

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, August 10, 2011**  
**7:00 PM**

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

MEMBERS ABSENT: None.

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

**CONSIDER THE MINUTES**

Hamilton moved to approve the July 13, 2011 minutes, which was seconded by Hardy and passed with a vote of 5-0.

**TABLE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE INCREASE OF THE MAXIMUM LOT COVERAGE FROM THIRTY (30%) PERCENT TO THIRTY-THREE (33%) PERCENT FOR A PROPOSED SECOND STORY ADDITION AND THE REDUCTION OF THE FOURTEEN (14) FOOT FRONT YARD SETBACK ALONG S. 16<sup>TH</sup> STREET TO EIGHT (8) FEET FOR AN EXISTING DECK AT 1600 PIERRE STREET IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: ROBERT AND SUSAN KELLY).**

Hardy moved that the public hearing to consider the EXCEPTIONS for 1600 Pierre Street be moved to the table. Lavis seconded, and the motion passed 5-0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTION TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED NUMBER OF OFF-STREET PARKING SPACES FROM 63 PARKING SPACES TO 3 PARKING SPACES FOR A PROPOSED SELF-STORAGE UNIT BUSINESS ON PROPERTY LOCATED AT 4850 EUREKA DRIVE IN THE I-3/AO, LIGHT INDUSTRIAL DISTRICT AND AIRPORT OVERLAY DISTRICT. (APPLICANT/OWNER: K & M HOLDING).**

Hamilton moved to approve the 180 EXTENSION for the APPROVED EXCEPTION at 4850

Eureka Drive. Hardy seconded, and the motion passed 5-0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTIONS TO REDUCE THE MINIMUM REAR YARD SETBACK FOR DECKS GREATER THAN 30 INCHES IN HEIGHT ABOVE THE GRADE ON WHICH THEY ARE LOCATED FOR LOTS 12A AND 12B TO LOT 20A AND 20B, KIMBALL TOWNHOMES ADDITION; A REDUCTION OF THE MINIMUM REAR YARD SETBACK FOR A PRINCIPAL SINGLE-FAMILY ATTACHED RESIDENTIAL STRUCTURE (LOT 12A, KIMBALL TOWNHOMES ADDITION); AND TO ALLOW AN INCREASE OF THE MAXIMUM THIRTY-FIVE (35) PERCENT LOT COVERAGE TO UP TO FORTY-FIVE (45) PERCENT FOR LOTS 12B TO 20B, KIMBALL TOWNHOMES ADDITION FOR THE PURPOSE OF CONSTRUCTING SINGLE-FAMILY ATTACHED RESIDENCES WITH DECKS IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: BAYER CONSTRUCTION, OWNER: BAYER CONSTRUCTION AND APLETECH CONSTRUCTION, INC.).**

Hardy moved to approve the 180 EXTENSION for the APPROVED EXCEPTIONS to Lots 12B to 20B, Kimball Townhomes Addition. Lavis seconded, and the motion passed 5-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM SIDE YARD SETBACK FOR THE EXISTING HOUSE TO BE USED FOR A BED AND BREAKFAST HOME FROM FIFTEEN (15) FEET TO SIX (6) FEET AT 500 DENISON AVENUE IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: JAMES T. LINDEMUTH).**

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

Aistrup opened the Public Hearing.

James Lindemuth, property owner, explained how he surpassed the minimum requirement for public notice for his property, obtaining 53 signatures of support in favor of converting his home to a Bed and Breakfast from neighbors within a 2-block radius. He also noted that construction of his driveway, which had previously been granted a 180 day extension from the Board, was now complete.

Aistrup expressed his gratitude, on behalf of the Board, for the amount of public comment that Lindemuth included in his application.

Aistrup closed the Public Hearing and opened Board Discussion.

Hardy said that he could support it—although he was not present at the meeting, he read the Staff Report from last month, which covered related requests for Lindemuth’s property, as well as the minutes, and found the application to be very well done.

