

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, September 14, 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

Hardy moved to approve the August 10, 2011 minutes, which was seconded by Hamilton and passed with a vote of 5-0.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR AN APPROVED VARIANCE TO ALLOW A DRIVEWAY TO BE GREATER THAN TWENTY-FOUR (24) FEET IN WIDTH AND 960 SQUARE FEET IN AREA; AND TO REDUCE THE MINIMUM 75% LANDSCAPED OPEN AREA REQUIRED IN THE FRONT YARD, ALL FOR A PROPOSED PAVED DRIVEWAY FOR A NEW SINGLE-FAMILY DWELLING LOCATED AT 2630 HEARTLAND DRIVE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT (APPLICANT/OWNER: MARY AND CARL ICE).

Hamilton moved to approve the 180 EXTENSION for the approved VARIANCE at 2630 Heartland Drive. Hardy seconded, and the motion passed 5-0.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTION TO ALLOW AN INCREASE OF THE MAXIMUM HEIGHT OF FIFTY (50) FEET TO NINETY (90) FEET FOR A PROPOSED EXPANSION TO AN EXISTING CONCRETE READY-MIX PLANT AT 704 S. 4TH STREET IN THE LM-SC, LIGHT MANUFACTURING-SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: MIDWEST CONCRETE MATERIALS).

Hardy moved to approve the 180 EXTENSION for the approved EXCEPTION at 704 S. 4th Street. Hamilton seconded, and the motion passed 5-0.

CONTINUE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE INCREASE OF THE MAXIMUM LOT COVERAGE FROM THIRTY (30%) PERCENT TO THIRTY-FOUR (34%) PERCENT FOR A PROPOSED SECOND STORY ADDITION AND THE REDUCTION OF THE FOURTEEN (14) FOOT FRONT YARD SETBACK ALONG S. 16TH STREET TO FOUR (4) FEET FOR AN EXISTING AND PROPOSED 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 to continue the public hearing for the proposed EXCEPTIONS at 1600 Pierre Street. Hamilton seconded, and the motion passed 5-0.

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

Kent asked to confirm that there had been no objections filed for the item; Bunger concurred.

Hamilton asked for clarification on how much the second story addition would contribute to the lot coverage, without taking into account the deck. Bunger replied that it measured roughly 180 square feet. Hamilton then asked whether the deck was the lion's share of the lot coverage being added, and Bunger explained that it contributed about 40% to the overall increase in lot coverage.

Aistrup opened the Public Hearing.

No one spoke.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said that she thought it was a nice proposal, and she applauds the owner for working with the City once the noncompliance was brought to their attention. She also said she had no problem with the deck to the east, even though it was not strictly necessary. Hamilton then explained that she had an issue with the "Strict Application" section of the Staff Report as written; namely, that the reasoning presented in it is based on the idea that the applicants cannot do what they want simply because the regulations will not allow it. Instead, she said that she favors language in the Staff Report that explains the unique extenuating circumstances of the property as a justification for granting an EXCEPTION.

Hardy expressed his agreement, and commented that portions of the "Effects on Public Health, Safety", etc., especially descriptions of factual conditions of the property, could be added to the "Strict Application" section in order to give it some teeth. Bunger said that he understood,

but explained briefly that because everyone in the Traditional Neighborhood Overlay must deal with the thirty percent lot coverage, the fact that the applicants could not do what they wanted to do in this instance was an important factor in why the EXCEPTION was being brought forward, and thus a part of its justification.

Hardy then added that two minor changes in wording to the Staff Report should be made, and said that otherwise he could support the item. Hamilton then proposed another change in wording, and Bunger asked whether, since he was redrafting the Findings of Fact due to the mentioned errors anyway, he should include the information about the vegetative screening and lack of sidewalks in the “Strict Application” section. Hardy agreed.

The Board made the following findings of fact for the Exception at 1600 Pierre Street.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The existing house and detached garage is approximately 2,257 square feet or thirty (30%) percent of the lot coverage, which matches the maximum limit of the Traditional Neighborhood Overlay District.

The existing wooden deck on the east side of the house encroaches into the fourteen (14) foot front yard setback along S. 16th Street. According to the applicant, the deck was present when the purchased the house in 1992. The Exception request to reduce the front yard setback along S. 16th Street will correct the existing condition.

Other than this issue and that for which the Exceptions are for, the property complies with all applicable regulations.

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. To the south along Colorado Street and Yuma Street are properties zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. To the north along Poyntz Avenue are properties zoned C-1, Restricted Business District.

