

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, February 8, 2012
7:00 PM

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

MEMBERS ABSENT: Bruce Kent.

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

CONSIDER THE MINUTES OF THE JANUARY 11, 2012, BOARD OF ZONING APPEALS MEETING.

Hardy moved to approve the November 8, 2006 minutes which was seconded by Hamilton and passed with a vote of 4-0.

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

Hardy moved to approve the 180 day extension, which was seconded by Hamilton. The voted passed by a vote of 4-0.

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

Hardy moved to approve the 180 day extension, which was seconded by Hamilton. The voted passed by a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE, TO ALLOW FOR AN EXISTING TWO-FAMILY DWELLING IN THE C-1, RESTRICTED BUSINESS

DISTRICT. THE APPLICANT IS PROPOSING TO ADD A THIRD BEDROOM TO MAIN FLOOR DWELLING UNIT IN THE STRUCTURE. (APPLICANT/OWNER: PHILLIP VERING).

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY (20) FEET; AND TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY-ONE (21) FEET FOR AN EXISTING TWO-FAMILY DWELLING IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT/OWNER: PHILLIP VERING)

The Board asked that both of these items be heard together. Bunger presented the staff report for both the Conditional Use and Exception for the property at 109 N. 9th Street. City Administration recommended approval for both items, with conditions of approval.

Aistrup opened the Public Hearing.

The applicant was present for questions.

There were no public comments. The Chairman closed the public hearing.

Hardy stated that he did have any issues with the requests and could support both the Conditional Use and Exception.

Hamilton did not express any concerns for the requests. She commented that she appreciates those who make an effort to improve and update older homes.

The Board made the following findings of fact for the Conditional Use at 109. N. 9th Street.

PRESENT USE: Two-family dwelling unit

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: According to the Riley County Appraiser office, the structure on the subject site was built in 1930. At the time of construction, the subject site was in the “A”, First Dwelling House District. The Zoning regulation in effect at that time required “a front yard of not less than twenty five (25) feet” with 5 different exceptions to that standard. One of which was the following:

- (2) Where forty (40) per cent or more of all the property according to the front feet abutting upon one side of the street between two intersecting streets is built up with buildings having an average setback line of more or less than twenty five (25) feet from the street line, no building hereafter erected or structurally altered shall project beyond the average setback line so established; provided further that this regulation shall not be interpreted as to require a setback line of more than 50 feet.”

It appears that the homes along N. 9th Street adjacent to the subject site were built closer than

twenty-five (25) feet and that the exception described above would apply.

The Zoning Regulations at the time of the construction of the house required a minimum of twenty-five (25) of rear yard setback. It is unclear as to how the house was sited twenty-one (21) feet from the west rear property line. The applicant has made Exception requests to bring these issues into conformance.

The use of the subject site as a two-family dwelling was established in 1955. The “A” 1st Dwelling House District permitted the use at that time. In 1969, the subject site and surrounding properties along Poyntz Avenue, south of the alley, were zoned C-1, Restricted Business District. The C-1 District allows, as a Conditional Use, the uses permitted in the R-3, Multiple-Family Residential District. A two-family dwelling is one of the uses permitted in the R-3 District. The subject site has not previously been granted a Conditional Use. The applicant is requesting the Conditional Use and Exceptions to bring the subject site into conformance with the Zoning Regulations and to allow the renovation of the main floor dwelling to add a third bedroom.

B. Probable effect on adjacent properties: The subject site and properties along Poyntz Avenue that are south of the mid-block alley are zoned C-1, Restricted Business District. Properties to the north of the mid-block alley are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of single-family, two-family and multiple-family dwellings, business and professional offices, churches, and the Manhattan High School East Campus.

Immediately to the south of the subject site is the Women’s Club House, a National Registered Historic Site. Because no exterior modifications are proposed, a review by the local Historic Resource Board or the State Historic Preservation Office is not required.