Hamilton concurred, explaining that while she sometimes has difficulties with the way the Staff explains the Strict Application requirement, she thought the reasoning in this Report was very well done.

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

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

The existing house is located approximately six (6) feet from the east side property line. At the time of the 2001 BZA hearing, the subject site was zoned R-2, Two-Family Residential District, which has a side yard setback of six (6) feet. In May, 2003, the subject site and the surrounding areas were zoned from R-2 to R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The R-1 District has a side yard setback requirement of fifteen (15) feet for Conditional Uses. The Board of Zoning Appeals approved a Conditional Use of the bed and breakfast home and a Variance to reduce the lot width and lot area on July 13, 2011.

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

There appears to be no adverse impacts on adjacent properties as a result of approving the proposed Exception. The house has been in that condition since 1938. No expansions or additions are proposed to the house. 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 side yard setback 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*).

**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.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the side yard setback would prevent the applicant from establishing a bed and breakfast home on the subject site. The intent of the greater minimum side yard setback for a Conditional Use 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 strict application of the regulation is unreasonable.

Hardy made a motion to approve an EXCEPTION to allow a reduction of the minimum side yard setback for the existing house to be used for a Bed and Breakfast Home from fifteen (15) feet to six (6) feet at 500 Denison Avenue in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions:

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

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

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW THE RENOVATION OF AN EXISTING SINGLE-FAMILY DWELLING UNIT TO A TWO-FAMILY DWELLING UNIT AT 823 BLUEMONT AVENUE, LOCATED WITHIN A R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT, IN WHICH BOTH OF THE DWELLING UNITS ARE GREATER THAN SIX-HUNDRED (600) SQUARE FEET IN FLOOR AREA AND WHERE ONE OR BOTH OF THE DWELLING UNITS**

**HAS MORE THAN TWO BEDROOMS (APPLICANT/OWNER: SHEAHAN TAYLOR LAND COMPANY – STEVE SHEAHAN – PRESIDENT).**

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW AN INCREASE IN THE MAXIMUM LOT COVERAGE FROM THIRTY (30%) PERCENT TO THIRTY-THREE (33%) PERCENT FOR AN EXISTING HOUSE AND DETACHED GARAGE; A REDUCTION OF THE MINIMUM EIGHT (8) FOOT SIDE YARD SETBACK TO FOUR (4) FEET ALONG THE EAST LOT LINE FOR THE EXISTING STRUCTURE; A REDUCTION OF THE MINIMUM EIGHT (8) FOOT SIDE YARD SETBACK TO FIVE (5) FEET ALONG THE WEST PROPERTY LINE FOR THE EXISTING STRUCTURE; AND A REDUCTION OF THE MINIMUM THREE (3) FOOT SIDE YARD SETBACK FOR AN ACCESSORY STRUCTURE TO ONE (1) FOOT FOR THE EXISTING DETACHED GARAGE AT 823 BLUEMONT AVENUE IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. NO ADDITION OR MODIFICATIONS ARE PROPOSED TO THE EXISTING STRUCTURES. THE EXCEPTION REQUESTS ARE TO GIVE THE APPLICANT CLEAR TITLE OF THE PROPERTY SO THAT HE MAY APPLY FOR A CONDITIONAL USE TO ESTABLISH A TWO-FAMILY DWELLING IN THE STRUCTURE. (APPLICANT/OWNER: SHEAHAN TAYLOR LAND COMPANY – STEVE SHEAHAN – PRESIDENT).**

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

Aistrup opened the Public Hearing.

Steve Sheahan, applicant, explained that he would like to see the property continue to be well-maintained, due to the fact that it is a beautiful old property. He went on to explain that when he purchased the property, the basement had been poorly finished, and he had removed what appeared to be a former living unit at that time.

Hardy commented that the Board appreciates the preservation of older homes, and asked whether the conditions for approval presented in the Staff Report were a problem to him?

