

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, May 8, 2013
7:00 PM

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

MEMBERS ABSENT: Catherine Lavis and Ray Thompson

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

CONSIDER THE MINUTES OF THE APRIL 19, 2013, BOARD OF ZONING APPEALS MEETING.

Aistrup moved to approve the April 19, 2013 minutes, which was passed with a vote of 3-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARDSETBACK FROM TWENTY-FIVE (25) FEET TO ZERO (0) FEET ALONG S. 15TH STREET FOR A PROPOSED SECUTIRY FENCE AT THE PROPERTY GENERALLY LOCATED TO THE EAST OF THE DEAD END OF S. 15TH STREET IN THE I-3, LIGHT INDUSTRIAL DISTRICT. (APPLICANT/OWNER: ROTHWELL PROPERTY MANAGEMNT, INC. – JASON ROTHWELL).

Bunger explained the Exception staff report and recommended approval of the item with two (2) conditions.

Hardy asked if there was significant time to review all of the material that was available.

Bunger explained that the city attorney did look at the material and after talking to the applicant he would defer the question to Rothwell on how he approached the issue.

Aistrup clarified that the question was more about if the staff is comfortable with this recommendation in light of the legal issues and the timeline in which they were discovered.

Bunger stated that the recommendation would not change after talking with the applicant.

Hamilton voiced her concern over the potentially significant information not included in the staff report and that it's raising questions.

Hardy expressed his concerns about going through the public hearing process instead of the staff going back and analyzing the newly found information and that maybe it should be tabled until next month.

Bunger explained after reading through the material the recommendation wouldn't change but could consider it.

Aistrup asked about the violation of the right-of-way issues.

Bunger stated that he had no good answer concerning the issue other than the fact that it has been there for a long time.

Aistrup voiced his concern with the violation and that it needs to be addressed. Bunger acknowledged Airstrip's comments.

Hamilton asked if the city attorney had a response to the material.

Bunger explained how the applicant went about addressing the issue and after talking with the city attorney about it, she had no issues with the material.

Hardy voiced his concerns about hearing disputes between the parties that have nothing to do with the application.

Bunger paraphrased the applicant's intent on building a fence to create a buffer from the disputed area.

Aistrup opened up to public comments.

Jason Rothwell, property owner, explained the purpose of the fence was for storage of plants and to provide security for the property. He then elaborated on the history of the disputed land

with the adjacent property owner. Rothwell stated that he doesn't want to get into a legal battle but wants access to use his property.

Aistrup thanked Rothwell for his comments and asked for other comments.

Robert Frotscher, property owner of 614 S. 15th Street, explained that he was never allowed to put a fence out to his property line and expressed his concerns with the access of the street causing a safety hazard.

Aistrup thanked Frotscher for his comments and asked for additional comments.

James Willard, attorney representing Melvin and Nancy Pagent, explained the issues with the property lines are due to avulsion and that it's unclear if 15th street existed when the property was built.

Aistrup asked for clarification.

Bunger stated that the area was a part of the old ward districts and 15th street was platted on the town site.

Aistrup stated that he wanted to address the portion of the fence being in the disputed area and not the history.

Willard explained that the portion of the fence is not anywhere near the disputed area and elaborated on the history of the dispute.

Aistrup asked about the status of the dispute. Willard stated that there is not really a dispute. Aistrup thanked Willard and asked for other comments.

Bunger explained that he has explored additional signage for the street to address the access issues.

Aistrup closed the public comments.

Hamilton voiced her appreciation for satisfying the board's concerns and thanked Rothwell for his efforts. She then summed up the fence being in alignment with the property across the railroad tracks and that she is convinced that there is no dispute over the property.

Aistrup asked for additional comments then entertained a motion.

Hamilton addressed the need to reflect the modified proposal of the fence.

Bunger explained that we can't talk about county issues but will make additions to the staff report under probable effect on adjacent properties. The location of the fence in rural Riley county will continue straight south in its line which should not impact adjacent property owners.

Hardy mentioned the addition of the applicant providing a buffer to be included in the report.

Bunger stated he will make sure that those additions will be included in the staff report.

Hamilton asked if the staff report is written to reflect the opening to the property being located on the north end. Aistrup explained that the reasoning behind the exception is for the entrance to be located on the north side.

Bunger stated that he will put those additions under strict application area.

The Board made the following findings of fact for the Exception at 705 S. 15th Street.