Minimal impact on adjacent properties is expected. The subject site has been used as a two-family dwelling since at least 1955. The current layout of the structure is a main floor dwelling with two (2) bedrooms and a second floor dwelling with two (2) bedrooms. The applicant purchased the property in 2009 and has been repairing and updating the property since that time. He has most recently repaired the front porch to the structure. The addition of a third bedroom to the main floor dwelling unit should not increase noise, light or traffic to a level that would impact the adjacent properties.

As required for the Conditional Use application, the applicant held a neighborhood meeting on December 19th at 6:00 pm at the property to discuss the proposed renovations and the required Conditional Use request. According to the meeting summary, no one attended the neighborhood meeting.

C. Domination by use over neighboring properties:

- 1. Location, nature, and height of physical improvements:** The subject site consists of a two-story structure that was built in 1930. The building faces N. 9th Street. Both dwelling units have their main access from the front door on the front porch. There is a concrete patio immediately to the north of the building.

- 2. Landscaping and screening:** The subject site has mature trees and grass lawns. There are no fences on the subject site.

D. Adequate provision of parking and loading: Five (5) off-street parking spaces in a gravel area are currently located off of the alley to the north. Section 7-103(2) requires that at least two (2) parking spaces be provided for each dwelling unit. The subject site provides adequate number of off-street parking spaces for the use and the number of bedrooms in each dwelling unit.

E. Adequate provision of drainage, and other public utilities: The subject site drains to the north towards the alley and to the east towards N. 9th Street. Utilities exist in the area to serve the subject site. Adequate drainage and utilities are provided.

F. Adequate provision of access: Access to the subject site is from the alley immediately to the north. Public sidewalks are provided throughout the area. Adequate access is provided.

Hardy moved to approve a CONDITIONAL USE, to allow for an existing two-family dwelling and the proposed renovation of the main floor dwelling to add a third bedroom at 109 N. 9th Street in the C-1, Restricted Business District, with the following conditions of approval:

1. The Conditional Use shall apply to the two-family dwelling as described in the application documents and shown on the site plan and floor plans.
2. All applicable permits shall be obtained.
3. The Exceptions for the front and rear yard setbacks shall be approved.

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

The Board made the following findings of fact for the Exception at 109. N. 9th Street.

PRESENT USE: Two-family dwelling unit

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the Riley County Appraiser office, the structure on the subject site was built in 1930. At the time of construction, the subject site was in the “A”, First Dwelling House District. The Zoning regulation in effect at that time required “a front yard of not less than twenty five (25) feet” with 5 different exceptions to that standard. One of which was the following:

- (2) Where forty (40) per cent or more of all the property according to the front feet abutting upon one side of the street between two intersecting streets is built up with buildings having an average setback line of more or less than twenty five (25) feet from the street line, no building hereafter erected or structurally altered shall project beyond the average setback line so established; provided further that this regulation shall not be interpreted as to require a setback line of more than 50 feet.”

It appears that the homes along N. 9th Street adjacent to the subject site were built closer than

twenty-five (25) and that the exception described above would apply.

The Zoning Regulations at the time of the construction of the house required a minimum of twenty-five (25) of rear yard setback. It is unclear as to how the house was sited twenty-one (21) feet from the west rear property line. The applicant has made Exception request to bring these issues into conformance.

The use of the subject site as a two-family dwelling was established in 1955. The "A" 1st Dwelling House District permitted the use at that time. In 1969, the subject site and surrounding properties along Poyntz Avenue, south of the alley, were zoned C-1, Restricted Business District. The C-1 District allows, as a Conditional Use, the uses permitted in the R-3, Multiple-Family Residential District. A two-family dwelling is one of the uses permitted in the R-3 District. The subject site has not previously been granted a Conditional Use. The applicant is requesting the Conditional Use and Exceptions to bring the subject site into conformance with the Zoning Regulations and to allow the renovation of the main floor dwelling to add a third bedroom.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties along Poyntz Avenue that are south of the mid-block alley are zoned C-1, Restricted Business District. Properties to the north of the mid-block alley are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of single-family, two-family and multiple-family dwellings, business and professional offices, churches, and the Manhattan High School East Campus.