Sheahan replied that they would not, and explained that when he first began renting the property, he was not aware of the City requirements and had unwittingly rented to five people. One renter had been blowing breakers regularly by using his bedroom as a living space, and when he contacted the City, Sheahan had been informed that four unrelated persons was the limit for rental properties. He said he learned a lot from that whole experience.

Aistrup closed the Public Hearing and opened Board Discussion.

Hardy said that he could support the requests and commended the Staff Report. He explained that he likes the fact that the house is being preserved and even improved.

Hamilton said that she could support both requests as well, but that she is concerned about counting enclosed garages as additional parking without a condition attached to the approval that stipulates the garage be used for parking and not for storage. She then stated that her only other concern was that the Strict Application for the EXCEPTIONS referenced the fact that the primary hardship to the owner would be that obtaining the CONDITIONAL USE PERMIT would not be possible. She said that she thought there was plenty of basis for granting the EXCEPTION based on giving the property owner clear title to the use of the property.

Lavis agreed with Hamilton's comments on the garage.

Hardy proposed a modification to the Strict Application section of the Staff Report based on Hamilton's remarks, to which the rest of the Board agreed.

The Board made the following findings of fact for the CONDITIONAL USE at 823 Bluemont Avenue.

**A. Compliance with all applicable regulations:** The existing house, built in 1929, was constructed four (4) feet from the east property line and five (5) feet from the west property line, which encroaches into the eight (8) foot side yard setback. The detached garage, which was built in 1958, is approximately one (1) foot from the west property line and encroaches into the three (3) foot side yard setback for an accessory structure. The Zoning Regulations in effect at the time required "private garages" to be located no less than two (2) feet from the side yard. It is assumed that the required setback was measured to the garage foundation or wall and not the furthest extent of the building (i.e. roof eaves or overhang), as it is measured today. The building footprint for the existing house and detached garage is approximately thirty-three (33%) percent. Exceptions have been advertised to address these existing conditions to give the applicant clear title to the property and bring the subject site into conformance with the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District regulations so that the applicant can apply for the Conditional Use.

Other than these issues and the need for the Conditional Use for the two-family dwelling in the TNO District, the subject site complies with all applicable regulations.

**B. Probable effect on adjacent properties:** The subject site and properties to the north, east and immediately to the south and west are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. To the southeast, across the abutting alley, is the Moro PUD, a residential Planned Unit Development consisting of sixteen (16) townhome style dwelling units. To the west across N. 9<sup>th</sup> Street are properties zoned R-3/M-FRO, Multiple-Family Residential District and Multi-Family Redevelopment Overlay District.

The area can be characterized as being medium to high density residential area, consisting almost entirely of rental units. The block where the subject site is located has single-family rental units, single-family homes that have been converted to two-family dwellings, three- and four-family dwellings and the sixteen (16) townhome unit The Moro PUD. According to the Riley County GIS Department, only one (1) property is owner occupied, which is at 831

Bluemont Avenue. To the west and north are similar developments with newer multiple-family dwellings, single-family homes that have been converted to two-family and multiple-family dwellings and single-family rentals. To the east are a higher number of single-family dwellings, some of which are owner-occupied.

The existing home has a total of five (5) bedrooms on the main and second floors. The application documents state that the subject site has been used as a four-bedroom rental unit, and if approved, this unit will continue to be used as a 4-bedroom unit. The Zoning Regulations do not regulate the number of bedrooms allowed in a dwelling, but rather defines “families” as:

*Either (a) an individual or two (2) or more persons related by blood, marriage or adoption, or under foster care established by governmental action, living together as a single housekeeping unit: or (b) a group of not more than four (4) persons some of which are not related by blood, marriage, or adoption, living together as a single housekeeping unit. There shall be a rebuttable presumption that five (5) or more people living together as a single housekeeping unit are not a family.*

In the event that five or more people that are unrelated as defined above live in the proposed home, they would be in violation of the Zoning Regulations and would face enforcement by the City.

