

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, November 9th, 2011
7:00 PM

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

MEMBERS ABSENT: Harry Hardy, Vice Chairperson; Catherine Lavis.

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

CONSIDER THE MINUTES OF THE OCTOBER 12, 2011, BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the October 12, 2011 minutes, which was seconded by Kent and passed with a vote of 3-0.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR AN APPROVED EXCEPTION TO ALLOW FOR AN INCREASE OF THE MAXIMUM THIRTY (30) PERCENT LOT COVERAGE TO THIRTY-FIVE (35) PERCENT FOR A PROPOSED SINGLE-STORY OFFICE BUILDING AT 1509 AND 1515 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT/OWNER: CALVIN EMIG).

Hamilton moved that the approved Exception for 1509 and 1515 Poyntz Avenue be moved to be granted a 180 day extension. Kent seconded, and the motion passed 3-0.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED OFF-STREET PARKING FOR A PROPOSED CHURCH WITH TWO-HUNDRED (200) FIXED SEATS FROM FIFTY (50) SPACES TO TWENTY-THREE (23) SPACES AT 821 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT: MANHATTAN MENNONITE CHURCH – RICHARD GEHRING).

Hamilton moved that the approved Exception for 821 Poyntz Avenue be moved to be granted a 180 day extension. Kent seconded, and the motion passed 3-0.

CONTINUE 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 a Conditional Use at 1810 Todd Road be removed from the table. Kent seconded, and the motion passed 3-0.

Aistrup then suggested that the two items pertaining to 1810 Todd Road be heard together.

A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A VARIANCE TO ALLOW A REDUCTION IN THE MINIMUM REQUIRED LOT AREA FOR A CONDITIONAL USE IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT, FROM 10,000 SQUARE FEET TO 7,430 SQUARE FEET FOR A PROPOSED LODGING/BOARDING HOUSE AT 1810 TODD ROAD IN THE EXISTING BUILDING. (APPLICANT/OWNER: GARY GLATZ AND LELA BECK-GLATZ).

Bunger presented the staff report for both items. He recommended denial of both the Conditional Use for the existing house and the Variance as described in the staff reports.

Kent asked whether, in a broader context, Bunger felt that the parking situation would be unfair to the neighbors. Bunger replied that, without knowing exactly how long approximately seven people had been living in the house, it seems that the parking currently provided seems to handle the needs of the residents. However, he added that parking is at a premium in this neighborhood, being so close to campus, and that if the number of bedrooms were increased, or more people were allowed to live in the house, it would be very impactful on the neighborhood.

Kent then asked if Bunger believed that the neighborhood would be adversely impacted by the proposed number of residents in the house. Bunger explained that the neighborhood has such a wide mix of residential uses and densities that, other than the immediate property owners, he does not believe that the impact will be particularly substantial. However, he reiterated his belief that allowing the proposed number of people to legally reside in a building that is connected to the property immediately to the west, a single-family home, would present a harmful impact.

Kent asked if the adjacent property owners had filed an objection to this proposal. Bunger replied that they had not, and in fact had filed a letter of support which was provided in the Board's packet.

Hamilton then asked why the parking in the front yard had not been raised as an issue in the proposal. Bunger said that it was originally designed and built that way, and it appears to be a legal nonconformity, so the Staff did not address it in the report. Bunger added that, in his estimation, the property had enough other issues that if it were able to address them all satisfactorily, the parking in the front yard would almost be a moot point. Hamilton said that she did not understand why that would be the case. Bunger replied that a Zoning Inspector had approved the plans when the property was originally built, and thus, although Bunger failed to mention it in the Staff Report, the Staff considers the parking in the front yard to be a legal nonconformity.

Hamilton then clarified whether, in the standards for Conditional Uses, in the section entitled "Compliance with all applicable regulations," Bunger would indicate that the front yard parking is a legally nonconforming condition of the property. He confirmed that he would indeed label it that way, and added that the side parking on the site was also designed and constructed with the property and was not a recent addition to the site.

Bunger explained further that, being a single-family attached dwelling, parking is permitted in the front yard in parking spaces or driveways – that is the case because the property is not technically a multi-family use, even though it currently functions as such. He explained, however, that it is a very unusual circumstance, and that the parking would not meet the requirement for 75% open space in the front yard, which that they have often dealt with on applications for Variances – an inability to meet that requirement would constitute the legally nonconforming condition.

Hamilton then asked whether the 7,500 square foot lot area that was created in 2000 when the lot was split was sufficient for its use in the R-2 District. Bunger said yes, and that the minimum lot area required for a single-family attached dwelling is 3,750 feet. Hamilton then clarified that when the lot was split, the owners did not create any problems for using this structure as a two-family or single-family dwelling. Bunger agreed.

Hamilton asked whether they could add a kitchen and separate the dwelling units to create a two-family use, and Bunger replied that doing so would, in fact, be a violation, because although the building is in an R-2 district, its use is as a single-family attached dwelling, and creating an additional unit would change that use.

