

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, December 12, 2012
7:00 PM

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

MEMBERS ABSENT: Catherine Lavis; and Bruce Kent

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

CONSIDER THE MINUTES OF THE November 14, 2012, BOARD OF ZONING APPEALS MEETING.

Hardy moved to approve the November 14, 2012 minutes, which was seconded by Hamilton and passed with a vote of 3-0.

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 November 14, 2012 minutes, which was seconded by Hamilton. Hamilton stated for the record that the application came before the Board in 2007 and there

has to be a point where the market is no longer the reason to allow the Extensions to continue. The motion passed with a vote of 3-0.

A PUBLIC HEARING TO CONSIDER TO AMEND AN APPROVED CONDITIONAL USE TO ALLOW FOR A NEW THIRTY (30) FOOT BY SEVENTY (70) FOOT STORAGE BUILDING AND RESTROOMS FOR THE OPTIMIST PARK IN THE I-2, INDUSTRIAL PARK DISTRICT. (APPLICANT/OWNER: MANHATTAN OPTIMIST FOUNDATION, INC.)

Aistrup announced that he would need to recuse himself from the public hearing for item #6 because of a conflict of interest. With his recusal, that left only two (2) Board members to hear the item. Collectively, the Board felt it would be best to table the item until the January meeting so more Board members could be present.

In an effort to not waste the applicant or any member of the public wishing to speak on the item, Hamilton moved the item to #3 on the agenda. Hardy seconded the motion to move the item up on the agenda, which passed by a vote of 3-0.

Hardy moved to table the item to the January 9th meeting. Hamilton seconded the motion, which passed 3-0.

CONTINUE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR THE REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FROM EIGHT (8) FEET TO SIX (6) FEET FOR AN EXISTING STRUCTURE AT 1219 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. THIS ITEM WAS ORIGINALLY TABLED ON JULY 11, 2012. THE PROPERTY OWNERS ARE PROPOSING TO CONVERT THE EXISTING THREE-UNIT APARTMENT BUILDING TO A TWO-FAMILY DWELLING (APPLICANT: JEFF HANCOCK, SMH CONSULTANTS OWNER: DANIEL R. AND LORI A. ALLEN).

CONTINUE THE PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A TWO-FAMILY DWELLING AT 1219 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. THIS ITEM WAS ORIGINALLY TABLED ON JULY 11, 2012. THE PROPERTY OWNERS ARE PROPOSING TO CONVERT THE EXISTING THREE-UNIT APARTMENT BUILDING TO A TWO-FAMILY DWELLING (APPLICANT: JEFF HANCOCK, SMH CONSULTANTS OWNER: DANIEL R. AND LORI A. ALLEN).

Hardy moved to remove items #4 & #5 from the table and continue the public hearing.

Hamilton seconded, which passed with a vote of 3-0.

Bunger presented the staff report for both items related to 1219 Poyntz Avenue. The City Administration recommended approval of the Conditional Use, with four (4) conditions of approval and the Exception, with two (2) conditions of approval.

In reference to condition #4 of the Conditional Use, Hamilton asked if the City has had any experience in writing abatement agreements. Bunger responded that they are pretty common course to arrive to compliance with the Zoning Regulations. Hamilton wanted clarification that a copy of the approved abatement agreement would be with the Community Development Department. Bunger said that it would.

Aistrup opened the public hearing for the two (2) items. No one spoke on the item. The applicants were present. Aistrup closed the public hearing.

Hamilton stated that she would like to applaud the applicants for working with the City. The applicants stated that they have hired a contractor to do the work and their plans have been preliminarily reviewed by the Code Service Department.

The Board made the following findings of fact for the Conditional Use at 1219 Poyntz Avenue.

PRESENT USE: Existing multiple-family home consisting of three (3) dwelling units.