Immediately to the south of the subject site is the Women's Club House, a National Registered Historic Site. Because no exterior modifications are proposed, a review by the local Historic Resource Board or the State Historic Preservation Office is not required.

Minimal impacts on adjacent properties are anticipated by approving the Exception requests. The house was built in its existing location on the subject site in 1930. The need for the Exception is to bring the property into compliance with the Zoning Regulations so that the applicant can make a Conditional Use request to allow for the renovation of the main floor dwelling unit. The applicant purchased the property in 2009 and has begun improving the property. In 2011, the applicant repaired the front porch facing N. 9th Street that had fallen into disrepair.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There is should minimal affects on the public health, safety or welfare. The structure has been in this location on the subject site since 1930. The location of the structure does not encroach into any utility easements or visions triangles.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the minimum front and rear yard setbacks would not allow for the approval of the proposed Conditional Use to renovate the main floor dwelling unit. The Exceptions are required to bring the property into compliance with the Zoning Regulations.

No viable options exist to bring the property into compliance with the applicable regulations. The subject site has been in this condition since 1930 with no known issues by the Community Development Department. Considering these factors, the strict application of the regulations appears to be unreasonable.

Hardy moved to approve the Exception to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to twenty (20) feet; and to allow for the reduction of the minimum required rear yard setback from twenty-five (25) feet to twenty-one (21) feet for an existing two-family dwelling at 109 N. 9th Street in the C-1, Restricted Business District, with the following conditions of approval:

1. The Exceptions shall be limited to the existing two-family dwelling and proposed renovations to the use, as outlined in the application documents and shown on the site plan and floor plan.
2. All applicable regulations shall be obtained.

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

A PUBLIC HEARING TO CONSIDER A VARIANCE FOR A REDUCTION OF THE MINIMUM REQUIRED PERCENTAGE OF LANDSCAPED OPEN SPACE IN THE FRONT YARD ALONG NORTH MANHATTAN AVENUE FROM SEVENTY-FIVE (75) PERCENT TO THIRTY-THREE (33) PERCENT, A REDUCTION OF THE MINIMUM REQUIRED PERCENTAGE OF LANDSCAPED OPEN SPACE IN THE FRONT YARD ALONG MCCAIN LANE FROM SEVENTY-FIVE (75) PERCENT TO FORTY-NINE (49) PERCENT, AND A REQUEST TO NOT PROVIDE SIGHT OBSCURING SCREENING BETWEEN THE PROPOSED PARKING AREA AND THE ADJACENT PROPERTY TO THE NORTH, ALL FOR A PROPOSED FRATERNITY HOUSE WITH SEVENTY (70) OCCUPANTS IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND UO, UNIVERSITY OVERLAY DISTRICT (APPLICANT: MICHAEL CARSON, BOWMAN BOWMAN NOVICK, INC. OWNER: DELTA THETA CHAPTER OF THE ALPHA TAU OMEGA BUILDING CORPORATION, A KANSAS NOT-FOR-PROFIT CORPORATION.)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR THE TEMPORARY REDUCTION OF THE MINIMUM REQUIRED NUMBER OF OFF-STREET PARKING SPACES FROM FIFTY-THREE (53) SPACES TO ZERO (0) SPACES, A REDUCTION IN THE FRONT YARD SETBACK ALONG NORTH MANHATTAN AVENUE FROM TWENTY-FIVE (25) FEET TO FIVE (5) FEET, AS WELL AS A REDUCTION IN THE FRONT YARD SETBACK ALONG MCCAIN LANE FROM TWENTY-FIVE (25) FEET TO TWENTY-THREE (23) FEET, ALL FOR A PROPOSED FRATERNITY HOUSE WITH SEVENTY (70) OCCUPANTS IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND UO, UNIVERSITY OVERLAY DISTRICT. (APPLICANT: MICHAEL CARSON, BOWMAN BOWMAN NOVICK, INC. OWNER: DELTA THETA CHAPTER OF THE ALPHA TAU OMEGA BUILDING CORPORATION, A KANSAS NOT-FOR-PROFIT CORPORATION.)