Because the possibility exists that all five (5) bedrooms could be used, which would be a violation of the Zoning Regulations, City Administration has recommended a condition of approval that City Administration shall be allowed to inspect the property upon receipt of a complaint regarding the number of occupants. It is City Administration’s opinion that this condition should run with the land and not the property owner, and has also recommended a conditional of approval that the findings of fact and the Board’s decision shall be filed on the property with the Register of Deeds before a building permit is issued to construct the basement unit. This will ensure that future property owners are aware of the Variance and conditions of approval prior to purchasing the property.

With the Zoning Regulations followed, up to four (4), unrelated persons could live in each dwelling unit, or a total of eight (8) for the two-family dwelling unit. However, based on the size of both units and the number of total bedrooms, it is more realistic that a total of 6 unrelated persons could live in the two-family dwelling structure. Minimal adverse affects are anticipated by the increased intensity of two (2) people compared to its current use.

Converting the single-family rental unit into a two-family unit should not adversely impact the adjacent properties.

The applicants have stated that no major renovations will be made to the exterior of the house. The existing house is similar in character to other houses throughout the neighborhood.

The applicant held a neighborhood meeting, as required by Conditional Use application process. The summary report states that no one attended the meeting (*see attached*).

**C. Domination by use over neighboring properties:** The existing house has been a part of the neighborhood since 1929. The applicant is not proposing to do major renovations to the exterior of the home. The proposed use is similar to that in the area and should not dominate over neighboring properties.

- 1. Location, nature, and height of physical improvements:** The existing structure on the subject site is two-stories tall and located near the center of the subject site. The house was built in 1929 and was located twenty-five (25) feet from the front property line along Bluemont Avenue, five (5) feet from the west side property line, four (4) feet from the east side property line and seventy (70) feet from the rear property line. Exceptions for the side yard setback of the structure have been advertised. An Exception for the encroachment of the detached garage into the east side yard setback has also been advertised.
- 2. Landscaping and screening:** The front yard of the subject site is a grass lawn area, with a large, deciduous street tree. The rear yard is a grass lawn area enclosed by a chain link fence. Along the alley is a parking lot large enough for five (5) vehicles. The off-street parking lot is not required to be screened because it does not contain more than six (6) parking spaces (Section 7-102E)(5))

**C. Adequate provision of parking and loading:** The two-family dwelling requires a minimum of two (2) off-street parking spaces per unit off, or a minimum of four (4) spaces. The subject site has five (5) spaces along the alley in a open, gravel parking lot and two (2) spaces in a detached garage. Two (2) of the off-street spaces are located in front of the garage. The seven (7) proposed parking spaces exceeds the minimum off-street parking requirements for the use.

**E. Adequate provision of drainage, and other public utilities:** Storm water drainage flows to the south towards the alley and existing utilities are serving the property. Adequate drainage and public utilities are provided for the proposed use.

**F. Adequate provision of access:** The subject site faces Bluemont Avenue to the north. Vehicular access is to the south off the adjacent alley, which is an unimproved gravel alley. Sidewalks are provided throughout the neighborhood and along the front property line of the subject site. Adequate access is provided for the proposed use.

Hardy made a motion to approve a **CONDITIONAL USE PERMIT** at 823 Bluemont Avenue to allow for construction of a two-family dwelling unit, located within the R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay District, in which both of the dwelling units are greater than six-hundred (600) square feet in floor area, with the following conditions:

1. The building floor plan shall be constructed as proposed in the site plan and application documents.
2. The Exceptions for the existing house and detached garage shall be approved.
3. All applicable permits shall be obtained.
4. No more than four (4) unrelated people may live in each dwelling unit.