The second-story building addition will be an extension of the home at the second story level and will match the character of the home. The west property line is lined with dense bushes and mature trees, which should buffer any adverse affect from the building addition on the adjacent to the property owner to the west. The increase in lot coverage by four (4%) percent, or three-hundred (300) square feet, for the building addition and deck addition should not be noticeable to adjacent properties. Several properties in the immediate area appear to exceed the maximum thirty (30%) percent lot coverage in the Traditional Neighborhood Overlay District.

The deck under construction also should not adversely impact adjacent properties. An existing deck, which has been on the property since at least 1992, is approximately eight (8) feet from the S. 16th Street front property line. A dense row of bushes, that are approximately four (4)

feet in height, are located in the right-of-way of S. 16th Street. This line of bushes should provide a visual screening from the property owners to the east. These bushes are in the public right-of-way (ROW), so the applicant does not control the removal of the vegetative screening, but they are required to maintain the bushes. Even without the vegetative screening, the proposed deck should not adversely impact adjacent properties. There are no sidewalks on the west side of the S. 16th Street ROW. The absence of the sidewalk in the S. 16th Street ROW along the subject site make the front yard visually appear wider than it technically is, reducing the impacts by the location of the deck.

The applicant has submitted a form letter with two (2) adjacent property owner's signature lending support to the proposal (*see attached*).

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

The request to increase the maximum lot coverage by four (4%) percent for the building addition and deck expansion equals approximately three-hundred (300) square feet. The increase in lot coverage is negligible and would not be noticed by the general public. The building addition will be towards the rear of the house and is supposed to match the architectural character of the existing house. Several properties in the immediate area appear to have total lot coverage that exceeds the TNO District's maximum lot coverage. The proposed additions would not alter the order of the neighborhood or impact the health, safety and welfare of the general public.

No sidewalks are located on the subject site along S. 16th Street. Because there is not a sidewalk along the subject site on S. 16th Street and the presence of the vegetative screening, the location of the proposed deck expansion should not impact pedestrians or vehicles traveling on S. 16th Street or the general public.

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

The strict application of the regulations would not allow the proposed additions to be constructed as proposed. The subject site has reached the maximum allowable lot coverage in the TNO District. No other option is available to the applicant to alter the site to allow the construction of the building addition or deck expansion under the confines of the current Zoning Regulations.

A number of properties in the immediate area have lot coverage that exceeds the maximum allowed by the TNO District. The conditions found on these adjacent properties were established prior to the adoption of the TNO District in 2003 for this area, which limits maximum lot coverage to thirty (30%) percent, compared to the underlying R-1, Single-Family Residential District, which has a maximum lot coverage of thirty-five (35%) percent.

The deck expansion could not be completed as proposed and would need to be removed. It is not exactly known when the existing deck was constructed, which is located approximately eight (8) feet from the front property line. The applicant has verbally stated that the existing deck was on the subject site when they purchased it in 1992. Considering that there are no

sidewalks are located on the subject site along S. 16th Street, the presence of the vegetative screening, the location of the proposed deck expansion should not impact adjacent property owners or the general public, the strict application seems unreasonable when all of the facts and circumstances are considered.

Kent made a motion to approve an EXCEPTION to allow for the increase of the maximum lot coverage from thirty (30%) percent to thirty-four (34%) percent for a proposed second story addition and the reduction of the fourteen (14) foot front yard setback along S. 16th Street to four (4) feet for an proposed and existing deck at 1600 Pierre Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions of approval:

1. The Exceptions shall apply to the proposed building addition and existing and proposed deck as outlined in the application documents and shown on the site plan.
2. The applicant shall maintain the existing vegetative screening along S. 16th Street in good condition.
3. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK ALONG ALTA DRIVE FROM TWENTY-FIVE (25) FEET TO TWENTY-TWO (22) FEET FOR A BUILDING ADDITION TO THE EXISTING SINGLE-FAMILY HOME AT 2235 ALTA DRIVE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: BRADLEY AND SUSAN SCHOEN).

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

Aistrup opened the Public Hearing.

Brad Schoen, applicant, came to the podium and explained that he was present to answer any questions about the proposal.

Aistrup closed the Public Hearing and opened Board Discussion.

Hardy said that he could support the application and that it was in keeping with the character of the neighborhood.

Hamilton concurred, saying that it was a creative way to enhance the front of the house.

