

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

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

MEMBERS ABSENT: Bruce Kent

STAFF PRESENT: Chad Bunger, CFM, AICP, Planner II; and Jose Abraham, Planning Intern

CONSIDER THE MINUTES OF THE JUNE 13, 2012, BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the June, 13, 2012 minutes, which was seconded by Hardy and passed with 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.).

Hamilton identified an error in the Inter-Office Memorandum which noted the 180 day deadline in effect since issuance of the last building permit as February, 6, 2012 instead of August, 6, 2012. Hardy moved to grant a 180 day extension for approved Exceptions for the Kimball Townhomes addition with the identified modification to the City Inter-Office Memorandum which was seconded by Hamilton and passed with a vote of 4-0.

REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED EIGHT (8) FOOT SIDE YARD SETBACK TO SIX (6) FEET ALONG THE WEST PROPERTY LINE FOR A PROPOSED BUILDING ADDITION TO AN EXISTING HOUSE AT 1326 PIERRE STREET IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: PAXTON AND JUDY LEMOINE).

Hardy moved to remove the item from the table which was seconded by Hamilton and passed with a vote of 4-0.

Bunger presented the staff report recommending approval of the Exception to allow for the reduction of the minimum required eight (8) foot side yard setback to six (6) feet along the west property line for a proposed building addition to an existing house in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with three (3) conditions of approval.

With no questions from the Board for City staff, Aistrup opened the public hearing. With no public comments Aistrup closed the public comment section for Board discussion.

The Board made the following findings of fact for the Exception at 1326 Pierre Street.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The existing house was constructed in 1947 with building additions in 1960 and 1963. The house was constructed as close as six (6) feet from the side property lines to the east and west. The Zoning Regulations at the time required a side yard setback of “not less than ten (10) percent of the lot, but such side yard shall not be less than six (6) feet.” The building additions constructed in the early 1960’s were also required to conform to this side yard setback. The original house conformed to this regulation and is considered to be a legally nonconforming condition. The attached garage constructed in 1963 is located approximately four (4) feet from the west property line.

It is unclear as to how this was permitted at the time. The proposed construction will eliminate the four (4) foot side yard setback. The new building addition will be in line with the original buildings, which is approximately six (6) feet from the side property lines. Other than these issues, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of single-family and two-family dwellings, with a combination of owner-occupied and rental units.

The proposal should not adversely impact adjacent properties owners. The site plans shows that the existing attached garage is approximately four (4) feet from the west property line. The proposal is to remove the existing attached garage and a portion of the rear of the house and construct the new addition to the southwest corner of the house. The proposed addition will have an identical setback of the existing house, which is approximately six (6) feet from the west property line. The proposal will increase the building setback from four (4) feet to six (6) feet on the west property. On the east side of the house, the building setback will not change and remain six (6) feet from the property line.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be no impact on public health, safety or general welfare. The proposal would remove a portion of the house that is located as close as four (4) feet from the west property line and construct a new building addition that is in line with the existing house, which is approximately six (6) feet from the side property.

The proposed building addition will not encroach into any utility easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application would not permit the proposed building additions because it would increase the degree of nonconformity. Although the additions will not encroach further into the side yard setback than the rest of the house, it does alter or increase the nonconformity. The strict application would require that the new addition be setback a minimum of eight (8) feet from the side property lines. This would reduce the size of the building addition and possibly reduce its functional use with the rest of the house.

Considering that the proposed addition will improve the setback from the west property line and not further encroach into the east setback, the strict application appears to be unnecessary. In this circumstance, the proposed additions will improve the subject site and its impacts on adjacent properties.

Hardy moved to approve the Exception to allow for the reduction of the minimum required eight (8) foot side yard setback to six (6) feet along the west property line for a proposed building addition to an existing house in the R-1/TNO, Single-Family Residential District and

Traditional Neighborhood Overlay District with the following conditions:

1. The Exception shall only be for the proposed building addition as outlined in the application documents and shown on the site plan.
2. The subject site shall be developed as shown on the site plan.
3. All applicable permits shall be obtained.

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

A PUBLIC HEARING FOR A VARIANCE TO ALLOW AN INCREASE IN THE MAXIMUM GROSS SURFACE AREA OF AN IDENTIFICATION SIGN FROM FORTY (40) SQUARE FEET TO SEVENTY-FIVE (75) SQUARE FEET FOR A PROPOSED WALL SIGN ALONG HOUSTON STREET AT THE THEODORE ROOSEVELT ELEMENTARY SCHOOL – 1401 HOUSTON STREET IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT: ANDERSON KNIGHT ARCHITECTS, P.A. – DAN KNIGHT OWNER: USD #383 MANHATTAN – OGDEN SCHOOL DISTRICT ROBERT SEYMOUR, ASSOCIATE SUPERINTENDENT).

