

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, February 13, 2013
7:00 PM

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

MEMBERS ABSENT: Ray Thompson

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

CONSIDER THE MINUTES OF THE FEBRUARY 13, 2013, BOARD OF ZONING APPEALS MEETING.

Hardy moved to approve the February 13, 2013 minutes, which was seconded by Hamilton and passed with a vote of 4-0.

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

Hamilton moved to approve the request for a 180 day extension for exception to allow for the reduction of the minimum required off-street parking for a proposed church with two-hundred (200) fixed seats from fifty (50) spaces to twenty-three (23) spaces at 821 Poyntz Avenue in the C-1, Restricted Business District. Hardy seconded, which passed with a vote of 4-0.

TABLE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FOR AN ACCESSORY STRUCTURE FROM SIXTY (60) FEET TO ZERO (0) FEET ALONG FAIRCHILD AVENUE FOR A PROPOSED TRASH ENCLOSURE AT 500 SUNSET AVENUE IN THE R-1/TNO/UO, SINGLE-FAMILY RESIDENTIAL

DISTRICT, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT AND UNIVERSITY OVERLAY DISTRICT (APPLICANT/OWNER: BETA THETA PI HOLDING CO. – SCOT K. TENPENNY, TREASURER).

Hardy moved to table the public hearing to consider an exception to allow for the reduction of the minimum required front yard setback for an accessory structure from sixty (60) feet to zero (0) feet along Fairchild Avenue for a proposed trash enclosure at 500 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. Hamilton seconded, which passed with a vote of 4-0.

PUBLIC HEARING TO CONSIDER AMENDING 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 abstained from participation due to a conflict of interest; his wife being a member of the Manhattan Optimist Foundation, Inc. Bunger presented the staff report. The City Administration recommended the approval of the Amendment to the approved Conditional Use to allow for a Health and Fitness Club which consists of a total of four (4) softball and tee-ball fields and accessory structures, including a new seventy (70) foot by (thirty) 30 foot storage building with restroom facilities and the existing buildings at the Optimist Park at 317 Plymate Lane in the I-2, Industrial Park District with the seven (7) specific conditions of approval

Hardy opened the public hearing.

Robert Buel, residing at 2916 Tatarax Drive, generally discussed his concerns about the approval of proposed project and related flooding issues in the area. He argued that the City should quit allow builds in that area considering the flooding issues and therefore, the proposal should be turned down. Hamilton appreciated Buel's concerns and asked if he had any specific concern regarding the most recent proposal which is reduced in terms of the amount of construction. Buel's concerns, however, neither specifically related to the amendment of the conditional use nor to the Board's scope of discussion. Bunger clarified the staff's interpretation about the project and emphasized that the proposal is downsized from the initial plan by omitting the initially proposed large building.

With no more public comments Hardy closed the public comment section for Board discussion. Hamilton and Hardy expressed their support for the project. The Board made the following findings of fact for amending an approved Conditional Use for the Optimist Park in the I-2, Industrial Park District.

PRESENT USE: Two (2) full size softball fields, two (2) small, tee-ball sized field, two (2) accessory buildings, which include restrooms and a gravel off-street parking lot.

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: The Optimist Park was created when the land was donated to the Manhattan Optimist Foundation in 1986. The City of Manhattan's Zoning Regulation at that time (Ordinance No. 3790) did not permit parks and playgrounds nor allow health and fitness clubs as a Conditional Use in the I-2 Zoning District. Before the Conditional Use was approved in 2009, it was considered a nonconforming use.

In January, 2009, the Manhattan Optimist Foundation acquired a 2,395 square foot piece of Lot 4, Westside Industrial Park, Unit 2 Addition. This acquisition of land was done by a lot split by deed and not a Final Plat. The Manhattan Urban Area Subdivision Regulations state in Article I, General Provisions, Part 5, Applicability:

Section I-501: Subdivision of land shall be made in accordance with these Regulations, and shall require a plat or replat (whichever is applicable) to be made in accordance with these Regulations, unless otherwise exempted by Part 6, below, whenever the owner(s) of any land within the jurisdiction of these Regulations desires to:

- (A) Divide, or further divide, land into two or more lots or parcels; or,
- (B) Otherwise alter the boundaries of lots or parcels of land.

