

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, October 12, 2011
7:00 PM

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

MEMBERS ABSENT: Harry Hardy, Vice Chairperson.

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

CONSIDER THE MINUTES

Hamilton moved to approve the September 14, 2011 minutes, which was seconded by Kent and passed with a vote of 4-0.

TABLE THE PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A LODGING/BOARDING HOUSE CONSISTING OF EIGHT (8) BEDROOMS, FOUR (4) BATHROOMS AND ONE (1) KITCHEN AT 1810 TODD ROAD IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: GARY GLATZ AND LELA BECK-GLATZ).

Hamilton moved that the public hearing to consider the Conditional Use for 1810 Todd Road be moved to the table. Lavis seconded, and the motion passed 4-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR AN EXISTING SINGLE-FAMILY DWELLING AT 107 N. 14TH STREET IN THE C-1, RESTRICTED BUSINESS DISTRICT. THE PROPOSED CONDITIONAL USE IS REQUIRED TO BRING THE PROPERTY INTO FULL CONFORMANCE WITH THE ZONING REGULATIONS, AS WELL AS TO PREPARE A FINAL PLAT FOR THE PROPERTY. (APPLICANT/OWNER: BRENT BOWMAN).

A PUBLIC HEARING TO CONSIDER A AN EXCEPTION FOR A REDUCTION OF THE MINIMUM REQUIRED REAR YARD SETBACK FOR ACCESSORY STRUCTURES FROM FIVE (5) FEET TO TWO (2) FEET FOR A PROPOSED GARAGE, AS WELL AS A REDUCTION IN THE MINIMUM REQUIRED FRONT

YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY-TWO (22) FEET TO OBTAIN CLEAR TITLE TO THE PROPERTY FOR AN EXISTING SINGLE-FAMILY STRUCTURE AT 107 N. 14TH STREET IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT/OWNER: BRENT BOWMAN).

Kevin Credit, Planning Intern, presented the staff report for both items. He recommended approval of both the Conditional Use for the existing house and the Exceptions as described in the staff reports.

Kent asked if there were any opposition of the requests from adjacent property owners. Bunger responded that he did discuss the item with an adjacent owner, but there were no complaints.

Hamilton asked for a clarification on the Conditional Use of the C-1 District. Bunger answered her questions regarding the use and the governing regulations.

Aistrup opened the Public Hearing.

No one spoke.

Aistrup closed the Public Hearing and opened Board Discussion.

She stated it was unusual for a Conditional Use to be required for the established home. This request brings the property into compliance with the C-1 District Regulations.

The Board made the following findings of fact for the Conditional Use for 107 N. 14th Street.

Present Use: Existing single-family home.

Compliance with all applicable regulations: According to the Riley County Appraiser's Office, the principal structure was built in 1946 as a single-family home. At that time the property was located in the "A" First Dwelling House District, which required a front yard setback of twenty-five (25) percent of the total lot depth, which at the time on the site would yield a minimum required setback of approximately twenty two (22) feet. The existing garage was constructed in 1950, at which time there were no rear yard guidelines for accessory structure in the Zoning Regulations—thus the property was in full conformance with the Regulations at this time.

In 1962, the Zoning designation of the property changed to "B" Second Dwelling House District, but was a permitted use in this district and remained in full compliance. In 1969, the subject site's Zoning classification changed again, to C-1, Restricted Business District, thus creating the condition of the nonconforming use requiring a Conditional Use Permit. Also, the front yard setback requirement for single-family homes in the R-3, Multifamily Residential District, under which the property would have been administered, were raised to twenty-five

(25) feet, thus creating the nonconforming condition requiring an Exception.

The house on the subject site does not meet the minimum twenty-five (25) foot front yard setback required for single-family homes in the R-3 District, as described in Article 4-106 (D)(2). Thus, the applicant is requesting an Exception to allow a reduction in the minimum setback to twenty-two (22) feet. The applicant is also requesting a Conditional Use Permit to allow for the existing single-family dwelling in the C-1, Restricted Business District, in order to obtain clear title to the property in accordance with Article 1-501 (B) of the Manhattan Urban Area Subdivision Regulations, which requires a replat of the property following the alteration of boundaries of lots or parcels of land.

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

Probable effect on adjacent properties: The subject site and properties to the immediate south and west are zoned C-1, Restricted Business District. To the immediate north are properties zoned R-1/TNO, Single Family Residential District and Traditional Neighborhood Overlay District, and immediately to the east is City Park, which is zoned R-3, Multiple-Family Residential District. In a larger context, the subject site exists as a part of a band of properties zoned C-1 along Poyntz Avenue, with properties zoned R-1/TNO to the north and south of that band—excluding City Park, which is zoned R-3. The area generally consists of a mix of single- and multiple-family residential dwellings, both owner- and renter-occupied, as well as office and other commercial buildings (such as banks, doctor’s offices, the Manhattan Arts Center, churches, and funeral homes) and the public use of City Park.