PRESENT USE: Vacant land proposed for outdoor storage

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

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned I-3, Light Industrial District. There are two (2) zoning lots along Ft. Riley Boulevard that are zoned LM-SC, Light Manufacturing-Service Commercial District. The Manhattan Levee System along the Kansas River is to north of the subject site and south of the Union Pacific Railroad ROW. The area is a mix of industrial uses, material storage yards, vacant land associated with the levee system and residential uses. It is presumed that the residential uses are legally nonconforming in the industrial district, as they are not permitted to the current regulations.

The proposed fence should minimally impact adjacent properties. The fence will generally match the location and character of the existing fence of the material storage yard of a construction company to the north of the railroad ROW. The fence on this property was granted a Variance in February, 1981 to reduce the front yard setback to zero (0) feet and is identical to this request.

A letters was received from Robert and Betty Frotscher and Gary Bennington asking the Board to deny the Exception request (*see attached*). The basis of the concerns from the Frotschers and Bennington include traffic, snow removal, impacts on utilities and an ongoing neighborhood dispute with an adjacent property to the west of the subject site and the City's involvement in that neighborhood dispute. To clarify the concerns expressed by the two (2) neighbors. The fence will be on the applicant's property. Its placement should not impact travelway of S. 15th Street, as at least a fifteen (15) foot wide grass strip is present between the local gravel and the property line. Similarly, snow removal of the area should not be impacted because of the width of the ROW. The public utilities are generally found in the ROW, not on private property unless a utility easement is granted.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal impacts on the public health, safety and general welfare are anticipated. The location of the proposed fence should not impact utility easements or vision triangles. A similar fence in a similar location is found to the north of the subject site on the east side of S. 15th Street. The proposed fence or its placement will not be out of character.

The Manhattan Levee System is present in the area and development actives near the levee require approval from the US Army Corps of Engineers (USACE). Before installation of the fence can proceed, approval from the USACE must be granted.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the regulations would require that the proposed fence be located at least twenty-five (25) feet from the front property line along S. 15th Street. The proposed fence could be located twenty-five (25) feet from the front property line as required by the I-3 District. The proposed location of the fence is to maximize the storage area for the landscaping business.

Considering the circumstances surrounding the subject site and the area, the requirement to comply with the setback regulations appears to be unreasonable. S. 15th Street is a dead end gravel street with limited local traffic, primarily for the industrial and residential uses in the area. Only three (3) private property owners exist south of the railroad tracks. The character of the front yard along the dead end street has previously been altered by the existing fence in the required front yard setback to the north, which was approved in 1981. Also, the adjacent property has a large portion of the existing house which is in the ROW at the end street.

Aistrup made a motion to approve an Exception to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to zero (0) feet along S. 15th Street for a proposed security fence at 705 S. 15th Street in the I-3, Light Industrial District with the following conditions of approval:

1. The Exception shall be limited to the six (6) foot tall security fence as described in the application documents and shown on the site plan.
2. All applicable permits shall be obtained, including approval from the United States Corps of Engineers for the placement of them in proximity to the Manhattan Levee System.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FROM THREE (3) FEET TO ZERO (0) FOOT ON THE WEST AND SOUTH PROPERTY LINE FOR A PROPOSED DETACHED GARAGE; AND TO REDUCE THE MINIMUM REQUIRED FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO TEN (10) FEET FOR AN EXISTING HOUSE AT 321 N. 16TH STREET IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE EXCEPTION REQUEST FOR THE EXISTING HOUSE IS TO ADDRESS NONCONFORMING CONDITIONS AND BRING THE PROPERTY INTO CONFORMANCE WITH THE ZONING REGULATIONS TO GIVE THE PROPERTY A CLEAR TITLE. (APPLICANT /OWNER: ALYN AND KEVIN WEST)

Bunger explained the Exception staff report and recommended approval of the item with two (2) conditions.

Hamilton expressed her concerns with the language in the staff report under the strict application section and that she would like it to be modified.

The Board made the following findings of fact for the Exception at 321 N. 16th Street.

PRESENT USE: Single-family home with detached garage

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The existing house and detached garage was originally built in the 1920s. The house is approximately ten (10) feet from the front property line along Osage Street. The existing detached garage is zero (0) feet from the side property lines to the west and south.