Aistrup then added that the reasoning behind applying for a Conditional Use to operate a lodging and boarding house was due to exactly this fact, that they could only legally have one kitchen in the building. Bunger added that, if it were possible, adding a kitchen and creating a separate dwelling unit would be the easiest way out. Bunger then read the definitions of two-family and single-family attached dwellings from the Zoning Ordinance, and explained again that because the entire building itself was designed and intended to house two units total, it is

not possible to exceed that total for the structure, even if it is now divided into two properties with two owners.

Kent then asked what, specifically, makes the property not comply with the standards for Variances. Bunger replied that, in terms of the Conditional Use, the Staff's specific concern is based on the adverse impact to the adjacent property owner to the immediate west, even though they have not objected to the proposal. He added that for the Variance, the reduction in minimum lot area from 10,000 square feet required to 7,500 square feet is problematic, as well as the fact that there is really no unique condition or hardship for the property owner, who still maintains the ability to rent it to up to four unrelated persons.

Kent then asked for clarification as to which standards were not being met, if the adjacent property owner had not complained; Bunger explained that one of the standards for the Conditional Use, "Effect on adjacent properties," and three of the standards for the Variance had not been met.

Hamilton then indicated to Kent that she saw the matter in a slightly different way – the Zoning Ordinance requires a minimum lot area of 10,000 square feet in order to conduct a lodging and boarding house, and this property does not meet that size requirement. If obtaining the Variance for that reduction is problematic, as Bunger has expressed, then there is no way the property can obtain a Conditional Use Permit, because it would not be able to show that it had met all applicable regulations.

Bunger agreed and suggested that the Board open the public hearing.

Aistrup opened the Public Hearing.

Gary Glatz, applicant, came to the podium and began by thanking City Administration for their help in the process. He then explained that he had prepared a written narrative which was included in the Board's packet, and that he had made several changes to the plans on his computer that day, which had subsequently been lost when he tried to upload them. He explained that he saw two key issues in addition to the specific ordinance: one is the nature of the surrounding neighborhood, and how that applies to the law allowing no more than four unrelated persons to live together, about which Glatz said he had done quite a bit of research. Glatz then presented the narrative that he had prepared.

Aistrup closed the Public Hearing and opened Board Discussion.

Kent proposed that, due to the quality both of the presentation and the house itself, and the unique circumstances of the property and the area in which it is located, that the Variances should be approved. He added that the quality of the maintenance of the house is exceptional, and that there has not been any public opposition to the item.

Hamilton then said to Kent that there are two items before the Board: one is the Variance, and the other is the Conditional Use Permit, which have different standards. Kent said that he

understood. Hamilton asked Kent if he thought both of those had been satisfied; he replied by saying, I'm satisfied.

Aistrup then said that this type of matter is one of the most difficult that they face as Board members; he explained that the standards that the Board has to meet are set by law, and often they see applicants come before the Board trying to skirt the boundaries of the law. Aistrup then addressed the applicant and said that he knows that the City Staff has cooperated with Glatz so much because he is a good property owner, they know that he does his job, they know that he pays his taxes, and they know that he has nothing but good intentions – that is the reason why this type of case is so difficult. Aistrup reiterated that the problem is that for Variances, there are standards that the Board has to abide by, and there are three of those that are clearly not being met. He then said that maybe if they could get two of those reconciled, he might feel better, but added immediately that really, they are supposed to meet all five of the standards for Variances. He said that he is open to hear his colleague as to why maybe they might want to think differently about the particular standards that are not met, and how they might rewrite the findings so that we could perhaps address the applicant's issue. He added that he is open to that type of discussion because he is sympathetic to this type of appeal. However, the problem that Aistrup also sees with this item is due to the precedent that gets set, and that while he appreciates Gary, and has no doubt that even if there were eight or nine residents living there, he knows that everything would be taken care of, Aistrup is more concerned about the property owners that surround the site, and that, as can be seen by the existing pattern of use, there is not much respect for those properties. Now, all of a sudden, they have set up a situation where they create a precedent for other to jam-pack their houses and, unlike Glatz, they do not have separate bathroom facilities for every living space. And, Aistrup added, having been on this Board for now almost six years, he could see that type of situation occurring.

Hamilton then said that she shares Aistrup's concerns, and that, for her, working with the Variance is critical because if they can somehow determine that the property qualifies for the Variance, then that eases some of the problems for the Conditional Use. She then said that while it seems like such a unique piece of property, it isn't in a different kind of sense, in that it is an R-2 lot, a small and functional R-2 lot, and happens to be next to some very high intensity non-residential uses. She then stated that the standards of "Conditions unique to the property" and "Unnecessary hardship" are very hard to meet in her opinion, because the current lot size is not a hardship for R-2 use. She doesn't see the intensive sorority use across the street or the mixed use beside the property impacting this standard the way the applicant wants to apply it here. She then clarified that she is having trouble accepting that someone who has a very functional lot can meet the standards for a Variance to make it a Conditional Use. Hamilton added that it reminds her of the time in which the City put a minimum sixty foot lot width on multi-family uses, and that even though people complained that they should be granted a Variance because they were only ten feet short of the requirement, the purpose of the requirement was to say, you need to have a bigger lot and more space if you want to do something multi-family inside a residential setting – that is how she sees this item, that the City is saying that you need to have more space if you are going to have a Conditional Use.