The property shall be replatted to comply with the Manhattan Subdivision Regulations. Other than these issues, the property complies with the applicable regulations.

The proposed site plan shows the fence of the tee-ball field to be located eleven (11) feet from the front property line along Plymate Lane. The minimum setback for the fence is twenty-five (25) feet. An Exception shall be applied for to reduce the front yard setback for the fence or the fence must conform to the minimum setback at the time the fence is installed.

B. Probable effect on adjacent properties: The subject site and surrounding properties to the south and west are zoned I-2, Industrial Park District. To the north and east of the subject site, properties are zoned R, Single-Family Residential District and R-2, Two-Family Residential District and New Boston Commons PUD, Commercial Planned Unit Development. The current Zoning Map appears to be in error by showing the R, Single-Family Residential District, on the subject site. When the area, including the subject site, was annexed into the City, the area was zoned for industrial uses south of the center line of Wildcat Creek. To the north of Wildcat Creek, the property was zoned for residential uses. The property within the I-2 District consists of light manufacturing and storage uses. The area in the R District is vacant land located along Wildcat Creek... The properties within the R-2 District are single-family detached and single-family attached dwellings. To the northwest of the subject site are properties zoned PUD, Planned Unit Development and R-3, Multiple-

Family Residential District. There are a number of commercial and residential PUD's along Garden Way, with include multiple-family developments and businesses and vacant land along Wildcat Creek. The R-3 District consists of several multiple-family apartment buildings.

The proposed amendment to the approved Conditional Use should have minimal impacts on adjacent properties. The Optimist Park has been in existence since 1986. The single-family attached and single-family detached dwellings closest to the existing playing fields were built in the late 1980's and early 1990's. The apartments along Garden Way were built in the mid-1960. Other single-family homes to the east of the Optimist Foundation property were built in the 1940's, 1950's and 1960's. There are no complaints on record concerning the softball fields and/or the lighting that was present prior to the most resent park expansion.

The two (2) new ball fields were constructed in 2009 and were first used in the 2010. No specific complaints regarding the actual use of the Optimist Park have been submitted to the Community Development Department. During the approval of the Conditional Use in 2009, there were concerns of the effects that the proposed light poles would have on adjacent properties. These lights or support poles have not been constructed and have been proposed to be eliminated from the development plans of the park. Not having the lit ball fields will lessen the impact of the Optimist Park on adjacent properties.

Another topic raised during the initial Board of Zoning Appeals process and subsequent years was the impact that fill placed on the subject site had on adjacent properties both upstream and downstream of the subject site during Wildcat Creek flood events. Fill placed on the subject site met the requirements of the State of Kansas and City of Manhattan and were issued appropriate permits. Currently, the area here the proposed building is to be located in the Zone AE (commonly referred as the 100 year flood plain) and Zone X (commonly referred to as the 500 year flood plain). The Article X, Flood Plain Regulations allows development in both flood zones provided all requirements are followed.

The City of Manhattan has received preliminary flood insurance rate maps (FIRMs) from the Kansas Division of Water Resource for Riley County (attached), which are not dated. These maps will delineate new 1% Annual Chance and 0.2% Annual Chance Floodplain boundaries. The proposed FIRMs show that Zone AE (100 Year Flood Plain) has expanded on the subject site compared to the current FIRMs (attached). The new base flood elevation for the area is 1040 feet above sea level. Although this flood information and FIRMs are preliminary, the City has made an administrative determination to use the more restrictive of the two (2) flood studies and FIRMs when reviewing development proposals and apply the current Flood Plain Regulations accordingly. Because the location of the building is located in the Zone AE area, the Flood Plain Regulations and the City's recent policy will require that the building will have to have its finished floor elevated or be flood proofed to at least one (1) foot above the base flood elevation, which is currently would be 1040 feet above sea level.

C. Domination by use over neighboring properties:

- 1. Location, nature, and height of physical improvements:** A single-story, storage

building is proposed near the center of the subject site. This building will be approximately 70 feet by 30 feet and will also have restroom facilities. The building will be approximately 165 feet to the north of Plymate Lane.