5. Property owner shall allow City Administration to inspect the property for compliance with the Manhattan Zoning Regulations relating to the number of permitted occupants if City Administration receives information of a possible violation of such Regulations.
6. The Finding of Facts and Board of Zoning Appeal's final decision shall be filed on the property with the Riley County Register Deeds by the applicant prior to a building permit being issued for the proposed dwelling.

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

The Board made the following findings of fact for the EXCEPTIONS at 823 Bluemont Avenue.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The existing house, built in 1929, was constructed four (4) feet from the east property line and five (5) feet from the west property line, which encroaches into the eight (8) foot side yard setback. The detached garage, which was built in 1958, is approximately one (1) foot from the west property line and encroaches into the three (3) foot side yard setback for an accessory structure. The Zoning Regulations in effect at the time the garage was built required "private garages" to be located no less than two (2) feet from the side yard. It is assumed that the required setback was measured to the garage foundation or wall and not the furthest extent of the building (i.e. roof eaves or overhang), as it is measured today. The building footprint for the existing house and detached garage is approximately thirty-three (33%) percent. Exceptions have been advertised to address these existing conditions to give the applicant clear title to the property and bring the subject site into conformance with the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District regulations so that the applicant can apply for the Conditional Use.

Other than these issues and the need for the Conditional Use for the two-family dwelling in the TNO District, the subject site complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the north, east and immediately to the south and west are zoned R-M/TNO. To the southeast, across the abutting alley, is The Moro PUD, a residential Planned Unit Development consisting of sixteen (16) townhome style dwelling units. To the west across N. 9<sup>th</sup> Street are properties zoned R-3/M-FRO, Multiple-Family Residential District and Multi-Family Redevelopment Overlay District. The area can be characterized as being medium to high density residential area, consisting almost entirely of rental units.

There appears to be no adverse impacts on adjacent properties as a result of approving the proposed Exception. The location of the existing house to the side yards has been present since it was built in 1929. The location of the detached garage was established in 1958. The total lot coverage has been at thirty-three (33%) percent since 1958. The applicants have stated that no major renovations will be made to the exterior of the house. The existing house is similar in character to other houses throughout the neighborhood. Even without the need for the Conditional Use for the proposed two-family dwelling, the Exceptions would be justified to give the applicant clear title of the property.

The applicant held a neighborhood meeting, as required by Conditional Use application process. The summary report states that no one attended the meeting (*see attached*).

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Only minor exterior improvements to the building are proposed to include egress windows and a new stairway entrance to the basement unit bedrooms. The existing structure, nor the proposed exterior improvements encroach upon any easements and should not have any adverse affects to the public health, safety, and welfare.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the side yard setbacks for the principle structure and accessory structure and the maximum lot coverage would prevent the approval of the Conditional Use to establish a two-family dwelling. The Conditional Use must comply with all applicable regulations or receive an Exception for the nonconformity before the use can be established.

The applicant could reduce the size of the basement apartment from 1,234 square feet to the permitted 600 square feet and eliminate the need for the Conditional Use. Having a permitted two-family dwelling where the second unit was 600 square feet or less would limit the need for the Exceptions to only give the property owner clear and marketable title. Given the current use of the surrounding neighborhood as having almost entirely rental units in a medium to high density residential area; and that the proposed Conditional Use is to renovate a basement apartment in a home that matches the character of the neighborhood, denying the Exceptions seems unreasonable.

Extreme renovates to the house and detached garage could be done to bring the property into conformance with the district regulations. These modifications to the property would affect the character of the house and/or limit the functionality of the detached garage, which could impact the neighborhood. This option also appears to be unreasonable.

Hardy made a motion to approve an EXCEPTION to allow an increase in the maximum lot coverage from thirty (30%) percent to thirty-three (33%) percent for an existing house and detached garage; a reduction of the minimum eight (8) foot side yard setback to four (4) feet along the east lot line for the existing structure; a reduction of the minimum eight (8) foot side yard setback to five (5) feet along the west property line for the existing structure; and a reduction of the minimum three (3) foot side yard setback for an accessory structure to one (1) foot for the existing detached garage at 823 Bluemont Avenue in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions of approval.