The Board made the following findings of fact for the Exception at 2235 Alta Drive.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site currently complies with all applicable regulations, except for what is being requested by the Exception. An Exception was approved in April, 1999 to allow for a reduction of the front yard setback along Tiana Terrance for the existing house that was constructed into the setback and for a proposed building addition into the same front yard setback (*see attached*). The subject site complies with all applicable regulations other than for what the Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties to the south, east and west are zoned R-1, Single-Family Residential District. Properties to the north along Tiana Terrace are zoned R-2, Two-Family Residential District and Snowbird PUD, Residential Planned Unit Development. The R-2 District and PUD District properties consist of single-family attached homes. Other properties are single-family homes.

Minimal adverse impacts on adjacent properties are anticipated from the Exception request. The proposed covered porch will be in character with a number of houses along Alta Drive, Tiana Terrace and the surrounding neighborhood. A property owner along Alta Drive, who did not give his name or address, said that he supported the proposed addition because it would improve the curb appeal of the house and the surrounding neighborhoods. The subject site does not have a sidewalk located in the front yard along Alta Drive, so visually, the three (3) foot encroachment should be visually unnoticeable.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Negative effects on the public health, safety and general welfare should be minimal. The proposed covered porch will be in character with a number of properties in the neighborhood. The building addition will not encroach into any visual triangles created by the street or be built in utility easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the front yard setback regulation would not allow the applicant to construct the covered porch as proposed. The building is setback approximately twenty-seven (27) feet from the front property line along Alta Drive. The applicant could construct a gabled roof line that would cover approximately two (2) feet of the existing concrete patio and steps leading to the front door of the home. The two (2) foot wide overhang would most likely be inadequate to achieve one of the goals of the applicant – “to provide cover over the residence’s main entry during inclement weather.”

The proposed addition should improve the character of the house, will not be out of character with neighboring properties and should not impact adjacent properties or the general public. Considering all of these factors, it appears that the strict application of the front yard setback regulation is unreasonable for this situation.

Hardy made a motion to approve an EXCEPTION to allow for the reduction of the minimum required front yard setback along Alta Drive from twenty-five (25) feet to twenty-two (22) feet

for a building addition to the existing single-family home at 2235 Alta Drive in the R-1, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall apply to the proposed building addition as described in the application documents and shown on the site plan.
2. All applicable building permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A VARIANCE TO ALLOW A SECOND IDENTIFICATION SIGN IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. THE PROPOSED SIGN IS TO BE A NON-ILLUMINATED GROUND SIGN WITH BULLETIN BOARD ALONG BROWNING AVENUE AT THE SUSAN B. ANTHONY MIDDLE SCHOOL AT 2501 BROWNING AVENUE (APPLICANT/OWNER: DAVID PAYNE, ASSISTANT PRINCIPAL, SUSAN B ANTHONY MIDDLE SCHOOL).

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

Kent asked Bunger to confirm that there would be no adverse affects on safety or traffic flow due to the sign; Bunger explained that the sign would be outside of the vision clearance triangle.

Hamilton asked whether the applicants could externally illuminate the sign in the future; Bunger confirmed that they could, unless a condition was placed on the approval.

Aistrup opened the Public Hearing.

No one spoke.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said that she could support it and clarified that she was not advocating that they put a condition on the approval. Hardy agreed, and said that he had a somewhat difficult time seeing the existing “sign” as a sign, since it basically just consists of letters on a wall.

The Board made the following findings of fact for the Variance at 2501 Browning Avenue.

CONDITIONS UNIQUE TO THE PROPERTY: The site is a large school campus with a number of activities taking place at the school throughout any given day. The use of the site as a middle school creates a need to ensure that there is adequate identification of the school

building for visitors and to provide additional information of upcoming events and activities that can be seen by students, parents and the public at different times of day.

PROBABLE EFFECT ON ADJACENT PROPERTIES: To the north, west and south of the subject site are single-family homes. The properties to the north of the school are zoned RS, Single-Family Residential District. The zoning district of the properties to the west is R-1 District. To the south, the single-family properties are zoned R, Single-Family Residential District. To the east are properties zoned PUD. The Stone Valley PUD, which includes the Blake Townhomes, consists of single-family attached homes. The St. Joseph Village PUD is a skilled nursing and assisted living facility.

Minimal adverse impacts on neighboring properties are anticipated. The sign will be located perpendicularly to the street and be setback a minimum of (15) feet from the Browning Avenue front property line. The position and location of the sign should not be intrusive to adjacent properties.