Other improvements include the existing fields and two (2) storage buildings. These improvements were approved in 2009. The approved Conditional Use also allowed for the installation of light poles to illuminate two (2) of the softball fields. These light poles have been removed from the development plans of the park and will not be installed.

The proposed building and the softball fields and tee-ball field fields are adequately setback from the front, side and rear property lines. These fields have been used by the Optimist Foundation for their sports programs since 1986 with no record of complaints. The proposed building and the use will not dominate the surrounding industrial uses

- 2. Landscaping and screening:** No specific landscaping plan has been proposed. The outfields of the ball fields are grass with other areas in an open lawn. Chain link fences surround each ball field and as the backstop for each ball field. These fences are to designate the playing field and protect spectators from softballs.

The I-2, Industrial Park District, requires a landscape area of twenty (20) feet installed on all sides abutting a street. The existing grass area along Plymate Lane meets this requirement. The proposed fence is shown to be approximately eleven (11) feet from the front property line along the street. The fence will either need to be moved to comply with the front yard setback requirement or the applicant will need to seek an Exception.

One (1) tree of a minimum two and one-half (2 ½) caliper or larger in size will be required to make sure that the parking area around the building will comply with the parking regulations. Existing trees may be able to meet this requirement.

An Exception to allow for the gravel parking and driveway for up to two (2) years was approved with the Conditional Use in 2009.

D. Adequate provision of parking and loading: The existing configuration of the Optimist Park has approximately 70 off-street parking spaces on a gravel surface. The proposed site plan for the Optimist Park shows sixty-six (66) off-street parking spaces.

The 70 x 30 foot storage building is required to have one (1) off-street parking space (Section 7-103(B)(20) At least one (1) parking space for each 2,000 sq. ft. of floor area).

The City of Manhattan Zoning Regulations does not specifically address parking requirements for baseball, softball and tee-ball fields. In researching this topic, cities across the country use different numbers of required off-street parking spaces for the recreational uses. Based on the

research, City Administration has determined a reasonable requirement is that each field to provide eighteen (18) spaces (2 parking spaces for each position on the field) is appropriate. The three (3) proposed ball fields are required to have fifty-four (54) off-street parking spaces. The proposed parking lots and number of parking spaces are adequate for the proposed ball fields and indoor athletic practice facility.

The northern portion of the parking lot is in the effective mapped flood plain and is shown to be entirely in the mapped flood plain on the preliminary maps. Parking is permitted in these areas, provided that vehicles or trailers can be moved out of the flood area before the flood waters rise to a level that could impact the parked vehicles or trailers. The concern is that the flood waters could damage the vehicles and/or trailers or the contents in them, or worse, sweep the vehicles downstream, which would most likely worsen the flooding by blocking stormwater structures or cause damage to property downstream. Because the park is not monitored on a continual basis, City Administration recommends a condition of approval to limit the use of the parking lots in the floodplain to no overnight parking or long term storage of trailers or other equipment.

E. Adequate provision of drainage, and other public utilities: Existing utilities are adequate to provide water, sanitary sewer and power to the proposed storage building.

As previously mentioned, parts of the site is in the mapped Floodway and Zone AE (commonly referred as the 100 year flood plain), as shown on the effective FIRM for the area. The area where the proposed building is to be located split between the Zone AE (commonly referred as the 100 year flood plain) and Zone X (commonly referred to as the 500 year flood plain). The Flood Plain Regulations allows development in both flood zones provided all requirements are followed. Section 10-203(C) requires that all structures be required to have its finished floor elevated or flood proofed be at least one (1) foot above the base flood elevation. The preliminary FIRMs show that Zone AE (100 Year Flood Plain) has expanded on the subject site compared to the current FIRMs. The new base flood elevation for the area is 1040 feet above sea level. Although this flood information and FIRMs are preliminary, the City has made an administrative determination to use the more restrictive of the two (2) flood studies and FIRMs when reviewing development proposals and apply the current Flood Plain Regulations accordingly. The proposed storage building will be required to be elevated or floodproofed a minimum of 10401.0 feet above sea level.

Stormwater detention would not be required for the proposed development, nor be advised. The City of Manhattan Design and Construction Standard Specifications and Policies states that stormwater detention be required on site for new subdivisions and infill projects that are 0.5 acres or larger. The requirement is to ensure that post-development stormwater runoff is equal to or less than the pre-development conditions. The area proposed to be disturbed by the construction of the new building is less than 0.5 acres and would not apply to the policy.