A twenty-four (24) foot wide concrete and gravel driveway leads from Osage Street to the existing detached garage and associated parking area. The Community Development Department photographed all properties in the Ward Districts in 2001 for monitoring purposes. According to these photographs, the gravel and concrete parking area has been in this condition since at least 2001. Section 4-111(F)(1)(a)(5) states:

For driveways and access aisles associated with existing residential buildings, that portion of the driveway or access aisle, located between the street and a façade that faces towards the street, may be maintained or replaced in its existing location, provided it shall not be widened, expanded, lengthened, or altered in any manner that increases its degree of nonconformity from the above requirements of the TNO District, nor extended in a manner that is not perpendicular to the street.

The site plans for the proposed detached garage shows a paved driveway in replace of current gravel and concrete driveway.

A six (6) foot tall screening fence is located approximately one (1) feet from the Osage Street front property line. It is unknown when this fence was installed. The application site plan did not reflect the location of the existing fence and it was not discovered until after the public notice for the garage and house Exception was given. An Exception would be required to keep the fence in its current condition.

Other than these items and the conditions that the Exception requests are for, the subject site conforms to 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 District. The area is a mix of single-family, two-family dwelling multiple-family dwellings. The area is also a mix of owner occupied residences and dwellings that are rental units.

The existing detached garage is located approximately zero (0) feet from the west and south side property lines. The proposal is to remove the existing garage and construction a new, larger garage and carport to accommodate modern vehicles. The building elevations submitted with the application shows a building design that is similar in character to that of the house.

In addition, it appears that several other properties in the area have detached garages in similar locations, including the property to the immediate south of the subject site. The proposed detached garage will not be out of character of the area in terms of its location or appearance.

The Exception request for the detached garage should have minimal affects on adjacent properties.

In regard to the Exception for the existing house, it has been in its location and a part of the neighborhood since the 1920's. It is apparent that the location of the house has not impacted adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal affects on public health, safety or general welfare is anticipated. The location of the garage and carport will not affect existing utilities or any vision clearance triangles created by the street and area driveways. The proposed detached garage and carport's location and design are similar in character to the surrounding neighborhood.

The existing house in its location has been a part of the neighborhood since the 1920's with no apparent impacts on the general public.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: No viable option exists to remove a portion of the house to comply with the fourteen (14) foot front yard setback along Osage Street. The Exception is to bring the property in to conformance with the Zoning Regulations so a clear title may be obtained.

The strict application of the side yard setbacks for accessory structures would require that the new garage and carport would need to move three (3) feet to the east and three (3) feet to the north. Although this may be a minor alteration in the site plans, the relocated garage would expand more into the limited yard behind the house.

The proposed detached garage is similar in size and location to the existing garage. The new garage is expanded approximately five (5) feet to the north and two (2) feet to the east to accommodate modern vehicles. This would be the only areas of the garage that would extend beyond the original garage. The carport to be attached to the east side of the new garage is roughly setback three (3) feet from the south property line.

Considering these factors and that the proposed detached garage and carport will not impact adjacent properties or the general public, the strict application of the regulations appear to be unreasonable.

Aistrup moved to approve an Exception to allow for the reduction of the minimum required side yard setback from three (3) feet to zero (0) foot on the west and south property line for a proposed detached garage; and to reduce the minimum required front yard setback from fourteen (14) feet to ten (10) feet for an existing house at 321 N. 16th Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions of approval:

1. The Exception requests shall be limited to the detached garage, carport and existing house as shown on the site plan, architectural elevations and described in the

application documents.

2. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A DORMITORY ASSOCIATED WITH KANSAS STATE UNIVERSITY THAT WILL HAVE UP TO FIFTY-NINE (59) RESIDENTS AND STAFF IN THE R-M/UO, FOUR-FAMILY RESIDENTIAL DISTRICT AND UNIVERSITY OVERLAY DISTRICT. (APPLICANT/OWNER: KANSAS STATE UNIVERSITY, DEPARTMENT OF HOUSING AND DINING SERVICES – SKYLER HARPER)

Bunger explained the Conditional Use staff report and recommended approval of the item with three (3) conditions.

Skylar Harper, Kansas State University assistant director of housing, explained the details of the conditional use and expressed that he was there to answer any questions.

Aistrup asked for additional comments from the public then opened up for board discussion.

The Board made the following findings of fact for the Conditional Use at 1930 College Heights Road.

PRESENT USE: Vacant building formerly associated with the Kappa Sigma fraternity

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: The existing structure was building as a fraternity in 1960. The Kappa Sigma fraternity received a Conditional Use in 1993 for the established fraternity and a building addition on the west side of the structure.

The staff report noted that the existing 43 stall off-street parking lot located in the front yard setback was legally nonconforming and not required to receive a Variance. City Administration concurs with the original findings that the location of the parking lot is legally nonconforming and does not require Board of Zoning Appeals action.