Minimal impact on adjacent properties is expected. The existing use, unmodified, has been a part of the neighborhood since 1946 without any known complaints to the Community Development Department; the applicant’s request for a Conditional Use Permit in this case is simply so that the applicant property can be brought into full compliance with current Zoning Regulations, as well as in order to complete a required replat of the property following the purchase of additional land as required by Article 1-501 (B) of the Manhattan Urban Area Subdivision Regulations. In addition, the proposed Conditional Use is fully in keeping with the existing character of the neighborhood, and is in fact a less intense use—with fewer associated public impacts, such as traffic congestion—than the Zoning currently allows.

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. According to the applicant, no one attended the meeting. The applicant has also indicated that he has visited with his neighbors, and that they have not raised any significant issues with the proposed Conditional Use.

While the Future Land Use section of the Manhattan Urban Area Comprehensive Plan labels the subject site as designated for future Office/Research Park uses—which is embodied by the zoning of the C-1, Restricted Business District—the proposed continuation of a residential use is compatible with this designation, as residential uses are allowed in such Zoning Districts by Conditional Use Permit. Also, as the applicant has stated, “14th Street along the park has become a meaningful and historic residential amenity.”

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 home on the subject site. Seeing as the proposed use is less intense than the Zoning District allows and has been a part of the neighborhood for over fifty (50) years, the probable effect on adjacent properties should be minimal.

Domination by use over neighboring properties: The existing use will not dominate over neighboring properties. The subject site has been used as a single-family dwelling since 1946 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 wood frame structure located roughly in the middle of the lot. No modifications or changes are proposed to the house. At present it has a lot coverage of approximately 1,450 square feet in area, or twenty-two (22) percent of the total lot. An existing garage, located to the west of the single-family home, is proposed to be demolished and replaced with a new two car garage, encompassing roughly 620 square feet of lot coverage, or ten (10) percent of the total lot. The total allowable lot coverage for single-family homes in the R-3, Multiple-Family Residential District is forty (40) percent, so the subject site is well within the acceptable constraints.
- 2. Landscaping and screening:** An existing limestone wall currently runs along the south property line, and its line is proposed to be extended with a fence to cover the additionally-purchased property to the rear of the home. Likewise, the existing fence that currently runs along the rear property line will be extended to match the new rear property line ten (10) feet to the west, screening the rear yard from view of the adjacent properties to the west and south, and vice-versa. The existing lawn is well-maintained, with a new sidewalk/patio garden area proposed in between the new garage and the existing home.

Adequate provision of parking and loading: As a single-family home, the subject site is required to maintain two (2) off-street parking spaces, according to Section 7-103 (A)(2) of the Zoning Regulations. Both of these will be accommodated by the construction of the new garage, along with the provision of two (2) additional spaces via driveway space.

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

Adequate provision of access: Vehicular access to the proposed garage will be provided through the alleyway to the north. Pedestrian access is provided via the front sidewalk, which is in good condition, with a paved pathway connecting the front porch to the public sidewalk.

Kent made a motion to approve a CONDITIONAL USE to allow for an existing single-family dwelling in the C-1, Restricted Business District. The proposed CONDITIONAL USE is

required to bring the property into full conformance with the Zoning Regulations, as well as to prepare a final plat for the property, 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 Exceptions of the required front and rear yard setbacks shall be approved.
3. The Final Plat of 107 N. 14th Street shall be approved by the Manhattan Urban Area Planning Board and filed with the Riley County Register of Deeds.
4. All applicable permits shall be obtained.

Hamilton seconded the motion, which passed 4-0.

The Board made the following findings of fact for the Exception for 107 N. 14th Street.

PRESENT USE: Existing single-family home.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the Riley County Appraiser’s Office, the principal structure was built in 1946 as a single-family home. At that time the property was located in the “A” First Dwelling House District, which required a front yard setback of twenty-five (25) percent of the total lot depth, which at the time on the site would yield a minimum required setback of approximately twenty two (22) feet. The existing garage was constructed in 1950, at which time there were no rear yard guidelines for accessory structure in the Zoning Regulations—thus the property was in full conformance with the Regulations at this time.