A PUBLIC HEARING FOR AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE INCREASE IN THE MAXIMUM HEIGHT OF A SIGN FROM FIFTEEN (15) FEET TO TWENTY-ONE (21) FEET FOR A PROPOSED WALL IDENTIFICATION SIGN ALONG HOUSTON STREET AT THE THEODORE ROOSEVELT ELEMENTARY SCHOOL – 1401 HOUSTON STREET IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT: ANDERSON KNIGHT ARCHITECTS, P.A. – DAN KNIGHT OWNER: USD #383 MANHATTAN – OGDEN SCHOOL DISTRICT ROBERT SEYMOUR, ASSOCIATE SUPERINTENDENT).

Bunger presented the staff reports for both the items together. The City Administration recommended approval of both items, with 2 specific conditions of approval for the Variance and 3 specific conditions of approval for the Exception.

Lavis asked if the lights on the wall would shine outwards and cause light pollution problem to which Bunger clarified that the lights are specifically designed as cut-off lights to shine only

along the wall to illuminate the sign.

With no other questions from the Board for City staff, Aistrup opened the public hearing. With no public comments Aistrup closed the public comment section for Board discussion.

Hardy said that he agrees with the staff report in that the strict application of regulations would require the sign to be smaller which would in turn affect readability. Aistrup added that aesthetics is also important in considering signs and that the sign under consideration looks good.

The Board made the following findings of fact for the Variance at Theodore Roosevelt Elementary School – 1401 Houston Street

PRESENT USE: Theodore Roosevelt Elementary School

CONDITIONS UNIQUE TO THE PROPERTY: The unique condition of the subject site is its use as an elementary school on a large zoning lot in the R-1, Single-Family Residential District. The zoning lot encompasses all of the lots between Houston Street, Pierre Street, S. 14th Street and S. 15th Street and the vacated mid-block alley. The zoning lot is 400 feet wide and 315 feet deep, with a lot area of 126,000 square feet (2.90 acres). On the subject site is a neighborhood elementary school with building heights that ranges from approximately eleven (11) feet to forty (40) feet. The new building addition is roughly thirty (30) feet tall. The wall where the proposed sign is to be located is twenty-five (25) feet tall. The building currently has a lot coverage of approximately 28,980 square feet. Very few properties in the older part of town have amassed such land for its use and has such a large building located on the property.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Properties to the south of Poyntz Avenue and north of the mid-block alley are zoned C-1, Restricted Business District. The area consists of a mix of owner-occupied and rental single-family and two-family dwellings. The uses in the C-1 Districts are banks, offices and a few single-family dwellings.

The adjacent properties most likely affected by the proposed sign and the needed Variance will those to the north of Houston Street. This is because the sign will face these properties. The impacts on these properties should be minimal. The sign will be approximately 75 square feet in area, which is larger than the maximum allowed area of 40 square feet. The size of the proposed sign should not be out of scale or character with the neighborhood, considering the size of the building and specifically the Houston street façade where the sign will be located. The characteristics of the sign, being externally illuminated, will also reduce any impacts that the sign may have on adjacent properties.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

There appears to be no particular hardship to the applicant if the maximum sign size is strictly applied. The sign can be reduced in size to comply with the maximum gross surface area of forty (40) feet for an identification sign in this residential district. However, the reduced size of the sign may impact the proportionality of the sign in relationship to the building and could affect the readability of the sign. The proposed sign at seventy-five (75) square feet in area appears to be adequately scaled to the façade that it will be installed on and should not adverse impacts on adjacent properties or the general public. The strict application of the regulation may not be a hardship to the applicant, but it does appear to be unnecessary.

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

No adverse impacts on the public's health, safety or welfare should occur from approving the Variance request, as proposed. The sign will be in scale with the large elementary school on the large zoning lot. The size and design of the sign and its lighting characteristics will not cause a distraction for drivers or pedestrians.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the maximum gross surface area for signs in residential districts is to ensure that signs match the scale and character of the residential neighborhood so that property values are protected and the impacts on adjacent properties, pedestrians, bicyclists and the drivers are minimized. It appears that the proposed sign and Variance request meets the intent of the regulations. The size of the sign is in scale with the existing building on the large subject site and should not adversely impact adjacent properties or the general public. The sign could be reduced in size to comply with the Zoning Regulations. However the compliant sign may be out of proportion to the rest of the building façade along Houston Street, which could impact its readability and effectiveness to identify the school.