The Board asked that both items be presented together. Credit presented the staff reports for both items. City Administration recommended approval of the Variance and Exception, with

conditions of approval.

Hardy commented that the staff reports were well done.

Aistrup asked about the parking situation proposed for Kansas State University parking lots.

Aistrup opened the public hearing.

Bill Muir, representative for the applicant, addressed Aistrup's question. Muir has spoken with representatives from KSU's parking services and they have assured the applicants that there is adequate parking to the east of the subject site, near the KSU Center for Child Development, for the residents of the fraternity to use. As stated in the staff report, the fraternity will purchase parking permits for each resident during construction on the subject site.

Mike Carson, Bowman Bowman Novick and architect for the property owner, addressed his concerns of #3 of the conditions of approval. He explained the variables of the construction schedule and the concern that construction of the fraternity house maybe complete, but the off-street parking lot would not be available. He asked the Board to consider the possibility for the fraternity to purchase parking permits on the KSU campus for the following semester if the situation arises that the house is ready to be occupied, but the parking lot is not completed and available to be used.

Aistrup closed the public hearing.

Hardy stated he could support the requests. He felt that, as stated in the staff report, the topography and the site was a justification to approve the Variances and the Exceptions. Hardy was open to modify the third condition to allow the fraternity to purchase parking permits for the following semester if the house is able to occupied, but the parking lot is not available for use.

Bunger commented that, in that situation, the City would most likely only issue a temporary certificate of occupancy until at least the minimum required number of parking spaces is provided on the subject site.

Hamilton asked if Bunger's comments addressed the applicant's concerned. Bunger said that condition #3 could be modified. He was just explaining the procedure that would occur in that scenario.

Bunger provided some background as to how the condition came about. The condition of approval arose from a concern of a neighboring property and the possibility that on-street parking would become congestion or that they might parking in neighboring parking lots.

Aistrup suggested the following condition: The Certificate of Occupancy for the new fraternity house shall not be issued until all required parking for the site as illustrated in the site plan has been constructed. A temporary certificate of occupancy may be issues, as long as adequate off-site parking is provided on campus.

The Board agreed with Aistrup's suggestion.

The applicant and City staff discussed the proposed conditions.

Hamilton stated she could support the requests. She wanted to ensure that it was understood that approving the Exception is a unique situations, in which the parking is similar in character to the surrounding neighborhood, that the proposed development is in scale of development and that there is adequate buffering from the adjoining streets.

The Board made the following findings of fact for the Variance at 1632 McCain Lane.

PRESENT USE: Fraternity house.

CONDITIONS UNIQUE TO THE PROPERTY: Being a fraternity house, the use of the subject site is fairly unique to the R-3, Multiple-Family Residential District; in order to provide a roughly one-to-one ratio of parking spaces to residents, the size of the parking lot planned, containing seventy-two (72) spaces, is necessary in order to mitigate the possibility of over-parking in an already-crowded area of the City. Thus, due to the property's unique location adjacent to the University, the provision of adequate off-street parking at the expense of maintaining landscaped open space in the front yard becomes a public amenity rather than a hardship.