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: The subject site was used as a single-family or two-family dwelling up until 1987. A previous owner renovated the two-story structure to provide three (3) units in 1991. At that time, a Conditional Use was required to permit the three-dwelling structure in the C-1 District. No such Conditional Use was granted. In 1995, another former property owner attempted to be approved for a Conditional Use and subsequent Variances to allow the three-family dwelling on the subject site and an adjacent apartment building. The Conditional Uses and Variances were denied. Up to this point, the property has been non-compliance with the C-1, Restricted Business District, regulations.

In addition, the house on the subject site does not meet the minimum eight (8) feet side yard setback requirement for two-family homes in the R-3 District, as described in Sections 4-106 (D)(2) respectively. The applicant is therefore an Exception to reduce the minimum eight (8) feet side yard setback to six (6) feet in order to bring the property into full compliance with

Zoning Regulations.

The original request by the application also required a Variance request to allow for a reduction in the minimum lot width from sixty (60) feet for a three-family dwelling to fifty (50) feet. The new proposal of a two-family dwelling does not require such a Variance.

B. Probable effect on adjacent properties: The subject site and properties to the immediate east and west are zoned C-1, Restricted Commercial District. Properties to the south are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. To the north of the subject site is City Park which is three (3) blocks wide. Adjacent properties to the east, south-east, south, south-west and west of the subject site are residential buildings including single-family homes and dwellings converted to apartments. The block in which the subject site is located has seven (7) lots that are zoned C-1, Restricted Commercial District, of which the corner lots contains an office and a church. The other five (5) properties, including the subject site have a lot width of approximately fifty (50) feet and contain residential buildings including single-family homes and dwellings converted to two (2) and three (3) unit apartments.

The subject site has been used as a three-family dwelling since 1991, when a former property owner renovated the building to include the illegal dwelling unit. Prior to this construction, the structure on the subject site was used as a single-family or two-family dwelling. The applicant's proposal is to renovate the structure to return it to a two-family dwelling. It is apparent that a two-family dwelling on subject site should not impact surrounding properties. Other properties along Poyntz Avenue and properties in the residential neighborhood to the south have two-family dwellings on identical sized lots.

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, to which none of the neighbors showed up.

C. Domination by use over neighboring properties: The proposed use as a two-family dwelling should not dominate over neighboring properties considering the presence of several other residential buildings in close vicinity including a single-family home and a four (4) unit residential apartment on lots abutting the subject site. As a result of residential density on the subject site, there might be some traffic congestion in the public alley that primarily serves single-family residential uses. However, its impact on public is expected to be no more than that caused by other traffic-intensive uses such as banks or offices which are permitted in the C-1 District. The subject site has been used as a multiple-family home since at least 1991. The proposed two-family dwelling will be a decrease in the number of dwelling units, although not the number of bedrooms. The purpose of the Conditional Use will ensure that the subject site is in 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 northern half of the lot, and is proposed to remain as it currently is. At present its lot coverage is

approximately 1,226 square feet in area or sixteen percent (16%) of the total lot.

2. **Landscaping and screening:** The existing landscaping on the subject site includes grass lawn in the front yard, side yards and part of the back yard. The subject site also has one (1) street tree, one (1) tree in the front yard, and two (2) trees in the side yard.

D. Adequate provision of parking and loading: The application documents submitted with the application indicates that the subject site will contain one (1) single-bedroom dwelling unit and a four-bedroom dwelling unit. Section 7-103 (A) (3) of the Zoning Regulations, stipulates two (2) parking spaces for one-bedroom unit, and four (4) parking spaces for a four-bedroom unit. A total of six (6) off-street parking spaces are required for the proposed two-family dwelling. There are six (6) spaces available in the rear of the lot along the alley in a gravel area. The off-street parking on the subject site is adequate.

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 proposed off-street parking lot is provided via the rear alleyway. Pedestrian access is provided through the front sidewalk, which is in fair condition, with a paved pathway and steps connecting the front porch to the street sidewalk.