B. Probable effect on adjacent properties: The subject site and surrounding properties are zoned R-M/UO, Four-Family Residential District and University Overlay District. To the northwest are properties zoned R, Single-Family Residential District, R-1, Single-Family

Residential District and PUD, Tecumseh Lofts Residential Planned Unit Development. Along Sunset Avenue are properties zoned R-3/UO, Multiple-Family Residential District and University Overlay District.

The area is a mix of single-family homes, some of which are owner-occupied, apartment buildings, and fraternities. The Mercy Regional Health Center on Sunset is located to the north.

Minimal affects on adjacent properties should occur by approving the Conditional Use for the proposed dormitory. The subject site has been used as a fraternity since 1960 when the original building was constructed. The fraternity had an occupancy load for up to 70 members. The University is proposing to renovate the interior to house 54 residents plus resident hall staff members. No exterior changes to the existing structure are proposed. The dormitory use of the structure will be similar to that of the fraternity. The amount of light, noise and traffic for the proposed dormitory should be similar to the former fraternity.

C. Domination by use over neighboring properties: The existing structure was constructed as a fraternity in 1960 and has been a part of the surrounding neighborhood, some of which are also fraternities, since that time. The proposed use will be similar to a fraternity or sorority and should not dominate over neighboring properties.

- 1. Location, nature, and height of physical improvements:** The structure is 2-story and has a building footprint of approximately 9,260 square feet. The building is setback approximately 73 feet from the College Height Road front property line, 64 feet from Quivera Drive front property line, 16 feet to the east side property line and 80 feet to the north side property line.

Other improvements on the side include a concrete basketball court and outdoor patio area.

- 2. Landscaping and screening:** Manicured lawns and mature trees are on the subject site. Foundation plant beds are to the south of the building. Because of the location of the existing parking lot, a screening fence is not required. The site plan does not show the placement of a trash dumpster. The permanent location of the dumpster will require sight obscuring screening with a closing gate. City Administration has provided a recommendation to ensure that this screening is provided.

D. Adequate provision of parking and loading: The parking requirement for a dormitory is the same as it is for a fraternity or sorority: At least one (1) parking space for each occupant for the first twenty (20) occupants, or a total number of spaces equal to seventy-five percent (75%) of the total occupants, whichever is greater (7-103(A)(4)). Based on the proposed occupancy of the dormitory (54 residents plus resident hall staff), 42 spaces are required. A total of forty-three (43) spaces are currently provided on the subject site. Existing parking meets the minimum requirement and is adequate for the proposed use.

E. Adequate provision of drainage, and other public utilities: The site drains towards Quivera Drive and College Heights Road. The general area has seen improvement in the

stormwater sewer system in recent years due to new and expanded detention facilities upstream from the subject site. Adequate drainage is provided.

Public utilities currently exist to serve the structure and the proposed use.

F. Adequate provision of access: Access to the subject site currently exists off of College Height Road and Quivera Drive. The existing access is adequate.

Sidewalks are found along the subject site and in the general area to accommodate pedestrian traffic.

Aistrup moved to approve a Conditional Use to allow for a dormitory associated with Kansas State University that will have up to fifty-nine (59) residents and staff at 1930 College Height Road in the R-M/UO, Four-Family Residential District and University Overlay District, with the following conditions of approval:

1. The Conditional Use shall apply only to the dormitory for Kansas State University as described in the application documents and shown on the site plan and building floor plans.
2. Sight obscuring screening with a closing gate of a height of at least six (6) feet shall be provided around the use's trash dumpster.
3. All applicable permits shall be issued.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FROM EIGHT (8) FEET TO ONE (1) FEET ON THE NORTH PROPERTY LINE FOR A PROPOSED ATTACHED CARPORT AT 407 WESTVIEW DRIVE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT (APPLICANT/OWNER: JASON KAZAR).

Bunger explained the Exception staff report and recommended approval of the item with three (3) conditions.

Aistrup opened up for public comments

Hamilton asked to confirm that the conversation the applicant had with the adjacent property owner was as positive as the board's comments.

Jason Kazar, applicant, expressed that they were.

Hardy expressed gratitude to the applicant for being proactive with his neighbors.

Aistrup closed the public comment section.

The Board made the following findings of fact for the Exception at 407 Westview Drive

PRESENT USE: Single-family home

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

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding property owners are in the R, Single-Family Residential Zoning District. The area is entirely a single-family residential neighborhood, most of which are owner occupied homes.