The property is also unique in respect to the natural features and open space that immediately surround it – the wide right-of-way and thick vegetation along N. Manhattan Avenue provides an unusually-large natural buffer between the subject site and the street. Likewise, the height of the embankment that separates the subject site and the property to the north - being fifteen to twenty (15-20) feet tall and consisting of stones, trees, and other kinds of vegetation - creates an effective natural buffer between the two properties. Finally, the phasing of development, which will allow the residents to continue to live in the fraternity throughout the duration of the project, presents a unique condition that greatly benefits the fraternity members, but also restricts the ability of the design to accommodate alternative arrangements of front yard parking.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the immediate south and east are zoned R-3, Multiple-Family Residential District and UO, University Overlay District, with some properties zoned R-2, Two-Family Residential District and UO, University Overlay District further to the south. To the immediate north and east are properties zoned R, Single-Family Residential District. To the west is Kansas State University, zoned U, University District. The immediate area of the subject site, as might be assumed by its proximity to the Kansas State campus, is a university-oriented residential district, with a mix of multiple-family dwellings, fraternity and sorority houses, and other university-related uses in the vicinity. However, to the east, in the area zoned R, Single-Family Residential, there are many single-family homes, both renter- and owner-occupied. The educational uses of the American Institute of Baking, which borders the subject site immediately to the north, and the Kansas State University campus, located to the west across N. Manhattan Avenue, are also in

the subject site's vicinity.

Due to the fact that the subject site is surrounded by natural buffers of various kinds, e.g. open space, trees, vegetation, and an embankment, the probable effect on adjacent properties due to the granting of these Variances will be minimal. The one-hundred and twenty (120) foot right-of-way along N. Manhattan Avenue provides a much larger effective quantity of open space adjacent to the subject site's front yard area along that street than is strictly allocated to it within its property lines – in that way, the proposed forty-two percent (42%) reduction in landscaped open space in the front yard along N. Manhattan is mitigated.

The proposed twenty-six percent (26%) reduction in the required landscaped open space in the front yard along McCain Lane should not present a significant impact to the surrounding neighborhood, as the proposed site plan calls for an increase in the amount of landscaped open space in this front yard than is currently in place on the site. Also, many of the adjacent properties do not maintain the required seventy-five percent (75%) of landscaped open space in their front yards; thus, the Variance would not create a condition that affords additional rights to the property owner than are enjoyed by the neighboring properties. Similarly, it will not be in any way out of character with the immediate neighborhood.

The presence of a fifteen to twenty (15-20) foot tall embankment, with large stones and trees on top, effectively fulfills the intention of the Zoning requirement for parking lot screening. The rear of the property to the north – the American Institute of Baking, which is not a traditionally-residential use – faces the proposed parking lot, further mitigating the potential impact of the lack of screening on adjacent properties. Due to the fact that the screening requirement is six (6) feet, and the embankment itself is approximately ten (10) feet taller than that constraint, it seems superfluous to require a screening fence to be put in place which would not change the condition of the existing views to or from the parking lot in any significant way.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:
Under the strict application of the regulations, the property owner would be required to eliminate a significant number of parking spaces from the lot, reducing the ability of the fraternity to provide one (1) space to each of its residents, therefore likely exporting additional parking to an already-crowded street. Considering the potential net negative effects to the property owner and the public, the strict application of the Zoning Regulations is unreasonable in this case.

The intent of regulations requiring a minimum amount of landscaped area in the front yard are to ensure a high-quality visual front to properties in residential districts, reduce the negative impact of front yard parking on the streetscape, to minimize automobile interference with pedestrians, to encourage the retention of existing trees and natural features, and to mitigate negative storm water drainage impacts. Due to the fact that the property currently has an existing parking lot in the front yard area, the subject site is surrounded by natural buffers of various kinds which increase its effective amount of open space, and the use is of a higher intensity than typical residential properties – thus requiring a larger parking lot in order to mitigate public impact - none of these intentions will be greatly compromised if the requested Variance is granted

The strict application of the required sight obscuring screening would not allow for the elimination of the requirement to provide a six (6) foot tall screening fence between the proposed parking lot and the property to the north. The intention of the Zoning requirement for parking lot screening is to eliminate the negative visual impact of parking lots on adjacent residential properties. As stated earlier, the presence of a fifteen to twenty (15-20) foot tall embankment, with large stones and trees on top, effectively fulfills this intent. Due to the fact that the property to the north is not a residential use, but rather an educational institution, and that the embankment itself is approximately ten (10) feet taller than the required height of the screening fence, the strict application of the Zoning Regulations in this case is unnecessary.