An externally illuminated sign for St. Joseph Village is located along Browning Avenue. The sign is approximately thirteen (13) feet from the front property line along Browning Avenue, located perpendicular to the roadway. The size of the St. Joseph Village sign is identical to the sign that is proposed. The Stone Valley residential development has three (3) ground signs identifying the developments. The Stone Valley Townhomes have two (2) externally illuminated ground signs made of brick at the intersection of Stone Valley Drive and Browning Avenue. The Blake Townhomes have a similar ground sign at the intersection of Willow Grove Drive and Browning Avenue, but it is not illuminated.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The proposed sign will allow the school to better inform the students, their families and the general public of upcoming events and activities. Currently, the school does not have a sign or other mechanisms on the site to provide this information. If the Variance request to construct a second sign on the site is denied, Anthony Middle School would not be permitted a sign to serve this function.

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

There should be no adverse affects on the public health, safety or welfare by approving the proposed Variances. The sign is to be setback a minimum of fifteen (15) feet from the front property line along Browning Avenue. The sign is outside of the vision triangle created by the intersection of the street and the driveway entrance.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the Sign Regulations within residential districts is to limit the size, placement, number, and illumination characteristics so that residential properties are not negatively impacted. The intent of the restriction regarding the number of signs is to not have signs dominate the surrounding residential neighborhood.

The size, functional type and illumination of the sign meet the requirements of the sign

regulations for residential districts. Considering the large size of the Anthony Middle School site and the various events and activities held at the school, the request to construct a second sign to notify students, parents and the public is reasonable.

Hardy made a motion to approve a VARIANCE to allow a second sign in a residential district located along Browning Avenue at the Susan B. Anthony Middle School located at 2501 Browning Avenue in the R-1, Single-Family Residential District with the following conditions:

1. The Variance shall only apply to the proposed site plan and the proposed sign.
2. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO SEVENTEEN (17) FEET FOR A PROPOSED BUILDING ADDITION TO AN EXISTING SINGLE-FAMILY HOME AT 921 DEHOFF STREET IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: SCOTT & DIANA MCELWAIN).

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

Hamilton asked for clarification on why the existing concrete pad is not considered to be in the setback already. Credit deferred to Bunger, who replied that concrete porches less than thirty inches in height can be as close as fifteen feet to the front property line.

Aistrup opened the Public Hearing.

Scott McElwain, applicant, came to the podium and said he was available to answer any questions about the proposal.

Aistrup closed the Public Hearing and opened Board Discussion.

Hardy said that he could support the application, and that it was very similar to the previous application.

The Board made the following findings of fact for the Exception at 921 Dehoff Drive.

PRESENT USE: Single-family home.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other than the proposed Exception, this property complies with all other applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the north, west and south are zoned R, Single-Family Residential District. To the immediate east are properties zoned R-1, Single-Family Residential District, and further to the northeast are properties zoned R-2, Two-Family Residential District. The area is essentially a residential district, with the vast majority of the surrounding properties being owner-occupied. Other than the two-family duplexes to the northeast, the only use other than that of single-family homes in the area is an electrical power generation station far to the west of the property located off of Stagg Hill Road.

Seeing as the extent of the roof line extension will be minimal and no other modifications to the structure or the site layout are being proposed, no adverse impact to the adjacent property owners is expected to stem from this Exception. In fact, according to the application documents, the proposed addition will “add value to the subject site, as well as [to] the aesthetics” of the surrounding neighborhood.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be minimal or no effect on the public health, safety or welfare due to this Exception. The proposed roof addition will not affect line-of-sight down the street, as it is not proposed to extend beyond the existing garage. Also, as stated earlier, no additional changes are being proposed to the layout of the site or to the existing structures, which currently meet all applicable regulations; thus no adverse changes are expected to result from this Exception.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: As stated in the application documents, the proposed addition will “[match] existing gable roof lines, for symmetry and functionality,” as well as “look like it was part of the original design.” As previously stated, rather than being a hardship to the neighborhood, the applicant believes that this addition will add to the character and value of the surrounding properties, thus resulting in a relative gain to the health, safety, and general welfare of the community. In addition, the strict application of the front yard setback requirements would not allow for a roof addition large enough to cover the existing concrete patio as intended, or to adequately match the existing shape and size of the garage roof, thus leaving the applicant without a reasonable alternative.

The intent of the front yard setback regulations are to provide enough space for a use to function on its zoning lot, to allow for a uniform visual look to the neighborhood, to allow open space for adequate drainage, sunlight, and air for the building, and to provide adequate separation of structures. None of these intentions will be compromised if the requested Exception is granted.

