

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, January 11, 2012**  
**7:00 PM**

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

MEMBERS ABSENT: Connie Hamilton

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II;

**CONSIDER THE MINUTES OF THE DECEMBER 14, 2011, BOARD OF ZONING APPEALS MEETING.**

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

**CONTINUE THE PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR AN EXISTING SINGLE-FAMILY DWELLING AT 1400 POYNTZ AVENUE 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: JULIE HAYNES).**

**CONTINUE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR A REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FOR ACCESSORY STRUCTURES FROM THREE (3) FEET TO TWO (2) FEET FOR AN EXISTING DETACHED GARAGE; AND A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO SEVENTEEN (17) FEET FOR AN EXISTING SINGLE-FAMILY STRUCTURE AT 1400 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. NO ADDITIONS ARE PROPOSED FOR THE STRUCTURES. THE EXCEPTIONS ARE TO BRING THE PROPERTY INTO CONFORMANCE WITH THE ZONING REGULATIONS SO A FINAL PLAT CAN BE COMPLETED. (APPLICANT/OWNER: JULIE HAYNES).**

Hardy made a motion to remove both items for 1400 Poyntz Avenue from the table. Kent seconded the motion, which passed by a vote of 4-0.

Bunger presented the staff report for both items concerning the property at 1400 Poyntz Avenue; recommending approval for both items, with conditions of approval.

Hardy stated that he did not see any issues with the requests and could support the items.

Kent agreed with Hardy and could support the items.

The Board made the following findings of fact for Conditional Use at 1400 Poyntz Avenue.

**PRESENT USE:** Existing single-family home.

### **STANDARDS FOR A CONDITIONAL USE**

**A. 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 would be a minimum required setback of approximately twenty-five (25) feet. It is presumed that the front yard setback was measured to the foundation of the main portion of the structure, which is approximately twenty-five (25) feet from the front property line, and not the covered porch over the front door. The existing garage was constructed in 1947, at which time there were no side yard guidelines for accessory structure in the Zoning Regulations.

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). The detached garage does not meet the minimum three (3) foot side yard setback for accessory structures. Thus, the applicant is requesting Exceptions to allow for the reductions of setbacks. 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.

**B. Probable effect on adjacent properties:** The subject site and properties to the immediate north and west are zoned C-1, Restricted Business District. To the north, across the alley, 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 general, the subject site is in an area where adjacent properties along Poyntz Avenue are zoned C-1, with properties zoned R-1/TNO to the north and south of Poyntz Avenue—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 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 sale of land to the neighboring property, as required by Article 1-501 (B) of the Manhattan Urban Area Subdivision Regulations. In addition, the proposed Conditional Use is consistent with the existing character of the neighborhood, and is in fact a less intense use than what the Zoning District 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.

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. The applicant has stated, “14<sup>th</sup> Street along the park has become a meaningful and historic residential amenity.”

**C. 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 structure located roughly in the middle of the lot. The existing garage is located along the west property line. No modifications or changes are proposed to the existing house or garage.
- 2. Landscaping and screening:** The existing lawn is well-maintained, with mature trees and landscape beds along the foundation of the home. There are no fences on

the subject site

**D. Adequate provision of parking and loading:** Section 7-103 (A)(2) of the Zoning Regulations requires that two (2) off-street parking spaces be provided for the single-family home. Adequate parking is provided in the detached garage and on the driveway leading to the garage.

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

**F. Adequate provision of access:** Vehicular access to the existing detached garage is provided off of Poyntz Avenue to the south. Pedestrian access is provided via the front sidewalk along Poyntz Avenue and N. 15<sup>th</sup> Street, which is in good condition.

Hardy moved to approve a CONDITIONAL USE to allow for an existing single-family dwelling at 1400 N. Poyntz Avenue in the C-1, Restricted Business District, with the following conditions:

1. The Conditional Use Permit shall apply to the existing and proposed development as shown on the site plan and stated in the application documents.
2. The associated Exceptions of the required front and side yard setbacks shall be approved.
3. The Final Plat of Brent Bowman Residence Addition 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.

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

The Board made the following findings of fact for Exceptions at 1400 Poyntz Avenue.

**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 would be a minimum required setback of approximately twenty-five (25) feet. It is presumed that the front yard setback was measured to the foundation of the main portion of the structure, which is approximately twenty-five (25) feet from the front property line, and not the covered porch over the front door. The existing garage was constructed in 1947, at which time there were no side yard guidelines for accessory structure in the Zoning Regulations.

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). The detached garage does not meet the minimum three (3) foot side yard setback for accessory structures. Thus, the applicant is requesting Exceptions to allow for the reductions of setbacks. 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 north and west are zoned C-1, Restricted Business District. To the north, across the alley, 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 general, the subject site is in an area where adjacent properties along Poyntz Avenue are zoned C-1, with properties zoned R-1/TNO to the north and south of Poyntz Avenue—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 City Park.