In 1962, the Zoning designation of the property changed to “B” Second Dwelling House District, but was a permitted use in this district and remained in full compliance. In 1969, the subject site’s Zoning classification changed again, to C-1, Restricted Business District, thus creating the condition of the nonconforming use requiring a Conditional Use Permit. Also, the front yard setback requirement for single-family homes in the R-3, Multifamily Residential District, under which the property would have been administered, were raised to twenty-five (25) feet, thus creating the nonconforming condition requiring an Exception.

The house on the subject site does not meet the minimum twenty-five (25) foot front yard setback required for single- family homes in the R-3 District, as described in Article 4-106 (D)(2). Thus, the applicant is requesting an Exception to allow a reduction in the minimum setback to twenty-two (22) feet. The applicant is also requesting a Conditional Use Permit to allow for the existing single-family dwelling in the C-1, Restricted Business District, in order to obtain clear title to the property in accordance with Article 1-501 (B) of the Manhattan Urban Area Subdivision Regulations, which requires a replat of the property following the alteration of boundaries of lots or parcels of land.

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

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the immediate south and west are zoned C-1, Restricted Business District. To the immediate north are properties zoned R-1/TNO, Single Family Residential District and Traditional

Neighborhood Overlay District, and immediately to the east is City Park, which is zoned R-3, Multiple-Family Residential District. In a larger context, the subject site exists as a part of a band of properties zoned C-1 along Poyntz Avenue, with properties zoned R-1/TNO to the north and south of that band—excluding City Park, which is zoned R-3. The area generally consists of a mix of single- and multiple-family residential dwellings, both owner- and renter-occupied, as well as office and other commercial buildings (such as banks, doctor's offices, the Manhattan Arts Center, churches, and funeral homes) and the public use of City Park.

Minimal impact on adjacent properties is expected. The proposed Exception for the new accessory garage is not expected to have any significant visual or noise-related impact on the neighbors to the west or south. To the west is a commercial office building which currently maintains an off-street parking lot that abuts the new rear property line and the proposed garage; to the south is a single-family residence. An existing limestone wall currently runs along the subject site's south property line, and its line is proposed to be extended with a fence to cover the additionally-purchased property to the rear of the home—this extension will effectively screen the garage from view of the property to the south.. Likewise, the existing fence that currently runs along the rear property line will be extended to match the new rear property line ten (10) feet to the west, screening the rear yard from view of the adjacent property to the west, and vice-versa

As for the front yard Exception, the existing size of the front yard setback has been a part of the neighborhood since 1946 without any known complaints to the Community Development Department; the applicant's request for an Exception in this case 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 three (3) foot discrepancy between the required twenty-five (25) foot setback and the existing twenty-two (22) foot setback for the home 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.

Likewise, the three (3) foot discrepancy between the required five (5) foot setback and the proposed two (2) foot setback for the proposed garage is expected to have minimal impacts on the public health, safety, and welfare (its construction does not jeopardize the minimum required lot coverage for the subject site). Also, according to the applicant, several other properties in the neighborhood—including the neighbor to the immediate south—have existing garages that similarly encroach into the rear yard setbacks of those properties; thus, the overall effect of this current proposal is expected to be largely in keeping with the existing character of the neighborhood.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the minimum rear yard setback requirement for accessory structures is unreasonable in this case due to the minimal nature of its impact, due to the fact that the property most affected by the encroachment maintains automobile-oriented infrastructure

immediately adjacent to the proposed garage location, rather than a structure that might be prone to adverse impacts from the garage's placement. Also, the applicant has stated that his intent for purchasing the land was to construct a two (2) car garage, and the unique layout of the site would make that size of garage impractical to construct given the strict application of the rear yard setback—if the garage were moved further to the east to avoid the setback, it would encroach on an existing landscaped sidewalk and garden area, thus reducing the applicant's enjoyment of his property. Otherwise, a garage of this size, with two (2) vehicle entry points next to one another, could not be accommodated on this site without the need to request another Exception.

Additionally, the strict application of the minimum front yard setback requirements is unreasonable when considering the fact that the existing setback has been a part of the neighborhood since its construction over fifty (50) years ago, with no known complaints to the Community Development Department. The setback regulations are intended to provide open space in the yard free of principal structure. The side yards remain open and maintain a minimum distance of separation from neighboring properties, and the existing encroachment is so minimal as to impart almost no visual impact. Without the Exception for the existing front yard, the applicant cannot have clear and marketable title to the property and cannot complete the Final Plat and complete the land transfer between the two (2) property owners.