Hamilton then asked Bunger if 7,500 square feet was typical to the surrounding R-2 lots. Bunger replied that there are only three lots that are zoned R-2 in the surrounding area: the single-family home attached to the subject site, and the Cats for Christ building to the immediate east. The remaining properties are zoned R-1, Single Family Residential, and then to the south are properties zoned R-2, Multi-family Residential with the University Overlay. He added that the R-1- zoned properties to the north and west range anywhere from 8,000 to 9,500 square feet in area, so they are larger than the subject site.

Hamilton then asked what the typical grid lot area was, in terms of setting precedents, and Bunger replied that it was 7,500 square feet, very comparable to the subject property. Hamilton said that in granting the Variance and Conditional Use here, the Board would open up consideration to all of the properties in the older part of town which have similar lot sizes. She then asked Aistrup what the standards were that he was concerned about for the Variance.

Aistrup replied that, while he was just thinking out loud, if they go to the “Probable effect on adjacent property owners,” he does not think that they can argue that any of the adjacent property owners will be affected by the property’s move to a lodging and boarding house. He then said that if they were to go through and change the findings for the “Probable effect on adjacent properties” section, it would be the easiest standard to meet. Aistrup then explained to Kent that the Board has to go through and change the Findings of Fact for each standard in order to find support for the Variance. Aistrup then continued, saying that if they go on to “Unnecessary hardship from strict application of the regulations,” Aistrup is sympathetic to Gary in that there is a certain cost involved, the building is such a large space, it requires five hundred dollars in utilities just to keep it going; however, Aistrup added, you also know this when you buy it, even if the applicant may have been misinformed about the legality of putting that many people into that particular structure. He then asked the Board if there was anything they could say in terms of “Unnecessary hardship” to change that particular finding.

Hamilton reiterated the requirement for the standard, and stated the possibility that it could be an unnecessary hardship because they have a successful, nice building with people already in it. Aistrup stated that this standard is hard to interpret any other way. Hamilton then added that, for that reason, in past years on the Board they have even taken to conducting a vote on every single individual point to see if there were a passing vote for each item.

Aistrup again said that he was having difficulty interpreting that standard in any other way, and that if someone could help him find an alternative, it would be helpful. Hamilton replied that the best alternative she could come up with was that the hardship would be the inability to operate a Conditional Use as proposed, with all of the requisite conditions of approval. She mentioned that she also had a question about how to count family members that use this building as a place to study, and how they would be counted in the Zoning definition of a family. Bunger replied that it was tough to determine, and that although the City has absolutely no way to check on whether the property is complying with the regulations, to the extent that someone is using it as a secluded place of study until the wee hours of the night, they would probably be considered a guest of the owner. However, in the past the daughter has lived there, and the applicant has said that there is a very fair chance that she would reside there, and at that point she would be considered as a resident. Bunger explained that in terms

of the zoning definition of family, as soon as one unrelated person enters the mix, everyone is counted as unrelated, and thus no more than four people could be present.

Kent then stated that, although he is fairly new at this, he could see it in this way: if you are taking away the ability of the property owners, with the size of the facility and the number of bedrooms and all the structure that is there, and the quality of it, to make use of their property under the strict interpretation of the rules, seems to be a hardship. Hamilton responded that you don't want to set up a situation where a person builds a large property with a number of bedrooms and says, now I'd like to be a lodging and boarding house. Kent replied that it is not a new building, but an existing property, and that the other thing that he is concerned about is that the surrounding area is not normal, with the sorority and multi-family housing nearby, and that the quality of the surrounding neighborhood can only be improved by allowing this situation to continue.

Aistrup then said that the problem is that when Tex Winter built the property, he intended to have multiple unrelated people living there; Hamilton disagreed, saying it was built for one family, and they asked Glatz to explain from his seat. Glatz said that the original intent of the property was to provide off-site living for residents of sororities, and when the original owner was informed of the illegality of that use during construction, Brian Winter and his family moved into the 1810 side, and they rented out the other side. So, Aistrup said, it was in fact designed to have multiple unrelated people living together.