Hardy made a motion to approve a Conditional Use to allow for a two-family dwelling at 1219 Poyntz Avenue in the C-1, Restricted Business District, with the following conditions:

1. The Conditional Use Permit shall apply to the proposed development as shown on the site plan, floor plans, and stated in the application documents.
2. The associated Exception of the required side yard setback shall be approved.
3. All applicable permits shall be obtained.
4. An abatement agreement shall be completed with the property owners for the conversion of the structure to a two-family dwelling and filed with the Riley County Register of Deeds.

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

The Board made the following findings of fact for the Exception at 1219 Poyntz Avenue.

PRESENT USE: Existing multiple-family home consisting of three (3) dwelling units.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Since the third unit in the house on the subject site was added well after the Zoning Regulation would have permitted a multiple-family dwelling, the subject site requires a Conditional Use Permit to maintain full compliance. In addition, the house on the subject site does not meet the minimum eight (8) feet side yard setback requirement for two-family dwellings as described in the R-3 District, as

described in Section 4-106 (D)(2). The applicant is therefore requesting an Exception to reduce the minimum eight (8) feet side yard setback to six (6) feet in order to bring the property into full compliance with Zoning Regulations.

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

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the immediate east and west are zoned C-1, Restricted Commercial District. Properties to the south are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. Adjacent properties to the east, south-east, south, south-west and west of the subject site are residential buildings having four (4), one (1), two (2), two (2), and one (1) dwelling units respectively. To the north of the subject site is City Park which is three (3) blocks wide. The block in which the subject site is located has seven lots that are zoned C-1, Restricted Commercial District, of which the northeastern and northwestern corner lots contains an office and a church respectively. Other five (5) properties, including the subject site contain residential buildings including single-family homes and dwellings converted to two (2) and three (3) unit apartments.

Building permit records for the subject site suggest that the existing side yard setback of six (6) feet has been a part of the neighborhood since it was built; without any known complaints to the City Administration. The applicant's request for an Exception is simply so that the existing property can be brought into full compliance with current Zoning Regulations and does not change the property in any way to have an adverse effect on the surrounding properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The two (2) feet discrepancy between the required eight (8) feet setback and the existing six (6) feet setback 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. Therefore, adverse impact of any kind on public resulting from the exception if granted is not expected.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the minimum side yard setback requirements would require the property owner to demolish or remove a portion of the existing principal structure, which has remained in its present arrangement without known complaints for a long period of time. The setback regulations are intended to provide open yard space free of principal structure. The side yards are open and maintain a minimum separation distance from neighboring properties. The strict application of the minimum side yard setback is unreasonable in this situation.

Hardy made a motion to approve an Exception to reduce the minimum required side yard setback from eight (8) feet to six (6) feet for a proposed two-family dwelling at 1219 Poyntz Avenue in the C-1, Restricted Business District with the following conditions:

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. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM FRONT YARD SETBACK FOR A SIX (6) FOOT TALL SCREENING FENCE ALONG THE WEST PROPERTY LINE FROM TWENTY-FIVE (25) FEET TO THREE (3) FEET; AND TO REDUCE THE FRONT YARD SETBACK FOR OFF-STREET PARKING SPACES FROM TWENTY-FIVE (25) FEET TO TWELVE (12) FEET ALONG WESTWOOD ROAD, AND FROM TWENTY-FIVE (25) FEET TO SIX (6) FEET ALONG OAK STREET, ALL FOR A NEW OFF-STREET PARKING LOT ASSOCIATED WITH THE MANHATTAN HIGH SCHOOL – WEST CAMPUS IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: MANHATTAN-OGDEN UNIFIED SCHOOL DISTRICT 383 – DR. ROBERT SEYMOUR).

Bunger presented the staff report for the Exception and recommended approval with five (5) conditions of approval.

