multiple family dwelling before the inclusion of minimum lot width as a restriction for multiple family dwellings in the Zoning Regulations—and that use has remained, unchanged, since at least 1940. Since the property owner cannot feasibly acquire more land on either side of the subject site, the minimum lot width cannot be met, and a Variance is required.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the immediate east and west are zoned C-1, Restricted Business District. To the south are properties zoned C-4, Central Business District, and to the north are properties zoned R-M, Four-Family Residential District. The area generally consists of a mix of single- and multiple family dwellings, both owner- and renter-occupied, as well as commercial buildings (such as banks and a grocery store) and an elementary school, Woodrow Wilson Elementary.

Minimal impact on adjacent properties is expected. The existing width of the lot has been a part of the neighborhood since 1900 without any known complaints to the Community Development Department; the applicant's request for a Variance is simply so that the property can be brought into full compliance with current Zoning Regulations.

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** The strict application of the Zoning Regulations would not allow the applicant to maintain the four-family dwelling and renovate the structure on the subject site to address life safety issues or to create a rear off-street parking lot without purchasing additional land or drastically changing the nature of the structure which has remained on the subject site for over one hundred (100) years. No viable option exists for the applicant to acquire the necessary ten (10) feet of lot width to meet the requirement without requiring the adjacent property to obtain Variances to their lot width and lot area. If the proposed Variance is denied, the property owner cannot renovate the lot or bring it into full compliance with the Zoning Regulations, which would constitute an unnecessary hardship to the owner created by the unique condition of the property. The subject site previously had a permitted multiple-family use that met all applicable Zoning Regulations at the time it became nonconforming, and has not changed use or size since at least 1940; many lots in the surrounding neighborhood contain structures

similar to what is currently proposed, due to comparable conversions in the past from single family to multiple-family use.

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

Adverse impact on the public is not expected. The ten (10) foot discrepancy between the required sixty (60) foot minimum lot width and the existing fifty (50) foot lot width is expected to have a negligible or nonexistent impact on public easements, vision clearance, open space provision, and/or overall visual appearance of the surrounding neighborhood.

Hamilton made a motion to approve a Variance to allow for the reduction of the minimum required lot width from sixty (60) feet to fifty (50) feet for an existing four (4) unit multiple-family dwelling in the C-1, Restricted Business District, with the following conditions:

1. The Variance shall apply to the existing and proposed development as shown on the site plan, floor plans, and stated in the application documents.
2. The associated Exception of the required front yard setback shall be approved.
3. The associated Conditional Use Permit shall be approved.
4. All applicable permits shall be obtained.

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

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR AN APPROVED EXCEPTION TO ALLOW A DRIVEWAY TO BE GREATER THAN TEN (10) FEET IN WIDTH FOR A PROPOSED PAVED DRIVEWAY EXPANSION AT 500 DENISON AVENUE IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: JAMES T. LINDEMUTH).**

Hamilton moved that the Board grant the 180-day extension. Lavis seconded the motion and it passed by a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW A BED AND BREAKFAST HOME WITHIN A R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT (APPLICANT/OWNER: JAMES T. LINDEMUTH).**

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW A REDUCTION IN THE MINIMUM REQUIRED SEVENTY-FIVE (75) FOOT LOT WIDTH TO FIFTY (50) FEET, AND A REDUCTION IN THE MINIMUM REQUIRED 10,000 SQUARE LOT AREA TO 7,500 SQUARE FEET FOR A PROPOSED BED AND BREAKFAST HOME IN A R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT**



**AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT.**  
**(APPLICANT/OWNER: JAMES T. LINDEMUTH).**

Bunger presented the Staff Reports with a recommendation of approval for both the CONDITIONAL USE and VARIANCE requests.

Aistrup opened the Public Hearing.

Tim Lindemuth, applicant, started by explaining that construction on the proposed driveway would begin Monday, and thanked the Board for granting the 180-day extension request. He talked about beginning bathroom renovations, taking care of his mother in her advanced age in the house, the history of the neighborhood, and his goal to reinvent himself through becoming an innkeeper in retirement. He explained that he hopes to open the Bed and Breakfast in August of 2012, having taken a great deal of care to learn the business and prepare the home before opening. He also discussed the neighborhood meeting that he held and the door-to-door visits that he made to a great deal of his neighbors, resulting in a letter of support signed by 53 of the area residents for his proposed bed and breakfast.

Lavis commented that he has done a beautiful job of putting together the application and home, and said that she really likes his garden, a replication of the gardens of Williamsburg.