In addition, requiring stormwater detention within a mapped floodplain is generally not advisable. Stormwater detention is designed to slow the rate of runoff from a site using a variety of different methods to meter the water over an extended period of time, so that it does not worsen a flood event. If detention is placed too close to a stream, the metered stormwater

could coincide with floodwater traveling from upstream. The City Stormwater Engineer has reviewed the proposed development and will not require such stormwater detention.

Because the proposed building is located in the floodplain, a local floodplain development permit will be required. Depending on certain factors, such as amount and height of fill, a state fill permit may be required also.

F. Adequate provision of access: The Park has access from an existing curb cut on the bulb of the Plymate Lane cul-de-sac. The access will be adequate for the proposed uses at the Optimist Park.

Hamilton made a motion to approve amendment to an approved Conditional Use to allow for a Health and Fitness Club which consists of a total of four (4) softball and tee-ball fields and accessory structures, including a new 70 foot by 30 foot storage building with restroom facilities and the existing buildings at the Optimist Park at 317 Plymate Lane in the I-2, Industrial Park District with the following conditions of approval:

1. The Conditional Use shall be limited to the total of four (4) softball and tee-ball fields and accessory structures, including a new 70 foot by 30 foot storage building with restroom facilities and the existing buildings
2. All necessary building permits shall be obtained.
3. The park shall be maintained in good condition.
4. An amendment to the Conditional Use shall be required if any new developments are to occur.
5. The western or south playing fields shall not be illuminated with light poles.
6. Off-street parking areas in the mapped floodplain area shall be restrict to no overnight parking or long-term storage of vehicles, trailers or equipment.
7. The property shall to conform to the Manhattan Urban Area Subdivision Regulations and Manhattan Zoning Regulations.

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

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A MULTIPLE-FAMILY DEVELOPMENT 718/720 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. THE PROPOSED DEVELOPMENT WILL CONSIST OF FIVE (5) DWELLING UNITS, WITH A TOTAL OF ELEVEN (11) BEDROOMS IN THREE (3) EXISTING BUILDINGS. (APPLICANT: TRACY ANDERSON – ANDERSON KNIGHT ARCHITECTS OWNER: RUSSELL REITZ).

PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO EIGHTEEN (18) FEET FOR AN EXISTING BUILDING; A REDUCTION OF THE SIDE YARD SETBACK FROM EIGHT (8)

FEET TO ZERO FEET ON THE WEST PROPERTY LINE FOR AN EXISTING BUILDING; A REDUCTION OF THE SIDE YARD SETBACK FROM EIGHT (8) FEET TO TWO (2) FEET ON THE EAST PROPERTY LINE; A REDUCTION OF THE REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO ZERO FEET FOR TWO (2) EXISTING BUILDINGS; AN INCREASE IN THE MAXIMUM LOT COVERAGE FROM THIRTY (30%) PERCENT TO THIRTY-FOUR (34%) PERCENT; AND A REDUCTION OF THE MINIMUM REQUIRED NUMBER OF OFF-STREET PARKING SPACES FOR A PROPOSED FIVE (5) DWELLING UNIT DEVELOPMENT WITH A TOTAL OF ELEVEN (11) BEDROOMS FROM SIXTEEN (16) SPACES TO ELEVEN (11) SPACES. THESE EXCEPTIONS ARE FOR A PROPOSED FIVE (5) DWELLING UNIT DEVELOPMENT WITHIN THREE (3) BUILDING AT THE PROPERTY IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT: TRACY ANDERSON – ANDERSON KNIGHT ARCHITECTS, OWNER: RUSSELL REITZ).

Aistrup joined the public hearing to present the last two items. Bunger presented the staff report for both the items together.

City Administration recommended denial of a Conditional Use to allow for a multiple-family development consisting of five (5) dwelling units, with a total of eleven (11) bedrooms in three (3) existing buildings at 720 Poyntz Avenue in the C-1, Restricted Business District. However, considering that the development and site plan can be modified to accommodate the Zoning Regulations, the City Administration recommended approval of a Conditional Use to allow for a multiple-family development consisting of four (4) dwelling units, with a total of nine (9) bedrooms in two (2) existing buildings at 720 Poyntz Avenue in the C-1, Restricted Business District, with the five (5) specific conditions of approval.