Several adjacent properties have attached garages, or carports located within the required eight (8) foot side yard setback, albeit not as close as what is being proposed. The presence of a carport in the required side yard setback would be within character of the neighborhood.

The property most impacted by the proposed addition would be the property immediately to the north of the subject site (411 Westview Drive). The proposal is to have the edge of the carport being one (1) foot from the adjoining property line. The house at 411 Westview Drive is setback approximately sixteen (16) feet from the adjoining property line. The architectural elevations of the carport show a partial wall along the north side of the structure to act as a visual screen. A fence on the property at 411 Westview Drive is located in the general area of where the carport is to be located on the subject site.

The applicant provided a form letter of support for the project with the signature of eight (8) neighboring property owner's signatures, one of which was the adjacent property owner to the north. It appears that the Exception request should not adversely impact adjacent property owners.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal adverse affects on the general health, safety or welfare of the public is anticipated. The proposed carport will not encroach on any public utilities as there are no utility easements along the north property line. The carport will also not encroach on any vision triangles created along Westview Drive.

As previously mentioned, there are a number of carports and detached garages located within the required eight (8) foot side yard setback. The proposal will be similar in character to these other structures in the surrounding neighborhood.

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

The strict application of the side yard setback for the principle structure would prohibit the construction of a carport or a second garage bay to the existing garage. The existing house is approximately ten (10) feet from the north property line. No other options exist to construct a covered or enclosed area to park a vehicle on the north or south side of the house, as there is not enough separation from the side property lines. It may be possible to construct a detached garage at the rear of the lot. It is unknown if that is a viable option for the applicants.

The proposal is not out of character with the surrounding neighborhood and it appears that the surrounding property owners, including the property owner immediately to the north of the subject, approval of the proposal. Considering these factors, the Exception request may be unreasonable.

Aistrup moved to approve of an Exception to allow for the reduction of the minimum required side yard setback from eight (8) feet to one (1) feet on the north property line for a proposed attached carport at 407 Westview Drive in the R, Single-Family Residential District, with the following conditions of approval:

1. The Exception request shall only apply to the carport as described in the application documents and shown on the site plan and architectural elevations.
2. The partial wall shall be installed as shown on the architectural elevations to provide a visual screen from the adjacent property.
3. All applicable permits shall be approved.

Hardy seconded the motion, which passed unanimously, 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).

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO 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).

Hardy motioned to remove item six (6) and seven (7) from the table, which passed 3-0.

Aistrup asked to hear just the updated information on the case.

Bunger explained the updated information and that the recommendations have not changed.

Aistrup opened up for public comments

Linda Jones, owner of 714 Poyntz, expressed her concerns about parking associated with the proposed development.

Angela Hubler, board of trustees First Congregational Church, expressed her concerns about parking with the proposed development.

Kathy Dzewaltowski, Manhattan/Riley County Preservation Alliance, expressed her support for the historic preservation of the subject site.

Kail Katzenmeier, president of Capstone 3D, explained his involvement with the project and expressed his support by adding additional comments in regards to the required parking.

Jim Lewis, board of trustees First Congregational Church, expressed his concerns in regards to parking.

Chris Banner, 1606 Osage, expressed his support for a consensual agreement for the parking requirements.

Hamilton asked Katzenmier about discussions regarding modifying the garage parking or reducing one (1) bedroom or anything at all.

Katzenmier stated that they have explored several combinations of options in regards to uses and explained that the main house will actually be two (2) residential units instead of three (3) as stated earlier.

Hamilton then asked for a clarification of the explored combinations and if the current proposal was the only way to make the project viable.

Russell Reitz, subject property owner, explained his investment in the project and that he is already nervous with its viability the way it is proposed.

Hamilton stated that she would take that as a yes to her question. Hamilton then commented on the applicant trying to preserve the garage but tearing it down would allow for the required parking for the project. She did not find that to be acceptable if the goal is to preserve the site.

Bunger explained that the staff wants this property to be preserved as best as possible and wanted to clarify that the garage doesn't necessarily have to be removed with the staff report recommendations.

Aistrup stated that he was curious about the table presented, particularly option two (2) the commercial property.

Bunger stated that the math was right and the gross square footage was correct then explained the parking requirements regarding the subject site.

Aistrup discussed different scenarios with Bunger.

Hamilton asked if the church complies with the parking requirements.

Bunger explained that he does not have detailed information but parking requirements for churches vary widely.