Hamilton commented that he had done an exemplary job in presenting a case before the Board, especially with the involvement with the neighbors. She said she had never seen an application like this before.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton explained that she is happy to support this, but that it is key that it is a one-bedroom operation, and added that she felt more comfortable that the Staff Report tied the requests to Tim's operation of this as a bed and breakfast.

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

**A. Compliance with all applicable regulations:** As described above, the property is approximately 50 feet by 150 feet, with a lot area of 7,500 square feet. The R-1, Single-Family Residential District, requires a minimum of 75 feet of lot width and 10,000 square feet in lot area for Conditional Uses. The applicant has requested Variances to reduce the minimums to the existing lot size. The R-1 District also requires a minimum side yard setback of fifteen (15) feet for Conditional Uses. The existing house is located approximately six (6) from the east property line.

In January, 2011, the applicant was granted an Exception to allow an expansion of the existing driveway to exceed the maximum driveway width of ten (10) feet so two (2) cars could be parked off of Denison Avenue. The applicant has requested an Extension of the approved

Exception for the driveway width. At that time, the applicant was also granted an Exception to reduce the side yard setback from eight (8) feet to six (6) feet to give the applicant clear title of the property.

In regard to the proposed bed and breakfast home use, the applicant has provided information in the application documents that he has consulted with the Code Service Office and the Riley County Health Department to discuss requirements for the renovation of the building and licensure of the bed and breakfast home.

Other than these conditions, which Variances and an Exception have been requested to address them; the property complies with all applicable regulations.

**B. Probable effect on adjacent properties:** The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Properties to the west and immediately north are also zoned UO, University Overlay District. The area is a mix of single-family owned homes, single-family rental units, two-family dwellings, multiple-family dwellings and fraternity and sorority houses.

There appears to be no adverse impacts on adjacent properties as a result of approving the proposed Conditional Use. The applicant is proposing to start a one-bedroom bed and breakfast home, which would accommodate at most, two (2) guests. Currently, the applicant is the only person living in the home. The number of people using the house (a total of three when the guest bedroom is rented by 2 people) would be similar to if a family lived at the property or if it was used as a single-family rental unit, which is present throughout the neighborhood. A bed and breakfast home was approved to operate in 1983 by the Board of Zoning Appeals at the corner of N. 17<sup>th</sup> Street and Fairchild Avenue, one (1) block to the east of the subject site. This bed and breakfast home has since stopped its operation and is currently a single-family home.

The applicant held a neighborhood meeting, as required by Conditional Use application process. The meeting summary is attached. According to the summary, no attendees of the meeting voiced concerns or any negative comments. The applicant also personally contacted surrounding neighbors to sign a petition of support. Fifty-three (53) neighbors of the applicant signed the petition supporting the proposed Conditional Use for the bed and breakfast home (*see attached*).

**C. Domination by use over neighboring properties:**

- 1. Location, nature, and height of physical improvements:** The existing house on the subject site is 1.5 stories in height and located on the south half of the subject site towards Fairchild Avenue. The house is approximately twenty-seven (27) feet from the front property line along Fairchild Avenue, seventeen (17) feet from the front property line along Denison Avenue, six (6) feet from the east side property line and seventy-nine (79) feet from the north side property line. A detached garage is located to the north of the house that is roughly in line with the house façade along Denison Avenue. The detached garage is approximately forty-eight (48) feet from

the north property line.

- 2. Landscaping and screening:** The subject site is extensively landscaped. The north side of the house is a manicured garden that the applicant is proposing to use as part of the accommodations of the bed and breakfast home. A white decorative fence surrounds the garden area on the property. An Exception was granted by the Board of Zoning Appeals in 2001 for the location of the fence in the Denison Avenue front yard setback.

**D. Adequate provision of parking and loading:** Currently the property has two (2) off-street parking spaces, one (1) in the detached garage and one (1) on the concrete pad in front of the garage. The applicant was granted an Exception to allow an increase of the maximum ten (10) foot driveway width in the Traditional Neighborhood Overlay District to allow for an additional off-street parking space. The applicant has not constructed the additional parking space yet. He has requested an Extension for the approved Exception. A total of three (3) spaces would be provided. The Zoning Regulations requires bed and breakfast home to provide two (2) off-street parking spaces plus one (1) space for each guest room. The proposed one (1) guest room bed and breakfast home is required to have three (3) spaces. The proposed parking plan is adequate for the use.

**E. Adequate provision of drainage, and other public utilities:** Adequate provision for drainage and other public utilities are provided. The site drains stormwater to the streets to the west and south of the subject site.