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 Variances – in fact, the reduction in the required amount of landscaped open space in the front yard will allow the fraternity house to minimize its impact on the public health, safety, and welfare by allowing it to provide a parking space for each of its residents. In addition, the exceptionally wide right-of-way along N. Manhattan Avenue and the presence of dense existing vegetation further mitigate the impact to the public of the lack of landscaped open space in the front yard; in fact, the newly-proposed parking lot will contain more open space in the front yard along McCain Lane than is currently available on the property. Therefore, it seems that any impacts resulting from this Variance will most likely result in a relative gain to the public health, safety, and welfare, rather than a loss.

Similarly, the lack of a screening fence should not significantly affect the public health, safety, or welfare – the present natural embankment provides a more complete, natural, and aesthetically-pleasing screening effect than the installation of a six (6) foot fence at that location.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of regulations requiring a minimum amount of landscaped area in the front yard are to ensure a high-quality visual front to properties in residential districts, reduce the negative impact of front yard parking on the streetscape, to minimize automobile interference with pedestrians, to encourage the retention of existing trees and natural features, and to mitigate negative storm water drainage impacts. Due to the fact that the subject site is surrounded by natural buffers of various kinds, e.g. open space, trees, vegetation, and an embankment, the probable effect on adjacent properties due to the granting of these Variances will be minimal. The one-hundred and twenty (120) foot right-of-way along N. Manhattan Avenue provides a much larger effective quantity of open space adjacent to the subject site's front yard area along that street than is strictly allocated to it within its property lines – in that way, the proposed forty-two percent (42%) reduction in landscaped open space in the front yard along N. Manhattan is mitigated.

The proposed twenty-six percent (26%) reduction in required landscaped open space in the front yard along McCain Lane should not present a significant impact to the surrounding neighborhood, as the proposed site plan calls for an increase in the amount of landscaped open

space in this front yard than is currently in place on the site. Also, many of the adjacent properties do not maintain the required seventy-five percent (75%) of landscaped open space in their front yards; thus, the Variance would not create a condition that affords additional rights to the property owner than are enjoyed by the neighboring properties. Similarly, it will not be in any way out of character with the immediate neighborhood.

The intent of the regulation to install sight obscuring screening along property lines abutting residential district is to limit any adverse impacts from higher-intensity uses. As stated above, the presence of a fifteen to twenty (15-20) foot tall embankment, with large stones and trees on top, effectively fulfills the intention of the Zoning requirement for parking lot screening. The rear of the property to the north – the American Institute of Baking, which is not a traditionally-residential use – faces the proposed parking lot, further mitigating the potential impact of the lack of screening on adjacent properties. Due to the fact that the screening requirement is six (6) feet, and the embankment itself is approximately ten (10) feet taller than that constraint, it seems superfluous to require a screening fence to be put in place which would not change the condition of the existing views to or from the parking lot in any significant way.

Hardy moved to approve a Variance for a reduction of the minimum required percentage of landscaped open space in the front yard along N. Manhattan Avenue from seventy-five (75) percent to thirty-three (33) percent, a reduction of the minimum required percentage of landscaped open space in the front yard along McCain Lane from seventy-five (75) percent to forty-nine (49) percent, and a request to not provide sight obscuring screening between the proposed parking area and the adjacent property to the north, all for a proposed fraternity house with seventy (70) occupants in the R-3, Multiple-Family Residential District and UO, University Overlay District, with the following conditions of approval:

1. The Variance shall apply to the proposed development as outlined in the Staff Report and application documents and as illustrated in the site plan.
2. The related Exceptions shall be approved.
3. All applicable permits shall be obtained.

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

The Board made the following findings of fact for the Exception at 1632 McCain Lane.