Hamilton stated that it seems like the church doesn't have enough parking and the area is tight in regards to parking.

Aistrup stated that it is time to close the public comment section.

Hamilton asked to clarify that the staff report was drafted in support for everything but parking.

Aistrup agreed and stated that we just needed to modify the staff report to address the parking issue.

Hamilton asked if there was enough information from the board's comments to modify the staff report.

Bunger clarified the details for the staff report modifications.

The Board made the following findings of fact for the Conditional Use at 718/720 Poyntz Avenue.

PRESENT USE: vacant commercial office space and four (4) nonconforming residential dwelling units.

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: The two (2) houses on the subject site were built in the 1900's and the garage appears to be built in the 1940's. The information provided by the applicant states that the main house and the northeast house have been used as a residence until 1951. At that time, it became a mix of residential and commercial uses. In 1969, the subject site and surrounding properties along Poyntz Avenue were rezoned to C-1, Restricted Business District. At that time, the residential uses became legally nonconforming, because the C-1 District required a Conditional Use to establish the use. In early 2012, it was discovered by the Code Service Office that a dwelling unit was being constructed in the northeast building. A stop work order was issued. The act of constructing an additional dwelling unit put the legal nonconforming status at risk. Since that time, the subject site has been sold to the current owner, who is seeking a Conditional Use to bring the property into compliance with the Zoning Regulations and renovate the two (2) existing residential buildings and construct a dwelling unit in the detached garage to create a total of five (5) dwelling units with eleven (11) bedrooms. The commercial use on the subject site will cease

to exist.

The structures do not comply with the existing zoning district's building setbacks. The main house is located approximately eighteen (18) feet from the front lot line along Poyntz Avenue and encroaches into the twenty-five (25) foot front yard setback. Both the northeast and northwest houses are located zero (0) feet from the rear property line along the alley and encroaches into the twenty-five (25) foot rear yard setback. The northeast house is approximately three (3) feet from the east property line. The northwest house is located zero (0) feet from the west property line. Both of these structures encroach into the minimum required eight (8) foot side yard setback. The buildings cover approximately thirty-four (34%) percent of the subject site. The C-1 District has a maximum lot coverage of thirty (30%) percent. Although the two (2) houses pre-date Zoning regulations in the City and the northwest house complied with the zoning regulations at the time it was constructed, Exceptions have been requested to bring them into conformance with the Zoning Regulations as part of Conditional Use process.

In addition to the above Exception requests, the applicant has proposed to reduce the minimum required off-street parking number from sixteen (16) spaces to eleven (11) spaces for the five (5) dwelling units. Other than these conditions, the subject site complies with all applicable regulations.

B. Probable effect on adjacent properties: The subject site and surrounding properties along Poyntz Avenue are zoned C-1, Restricted Business District. To the north of the alley are properties zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of residential, commercial and institutional uses. Immediately to the west and north of the site are residential uses. To the east is a commercial office building and the First Congregational Church. To the south of Poyntz Avenue are commercial office buildings.

The subject site is with the environs of the First Congregational Church, Ulrich House, and the Houston-Pierre Historical District. The applicant and the project consultant, Kail Katzenmeier of Capstone Development, presented a conceptual plan at the December 17, 2012 Historic Resource Board. On April 22, 2013, the Manhattan Historic Resources Board officially reviewed the Conditional Use and Exception requests for the proposed development and found that it meet the *Standards and Guidelines for Evaluating the Effect of Projects on Environs* and will not encroach upon, damage or destroy any listed historic property or its environs (*See attached letter from Kevin Credit*)

The subject site has been used as a mixed use development since at least 1951. The first commercial use was a funeral home. The most recent uses were a mix of office space on the first floor and residential dwelling units in the basement and second floors of the main house and two (2) dwelling units in the northeast building. The proposal would eliminate the commercial uses on the subject site and establish five (5) dwelling units with a total of eleven (11) bedrooms through the three (3) separate buildings. In terms of light, noise and traffic, the impacts of the proposed development will be minimal and similar to the surrounding residential properties in the area.

Comparing the existing mixed use conditions of the property, the subject site historically did not have adequate off-street parking. There are eight (8) designated parking spaces on the subject site. Three (3) parking spaces could be located in the garage. Based on today's parking standards, the most recent use of the property would require a minimum of nineteen (16) parking spaces (4 spaces for the commercial use and 12 spaces for the mix of single-, two- bedroom apartments in the 2 buildings). The garage was not calculated as a residence, as it has recently been used for storage. The proposed site plan shows a re-organization of the parking lot layout to provide the eleven (11) spaces. The number of parking spaces is adequate for the tenant parking, but does not address visitor parking. Unrestricted on-street parking is provided on Poyntz Avenue, which may alleviate the parking demand during most hours of the day and night.