Hamilton made a motion to approve the Exception to allow for a reduction of the minimum required rear yard setback for accessory structures from five (5) feet to two (2) feet for a proposed garage, as well as a reduction in the minimum required front yard setback from twenty-five (25) feet to twenty-two (22) feet to obtain clear title to the property for an existing single-family structure in the C-1, Restricted Business District, with the following conditions of approval:

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 Conditional Use Permit shall be approved.
3. The Final Plat of 107 N. 14th Street shall be approved by the Manhattan Urban Area Planning Board and filed with the Riley County Register of Deeds.
4. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION OF THE COMPATIBILITY STANDARDS OF THE MULTI-FAMILY REDEVELOPMENT OVERLAY DISTRICT, MORE SPECIFICALLY, THE SITE DESIGN STANDARDS WITH RESPECT TO THE LOCATION OF PARKING FOR RESIDENTIAL BUILDINGS. THE EXCEPTION WILL ALLOW EXISTING OFF-STREET PARKING IN THE AREA DIRECTLY IN FRONT OF A RESIDENTIAL BUILDING'S FAÇADE THAT FACES TOWARDS A PUBLIC STREET, SUCH AREA BEING BOUNDED BY THE FRONT LOT LINE, THE FAÇADE FACING THE FRONT LINE, AND TWO

PARALLEL LINES EXTENDING FROM THE POINTS ON EITHER SIDE OF THE FACADE THAT ARE CLOSEST TO THE THEIR RESPECTIVE SIDE LOT LINES, PERPENDICULAR TO THE FRONT LOT LINE. THE AREAS IN WHICH EXISTING PARKING IS LOCATED DIRECTLY IN FRONT OF THE RESIDENTIAL BUILDING INCLUDE THE N. 11TH STREET FRONTAGE AND THE BLUEMONT AVENUE FRONTAGE. THE EXCEPTION IS REQUIRED TO ALLOW A PROPOSED BUILDING ADDITION TO THE EXISTING APARTMENT BUILDING FOR PROPERTY LOCATED AT 1026 BLUEMONT AVENUE IN THE R-3/M-FRO, MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND MULTI-FAMILY REDEVELOPMENT OVERLAY DISTRICT (APPLICANT/OWNER: ZACHARY J. BURTON AND AMBER R. BURTON).

Bunger presented the staff report and recommended approval for the Exception requests at 1026 Bluemont Avenue.

Kent asked for clarification of the proposed building addition. Bunger clarified the description of the building addition.

Hamilton asked about the floor plan and its relationship to the amount of parking provided. Bunger referred to the applicant to provide a floor plan. Bunger explained the requirements for the off-street parking requirements for the different bedroom mix in the building.

Hamilton expressed concerns about the amount of parking and the design of the buildings. Bunger explained that all rooms that function as bedrooms will be counted as bedrooms, regardless of the label on the floor plan.

Aistrup opened the Public Hearing.

Zac Burton, applicant, provided information to the Board on the building design and building permit requirements.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton stated that she would like to uphold the design standards of the M-FRO District, but given the circumstances of the property, it doesn't make sense to require that. She was glad to that the building will be updated and that the landscaping will be improved.

The Board made the following findings of fact for the Exception for 1026 Bluemont Avenue.

PRESENT USE: Existing three-story, thirteen (13) unit apartment building.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other than the nonconforming off-street parking spaces, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-3/M-FRO, R-3/M-FRO, Multiple-Family Residential District and Multi-Family Redevelopment Overlay District. The property immediately to the north is the Willie's Villa Multiple-Family Residential Planned Unit Development. To the south and west is Aggieville, zoned C-3, Aggieville Business District. The residential area is primarily multiple-family dwellings or single-family and two-family rental units.

The off-street parking has been in its location since it was constructed in 1983. The nonconforming condition of the subject site was a result of the M-FRO District being adopted in October, 2003. The applicant is proposing to renovate the interior and exterior of the building, along with constructing a building addition. The proposed building renovations, which require the subject site to come into conformance with the M-FRO Site Design standards, should improve the appearance of the subject site.

There are a number of shrubs and bushes that provide a visual buffer of the parking lot. The applicant has proposed to plant addition shrubs to create a solid vegetative screen of the parking lot. The site plan shows these shrubs will be thirty (30) inches tall and be planted three (3) feet apart. No adverse impacts on adjacent properties should occur by approving the Exception.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Three (3) of the proposed bushes along the southwest corner of the parking lot are located in the vision triangle create by the intersection of Bluemont Avenue and N. 11th Street. They are proposed to be planted at a height of thirty (30) inches. If these plants are maintained at that height, they will not encroach into the vertical area of the vision triangle, which starts at thirty (30) inches above the ground. Other than this issue, the Exception for the existing off-street parking lot should not impact the health, safety or general welfare of the public. The existing parking spaces have been in this location since 1983. The applicants are proposing to install additional shrubs to create a more dense vegetative screening of the parking lot.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The existing off-street parking lot complied with the Zoning Regulations in effect at the time when it was constructed in 1983. The applicants recently purchased the property and are