PRESENT USE: Fraternity house.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the Riley County Appraiser's Office, the subject property was constructed in 1970 as a permitted use in the R-3, Multiple Family Residential District and U, University Overlay District. At that time, under the 1969 Zoning Regulations, Article 7-102(D) disallowed any parking spaces open to the sky to be built in the front yard. It seems that, at the time of construction, the property had fourteen (14) spaces built in the front yard, and thus would have been nonconforming to the R-3 District. The property also appears to have lacked the screening of the parking area required by Article 7-102(5). In 1984, the provision that no parking would be permitted in residential districts between the front lot line and a parallel line through the furthest point of the side of

the principal structure facing the front lot line, and required that at least seventy-five percent (75%) of that area be maintained as landscaped open space, was added, thus creating a nonconforming condition for the subject property. In 1988 the subject site was replatted into the Alvin A. Hostetler Addition. The current structure and parking lot is proposed to be demolished, thus eliminating the existing nonconforming conditions.

However, the proposed site plan for the new fraternity house will not be compliant with all applicable regulations. First, throughout the duration of the construction process - which, according to the application documents, is planned to be finished in time for the beginning of the fall semester, 2013 - none of the fifty-three (53) spaces required for a fraternity house with seventy (70) occupants will be provided, as is currently required by Section 7-103(A)(4) of the Zoning Regulations. In addition, the designated location of the proposed parking lot will encroach two (2) feet into the front yard setback along McCain Lane, as well as twenty (20) feet into the setback along N. Manhattan Avenue, thus creating the need for the Exception requests.

In addition, due to the proposed location of the parking lot, the subject site will also be in violation of Sections 7-102(C)(2) and 7-102(E)(5), which require the minimum amount of landscaped open space in the front yard area to be at least seventy-five (75) percent of the total area between the front lot line and the previously-mentioned parallel line, as well as the presence of a six (6) foot screening fence. In order to bring the proposed development into full compliance with the Zoning Regulations, the applicant is requesting the applicable Variances, for a) a reduction of the minimum required percentage of landscaped open space in the front yard along N. Manhattan Avenue from seventy-five (75) percent to thirty-three (33) percent, b) a reduction of the minimum required percentage of landscaped open space in the front yard along McCain Lane from seventy-five (75) percent to forty-nine (49) percent, and c) a request to not provide sight obscuring screening between the proposed parking area and the adjacent property to the north. 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 east are zoned R-3, Multiple-Family Residential District and UO, University Overlay District, with some properties zoned R-2, Two-Family Residential District and UO, University Overlay District further to the south. To the immediate north and east are properties zoned R, Single-Family Residential District. To the west is Kansas State University, zoned U, University District. The immediate area of the subject site, as might be assumed by its proximity to the Kansas State campus, is a university-oriented residential district, with a mix of multiple-family dwellings, fraternity and sorority houses, and other university-related uses in the vicinity. However, to the east, in the area zoned R, Single-Family Residential, there are many single-family homes, both renter- and owner-occupied. The educational uses of the American Institute of Baking, which borders the subject site immediately to the north, and the Kansas State University campus, located to the west across N. Manhattan Avenue, are also in the subject site's vicinity.

Due to the fact that - according to the application documents - the fraternity will purchase KSU parking passes for its members for the duration of the construction project, the effect on

adjacent properties due to this Exception should be minimal. Owing to the fact that the North Haymaker lot is approximately less than a quarter mile from the fraternity house, it seems that any associated impacts on the surrounding property owners due to a temporary lack of parking provision should be limited.

In addition, seeing as the encroachment into the front yard setback along McCain Lane is fairly minimal, with twenty-three (23) feet of the setback maintained, any negative impacts associated with this encroachment should be minimal – currently, as mentioned above, the property has fourteen (14) parking spaces in the front yard along McCain Lane, with no known complaints to the Community Development Department. In addition, as noted in the application, several of the neighbors are currently in violation of the restrictions on parking in the front yard. Thus, granting an Exception to reduce the size of the setback will not drastically impact the character of the surrounding neighborhood, and will allow the property to become fully compliant with the Zoning Regulations. Likewise, the encroachment into the front yard setback along N. Manhattan Avenue - while larger - is mitigated by the road's large right-of-way, which is one-hundred and twenty (20) feet wide, and a large amount of existing trees and other vegetation, in that way providing a visual and physical buffer between the parking lot and the neighboring property to the west, Kansas State University.