An email was sent to City Administration from Linda Jones on April 18th expressing her concerns for the proposed development and the impact that the off-street parking would have on her and her property at 714 Poyntz Avenue (*see attached letter*).

Letters of support for the project was submitted from Kathy Dzewaltowski, President of the Manhattan/Riley County Preservation Alliance, Donald and Arlene Bechtel and from Thomas Hintz, Varney & Associates, CPAs LLC. All three (3) correspondences expressed support for maintaining the historic elements of the subject site and that the proposed off-street parking count should not affect the area (*see attached letters*).

Considering these factors, there should be minimal impacts on adjacent properties.

C. Domination by use over neighboring properties: No significant changes to the exterior of the two (2) existing residential buildings are proposed. The existing garage will be renovated to remove garage doors so that it can be converted to a residential dwelling unit. The proposed development should not dominate over neighboring properties.

- 1. Location, nature, and height of physical improvements:** All three (3) buildings are made of native stone. The main house, located in the center of the subject site is three-stories. The northeast house is two-stories. The garage is a single-story structure.
- 2. Landscaping and screening:** The front yard along Poyntz Avenue and the east side yard is generally manicured lawn. Based on the size of the off-street parking lot at the rear of the subject site (approximately 4,500 square feet), one (1) tree of 2 ½ caliper is required and is provided on the east side of the subject site (Section 7-102(E)(2)). Mature street trees are located along Poyntz Avenue. A line of mature trees and shrubs line the adjoining property line to the west.

No sight obscuring screening is required for off-street parking lots in the C-1 District (Section 7-102(E)(5)). No screening fences are proposed. A trash enclosure is

proposed adjacent to the main house. No details of the enclosure's materials are provided in the application documents. This enclosure must be constructed of sight obscuring materials such as wood, plastic or metal.

D. Adequate provision of parking and loading: The minimum off-street parking requirement for the five (5) dwelling unit development is a total of sixteen (16) off-street parking spaces. The exact requirements are as followed:

Building	Unit	Bedroom Count	Parking Requirement
Main	1st Floor	2	3
	2 nd & 3 rd Floors	3	3.5
Northeast	1 st Floor	2	3
	2 nd Floor	2	3
Northwest	Main floor	2	3
		Total	15.5 – rounded to 16

At the March 13th, 2013 Board of Zoning Appeals public hearing, the applicant, project consultant and property owner expressed their desire to place the subject site on the National Registry of Historic Places so that the project can be financially viable by using tax credits. A letter from Kristen Johnston, Tax Credit Coordinator, State Historic Preservation Office has been submitted to address a previous discussion that modifying the detached garage to raise its roof line would prohibit from being considered for the National Registry. City Administration had a phone conversation with Ms. Johnston, where it was explained that generally converting the detached garage as proposed in the Conditional Use request would not impact its eligibility for the historic listing.

The site plan shows eleven (11) off-street parking spaces in the center of the lot. The applicant has requested an Exception to reduce the minimum number of spaces to the proposed number found on the site plan.

The Board of Zoning Appeals finds that the proposed development plan provides one (1) off-street parking space for each bedroom proposed in the five (5) dwellings, which the Board finds to be sufficient. The Board feels strongly that the historical preservation project should include all three (3) buildings and not jeopardize the detached garage. The number of units that are being proposed is essential to ensure that the site is preserved for its historic significance. The Board is willing to weight that heavily against the strict application of the off-street parking standards in the applicant's favor.

E. Adequate provision of drainage, and other public utilities: Adequate utilities are available to serve the proposed development. New utility services would be provided to the northwest structure. Stormwater drainage currently sheet flows towards the alley to the north, where if then sheet flows to the adjacent streets and enters into the City's stormwater sewer system

F. Adequate provision of access: Currently access is provided off of Poyntz Avenue and the

alley. No changes are proposed to the existing access, which is adequate for the proposed development.

Pedestrian access is provided via a public sidewalk along Poyntz Avenue.