Hardy moved to approve the Variance to allow an increase in the maximum gross surface area of an identification sign from forty (40) square feet to seventy-five (75) square feet for a proposed wall sign along Houston Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with the following conditions:

1. The Variance shall apply to the proposed sign as described in the application documents and shown on the architectural elevations.
2. All applicable permits shall be obtained.

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

The Board made the following findings of fact for the Exception at Theodore Roosevelt Elementary School – 1401 Houston Street

PRESENT USE: Theodore Roosevelt Elementary School

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations, other than for what the Exception requests are for. The existing school and new building additions were granted Exceptions for its location and height to bring the subject site into compliance with the Zoning Regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Properties to the south of Poyntz Avenue and north of the mid-block alley are zoned C-1, Restricted Business District. The area consists of a mix of owner-occupied and rental single-family and two-family dwellings. The uses in the C-1 Districts are banks, offices and a few single-family dwellings.

The adjacent properties most likely affected by the proposed sign would be those to the north of Houston Street, because the sign will face these properties. The impacts on these properties should be minimal. The height of the wall that the sign is to be located on is approximately twenty-three (23) feet tall. The height of the façade, as viewed from Houston Street is almost thirty-one (31) feet tall. This facade includes the gymnasium wall that is behind the wall that the sign will be installed on. The height of the sign will be in scale with the front façade and should not detract from surrounding neighborhood.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No adverse impacts on the public's health, safety or welfare should occur from approving the Exception request. The sign will be in scale with the large elementary school. The design of the sign and lighting characteristics will not cause a distraction for drivers or pedestrians.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The intent of the maximum sign height regulation is to ensure that signs in residential district match the scale and character of the surrounding residential neighborhood and will not detract from adjacent properties. The strict application of the regulations would require that the sign be lowered approximately six (6) feet to meet the maximum height requirement of fifteen (15) feet. There are existing lights already mounted onto the wall that are to be below the proposed sign. These lights are approximately eleven (11) feet above the ground. The proposed height of the row of letters is roughly six (6) feet. If the sign was required to be lowered to the required fifteen (15) foot sign height, there would be a conflict between the existing lights and the proposed signage. In addition, the height of the sign appears to be appropriate in terms of the scale of the building at the height of the wall that it is to be installed upon. Considering these factors, it appears that the strict application of the regulation to limit the height of the sign is unreasonable in this case.

Hardy moved to approve the Exception to allow for the increase in the maximum height of a sign from fifteen (15) feet to twenty-one (21) feet for a proposed wall identification sign along Houston Street in the R-1/TNO, Single-Family Residential District and Traditional

Neighborhood Overlay District with the following conditions:

1. The Exception shall apply only to the proposed sign as described in the application documents and shown on the elevation drawings.
2. The Variance to allow an increase in maximum gross sign area shall be approved.
3. All applicable permits shall be obtained.

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

A PUBLIC HEARING FOR A CONDITIONAL USE TO ALLOW FOR AN EXISTING THREE (3) UNIT MULTIPLE-FAMILY DWELLING AT 1219 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT: JEFF HANCOCK, SMH CONSULTANTS OWNER: DANIEL R. AND LORI A. ALLEN).

A PUBLIC HEARING FOR A VARIANCE FOR THE REDUCTION OF THE MINIMUM REQUIRED LOT WIDTH FROM SIXTY (60) FEET TO FIFTY (50) FEET FOR AN EXISTING THREE (3) UNIT MULTIPLE-FAMILY DWELLING AT 1219 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT: JEFF HANCOCK, SMH CONSULTANTS OWNER: DANIEL R. AND LORI A. ALLEN).

A PUBLIC HEARING FOR AN EXCEPTION FOR THE REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FROM EIGHT (8) FEET TO SIX (6) FEET FOR AN EXISTING THREE (3) UNIT MULTIPLE-FAMILY DWELLING AT 1219 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT (APPLICANT: JEFF HANCOCK, SMH CONSULTANTS OWNER: DANIEL R. AND LORI A. ALLEN).

Abraham presented the staff reports for the three items together. The City Administration recommended approval of all three items, with 6 specific conditions of approval for the Conditional Use, 4 specific conditions of approval for the Variance, and 3 specific conditions of approval for the Exception.

Hardy inquired if the application made by the previous owner in 1995 was just a Variance to which Abraham clarified that it was a Conditional Use application with accompanied Variance to allow a reduction in the minimum lot width and side yard setback, reduction of the required number of off-street parking spaces, and to allow off-street parking on a gravel space.