1. The Exceptions shall be limited to the existing structure as outlined in the application documents and shown on the applicant's site plan.
2. All applicable permits shall be obtained.

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

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR AN INCREASE IN THE MAXIMUM ALLOWABLE LOT COVERAGE FROM THIRTY (30) TO THIRTY-TWO (32) PERCENT FOR A PROPOSED BUILDING ADDITION; REDUCTION IN THE MINIMUM REQUIRED SIDE YARD SETBACK FROM EIGHT (8) FEET TO FOUR (4) FEET FOR A PROPOSED BUILDING ADDITION, AS WELL AS AN EXISTING SINGLE-FAMILY HOME; A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK ALONG KEARNEY STREET FROM FOURTEEN (14) FEET TO THIRTEEN (13) FEET FOR THE EXISTING SINGLE-FAMILY HOME; A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK ALONG N. 6<sup>TH</sup> STREET FROM FOURTEEN (14) FEET TO THIRTEEN (13) FEET FOR THE EXISTING SINGLE-FAMILY HOME; AND A REDUCTION IN THE MINIMUM REQUIRED SIDE YARD SETBACK FROM THREE (3) FEET TO ONE (1) FOOT FOR AN EXISTING ACCESSORY DETACHED GARAGE, ALL FOR AN EXISTING SINGLE-FAMILY HOME AT 531 KEARNEY STREET IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: JAMES L. AND CONNIE ARMOUR).**

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

Aistrup opened the Public Hearing.

James Armour, applicant, explained that the property was going to be used for his four sons to live in, all of whom will be living in Manhattan and attending Kansas State this year. He said that he had originally planned to have the addition built by the summer, so that all four sons could live in the house during the school year, but discovered that the building would have to go through the Board of Zoning Appeals process.

Aistrup closed the Public Hearing and opened Board Discussion.

Hardy said that he could support the application, and mentioned that he liked what the applicant had tried to do, conforming to the existing property's dimensions.

The Board made the following findings of fact for the EXCEPTIONS at 531 Kearney Street.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** According to the Riley County Appraiser's Office, the principal structure was built in 1920 as a single-family home,

prior to the adoption of Zoning Regulations in the City of Manhattan. In 1926, the inaugural Zoning Ordinance placed the property in the “A” Residence District, which required a minimum twenty-five (25) foot front yard setback, as well as a six (6) foot side yard setback. While the requirements have changed over time with the Zoning Regulations, these nonconforming conditions requiring an Exception were initially created with the first Zoning Ordinance.

In 1969, the subject site’s Zoning classification changed to R-2, Two-Family Residential District. According to a building permit filed with the Code Services Office, the accessory garage was constructed in 1990. Site plan materials provided with that application showed the proposed garage to be outside of the required side yard setback; however, its current placement is not consistent with that site plan, and thus is currently nonconforming to the accessory structure setbacks established in Article VI of the Zoning Regulation, which require a minimum side yard of three (3) feet for accessory structures; thus, an Exception must be obtained for the garage side yard.

In 1993, a former property owner was granted a Variance from the Board of Zoning Appeals for a reduction in the required front yard setback along N 6<sup>th</sup> Street from twenty-five (25) feet to fifteen (15) feet for a fence that is currently removed in preparation for the construction of the proposed addition. In April 2004, the property’s Zoning designation changed to its current classification, R-1/TNO, Single-family Residential District and Traditional Neighborhood Overlay District, which mandates a maximum lot coverage of thirty (30) percent. In order to allow the current applicant, who purchased the site in 2010, to proceed with construction of the proposed building addition, an Exception for the increase in the maximum lot coverage is required.