Aistrup then asked Hamilton whether they could approve the Conditional Use first in order to create the necessary hardship to approve the Variance; she responded that it was not possible to grant the Conditional Use unless it complies with all applicable regulations, which includes the Variance. She then proposed that the Board say that there was a hardship given the intended operation and the limitations on the Conditional Use that are going to be proposed, and given the site and the history of it. She then said that this is where you would have to throw in your parameters that would try to protect you from precedent. She added that the "Probable effects on adjacent properties" would also have to be modified to make sure that the sororities across the street, the mixed use building beside, and the fact that the structure is not right in the middle of a residential area all be mentioned. Further, she said that this reasoning would have to be worked in to the "Conditions unique to the property," that, prior to the owner buying the property, it was constructed in a way that served the purpose of housing off-campus sorority members. She then speculated that perhaps the original owners could have gotten a Conditional Use Permit to use the structure as it was intended when they built it.

Hamilton continued, saying that the "Relationship to the intent of the regulations" standard was also hard to meet, in that the applicant bought a property that is functionally able to be used, even though it is too big to be economical for a single family. She added that perhaps they could say, as the applicant did, that the proposed use is beneficial to the City's plans and provides quality housing.

Aistrup explained again to the applicant that the Board has specific guidelines, and that even though he is searching for ways in which they could reconfigure the findings to support the applicant's case, as he would really like to do, he personally just doesn't see a way to do it.

Glatz then spoke from his seat, saying that he has a good friend that holds a similar position in the township in which he lives, and that, in discussing the matter with him, he came to the opinion that while the City planning department has to stick to the letter of the law, the Board has a position of latitude to take into account unique situations that certainly are not going to harm the community, certainly have a strong track record, and certainly could be explained to anyone in that neighborhood. He added that apparently many of the R-1 properties have been grandfathered in as two-unit structures, as he saw many homes with two mailboxes on Elaine Road and Todd Road, and that he is trying to resolve the issue up front with City instead of maintaining an existing nonconformity.

Aistrup replied that this is an interesting interpretation, but according to Kansas law, the Variances have standards by which the Board has to abide, and that is the issue at hand. He explained that they cannot just apply their own judgment to this particular situation, even if they want to – and Lord knows he wants to. He then asked if there was anything else to add to the case before them.

Hamilton said that she thinks what she is hearing the Board say, is that, given the unique situation of where this house is located, given the established quality of the operation that is going on, and given the conditions that will be established with the Conditional Use if granted - that the quality and the operation is to continue - then the Board is predisposed to try to make this happen. She continued by saying that they should go to the Variance and look at the first standard.

Bunger then interjected, saying that the headings in the staff report are paraphrases of the true standards; he then asked the Board to go to page four and five of the staff report and read through the full standards listed there, looking at one in particular, number one, to make sure they had a clear understanding of the standards as they go about refining the findings.

After reading, Hamilton explained to Glatz that because the applicant wants to use the property in a way that requires a Conditional Use Permit, he is creating the condition which requires the Variance, which, Aistrup added, is expressly prevented by point A of the Standards for Variances, and that's the rub.

Hamilton then proposed that they don't focus on the condition being the use as a lodging home, but they focus on the condition being the size of the building. Aistrup replied, I'm game, keep going. Hamilton continued, saying that the size of the building is pretty unique to this whole neighborhood and residential development in general, with three stories, lots of bedrooms, lots of accommodation for multiple-family living. She added that the applicant did not construct the building this way. Aistrup continued by saying that he made a logical assumption that if the building was constructed this way it must be intended to be rented out in this way. He added that most people do not know the legality of their property when they buy it. Hamilton stated that you are charged to know the law, and that if the purchase were made based on bad information from a real estate agent, then you sue the real estate agent.

Hamilton then said that it sounds like the Board is saying that the structure itself is unique, being a three story residential building. Aistrup said that he could not think of anything approaching that structure, other than rental units that are properly construed as rental units.

Kent then asked what would happen if they found in favor of the Variance, with a specific condition that it is not to be considered a precedent. Hamilton replied that you can't do that, and that the findings themselves have to establish why other people wouldn't be able to follow in their footsteps. Kent followed up by saying that they are finding it to be a unique property in a totally unique situation. But, Hamilton replied, people will argue that they can meet the standard in the same way, which is what she is most worried about. She then proposed, what if they say, given the property's location, structure, and design - which were not created by the applicant - the property is unique.

Bunger again interjected, saying that he may be overstepping his bounds - to which Aistrup replied, that he has a right to do that. Bunger continued, saying that the Board has accurately stated that Mr. Glatz has a very nice property, does a good job managing it, and, up until the rental inspection, the City had no idea that they had more people living there than they should. Instead, he said that one of City Administration's bigger fears is the precedent that this decision would set up, and that the Board's description of this property as unique - a three-story house with 7,500 square feet of lot area that was designed for something other than it is being used - identically fits many properties throughout the City, including some a stone's throw from this property. He continued by saying, that is our fear; this is nothing against Mr. Glatz and his operation, and trust me, if we could find a way to work it out I'd be really happy, but I also know what could come down the pipe.

Hamilton then asked, but the stone's throw wouldn't include a compromised residential setting due to the mixed use facility with parking right next door and the intensive sorority and University Overlay surround, would it? Aistrup responded that if you go through the Denison area, you have all that mixed R-1 with fraternities, and you can easily imagine someone buying a property near a parking lot and trying to do the same thing. He went on to say that he has struggled enough with this now to understand that City Administration has probably struggled with the same things, and he thinks they have rightly come to the conclusions that they have, sadly.