Hardy asked if the City Administration's position is to approve these items to somehow bring the property to full compliance considering that the property has been in violation for the past several years.

Bunger agreed with Hardy and explained that the unique history of the property and the absence of an effective mechanism on the City's part to enforce compliance have led to this situation. Bunger added that the City Administration took several different approaches in studying the application to arrive at a fair recommendation that took into consideration the unique history of the property and its existence for the past several years without any adverse effect on the neighborhood.

Hardy expressed his eagerness to hear from the applicant and the Board generally discussed the complexity of the case. Aistrup opened the public hearing.

Jeff Hancock, the applicant, said that the property owners Daniel and Lori Allen purchased this property as a three (3) dwelling unit structure. Hancock also added that one of the neighbors Mary Ann Fleming, chairperson of South Manhattan Neighborhood Association sent him an email expressing her opinion that since the property has existed as a three (3) dwelling unit structure for a long time she did not see any problem in the property staying that way.

Lori Allen explained that they bought the property as a three-unit structure as was evident from the Riley County Appraisers Office, Inventory Content Sheet not knowing about its history of non-compliance. She also said there were few other documents that suggest that the property was purchased as a three-unit structure. Allen also said that the building permit application in 2004 was made for a proposed two-family residential use because they were altering only two units. In general, Allen was suggesting that none of the discrepancies associated with the property was intentional.

Hamilton asked Allen as to why none of the notices of zoning violation sent in 2006 were responded to. Allen responded saying that her health condition did not permit her to do so. Hamilton then asked Allen if she gave any thought about converting the structure into a two dwelling unit structure after 2006. Allen replied that it would not be possible to do so because of the present physical configuration and condition of the structure.

With no other public comments, Aistrup closed the public comment section for Board discussion.

Aistrup started the Board discussion by saying that even though the property owners have inherited some parts of the situation from the previous owners, the case for the concerned property is weakened because of its unique history of non-compliance and a need for Conditional Use Permit, Variance as well as Exception. Hardy said that it is difficult to believe that at the time of purchase Allen's—the property owners—could not find out that the property was in violation. Hardy added that it is disturbing to know that from 2006 to 2012, the Allen's made no attempt to bring the property to compliance. Hardy also suggested that he is not in favor of validating this situation by approving the applicant's requests as that would act as a precedent for other properties functioning in a similar fashion and that he would rather support the suggestion in the staff report to table these items to a future meeting so that the City Administration can meet with the City's Legal Department and then provide the applicant with appropriate options.

Hamilton emphasized that she would not support the granting of a Variance even though the property has functioned for a long time without any complaints or incidents because a 60 feet lot width is vital in residential developments within the older part of town and it serves to safeguard neighbors from extensive development. Hamilton then said that the argument presented in the staff report concerning M-FRO is not applicable to the concerned property as the property would be governed by R-3 rather than M-FRO, if the Conditional Use Permit is granted. Hamilton also suggested that a better way to bring the concerned property to compliance is to close one of the three units to make it a two-dwelling unit structure rather than validating a 17 year long zoning violation.

In response, Bunger clarified that the reference to the M-FRO in the staff report was to merely suggest the feasibility of efficient functioning of a multiple-family residential structure on a 50 foot wide lot and that the lot under consideration being a 50 foot by 150 foot lot is too small for a permitted use as per the C-1, Restricted Business District which requires a minimum of 15,000 square feet of lot area. Bunger further added that City Administration is also partly responsible in creating a situation of non-compliance in regard to not being able to enforce full compliance. To that Hamilton suggested that it is important to consider that the City Administration did its part by denying the Conditional Use application in 1995.

Aistrup added it is also important to consider that the property owners were notified by the City Administration about non-compliance of the concerned property, which they ignored for six years. Aistrup also suggested that a factor in favor of dealing the case leniently is that the property being located in a C-1, Restricted Business District would not have as severe impacts on the neighborhood as it would have had on any residential district. Hamilton agreed to Aistrup's comment but stated that there would be a lack of strong justification to permit the property to exist as a three-dwelling unit structure other than its long time existence in violation.

The Board generally discussed possible decisions and Hamilton and Hardy stated that they were in favor of tabling the items for the next meeting. Bunger explained that if the items are tabled, then the City Administration would discuss and work with the applicant and property owners towards a more reasonable option to achieve compliance, which would most likely be to use the property for a two-dwelling unit structure. Bunger also explained that for adequate time to discuss and process the application, the items would have to be tabled for the September meeting.

Hamilton moved to table all three items for the City Administration to explore alternative proposals to present to the board.

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

Aistrup adjourned the meeting.

Respectfully submitted by
Jose Abraham, Planning Intern