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. According to the application documents, the “proper steps are in place to not create a disruption during the construction process for the ATO residents or the public at large,” and due to the fact that the fraternity will be purchasing on-campus parking passes for its members, and will not be occupying the house until the construction of the new lot is complete, it seems that any impact on the public due to the temporary reduction of off-street parking will be negligible.

Similarly, the reduction of the front yard setbacks should not substantially alter or impact the visual effect of the setback or line-of-sight down either N. Manhattan Avenue or McCain Lane. Along N. Manhattan Avenue the effect of the twenty (20) foot encroachment will be mitigated due to the street's exceptionally wide right-of-way and the presence of thick vegetation, and the encroachment along McCain Lane is so minimal – two (2) feet – as to be virtually unnoticeable. No impediments to the ease of vehicular or pedestrian travel are expected to result from these Exceptions.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: Under the strict application of the regulations, the property owner would not be able to vacate the parking lot for the duration of the construction period in order to build a new fraternity house, thus disallowing continuous school-year residence in the fraternity. Due to the temporary nature of the Exception, the requirement put in place that fraternity purchase KSU parking passes for its members for the duration of the project, and the fact that the fraternity house will have more than enough parking for the intended number of residents once it is constructed – fifty-three (53) required and seventy-two (72) provided - the strict application of

the Zoning Regulations is unreasonable in this case.

In addition, the strict application of the Zoning Regulations would not allow for the reduction of the front yard setbacks along N. Manhattan Avenue and McCain Lane. Due to the fact that many other properties currently are in violation of their front yard setback – caused by parking – the reduction of the subject property’s two front yard setbacks in order to construct a parking lot is not out of keeping with the context of the surrounding neighborhood. As stated earlier, the effect of the twenty (20) foot encroachment along N. Manhattan Avenue will be mitigated due to the street’s one-hundred and twenty (120) foot right-of-way and the large amount of existing vegetation that currently screens the property from view; the encroachment along McCain Lane, at two (2) feet, is so minimal that it should not create any kind of noticeable impact on the surrounding property owners or public.

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.

STAFF COMMENTS: City Administration has concerns that the parking demand cannot or will not be able to be accommodated by Kansas State University. The Board may consider placing a condition of approval requiring that the needed off-street parking is provided on the campus. This condition needs to be reasonably enforceable by the City to address the concern.

Hardy made a motion to approve the Exception to allow for the temporary reduction of the minimum required number of off-street parking spaces from fifty-three (53) spaces to zero (0) spaces, a reduction in the front yard setback along N. Manhattan Avenue from twenty-five (25) feet to five (5) feet, and a reduction in the front yard setback along McCain Lane from twenty-five (25) feet to twenty-three (23) feet, all for a proposed fraternity house with seventy (70) occupants in the R-3, Multiple-Family Residential District and UO, University Overlay 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 related Variances shall be approved
3. The Certificate of Occupancy for the new fraternity house shall not be issued until all required parking for the site as illustrated in the site plan has been constructed. A temporary certificate of occupancy may be issued, as long as adequate off-site parking is provided on campus.
4. All applicable permits shall be obtained.

Hamilton seconded the motion, which passed unanimously.

CAPITAL IMPROVEMENT PLAN FORMS

The Board did not offer any suggestions for the City’s capital improvement plan.

BOARD OFFICER ELECTIONS

Hamilton moved to nominate Aistrup as Chairman and Hardy as Vice-Chairman. She felt both were doing an outstanding job at these positions.

Lavish agreed and seconded Hamilton's nomination.

The nomination of Board officer's was approved by a vote of 3-1, with Aistrup voting against the nomination. However, he accepted the nomination willingly.
Aistrup adjourned the meeting.

Respectfully Submitted by Chad Bunger, Planner II

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