Aistrup asked if the school lost off-street parking spaces with the recent remodel of the building. Bunger deferred that question to the applicant. Aistrup was curious because he wondered about the need behind the proposal.

Hamilton asked if there were any design standards or if any engineers with the City reviewed the proposal. Bunger responded that the City have a set of minimum design standards for off-street parking. The City engineers have also reviewed the proposal and the location of the driveway. Hamilton wondered about if there was a concern about having only one (1) driveway for the amount of parking shown. Bunger did provide anecdotal conversations that the traffic coming from the high school's west parking lot was causing damage to the cemetery and Sunset Zoo and was becoming an issue to public safety. This was a secondary reason behind the proposed parking lot.

Hamilton disagreed with the notion that the new parking lot would improve public safety because it would encourage more parking in the area, rather than consolidating it. Aistrup agreed. Bunger did respond that there have been discussions of removing access through City property from that western parking area.

Hamilton stated she was dismayed with the assessment that it would decrease traffic in the neighborhood. The proposal would certainly increase turning traffic at Westwood Drive, which has not been present. She thought it would be an impact on the neighborhood.

Aistrup agreed with Hamilton's comments and thought the proposal would increase traffic in the area.

Bunger suggested that the applicant might be willing to address the long-term parking plan for the school.

Aistrup opened the public hearing,

Dr. Robert Seymour, applicant, provided answers to the Board's questions. Seymour explained the current parking situation at the high school. He stated that the school plans to close the west parking area off for parking. Removing access would prohibit additional parking and consolidate parking to this parking lot. It was a safety concern for the school district.

Hamilton asked if the parking lot was to be designed to be one-way traffic through the lot. Matthew Kohls, BG Consultants, consultant for the project, provided information for that. The intent was not to provide one-way through in the driving aisles. The Board discussed the design of the parking lot and issues with safety of the high school students using the parking lot. The Board recommended that the consultant considered signing the driving aisles to be one-way to create a more efficient parking lot.

No one else was present to speak on the item; Aistrup closed the public hearing.

Hamilton stated she had reservations on the design of the parking lot, but did not have any issues with the Exception requests and applauded the effort to screen the residents to the south from the parking lot. Hamilton thought the staff report was light on the impacts that the parking lot will have on neighbors to the east. She thought it would have more of an impact than what the staff report stated.

Aistrup thought that by and large, most of the impacts would occur during the day. The impacts would be greatest after school when the kids are leaving and would be an impact on

Westwood Drive.

Hamilton asked the minutes state the Board's concerns about the west parking area being closed and the design of the parking lot.

The Board made the following findings of fact for the Exception at the property that is generally located at the northwest of the intersection of Oak Street and Westwood Road for the Manhattan High School West Campus.

PRESENT USE: Four (4) vacant platted lots

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations, other than for what the Exception requests are for.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R, Single-Family Residential District. To the north is the Manhattan High School and associated off-street parking lot. To the east is an off-street parking lot associated with the high school and single-family homes and a two-family home. To the south are single-family homes, a few two-family homes and a three-family dwelling. To the west are single-family homes and the Sunset Zoo.

The surrounding area is used heavily by student and visitors parking for school and evening functions at the high school. On-street parking by student is prohibited on the surrounding public streets, but there is substantial parking in the Sunset Zoo parking lot and the area to the west of school near the cemetery. An increase in light, noise and traffic is anticipated from the proposed off-street parking lot.

The properties most impacted by the off-street parking lot would be those most adjacent to it. The property to the immediate west will be screened by a six (6) foot tall screening fence. The screening fence should be adequate to reduce the impact from vehicle noise and headlights. The properties to the east are separated by an eighty (80) foot road right-of-way of Westwood Road. These properties will be most impacted by vehicles using the driving aisle between the parking spaces. These properties to the east of Westwood Road already have an off-street parking lot adjacent to them to the north. The properties to the south of the subject site along Oak Street will most likely be impacted by the headlights of vehicle's parking in the lot. The site plan shows a row of evergreen shrubs is to be planted along Oak Street to screen the vehicle headlights in the off-street parking lot from the homes across the street. Conversations with the project consultant, Matthew Kohls, P.E. from BG Consultants state that the plant type will be a burning bush that will be in a 7 gallon pot. These plans should be twenty-four (24) to twenty-eight (28) inches tall at the time of planting and grow to a height of three (3) to four (4) feet in height.