City Administration recommended approval of an EXCEPTION to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to eighteen (18) feet for an existing building; a reduction of the side yard setback from eight (8) feet to zero (0) feet on the west property line for an existing building; a reduction of the side yard setback from eight (8) feet to two (2) feet on the east property line; a reduction of the rear yard setback from twenty-five (25) feet to zero (0) feet for two (2) existing buildings; an increase in the maximum lot coverage from thirty (30%) percent to thirty-four (34%) percent for the existing structures at 718/720 Poyntz Avenue in the C-1, Restricted Business District, with one (1) specific condition of approval.

However, considering that viable options exists to comply with the Zoning Regulations; City Administration recommended denial of an Exception to reduce the minimum required number of off-street parking spaces from sixteen (16) spaces to eleven (11) spaces. These Exceptions are for a proposed five (5) dwelling unit development within three (3) building at the 718/720

Poyntz Avenue in the C-1, Restricted Business District. Also, the City Administration recommended three (3) specific conditions of approval, if the Board was inclined to approve the Exception request.

Hamilton generally enquired about the parking requirements for the site; to which, Bunger explained in the detail the parking calculation process and considerations as required by the Zoning Regulation and stated that the proposed number of dwelling units and bedrooms would require a total of at least sixteen (16) off-street parking spaces. Hamilton asked if the minimum required number of off-street parking spaces would change if all the dwelling units were part of a single building. Bunger replied that the number of buildings on site does not contribute to the parking calculations. Aistrup asked if the site being located within the C1, Restricted Business District influenced the parking calculations, to which Bunger replied that the parking requirements in the Zoning Regulations are based on proposed use rather than the type of district. Aistrup also asked if any precedent existed that suggested leniency in considering similar cases. Bunger mentioned that the Board had approved a similar Exception request for a project on College Heights and Sunset Avenue last year.

Aistrup opened the public hearing.

Linda Jones, who is a co-owner of the commercial building east of the subject site at 714 Poyntz Avenue, suggested that the area would face parking problems as a result of the proposed project. Jones stated that because of the apartment type houses in the area, she is already dealing with people parking illegally on her lot and is forced to act as a parking lot monitor. She emphasized that the reduced parking in the proposed project would result in more illegal parking on their lot because the back building of the proposed project is within two (2) feet from their parking lot. She also listed some specific existing parking issues in the area such as, the previous property owner, Sullivan having to enforce fifteen (15) minute parking limits and parking spill over to the street in front of their property from businesses with small parking lots. She concluded that there already exists a parking crisis in that area and any proposed parking shortage would directly impact their property.

Angela Hubler, representing the First Congressional United Church of Christ located at 700 Poyntz Avenue suggested the City to deny the Exception request for a reduction in the minimum required parking spaces. Hubler expressed that she agrees to Jones on the existing parking crisis in the area and stated that she also fears that illegal parking on their property would increase as a result of reduced parking in the proposed project.

Melanie Graber, who is a co-owner of the commercial building east of the subject site at 714 Poyntz Avenue, reiterated the already discussed general parking issues in the area and stated that students are home during both day and night and the on-street parking is already being over-used. She also stated her observation that people park on street for long hours in spite of the fifteen (15) minute parking limit signs. Graber further emphasized on the problem of illegal parking on their lot and street section because of which they are often times not able to efficiently accommodate their clients. In conclusion, Graber expressed that apart from some small concerns such as the trash receptacle for the proposed development being in their view, she is excited about the project happening in this area but would strongly recommend an

increase in the number of on-site parking spaces.

Kail Katzenmeier, owner of Capstone 3D development came forward to discuss the proposed project in terms of the unique set of circumstances and challenges associated with the project and also the development team's efforts and ideas in achieving a meaningful project. Katzenmeier started by discussing how his company focuses on mixing commerce and meaning to result in sustainable projects that contribute to the community. Katzenmeier pointed out that while presenting the history of the concerned property in the staff report, some of the recent problems relating to code violations and construction issues which was said to have happened in the winter of 2012 as mentioned by Bunger actually happened in winter of 2011 which was prior to the current ownership. Katzenmeier emphasized that in planning and designing for the subject site, their team had to deal with an exceedingly unique set of situations because there is a lot at stake with the Board's decision.