Even though, Hamilton added, "Probable effect on adjacent properties" is not a problem, and the "Unnecessary hardship" could be mitigated by the proposed use in the conditions, we still are left with "Conditions unique to the property" and the "Relationship to the intent of the regulations".

And again, Bunger said, if you can find these findings to make these work, I'm fine with it, just be mindful of what you're setting up.

Hamilton then addressed Glatz and said, I know that you said you traveled to get to us, so I'm not saying this lightly, but this is the kind of thing that might benefit from more cogitation. Because, the way we have our rules now, what we write down, or what we decide has to be done tonight, and that's making me feel pretty uncomfortable.

Aistrup then said, I would suggest that, if it's ok with Gary, I would certainly entertain a motion to table this to allow for further reflection on the part of the City Staff, and by each of us; of course, we have to be mindful of the Open Meetings Act - we aren't allowed to talk about this in any way, shape, or form, nor through any kind of daisy-chain where we talk through the City Administration back to us, but certainly each one of us could sit down and think about these issues, and also ask City Staff to think about how they might consider it, how they might reconfigure it, given our discussion.

Bunger then said that the Staff's discussions have paralleled the Board's fairly closely; is there any new information or more research to be done, other than just trying to massage the words?

Aistrup said that he thinks it would also be useful to have more Board members here – right now they are operating with just three Board members, and having additional members present on a case of this nature would be useful. It would also allow each of us to think about these findings if we would want to change them. He said that he has to admit that he is not predisposed right now, given what's here, to support this, but on the other hand, he's also open to arguments – arguments by other folks, so I'm not yet ready to vote this down, given the special conditions that surround it, and I certainly want the additional input of my other colleagues who sit on this Board.

Hamilton then asked whether there would be any impact on the households currently living in the residence should the Board decide to table the item. Bunger replied that, tabled or denied, the City would work in abatement with the property owner, most likely until the end of the lease, to make sure that those folks weren't put out on the street. Hamilton then asked that, even though they usually table until the next meeting, there is no actual requirement that this couldn't be tabled until the next convenient meeting for the applicant. Bunger replied, correct, and said to Glatz, Gary, the next meeting is December 14th, and we could tentatively set the date for then, and, after consulting your family calendar, you could request an extension through a letter to the Board.

Glatz said he appreciated that, and that surgery in the off-season had greatly limited his travel, causing them to get to where they were today.

Hamilton then said that she thinks that is Glatz's best shot for any hope of making progress on this. Glatz said that he appreciated their consideration, and that they would work hard to do whatever it takes to resolve this issue.

Kent moved to table the request for a Variance and Conditional Use Permit at 1810 Todd until December 14th, which was seconded by Hamilton and passed with a vote of 3-0.

A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR AN EXCEPTION TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK ALONG SEATON AVENUE FROM TWENTY-FIVE (25) FEET TO SEVEN (7) FEET FOR THE CONSTRUCTION OF A PROPOSED FENCE FOR AN

EXISTING SINGLE-FAMILY HOME AT 3039 JAMES STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: CHRIS AND MILDRED MCNABB).

Credit presented the staff report and recommended approval for the Exception request at 3039 James.

Hamilton asked to see a picture of the fence as constructed once again. She then said that she could support this item, but that her concern, under the “Strict application”, was that when the Board has had fences in corner yards that have been functional front yards, they have also considered whether or not the front yard-scape of neighboring properties would be impaired. She said that she would feel better if there was just a phrase added to the staff report that mentioned the orientation of other homes along Seaton Avenue, and the intense vegetation in the area that mitigates the potential visual impact.

Aistrup also asked Credit to review the aerial photo, and Hamilton mentioned that this confirmed that the houses do not, for the most part, front onto Seaton, and thus do not see the fence from their front yard, making it a much different situation than the similar item that the Board dealt with last month along Juliette.

Aistrup then asked about the other house that was mentioned in the staff report as nonconforming: how high is that fence? Credit said he believed it was also six feet tall. Aistrup said he could support the item.

Aistrup opened the Public Hearing.

The applicant, Chris McNabb, said he could add any additional information if he needed to.

Aistrup closed the Public Hearing and opened Board Discussion.

Kent said that he had no major issues with this item.

Aistrup suggested that they add the additional phrase dealing with intense vegetation to the “Strict application” section of the staff report, which Hamilton then explained, and added that she wanted to include the idea that the views from neighboring front yards were not being impacted.

Aistrup added that the homes' yards along Seaton were effectively side yards, even if the properties happened to be on a corner. Hamilton said that the Board has granted Exceptions in the past when there has been no impairment of a front yard sight-line, and with the vegetation and the orientation of the homes, there is no impairment in this case.

The Board made the following findings of fact for the Exception at 3039 James Avenue.