proposing to construct an addition to the north side of the building and renovated the exterior as well as the interior of the building. The M-FRO District regulations require that any addition or modification to the exterior of the building, the Site Design standards shall apply. The intent of the M-FRO District Site Design standards is to place buildings towards the front property lines and have the parking lots to the side and rear of the structure. Because of the development of the subject site, with the building being located along the east property line and away from the front property line along N. 11th Street, no feasible options exists to maintain the building and bring the parking lot into conformance. The strict application of the regulations is unreasonable considering that the parking lot has been in its location since 1983 when the multiple-family dwelling was built. The proposed exterior renovations and building addition could not be done without approval of the Exception.

Hamilton made a motion to approve the EXCEPTION of the Compatibility Standards of the Multi-Family Redevelopment Overlay District to allow existing off-street parking in the area directly in front of a residential building's façade that faces towards a public street for a proposed building addition to the existing apartment building at 1026 Bluemont Avenue in the R-3/M-FRO, Multiple-Family Residential District and Multi-Family Redevelopment Overlay District with the following conditions of approval:

1. The Exception shall apply only to the existing off-street parking lot as described in the application documents and shown on the site plan.
2. The proposed landscaping buffer shall be planted as proposed. At the time of planting, the landscape stock shall have a maximum separation of three (3) feet on center to screen the parking lot from N. 11th Street and Bluemont Avenue.
3. The shrubs located in the vision triangle shall be maintained at a height no greater than thirty (30) inches.
4. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FOURTEEN (14) FOOT FRONT YARD SETBACK TO TWO (2) FEET FOR A PROPOSED FENCE 621 N. JULIETTE STREET IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT (APPLICANT/OWNER: AARON AND SINA BRENT)

Bunger presented the staff report for the Exception request at 621 N. Juliette Street. The staff report recommended denial of the Exception request.

Kent asked for City Administration's recommendation if the Board was inclined to approve the request. Bunger provided the clarifications.

Kent asked if there were any vehicular issues with the location of the fence. Bunger explained that there were no vision clearance triangle issues.

Aistrup opened the Public Hearing.

Aaron Brent, applicant, provided the Board with information regarding the existing fence on the property, the new fence under construction and their desire to enclose his rear yard for the privacy and enjoyment of their rear yard.

Aistrup asked Brent if he was agreeable to City Administration's proposed conditions of lowering the height of the fence and create a picket style fence. Brent would be willing to lower the fence height, but was reluctant to create a picket style fence to reduce the amount of trash blown or thrown in the yard.

Kent asked for clarification on the former fence and the new fence. The applicant and the Board discussed the former fence and the one being proposed.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton stated she understood the applicant's needs for fencing in the yard for the enjoyment of the family. She stated that was having trouble balancing the need for the fence and maintaining the order of the front yard along the street. She felt that it was indisputable that the proposed fence would block the order of the front yard. Similar fences that the Board had approved were wrought iron type fences that were open and see through.

Lavish stated she was struggling with the request also. She asked if the Board felt that the compromises recommended by the staff were acceptable.

Kent said that he felt the proposed compromises were reasonable to give the applicant his wants and needs and maintains the front yard along the street.

Aistrup felt that the compromises were appropriate. He did not have an issue of how the side yard between the adjacent properties were fenced, but he did want to maintain the front yard sight lines because it was a part of the character of the neighborhood.

The Board made the following findings of fact for the Exception for 621 N. Juliette Street.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The house and detached garage have a number of setbacks. According to the Riley County Appraiser's office, the house was built in 1920 and the detached garage was built in 1930. The house was built approximately four (4) feet from the south property line, which is considered a side property line. The detached garage was built two (2) feet from the south property line. Both of these conditions encroach into required side yard setbacks for principle structures and accessory

structures. It appears, based on the age of the structures that they are legally nonconforming conditions to the property. These conditions were not advertised for clear title.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. One block to the east, properties are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District.

The applicant is proposing to install an approximately six (6) foot tall white vinyl privacy fence approximately two (2) feet from the front property line. The application documents state that the fence is desired to give their children a fenced in backyard to play in. The application documents have also noted need to safety and privacy because of late night pedestrian traffic in the area. "We have busy late night traffic and have consistently seen people walking through our back yard and had minor vandalism due to late night travelers."