Katzenmeier stated that the proposed building configuration is a result of considering over forty (40) different alternatives over a period of one (1) year because the team intended to achieve the most viable development plan for the subject site. Katzenmeier further emphasized that the owner Russel Reitz is pursuing this project as a preservation effort rather than an investment and that Capstone 3D is attempting to make this effort economically viable. Katzenmeier stated that based on his knowledge, the proposed building configuration is the best configuration in terms of a physical model, financial model, and in a way that it references to other areas which were either granted parking reduction exceptions or considered reduced parking ratio and requirements. Katzenmeier acknowledged that he sympathizes with the neighbors who spoke about the existing and prospective parking crisis but their team is challenged by a unique set of circumstances which is largely related to the historic preservation of the subject site. He argued that most of the development options satisfying the required number of parking spaces would not be viable from a preservation point of view. Katzenmeier mentioned two such development options that were restricted by their preservation goals—(a) Demolishing the garage; (b) lifting the garage above ground to accommodate parking underneath. Katzenmeier summarized his discussion by saying that their team comprising the owner, architect, and himself are trying to make this project a meaningful one which they can be proud of and urged the Board to take decisions they can be proud of.

Katzenmeier requested to project the photographs of the subject site and generally summarized that historic preservation projects are difficult to navigate through and always present a situation of compromise in some form of give and take. He also noted that for the past twenty (20) years the subject site is characterized by parking all over the place, haphazard uses, code department shutting down constructions, people living there who have multiple cars, people trying to build illegally. He argued that for this to change, the City as a whole should consider preserving this property by making the needed compromise and participate in a give and take type of approach to maximize the property's full potential as a historic preservation project. He also respectfully expressed his disagreement with the City staff's claim that viable options exist to meet the minimum parking requirements. Katzenmeier claimed that in order to achieve a true historic preservation of the property, the project must be executed as proposed with the underlying concept of increased residential density and complete restoration of the existing

buildings in spite of the unfortunate parking issue. He also added that if the project does not materialize as proposed, the owner would use the property in its current status because no other configuration would be a viable development option considering a seven (7) figure investment on the property. Katzenmeier finally concluded by suggesting that the Board consider this proposal from a true historic preservation point of view and approve an Exception as requested knowing that the development team has spent a long time considering various influencing factors and several different alternatives.

Aistrup appreciated Katzenmeier's efforts and concern towards historic preservation but also noted that a decision to approve this Exception request would have day-to-day externalities considering a good chance for a parking demand greater than what the proposed project can accommodate. Aistrup noted that there would be more cars owned by the tenants of the proposed project than the eleven (11) spaces allotted. Aistrup then requested Katzenmeier to present a rationale other than the applicant's investment because the board cannot consider monetary investment or money making proposition as a factor to base the approval of any request upon.

Katzenmeier recognized the concerns of the Board and stated that apart from the financial viability, there exists a general viability which is more pressing, given the circumstances in place. He also emphasized that the historic preservation aspect also serves as a legal mechanism limiting the scope of the project in terms of its building configuration. Katzenmeier at this point argued that the only two viable options are to either go against the standards of the historic preservation set by the National Register to solve the parking issues or abide with the proposed development plan to achieve true historic preservation and compromise on the parking issue. Katzenmeier added that the property already presents some issues in terms of parking and appearance leading to frustration and it could be eliminated to some degree through the proposed project.

Tracy Anderson, who is the project architect, came forward to generally talk about the project and the development team. Based on his 5-6 years experience of working with Capstone 3D, Anderson suggested that they have a formula that seems to work. Anderson said that their team is keen on executing a true historical preservation which would be welcomed by the people of Manhattan. However, he noted that the only problem is that the site has certain constraints and is an extremely unique property. He specifically discussed the historical value of the existing buildings and suggested that everybody would rather have them restored and preserved. Anderson acknowledged the Board's limitation in considering finances as a basis for decisions but stated that financial considerations is key in the viability of any project. Anderson also acknowledged that smaller issues such as screening the trash receptacle would be take care of in a tasteful way. About parking issues in the area, Anderson stated that parking in the area is an issue and shall always be an issue. He also suggested they as a team may consider screening their parking areas reduce any impact on views and vistas. Anderson concluded by saying that the property has a prime location within the fabric of our community and in order to do the right thing with the property there has to be some give and take.