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 immediate north, west, and east are zoned R-1, Single-Family Residential District. To the immediate south are properties zoned R-3, Multiple-Family Residential District. Further to the east are properties zoned R, Single-Family Residential District, R-2, Two-Family Residential District, and the Shirley Lane Addition PUD. The area is essentially a residential district, with a mix of single- and multiple-family dwellings, both owner- and renter-occupied. Other than the single-family homes of the Kimball Subdivision, there are a few other types of uses in the area (almost exclusively residential), including apartments, townhomes, duplexes, and the St. Thomas More church on Kimball Avenue.

Seeing as the encroachment into the front yard setback is fairly minimal, with approximately twenty-two (22) feet of open yard being left between the fence line and the curb, and that the fence does not intrude into a setback that borders any adjacent property, the overall effect on adjacent properties appears to be negligible; to that effect three (3) of the adjacent property owners have signed a form letter of support stating that they have no objections to the approval of this Exception. The applicant has also noted that there are "zoning irregularities already in existence in the neighborhood" with regard to front yard fences, including a property on Seaton Avenue with an almost identical arrangement; thus, the granting of this Exception would not be out of character with the existing neighborhood.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be minimal effect on the public health, safety or welfare due to this Exception. The fence does not greatly affect line-of-sight down the street, and it is clear of the thirty (30) foot Vision Clearance Triangle at the intersection of Seaton Avenue and James Avenue. Also, there is no existing sidewalk on the east side of Seaton Avenue, where the fence is located, so the visual effect to pedestrians should be minimal; likewise, due to the curvilinear nature of the road network in the subdivision, the visual effect of the building setback line is not readily apparent, and thus this Exception will do little to damage that effect.

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 effects are

expected to result from this Exception.

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

Under the strict application of the regulations, any fence along Seaton Avenue would be forced to exclude a significant portion of what is functionally a side yard, thus unduly reducing the owners' enjoyment of their property in their desire for privacy. In addition, the impact to the surrounding neighborhood and the public at-large due to this Exception will be minimal, thanks to the remaining twenty-two (22) feet of open space left between the curb and the fence, the preservation of existing sight lines, and the lack of a sidewalk on the east side of Seaton Avenue, along which the fence is located.

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 permit adequate line-of-sight down the street, 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 greatly compromised if the requested Exception is granted, given the orientation of the other homes along Seaton Avenue and the existing vegetation on the property and in the area.

Kent made a motion to approve Exception to allow for a reduction in the minimum required front yard setback from twenty-five (25) feet to seven (7) feet for the existing fence for an existing single-family home in the R-1, 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. The fence shall be maintained in good condition.
3. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR 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 THREE (3) FOOT BY FIFTEEN (15) FOOT ADDITION TO THE FRONT FAÇADE OF THE STRUCTURE AT 612 KEARNEY STREET, AND FOR AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM FOURTEEN (14) FOOT FRONT YARD SETBACK TO ONE (1) FOOT FOR THE

PROPOSED ADDITION (APPLICANT/OWNER: NICK AND BONNIE ZACK).

Bunger presented the staff report for the Conditional Use and Exception requests at 612 Kearney Street. The staff report recommended approval of the requests.

Due to some difficulties with the word processing of the staff report, Hamilton clarified that they were looking at both a Conditional Use to modify and existing nonconforming use, and an Exception to reduce the front yard setback.

Aistrup opened the Public Hearing.

Nick Zack, applicant, said that he was present and available for any questions, should the need arise.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton, Aistrup, and Kent said that they could support the item.

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

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

1. **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.

2. **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 proposed addition to 612 Kearney Street would create a covered entrance to the front door of the dwelling. Currently the front façade of the dwelling is flat, with no roof overhang to protect the entrance from the elements. The addition will be approximately seventeen (17) feet wide and three (3) deep. A portion of the addition wraps around the building to the north and behind the front façade of the existing building. It will be approximately eight (8) feet above the front step leading to the dwelling and adjacent public sidewalk. The proposed building addition would place the structure approximately one (1) foot from the front property line.

The existing building has been located approximately four (4) feet from the front property line along Kearney Street since the 1910's. Because of this existing building, this side of the block of Kearney Street has not had a traditional visual building line with a uniform setback of all of the buildings. The building addition would decrease that distance to the front property line to approximately one (1) foot. Although the addition will increase the degree of encroachment of the building into the minimum required front yard setback, it will be approximately eight (8) feet above the grade of the property. This should not further visually disrupt the view along the street or sidewalk. Minimal adverse impacts from the proposed expansion of the structured devoted to the legally nonconforming condition is anticipated.

3. **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 proposed building addition would be approximately seventeen (17) feet wide and three (3) deep and would place the structure approximately one (1) foot from the front property line.