The proposed fence would not be a minor encroachment into the fourteen (14) foot front yard setback. Properties to the south of Moro Street along N. Juliette Avenue (including the subject site) are oriented to the east and west, with most homes on those properties facing N. Juliette Street. All other properties along the "side streets," such as Moro Street and Laramie Street are oriented to the north and south, with the homes on these properties facing the "side street." This development pattern was established when the City was originally platted in 1858. The proposed solid screening fence would disrupt the visual front yard building line along Moro Street. The homes on Moro Street have a common building setback of approximately fourteen (14) feet.

There are a number of corner lots in the area that have fences in the required front yard setback. However, these fences are all on lots that are orientated to the north and south. These fences do not disrupt the visual building line of the front of the houses, when compared to the proposed fence on the subject site. The Community Development Department has spoken with the applicant about alternatives that would lessen the visual impact on the established building line along Moro Street. These alternatives include constructing a picket styled fence to create a see through design that would blend into the area, and/or create a shorter fence that would be less than five (5) feet tall. The applicant stated that he wanted the six (6) foot tall screening fence because of need for privacy. The Board may consider these options as a condition of approval to lessen the encroachment of the fourteen (14) foot front yard setback by a fence.

As proposed, the six (6) foot tall screening fence would negatively impact adjacent property. The Board finds that the four (4) foot tall, open picket style fence will mitigate these concerns sufficiently in this circumstance.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed fence does not impact any vision clearance triangles created by the street or alley intersections or the intersection of a driveway with a street. The proposed is not located in a utility easement. The location of the proposed fence would disrupt the public order along Moro Street by visually breaking of the

front building lines of homes to the west of the subject site.

As proposed, the six (6) foot tall screening fence would adversely impact the public health safety and welfare. The Board finds that the four (4) foot tall, open picket style fence will mitigate these concerns sufficiently in this circumstance.

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

The strict application of the Accessory Use Regulations would require the fence to follow the front yard setback of the TNO District, which is fourteen (14) feet. The applicant wants the fence at the proposed location to give their children a safe and private play area. There are also concerns of wanting to protect against trespassers and vandalism.

The subject site is orientated to the east and west, with the homes front door towards Juliette Avenue. All other properties to the west are orientated to the north and south, with the front doors facing Moro Street. The location, height and solid privacy design of the fence would disrupt the visual front building line along Moro Street and would negatively impact adjacent properties and the general public. Alternatives exist to lessen the visual impacts of the fence on the adjacent properties and the public; however the applicant desires the solid privacy fence for reasons stated above. Considering the proposed fence's adverse impacts, requiring the minimum fourteen (14) foot front yard setback appears to be reasonable.

The Board finds that the alternative design and height of the fence compared to the applicant's proposal would mitigate concerns of its impacts on the adjacent properties and the general public. Considering this, the strict application of the regulations is unreasonable.

Kent made a motion to approve the Exception to allow for the reduction of the minimum required fourteen (14) foot front yard setback to two (2) feet for a proposed fence in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District with the following conditions:

1. The Exception shall be limited to the proposed fence as outlined in the application documents and shown on the site plan.
2. The fence shall be an open picket style fence to maintain a see-through design
3. The fence shall be maximum of four (foot) tall.
4. The fence shall be maintained in good condition.

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

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR THE MODIFICATION OF A LEGALLY NON-CONFORMING CONDITION WHERE TWO (2) PRINCIPLE RESIDENTIAL STRUCTURES ARE PRESENT ON A SINGLE ZONING LOT IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE MODIFICATION CONSISTS OF AN APPROXIMATELY TEN (10) FOOT BY TEN

(10) FOOT BUILDING ADDITION UNDER CONSTRUCTION ON THE NORTHWEST CORNER OF THE HOUSE AT 614 KEARNEY STREET, AND FOR AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM EIGHT (8) FOOT SIDE YARD SETBACK ALONG THE WEST PROPERTY LINE TO SIX (6) FEET FOR THE PROPOSED ADDITION AND THE EXISTING STRUCTURE (APPLICANT/OWNER: NICK AND BONNIE ZACK).

Bunger presented the staff report and recommended approval of the Conditional Use/Exception requests at 614 Kearney Street.

Bunger explained the recommended condition of approval #4 “The construction shall be complete within six (6) months of the Notice of Decision unless the Code Service Office authorizes an extension.” The Board then discussed the meaning of condition #4 if it was not met.

Hamilton asked what happened to the previous appeal. Bunger explained the Conditional Use and its impact on the grandfathering of the property.

The Board and Bunger further discussed the meaning of condition #4.

Aistrup asked how long the construction of the addition had been going on before it was discovered by the Code Service Office. Bunger did not know the answer and referred to the applicant for the answer.

Aistrup opened the Public Hearing.

Nick Zack, applicant, presented information and photos of the building addition under construction.