Russel Reitz, who is the property owner, came forward to discuss the project. Reitz generally discussed his association with Katzenmeier and their shared opinion about the concerned

property as a “diamond in the rough.” He also discussed his passion and efforts for historic preservation and restoration. Reitz said that he was not interested in continuing to own the property in its current state. He discussed his efforts of making sure that people living on the property had healthy living conditions. Reitz said they had to move people living in the carriage house which did not have a shower to the main house and clear out the basement which had poor living conditions. Reitz said that his intent with the property is to transform it to a place they can be proud of rather than renting it out as it is. Using the example of the garage building, Reitz discussed the difficulty involved in restoration and stated that a lot of money would be involved in restoration efforts. He stated that his goal is to preserve the property and restore it to become a meaningful part of the community but in such a way that it pays for itself.

Katzenmeier came forward to present some final thoughts on the discussion. He referred to the standards of exception and presented two key arguments. Firstly, he suggested that the adverse effect of the proposed exception is a relative question because the parking situation as proposed can cause an adverse effect but leaving the property as it is can also cause an adverse effect, thereby making it a neutral point. Secondly, he said that standard “D” which reads, *“The strict application of these regulations is unreasonable, or unnecessary when all facts and circumstances are considered. In determining this standard, the Board shall weigh all facts and circumstances and place whatever emphasis and relevance it deems to be appropriate on each”* holds more weightage and hence is most critical and challenging. To further explain his argument, Katzenmeier referred to the Optimist Park conditional use amendment case, which was discussed early on in the public hearing. In comparing the two cases, Katzenmeier said that both cases have a proposal that is less damaging compared to the already approved/existing condition. He stated that the property is already under-served in terms of parking and therefore already causing problems. Bunger confirmed the existing parking deficit for the current use of the property. Katzenmeier, further drew upon this similarity and argued that if their proposal is considered as a whole, it is less damaging and more meaningful compared to the existing condition of the property, thereby satisfying the definition of the standard.

Aistrup asked Bunger about the occupancy of various buildings on the property as it currently exists. Bunger stated that the applicants would be in a better position to answer that question, and said that to the best of his knowledge there is a one bedroom unit in the basement, a commercial floor on the first floor, and a two-bedroom apartment on the second floor of the main building. He added that the garage is used for storage and the north-east building had a two-bedroom apartment until 2012 when the Code Office discovered another illegal two-bedroom apartment. Bunger also clarified that his analysis was based on what exists which also included the illegal unit. Aistrup asked how many parking spaces would meet the minimum requirement with the existing uses. Bunger stated that based on his calculations, the property needs a total of sixteen (16) parking spaces; four (4) for the commercial use and twelve (12) for the residential uses, to meet the minimum requirement. He also added that if the illegal unit is not considered, the minimum required parking spaces would reduce to thirteen (13).

At this point, Bunger and Katzenmeier generally discussed how the illegal unit was added to

the property. Katzenmeier reiterated his argument that their proposal is causing less parking problem compared to the existing condition because their proposal reduces the parking deficit ratio. Jones came forward to provide some information on how the property was used in the past. She stated that John Sullivan bought the property in 1977 and used it as an insurance office. She said that nobody lived in the back building because it lacked a shower and kitchen until recently when someone added the illegal unit. She added that the basement was occupied by one (1) person and Sullivan had three (3) employees and the back building was used for various businesses. She concluded by saying that there was no parking issue since 1977 because of the number of people using the property until Sullivan went out of business. Bunger added that based on the gross square footage of the back building, the property is under served in terms parking in either case of the back building used for commercial or residential use.

Aistrup closed the public hearing and opened the Board discussion.

Hamilton said she wished that the Zoning Regulations had provisions for projects with historic restoration as the goal. She also appreciated Capstone 3D's works in general and also the intent of the proposal under consideration. Aistrup mentioned that the standards do allow the Board to take into consideration the whole conditions, thereby giving some latitude to consider historic preservation efforts. Hamilton noted that the case being an application for an exception gives the Board more opportunities to consider various aspects of the project to make a final decision.