4. **THE EXISTING USE WILL CONTINUE IN SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE THE PROPOSED USE MORE MODERN OR EFFICIENT:**

The proposed building addition would modify the physical form of the dwelling by installing overhang above the entrance to the building. The seventeen (17) foot wide

and three (3) foot deep addition to the front of the building will create a cover for the front door of the dwelling to protect it from inclement weather. The addition will create a more efficient and protected entrance to the dwelling. It should also update the front façade of the dwelling and make it have a more modern appearance.

Hamilton made a motion to approve 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 three (3) foot by fifteen (15) foot addition to the front façade of the structure at 612 Kearney Street, and for an EXCEPTION to allow a reduction of the minimum fourteen (14) foot front yard setback to one (1) foot for the proposed addition. 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.

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

A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK ALONG DELAWARE AVENUE FROM TWENTY-FIVE (25) FEET TO TWELVE (12) FEET FOR A PROPOSED BUILDING ADDITION TO THE FRONT DOOR OF THE HOUSE; AND FROM TWENTY-FIVE (25) FEET TO FIFTEEN (15) FEET FOR A PROPOSED BUILDING ADDITION TO THE SOUTH OF THE HOUSE AND THE EXISTING HOUSE AT 204 S. DELAWARE AVENUE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. THE EXCEPTION FOR THE EXISTING HOUSE IS TO GIVE THE PROPERTY OWNER CLEAR TITLE OF THE PROPERTY. (APPLICANT/OWNER: MICHAEL & SARAH WESCH).

Credit presented the staff report and recommended approval of the Exceptions at 204 S. Delaware Avenue.

Aistrup opened the Public Hearing.

Michael Wesch, applicant, said that he was present and available for any questions.

Aistrup closed the Public Hearing and opened Board Discussion.

Kent said that he had no issues and that he could support it.

The Board made the following findings of fact for the Exceptions at 204 S. Delaware Street.

PRESENT USE: Single-family home.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the Riley County Appraiser's Office, the principal structure was constructed in 1938 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) feet, with a provision that no building should project beyond an existing established setback line—which City Administration believes to be the reason why the building was allowed to be constructed where it was, roughly just fifteen (15) feet from the front property line. The property's Zoning designation changed from "A" to "A-A" Single-Family Dwelling District in 1964, which required a minimum front yard setback of twenty-five (25) feet, thus creating the nonconforming condition requiring an Exception. The subject site's Zoning classification changed to R-1, Single-Family Residential District, in 1969, the District in which it currently remains.

The existing 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-1 District; thus, the applicant is requesting an Exception to allow for a reduction in the minimum setback to fifteen (15) feet in order to obtain clear and marketable title to the property. Since the proposed addition to the southern end of the house will be designed to extend no further than the east (front) wall of the structure, it will likewise need an Exception to allow for a setback reduction to fifteen (15) feet in order to begin construction. The proposed canopy above the front entryway will extend an additional three (3) feet into the front yard setback, and thus requires a separate Exception to reduce the setback to twelve (12) feet.

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

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties to the north, east and south are zoned R-1, Single-Family Residential District. To the west are properties zoned R, Single-Family Residential District; further to the southeast are properties zoned R-2, Two-Family Residential District, along with the Orchard PUD. Also further to the north are the designated historic sites of the McFarlane-Wareham Residence and the Grimes House. The site is not within the environs of the historic properties. The area is largely a residential district, with a mix of single- and multiple-family dwellings, both owner- and renter-occupied. The only major non-residential use within the general neighborhood of the property is the Manhattan High School West Campus to the northwest of the subject site, along Poyntz Avenue.

While the construction of the southern addition (containing the screen-in porch) will add roughly seven hundred and eighty (780) square feet of lot coverage to the property, this amounts to less than two (2) percent of the total lot coverage, due to the large size of the zoning lot. And while the location of the existing structure and the proposed southern addition are currently only fifteen (15) feet from the front property line, they are more than sixty (60)

feet from the curb on Delaware Avenue, due to the street's wide right-of-way. Delaware Avenue was originally platted with a 120 foot road right-of-way in 1858. In addition, the required side- and rear-yard setbacks will maintain a hefty separation between the structure as proposed and the adjacent properties. Thus, the effect to the surrounding neighborhood from granting the Exception for the existing structure and southern addition should be minimal.

Likewise, the covered entry on the east side is unlikely to have any adverse impact on the adjacent properties, as it will extend only three (3) feet into the required setback and be designed in a manner in keeping with the traditional character of the surrounding neighborhood. As stated before, the 120 foot right-of-way of Delaware Avenue ensures that the house appears to be set back well back from the street, thus diminishing the visual impact on the encroachment that is proposed from the entrance canopy.

To that effect, the applicant has provided a form letter of support signed by fourteen (14) of the adjacent property owners, stating that they have no objections to the approval of these Exceptions.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be minimal effect on the public health, safety or welfare due to these Exceptions. The proposed southern addition and existing home will not substantially encroach on the street or change the visual effect of the setback along South Delaware Avenue, which has been well-established for over seventy (70) years. Also, the proposed covered entry will not affect line-of-sight down the street, as it is not proposed to extend more than three (3) additional feet into the setback.