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

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the immediate north are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Directly to the south are properties zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District, and further to the southwest are properties zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area is largely a residential district, with a combination of single- and multiple family dwellings, both owner- and renter-occupied, as well as Goodnow Park to the northeast and Bluemont Elementary school to the southwest.

Minimal impact on adjacent properties is expected from the requested Exceptions. The existing sizes of both front yard setbacks have been a part of the neighborhood since 1920 without any known complaints to the Community Development Department. Likewise, the existing size of the side yard setback for the primary structure has been a part of the neighborhood since 1920, and the proposed building addition intends simply to match that present size, without exceeding it or encroaching further on neighboring properties. As per the stipulations of the Traditional Neighborhood Overlay District, the proposed building addition will be constructed in a manner that “incorporates[s] basic design and site layout elements characteristic of homes in the traditional neighborhoods” (Section 4-111), so as not to disturb

the visual character or sense of place associated with the surrounding neighborhood. Increasing the total lot coverage as proposed by two (2) percent is not expected to cause a considerable increase in the rate of flow of stormwater drainage, loss of open space, or other detriment to the adjacent properties, especially due to the fact that the subject site is a corner lot, and the front yard along North 6<sup>th</sup> Street will remain open as it currently is. Likewise, the existing detached garage is not proposed to be expanded in any way, but simply requires an Exception for a previously nonconforming condition, in order that the entire property be brought into compliance with the Zoning Regulations.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Adverse impact on the public is not expected. The various discrepancies between the required and the existing front yard setback, side yard setback, and maximum lot coverage are expected to have a negligible or nonexistent impact open space provision, and/or overall visual appearance of the surrounding neighborhood. The existing buildings and proposed building addition do not encroach into public easements or vision clearance areas. No increase in drainage or traffic congestion is likewise expected to occur as a result of this Exception.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the side yard setback requirement for the building addition would require the planned addition to be narrowed by about four (4) feet. According to the application documents, if the floor plan of the addition were redesigned to match the home's west corner, it would not be able to function with the existing structure's entryway. The power supply to the house currently comes into the southwest corner of the building and would then also have to be relocated. The applicant has explored other alternatives to redesign the addition to meet the wider side yard setback, but none of them seemed reasonable; the dimensions requested for the addition are the minimum required to allow room for a stairway, and therefore anything smaller would negate the feasibility of building an addition in the first place.

Also, the proposed addition would have to be a minimum of one-hundred and fifty (150) square feet smaller in order for the property to meet the minimum lot coverage requirements, which would effectively reduce the functionality of the addition as planned.

As for the remaining Exceptions—for the existing structure and detached garage—the nonconforming conditions were not created by the applicant, and they are not proposed to be expanded or exacerbated in any way.

The intent of maximum lot coverage and minimum yard setback regulations are to ensure that a permitted use has enough space to function on its zoning lot, to provide sufficient open space for fresh air and sunlight to be able to enter the building, to prevent excessive environmental degradation due to a lack of pervious surface for stormwater drainage, and to ensure a minimum distance is maintained between neighboring properties. All of these conditions will be preserved if the requested Exceptions are granted.

Hardy made a motion to approve an Exception to allow for an increase in the maximum

allowable lot coverage from thirty (30) to thirty-two (32) percent for a proposed building addition; reduction in the minimum required side yard setback from eight (8) feet to four (4) feet for a proposed building addition, as well as an existing single-family home; a reduction in the minimum required front yard setback along Kearney Street from fourteen (14) feet to thirteen (13) feet for the existing single-family home; a reduction in the minimum required front yard setback along 6<sup>th</sup> Street from fourteen (14) feet to thirteen (13) feet for the existing single-family home; and a reduction in the minimum required side yard setback from three (3) feet to one (1) foot for an existing accessory detached garage, all for an existing single-family home at 531 Kearney Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions:

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. All applicable permits shall be obtained.

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

Aistrup adjourned the meeting.

Respectfully Submitted,

Kevin Credit, Planning Intern.