Kent made a motion to approve an Exception to allow for a reduction in the minimum required front yard setback from twenty-five (25) feet to seventeen (17) feet for a proposed building addition to an existing single-family home in the R, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall apply to the proposed development as outlined in the Staff Report and application documents and as illustrated in the 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 THE INCREASE OF THE MAXIMUM LOT COVERAGE FROM THIRTY (30%) PERCENT TO THIRTY-FIVE (35%) PERCENT FOR A PROPOSED DETACHED GARAGE AND THE REDUCTION OF THE MINIMUM EIGHT (8) FOOT SIDE YARD SETBACK ALONG THE EAST PROPERTY LINE TO ZERO (0) FEET FOR AN EXISTING DECK AT 1207 HOUSTON STREET IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: JEREMY BENEKE).

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

Hamilton asked whether a deck that was not attached to the principal structure on a lot is required to meet the same setbacks as the structure itself. Bunger explained that if it is not attached to the house itself, it would be governed by the accessory structure setbacks, which would allow it to be closer to the side and rear lot lines, but at least sixty feet from the front lot line. He added that even if the deck is not physically attached, City Staff would consider it a part of the principal structure if it was reasonably close to it.

Aistrup opened the Public Hearing.

No one spoke.

Aistrup closed the Public Hearing and opened Board Discussion.

No one spoke.

The Board made the following findings of fact for the Exception at 1207 Houston Street.

PRESENT USE: Single-Family Home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all existing regulations, except that for which the Exception is requested. The existing wooden deck on the east side of the house encroaches into the eight (8) foot side yard setback. According to the Riley County Appraiser Office, the deck was constructed in 1984 & 1987, prior to the applicant purchasing the house in 2004. The Exception request for the existing deck will give clear title to the property owner

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 north, along Poyntz Avenue, are zoned C-1, Restricted Business District. The area is a mix of single-family and two-family residential uses, so of which are owner occupied. The properties along Poyntz Avenue are a mix of office and residential uses.

A number of surrounding properties have similar garages along the alley. The proposed detached garage on the subject site will not be out of character. Likewise, several properties in the surrounding area, including the properties adjacent to the subject site, have building footprints that exceeds the Traditional Neighborhood Overlay District's (TNO) maximum lot coverage of thirty (30%) percent. These properties were developed in this condition prior to the TNO District being established for this neighborhood in December, 2003.

The existing deck was constructed in 1987, prior the applicant purchasing the property. It has been a part of the neighborhood since that time. The Community Development Department has not received any complaints regarding the deck or the subject site

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The request to increase the maximum lot coverage by five (5%) percent for the proposed detached garage equals approximately 375 square feet. Several properties in the immediate area appear to have total lot coverage that exceeds the TNO District's maximum lot coverage. The proposed additions would not alter the order of the neighborhood or impact the health, safety and welfare of the general public. The existing deck is outside of any platted utility easements and should not have any adverse impacts on the public.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the maximum lot coverage in the TNO District would prevent the applicant from constructing the proposed two-car detached garage. The existing house and deck have a lot coverage of 2,024 square feet, or approximately 27%. A detached garage that is 226 square feet could be constructed and meet the TNO District regulations. The applicant is proposing a two-car detached garage that will be 572 square feet (measured to the roof eave overhang). Considering that the proposed garage will match the character of the property and the surrounding properties and that the lot coverage after construction will match development patterns of the neighborhood; the strict application of the regulation appears to be unreasonable.

The strict application of the side yard setback encroachment would require a portion of the deck to be removed. This condition was done prior to the applicant purchasing the subject site in 2004. The deck was constructed in 1987. No complaints have been filed with the Community Development Department. Requiring the removal of the deck that has been part of the property and surrounding neighborhood since 1987 to comply regulations appears to be unreasonable.

Kent made a motion to approve an EXCEPTION allow for the increase of the maximum lot coverage from thirty (30%) percent to thirty-five (35%) percent for a proposed detached garage and the reduction of the minimum eight (8) foot side yard setback along the east property line to zero (0) feet for a existing deck at 1207 Houston Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with the following conditions of approval:

1. The Exception shall apply to the proposed two-car detached garage and existing deck as stated in the application documents and shown on the site plan.
2. All applicable permits shall be obtained prior to construction.

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

Aistrup adjourned the meeting.

Respectfully Submitted,

Kevin Credit, Planning Intern.