Aistrup asked if the 6 month time line for completion would be an issue for the applicant. Zack explained that he did not have any issues with that timeline.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton stated she was supportive the request and the need for the applicant’s desire to construct the addition. She did say she thought that the scale of the building addition changed the character of the property and could impact the surrounding properties, but was willing to support with the staff report.

The Board made the following findings of fact for the Conditional Use/Exception for 612/614 Kearney Street.

PRESENT USE: Two legally nonconforming single-family dwellings on a single residential

lot.

THAT THE SIZE OF THE ZONING LOT IS NOT INCREASED FROM THAT WHICH CURRENTLY EXISTS

The subject property is Lot 275, Ward 3, which is a typical rectangular shaped Ward lot. The lot is to the north of Kearney Street and has a lot width of fifty (50) feet and a lot depth of 150 feet. Lot 402 is 7,500 square feet in area. The lot size is not increased from what currently exists.

THAT EITHER, THE CURRENT EXISTING USE HAS NO SIGNIFICANT ADVERSE IMPACT ON EITHER THE SURROUNDING NEIGHBORHOOD OR PUBLIC, HEALTH, SAFETY OR GENERAL WELFARE AND THE PROPOSAL WILL NOT WORSEN THE IMPACT; OR, (B) THE CURRENT EXISTING USE HAS A SIGNIFICANT ADVERSE IMPACT AND GRANTING THE PROPOSAL WILL MORE LIKELY REDUCE OR ELIMINATE THE IMPACT COMPARED TO A DENIAL OF THE REQUEST:

The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. To the north of Vattier Street are properties that are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of single-family, two-family and multiple-family dwelling units. A significant number of dwelling units in the area are rental units.

The legally nonconforming condition of the subject site is that it has two (2) principle residential structures on the same Ward lot. The use of both principle structures is a single-family dwelling. The existing uses of both structures are similar to adjacent properties and do not adversely impact surrounding properties or the general public.

The Zoning Regulations indicate that a legally nonconforming use shall be deemed a conditional use in the zoning district in which it is located. In general, a legally nonconforming use cannot be expanded, enlarged or increased in intensity beyond that which existed when it became legally nonconforming unless a conditional use is approved. An expansion, enlargement or increase in intensity is the use of additional structures, land area, or floor space within the same structure not originally designed or arranged for such use.

The applicant began the 16 foot by 18 foot building renovation and nine (9) foot by ten (10) foot addition to 614 Kearney Street to replace the existing shed roof because of damage and to provide the bedrooms at the rear of the house with additional square footage and taller ceilings. The addition occurs at the rear of the house and matches the character of the existing structure and surrounding properties. The west roof eave encroaches into the minimum required eight (8) foot side yard setback from the west property line. The existing house has been in this location since it was constructed in the 1910's. The building renovations and addition matches the existing walls and roof eaves along the sides of the house. No adverse impacts from the proposed expansion of the structured devoted to the legally nonconforming condition is anticipated.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS, EXCEPT EXISTING LEGALLY NONCONFORMING CONDITIONS AND ANY NECESSARY EXCEPTION OF THE REGULATIONS:

The location of the existing structures on the subject site has several legally nonconforming conditions. The building renovations under construction are located approximately six (6) feet from the west side property line and encroach into minimum required eight (8) foot side yard setback. The building addition maintains the existing building lines of the sides of the house.

The applicant began construction of the building addition without a building permit. The City of Manhattan Code Services Department has issued a stop work order because of not obtaining a building permit. The Conditional Use/Exception is being sought to resolve this issue and allow the property owner to complete the expansion project on the garage.

THE EXISTING USE WILL CONTINUE IN SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE THE PROPOSED USE MORE MODERN OR EFFICIENT: The building renovations and addition under construction is similar in form and character to that of the existing building. The building renovations and addition alters the building's roof line towards the rear yard from a shed roof to a gabled roof to allow higher ceilings for the bedrooms. From the street view along Kearney Street, the building addition cannot be seen. The building improvements under construction provide for a more efficient use of the bedrooms in the house at 614 Kearney Street by giving the occupants a higher ceiling height compared to the existing shed roof.

Kent made a motion to approve of a CONDITIONAL USE to allow for the modification of a legally non-conforming condition where two (2) principle residential structures are present on a single zoning lot in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The modification consists of a new gabled room and an approximately ten (10) foot by ten (10) foot building addition under construction on the northwest corner of the house at 614 Kearney Street, and for an EXCEPTION to allow a reduction of the minimum eight (8) foot side yard setback along the west property line to six (6) feet for the proposed addition and the existing structure. The following conditions of approval shall apply:

1. The Conditional Use shall apply to the building renovations and addition as outlined in the application documents and site plan.
2. The Exception shall be limited to the west side yard setback for the building renovations and additions.
3. All applicable permits shall be obtained.
4. The construction shall be complete within six (6) months of the Notice of Decision unless the Code Service Office authorizes an extension.