The location of the six (6) foot tall screening fence should have minimal effects on adjacent property owners. The fence's purpose is to screen the property to the west from the impacts of

the off-street parking lot.

The applicant has taken appropriate measure to lessen the impacts of the off-street parking lot on adjacent properties and their owners.

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

Westwood Road and Oak Street are fairly heavily travelled roads that lead to both the high school and Sunset Zoo. The amount of traffic generated by the location of the off-street parking should not substantially increase the amount of traffic in the area.

As previously mentioned, on-street parking for students is prohibited, however a large number of students parking in the Sunset Zoo parking lot and in areas along the cemetery. The application documents states “This parking lot will provide for safer, more orderly parking than the current situation at the high school.” “ The need of the school district to provide safe parking close to the high school is of utmost importance.” Parking in these locations off of the school campus does increase the number of vehicles that travel on the local residential streets. By consolidating some of the off-street parking to the subject site, with 119 spaces, the amount of traffic through the neighborhood on local residential streets should be decreased, which will improve public safety and order.

The location of the parking spaces in this off-street parking lot will not be out of character with other parking lots in the area. There are other off-street parking lots east of the subject site, on Westwood Drive and Pine Street that are associated with the high school that have parking spaced in the front yard setback.

The vision triangles created by the intersection of Westwood Road and Oak Street and the intersection of the parking lot driveway and Oak Street are free from any obstructions or encroachments.

The proposed fence will not be out of character from other fences in the neighborhood and will not encroach into any site lines created by the neighboring property owner pulling out of his/her driveway.

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 requirements for off-street parking spaces would eliminate twenty-eight (28) of the 119 off-street parking spaces. Because of the change of grade to the north of the parking lot and the location of an existing parking lot associated with the high school, the proposed lot cannot be shifted to the north and west to remove the spaces outside of the required twenty-five (25) foot front yard setback.

As previously mentioned in the *Probable Effect On Adjacent Properties* standard section, a number of students park off of the high school campus, increasing the amount of traffic through the neighborhood. The proposed off-street parking lot will consolidate a number of these parking spaces onto the high school campus near the primary streets in the area. The

applicant has also proposed measures to reduce the impacts that vehicles in the off-street parking lot may have on adjacent homes and the general public. Considering these factors, it appears that the strict application of the front yard setback regulations for the location of the parking and the screening fence is unreasonable.

Hardy made a motion to approve an EXCEPTION to allow for the reduction of the minimum front yard setback for a six (6) foot tall screening fence along the west property line from twenty-five (25) feet to three (3) feet; and to reduce the front yard setback for off-street parking spaces from twenty-five (25) feet to twelve (12) feet along Westwood Road, and from twenty-five (25) feet to six (6) feet along Oak Street, all for a new off-street parking lot associated with the Manhattan High School – West Campus at the northwest of the intersection of Oak Street and Westwood Road in the R, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall be limited to the proposed off-street parking and screening fence as described in the application documents and shown on the site plans.
2. The proposed light poles shall be limited to twenty (20) feet tall and shall be fully shielded and cut-off designed.
3. The landscaping shall be installed with the plant species and size listed, as shown on the site plan.
4. The row of shrubbery shall not be trimmed to less than three (3) feet once fully matured.
5. The landscaping shall be maintained in good condition.

Hamilton seconded the motion, which passed unanimously, 3-0.

Aistrup adjourned the meeting.

Respectfully submitted by
Chad Bunger, AICP, CFM, Planner II