The Exception requests for the existing house and detached garage should not adversely impact the adjacent properties. The existing location of these structures has been a part of the neighborhood since at least 1947 without any known complaints to the Community Development Department. The house was constructed in 1946 and the detached garage was built in 1947. The applicant's requests for the Exceptions are to simply bring the property into full compliance with current Zoning Regulations so that a Final Plat can be completed and finalize a property subdivision between the subject site and the neighboring property to the north.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Adverse impact on the public is not expected. The location of the house and detached garage are similar to other houses and accessory structures throughout the adjacent residential neighborhood to the north. The requested setback reductions is expected to have a negligible or nonexistent impact on public easements, vision clearance, open space provision, and/or overall visual appearance of the surrounding neighborhood.

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

The strict application of the minimum front yard setback requirement for the existing house and the minimum side yard setback for the existing detached garage are 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 front and side yards that are free of structures. Adequate open space has been maintained along N. 14<sup>th</sup> Street and the west property line. The existing encroachments do not visually impact the neighborhood or the character of the area along N. 14<sup>th</sup> Street or Poyntz Avenue. Without the Exceptions for the existing front yard setback for the house and the side yard setback for the existing detached garage, the applicant cannot have clear and marketable title to the property and cannot complete the Final Plat to finalize the land transfer between the two (2) property owners.

Hardy moved to approve the Exception reduction of the minimum required side yard setback for accessory structures from three (3) feet to two (2) feet for an existing detached garage; and a reduction in the minimum required front yard setback from twenty-five (25) feet to seventeen (17) feet for an existing single-family structure at 1400 Poyntz Avenue, 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 Brent Bowman Residence Addition 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 FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY-ONE (21) FEET FOR A PROPOSED TWO-FAMILY DWELLING AT 2713 AND 2715 BUTTWOOD DRIVE IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: BULLSEYE PROPERTY, LLC – TOMMY DILLON).**

Bunger presented the staff report, recommending approval of the Exception, with two (2) conditions of approval.

Hardy commented that the decision cannot be based on the cost to construct a home on the lot, but he was satisfied that the small lots make it difficult to construct homes that are comparable

to other homes in the area. He felt that the applicant has worked to keep the same character of the house as other properties in the area. Hardy stated he could support the item.

The Board made the following findings of fact for Exceptions at 2713 and 2715 Buttonwood Drive.

**PRESENT USE:** vacant single-family attached lot

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site complies with all applicable regulations. The subject site meets the minimum lot width and lot depth requirements of the R-2, Two-Family Residential District.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties are zoned R-2, Two-Family Residential District. The Prairie Lakes Addition is a mix of single-family attached and two-family dwelling units. This particular area of the subdivision has just recently begun developing. There are several vacant lots in the immediate area.

The subject site is comprised of two (2) lots that are among the smallest in the subdivision in lot area and depth. The depth of the lots at the adjoining property line is approximately 106 feet. Because of the lot depth, a minimal rear yard would be anticipated with a typical sized home on the subject site. The property most impacted by the Exception request would be the adjacent property to the south. The two-family dwelling will be as close as sixty-four (64) feet from the two-family dwelling to the south, off of Butterfield Circle. The separation from these two (2) structures should have minimal impacts on each other.

A dedicated twenty (20) foot wide utility and drainage easement is located along the adjoining property line between the subject site and the property to the south (the easement is 10 feet wide on each side of the property line). City Ordinance 32-186 prohibits the construction or location of all structures, fences and even vegetation, other than grass in the drainage easement. The utility and drainage easement will limit the use of the rear yard of the subject site for customary backyard activities and structures, such as garden sheds, playgrounds and gardens. This may impact future property owners and/or residence of the dwellings. The open space created by the easement may mitigate the impacts of the two-family on the subject site to the properties to the south.

A similar Exception was granted for the two-family dwelling unit at 2725 Buttonwood Drive by the Board of Zoning Appeals on September 13, 2006. The Exception was to reduce the rear yard setback to fourteen (14) feet. The location of that structure does not appear to have impacted adjacent properties. Similarly, it does not appear that the proposed Exception request will adversely impact adjacent properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed setback reduction will not cause the proposed residential structure to be located within any utility or drainage easements, or adversely impact the public street rights-of-way. The proposed rear yard setback reduction

is not anticipated to adversely affect the overall 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 rear yard setback regulation in the R-2, Two-Family Residential District, would prevent the proposed two-family dwelling to be constructed. The building could be re-designed to reduce the overall length of the dwellings to accommodate the required building setbacks. The applicant has stated in the application documents that to accommodate the building setbacks that "we would have to build a duplex that has a second story in order to fit within the guidelines. By adding a second story, you add a lot of expense, driving the cost up. This area was built for inexpensive homes. A second story only makes it less affordable for many."

The subject site consists of lots that are among the smallest in the subdivision in lot depth and area. Constructing dwelling units on the subject site that meets the minimum buildings setbacks and is also desirable in size for the housing market appears to be a challenge. Considering this and the minimal impacts that the proposed Exception would have on adjacent properties, it appears that the strict application of the regulations is unreasonable for this particular property.

Hardy moved to approve the Exception to allow for the reduction of the minimum required rear yard setback from twenty-five (25) feet to twenty-one (21) feet for a proposed two-family dwelling at 2713 and 2715 Buttonwood Drive in the R-2, Two-Family Residential District, with the following conditions of approval:

1. The Exception shall be limited to the application documents and site plan.
2. All applicable permits shall be obtained.

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

Aistrup adjourned the meeting.

Respectfully Submitted,  
Chad Bunger, AICP, CFM, Planner II