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

A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW TWO (2) EXISTING AWNING SIGNS ALONG CLAFLIN ROAD AT 1150 WESTPORT DRIVE IN THE C-2, NEIGHBORHOOD SHOPPING DISTRICT (APPLICANT: THE FRIDGE WHOLESALE LIQUOR – KEVIN NITZEL, OWNER: FUGATE ENTERPRISES – J. LARRY FUGATE, TRUSTEE).

Bunger presented the staff report and recommended approval for the Variance requests at 1150 Westport Drive.

Hamilton asked for clarification that the Board was only concerned with the existing awning signs on the front of the building toward Claflin Avenue. Bunger said that was correct. She was asked for clarification that the City has addressed the window signs or temporary banner signs that exist or were recently removed. Bunger responded that that was correct.

Hamilton then asked about the illumination of the awning signs. Bunger said that he did not know the illumination characteristics of the awning signs, but they are not in questions with the Zoning Regulations or the Variance request.

Aistrup opened the Public Hearing.

Kevin Nitzel, applicant, explained how the signs came about and why the signs did not receive a permit. He said that he would personally be getting the needed permits. Nitzel also answered the questions regarding of the signs and the lighting of them. Nitzel did say that he visited with neighbors surrounding his business and sought their approval.

Aistrup closed the Public Hearing and opened Board Discussion.

Kent said that he lives very close to that property and didn't know if he should abstain or not from the hearing, but he didn't not have any issues with the signs.

Aistrup felt that the signs were compatible with other business signs in the area. The Board made the following findings of fact for the Variance at 1150 Westport Drive.

PRESENT USE: Package Liquor Store

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is a large lot with a large building in the C-2, Neighborhood Shopping District. The building is orientated toward Claflin Road, which is a major collector street. The 1993 Variance staff report states that the area in the C-2 District does not have a shopping center setting, but rather a highway business appearance. This area along Claflin Road has continued to develop in more of a highway business corridor with individual buildings with businesses oriented towards vehicles, such as several drive-thru restaurants and a drive-thru bank under construction. This development pattern is unique to this area zoned C-2, Neighborhood Shopping District.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surround properties to the immediate south and west are zoned C-2, Neighborhood Shopping Center. Further to the west is the West Loop Shopping Center PUD, Commercial Planned Unit Development and properties zoned R-3, Multiple-Family Residential District. Properties to the east are zoned C-1, Restricted Business District. Properties to the north are the Claflin Residential PUD, and the Westport Commons Commercial PUD.

The number and size of the illuminated wall signs have been existent since 1993 when the Board of Zoning Appeals approved the Variance to allow them to be installed. The applicant has re-faced the signs, but has not enlarged or changed the structure of the signs. The signs located on the interior of the building are excluding from the Sign Regulations. According to the applicant, the existing window signs are to be removed.

The applicant has provided a form letter of support from eleven (11) adjacent property owners or business owners. The Variance request should not adversely affect adjacent property owners.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: As stated in the 1993 Variance staff report, “ Strict application would prohibit 2 additional signs, however, when all 3 signs square footage is added together, total square footage is 166 square feet less in are than would be allowed for a single sign. The proposed signs are consistent with the applicant’s signage package. The regulations would prohibit that presentation.”

The Board found that the sign package was appropriate for the building, but conditioned approval of the number of signs to the specific business located within the building. No adverse impacts on the surrounding properties have been seen by the number of signs on the building. Prohibiting the re-faced sign package previously approved by the Variance for this permitted use in the C-2 District would be an unnecessary hardship to the applicant.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal impacts on the general public are anticipated. The number of signs has been in place on the subject site since 1993. The sign and illumination characteristics are similar to that of other properties in the immediate area.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the number of the regulation is to restrict the number of signs a business can have in a typical shopping center setting. The existing building is on a separate zoning lot in an area outside of a shopping center environment. The building would be permitted one (1) sign up to 630 square feet in area. The existing three (3) signs have a total area of 464 square feet. Considering these factors, the intent of the regulation is met.

Kent made a motion to approve a VARIANCE to allow two (2) existing awning signs along Claflin Road in the C-2, Neighborhood Shopping District with a condition of approval that the applicant shall apply for and be issued a sign permit for the existing signs.

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

Aistrup adjourned the meeting.

Respectfully Submitted,

Chad Bunger, AICP, CFM, Planner II