**F. Adequate provision of access:** Off-street parking will be accessed from Denison Avenue. Sidewalks in the neighborhood, and around the property, provide for pedestrian access.

Lavis made a motion to approve a Conditional Use to allow a Bed and Breakfast Home at 500 Denison Avenue within an R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with the following conditions of approval.

1. The Conditional Use shall apply to the Bed and Breakfast Home as outlined in the application documents.
2. The associated Variances of the required lots width and lot area shall be approved.
3. The associated Exception of the required side yard setback shall be approved
4. The additional off-street parking space shall be constructed prior to the opening of the Bed and Breakfast Home.
5. If the applicant sells the property, the new owner should reapply for a Conditional Use for a Bed and Breakfast Home, prior to operating the use.
6. The Bed and Breakfast Home shall be limited to one (1) guest bedrooms as proposed.

The Bed and Breakfast Home shall conform with the use limitations associated with Bed and Breakfast Home in the R-1, Single-Family Residential District.

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

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

**PRESENT USE:** Single-family home

**CONDITIONS UNIQUE TO THE PROPERTY:** Lot 12, Ingram Addition was platted in 1912 and has remained in its current configuration since that time. The existing home was constructed in 1938. Other bed and breakfast homes have been operated in the area, including one at the corner of Fairchild Avenue and N. 17<sup>th</sup> Street, which was approved by the Board of Zoning Appeals in 1983. This bed and breakfast home has since stopped its operation and is currently a single-family home.

The use of the home as a “boutique” bed and breakfast home is unique to the area and the City. The applicant is proposing to operate a one-guest room bed and breakfast home near Kansas State University to provide accommodations for visitors to the campus. The one-guest room bed and breakfast will appear and function similar to that of a single-family house or rental unit in terms of number of adults in the home and the amount of traffic generated by the use.

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

There appears to be no adverse impacts on adjacent properties as a result of approving the proposed Variance. The applicant is proposing to start a one-bedroom bed and breakfast home, which would accommodate at most, two (2) guests. Currently, the applicant is the only person living in the home. The number of people using the house would be three (3) when the guest bedroom is rented by 2 people. Reduction of the lot width and lot area is specifically for the bed and breakfast home. The amount of noise, light and traffic generated by the “boutique” use will be similar to that of an owner occupied single-family home or rental unit.

The applicant held a neighborhood meeting, as required by the Conditional Use application process. The meeting summary is attached. According to the summary, no attendees of the meeting voiced concerns or any negative comments. The applicant also personally contacted surrounding neighbors to sign a petition of support. Fifty-three (53) neighbors of the applicant signed the petition supporting the proposed Conditional Use for the bed and breakfast home (*see attached*).

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** The strict application of the regulations would prevent the applicant from establishing a Bed and Breakfast Home within the existing dwelling. As stated in the application documents, the applicant is proposing the bed and breakfast home as a new career after retirement from his current career. Because the neighborhood has been developed since the early 1930s, no

possibility exists to widen the lot and make its size larger without purchasing adjacent property that is developed.

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

No physical improvements to the building footprint are proposed. The existing structure does not encroach upon any easements and should not have any adverse affects to the public health, safety, and welfare.

**RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the minimum lot width and lot area requirements are to establish density parameters, allow for light, air and open space around structures and to help minimize the risk of structure fire from spreading to adjacent properties. The requirement for Conditional Uses in the R-1, Single-Family Residential District, to have wider lot width and more lot area is to create a greater separation between the perceived higher intensity use of a Conditional Use and adjacent residential properties.

The proposed use as a one-guestroom bed and breakfast home is similar in noise, light and sound compared to a single-family home. The total number of adults in the home would be three (3) (when the guest bedroom is rented by 2 people). Because the proposed use will not generate an adverse impact on the adjacent properties compared to a larger bed and breakfast home or other Conditional Uses of the R-1 District, the intent of the regulation is met.

Lavis made a motion to approve a VARIANCE to allow a reduction in the minimum required seventy-five (75) foot lot width to fifty (50) feet, and a reduction in the minimum required 10,000 square lot area to 7,500 square feet for a proposed Bed and Breakfast Home at 500 Denison Avenue in a R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with the following conditions of approval:

1. The Variance shall apply according to the site plan and in the application documents.
2. The Variance shall be approved concurrently with the application for a Conditional Use.

Hamilton seconded the motion, which passed with a vote of 3-0.

Aistrup adjourned the meeting.

Respectfully Submitted,

Kevin Credit, Planning Intern.