Hamilton stated that the proposal to make this property predominantly residential makes the parking issue a bigger problem by putting pressure on the neighboring properties. She also added that it raises a question whether or not it would be a good decision to propose a residential development in this location zoned C1- Restricted Business District. Hardy had a similar concern and said even though he appreciates the intentions and efforts behind the proposal; he is concerned whether it is an attempt to put a square peg in a round hole. Considering that a residential use would not be out of character in the area, Hamilton and Hardy agreed to the City Staff's recommendation that a scaled-down residential development would be appropriate as a conditional use. At this point Bunger clarified that the main concern from the City's stand point is the addition of a residential unit in the garage which was never used for residential purposes and then apply an exception to reduce the parking spaces. Hardy agreed to Bunger and stated that considering the neighbor's comments regarding parking not being an issue until the property was predominantly used for residential purposes, increasing the residential density is a major concern. He also stated that there seems to be a viable option to meet the parking standards by altering the proposal.

Aistrup suggested that the Board should consider the nature of the project as well because the project aims to draw clients interested in upscale and historically accurate apartments. He added that he inclined towards believing that the project, as proposed, will result in a better development and give better neighbors to the area. He argued that taking all conditions and factors into consideration; he would be willing to support the request for an exception. Lavis agreed to Aistrup and stated that she also believes the proposed development would draw responsible, tidy, and good neighbors because of the quality work Capstone 3D generally

delivers. At this point Bunger emphasized that the one-bedroom basement apartment would be eliminated.

Aistrup asked about the interpretation of a tie-vote, to which Bunger replied that a tie-vote would be interpreted as a vote of denial. Hamilton said that she does not disagree with argument that the proposal would result in a good development and drawing good neighbors, but she also emphasized that the impact on neighboring properties in terms of parking is a valid concern. Hamilton and Bunger also clarified that the development cannot be developed as a PUD because the site area is less than half acres. Hamilton asked if there is any provision for shared-parking. Bunger said that shared parking was not proposed and that the total collective parking must meet the sum of separate minimum parking space requirements (equivalent or more) and must be located in the same zoning district and within six hundred (600) ft from the property.

Aistrup asked if the item could be tabled, more information could be gathered and they could have their fifth member to vote to achieve a majority, one way or the other. Hamilton said that if the item was tabled, she would want to have the applicants establish how this proposal is the only way to historically restore the property to meet the standards of the National Historic Register. Hardy agreed to Hamilton and said that he is not sure if all possibilities were considered and more information in that regard would be beneficial in terms of decision making. Aistrup shared his belief that the parking would not be a major issue if the property is a quality development but said that he cannot use it as a fact for decision making. He further added that if the development meets historic preservation standards, then it could weigh enough over some of the other issues at hand. At this point Hardy reminded that the decision would still depend on whether there is the parking problem is being addressed.

Aistrup moved to table the item. Lavis seconded the motion which passed by a vote of 4-0.

Aistrup reminded the neighbors that there would be no notification about the next meeting unless the applicants change their proposal. Bunger and Hardy clarified that for the next meeting the Board is looking for other viable options that were considered towards historic preservation and how the proposal is the only viable option for historic preservation. Aistrup and Hamilton further emphasized historic preservation and historic value post development as a key element to decision making and suggested the need for proofs supporting statements about historic preservation. Bunger clarified that historic preservation and restoration is the desire of the applicants and not any requirement from the Historic Resource Board. Hamilton suggested that it would be helpful to get some support from people who want historic preservation in this community. Bunger suggested that if the Board's decision would be based on the property being on the National Historic Register, it must be conditioned. Hardy added that some evidence regarding how this property as a residential development would be unique rather than just another residential development, to which Aistrup added that having a quality development is not enough and the key would be to achieve certain historic value post development.

Bunger stated that he would forward the case to the Historic Resource Board and have the planner who liaisons with that board to get specific details on registering it. He also said that

he would gather more information about the legalities of making historic registration as a condition of approval.

Aistrup adjourned the meeting.

Respectfully submitted by
Jose Abraham, Planning Intern