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 regulations in the case of the existing house is unreasonable due to the fact that it has been a well-established part of the visual character of the neighborhood for over seventy (70) years, with no known complaints to the Community Development Department. Also, due to the fact that the proposed southern addition simply aims to follow the structure's existing west wall, and extend no further than the existing east (front) wall, while taking into consideration the other unique conditions of the property—including the extremely wide right-of-way on Delaware Avenue and the unusually-large subject lot—the strict application of the front yard setback regulation in this instance is unreasonable, although other, less-desirable placement options for the southern addition on the site certainly exist.

As for the proposed canopy on the east side of the property, the application documents show that the proposed addition will match the traditional character of the surrounding neighborhood and have the "positive effects of improving the beauty of the house while providing weather protection when neighbors and others come to visit through the front door," according to the applicant. Rather than being a hardship to the neighborhood, this addition is intended to 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.

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 permit adequate line-of-sight down the street, 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 greatly compromised if the requested Exception is granted.

Kent made a motion to approve the Exception to allow for the reduction of the minimum required front yard setback along Delaware Avenue from twenty-five (25) feet to twelve (12) feet for a proposed building addition to the front door of the house; and from twenty-five (25) feet to fifteen (15) feet for a proposed building addition to the south of the house and the existing house in the R-1, 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 by a vote of 3-0.

A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR AN EXCEPTION TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK ALONG BUTTERFIELD ROAD FROM TWENTY-FIVE (25) FEET TO ZERO (0) FEET FOR THE CONSTRUCTION OF A PROPOSED FENCE AT 2501 GALLOWAY DRIVE IN THE BUTTERFIELD, UNIT 2 PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT. (APPLICANT/OWNER: JESSI R. LANE).

Bunger presented the staff report and recommended approval for the Exception request at 2501 Galloway Drive.

Aistrup opened the Public Hearing.

Jessi Lane, applicant, said that the Homeowner's Association in Butterfield has also approved the fence, and the surrounding neighbors also seem to be fine with it, although he did not take the time to get their written approval.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton and Kent said they had no issues. Aistrup mentioned that this was like countless other requests that have come before this Board for six foot privacy fences when a property has two front yards. Hamilton added that the homes were aligned in such a way as to allow it in this case.

The Board made the following findings of fact for the Exception at 2401 Galloway Drive.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations of the established Butterfield PUD, Planned Unit Development, Ordinance No 3244 and the Zoning Regulations, other than for the Exception request.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are single-family homes in the Butterfield PUD. Several existing fences along Butterfield Drive have similar front yard setbacks from the collect street. The existing fences are a mix of four (4) feet tall, chain link fences and six (6) foot tall wooden privacy fences. The presence of fences in this area of the front yard is not out of character for the area.

No sidewalks exist along the south side of the Butterfield Road right-of-way (ROW) where the subject site is located. A sidewalk exists on the north side of the street in the ROW. The lack of a sidewalk in the public ROW adjacent to the subject site gives the visual appearance that the front yard is wider than it actually is. Existing trees and bushes are also present in the ROW adjacent to the subject site, which should soften the visual impacts of a six (6) foot tall privacy fence.

The homes along Butterfield Road are oriented to the side streets, such as Galloway Drive in this area. The location of the proposed fence would not disrupt the front building lines along the collector street. The proposed fence should not adversely impact the adjacent property.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed fence would be outside any platted utility easements on the subject site. The fence will not encroach on the vision triangles at the intersection of Galloway Drive and Butterfield Road or at the driveway and Galloway Drive. There are several similar fences in the immediate area, so the proposed six (6) foot tall fence will not affect the order of the area. The proposed fence should not adversely impact the public's health, safety or general welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the required front yard setback would mandate that the proposed fence be located behind the front façade of the house along Butterfield Road or approximately eighteen (18) feet from the front property line. The Butterfield PUD was designed to provide affordable, single-family homes on smaller residential lots (ranging from 6,500 to 7,500 square feet in area). The subject site is 6,596 square feet in area. These smaller lots have limited side and rear yard space for outdoor enjoyment. Strictly applying the front yard setback requirement along Butterfield Road further limits the amount of yard space that the applicant can use for private outdoor enjoyment. Considering that there are a number of existing fences in the area that are in approximately the same location of the front yard and that the proposed fence will not adversely impact adjacent property owners or the general public, the strict application appears to be unreasonable.

Kent made a motion to approve an EXCEPTION to allow for a reduction in the minimum required front yard setback along Butterfield Road from twenty-five (25) feet to zero (0) feet

for the construction of a proposed fence at 2401 Galloway Drive in the Butterfield, Unit 2 PUD, Residential Planned Unit Development, 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. The fence shall be maintained in good condition.
3. All applicable permits shall be obtained.

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

Aistrup adjourned the meeting.

Respectfully Submitted,

Kevin Credit, Planning Intern