Aistrup made a motion to approve a CONDITIONAL USE to allow for a multiple-family development at 718/720 Poyntz Avenue in the C-1, Restricted Business District with the following conditions of approval:

1. The Conditional Use shall only apply to the proposed development which consists of five (5) dwelling units, with a total of eleven (11) bedrooms in three (3) existing buildings, as outlined in the application documents and shown on the site plan and floor plans.
2. The Exception request to reduce the minimum required off-street parking numbers and building setbacks shall be approved.
3. The basement shall be remain vacant and only used for minimal storage. Compliance of this condition will be verified prior to the issuance of a Certificate of Occupancy for the structure.
4. Appropriate sight obscuring screening shall be provided for the trash dumpster.

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

The Board made the following findings of fact for the Exception at 718/720 Poyntz Avenue.

PRESENT USE: vacant commercial office space and four (4) nonconforming residential dwelling units.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The two (2) houses on the subject site were built in the 1900's and the garage appears to be built in the 1940's. The information provided by the applicant, the main house and the northeast house has been used as a residence until 1951. At that time, it became a mix of residential and commercial uses. In 1969, the subject site and surrounding properties along Poyntz Avenue were rezoned to C-1, Restricted Business District. At that time, the residential uses became legally nonconforming, because the C-1 District required a Conditional Use to establish them. In early 2012, it was discovered by the Code Service Office that a dwelling unit was being constructed in the northeast building without a building permit. A stop work order was issued. The act of constructing an additional dwelling unit put the legal nonconforming status at risk. Since that time, the subject site has been sold to the current owner, who is seeking a Conditional Use to bring the property into compliance with the Zoning Regulations to establish a total of five (5) dwelling units with eleven (11) bedrooms within the three (3) buildings. The commercial use on the subject site will cease to exist.

The structures do not comply with the existing zoning district's building setbacks. The main house is located approximately eighteen (18) feet from the front lot line along Poyntz Avenue and encroaches into the twenty-five (25) foot front yard setback. Both the northeast and

northwest houses are located zero (0) feet from the rear property line along the alley and encroaches into the twenty-five (25) foot rear yard setback for a principal structure. The northeast house is approximately three (3) feet from the east property line. The northwest house is located zero (0) feet from the west property line. Both of these structures encroach into the minimum required eight (8) foot side yard setback. The buildings cover approximately thirty-four (34%) percent of the subject site. The C-1 District has a maximum lot coverage of thirty (30%) percent. Although the two (2) houses pre-date Zoning regulations in the City and the northwest house complied with the zoning regulations at the time it was constructed, Exceptions have been requested to bring them into conformance with the Zoning Regulations as part of Conditional Use process.

In addition to the above Exception requests, the applicant has proposed to reduce the minimum required off-street parking number from sixteen (16) spaces to eleven (11) spaces for the five (5) dwelling units. Other than these conditions, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties along Poyntz Avenue are zoned C-1, Restricted Business District. To the north of the alley are properties zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of residential, commercial and institutional uses. Immediately to the west and north of the site are residential uses. To the east is a commercial office building and the First Congregational Church. To the south of Poyntz Avenue are commercial office buildings.

The subject site is within the environs of the First Congregational Church, Ulrich House, and the Houston-Pierre Historical District. The applicant and the project consultant, Kail Katzenmeier of Capstone Development, presented a conceptual plan at the December 17, 2012 Historic Resource Board. On April 22, 2013, the Manhattan Historic Resources Board officially reviewed the Conditional Use and Exception requests for the proposed development and found that it meet the *Standards and Guidelines for Evaluating the Effect of Projects on Environs* and will not encroach upon, damage or destroy any listed historic property or its environs (*See attached letter from Kevin Credit*)

No effects on the adjacent property should be seen by approving the setback reductions and the increase of the maximum lot coverage for the existing buildings. These conditions have been a part of the neighborhood since 1902 for the residential buildings and 1940 for the garage. No significant changes to the exterior of the existing buildings are proposed.

The amount of off-street parking could impact the adjacent properties. The applicant has requested an Exception to reduce the required number of off-street parking space total from the minimum of sixteen (16) spaces to eleven (11) spaces. The proposed parking count equates to one (1) off-street parking space per bedroom.

Comparing the existing mixed use conditions of the property, the subject site historically did not have adequate off-street parking. There are currently eight (8) designated parking spaces on the subject site. Three (3) parking spaces could be located in the garage. Based on today's

parking standards, the most recent use of the property would require a minimum of nineteen (19) parking spaces (4 spaces for the commercial use and 12 spaces for the mix of single- and two- bedroom apartments in the 2 buildings). The garage was not calculated as a residence, as it has recently been used for storage. The applicant has submitted additional information outline a rough comparison of different permitted and conditional uses in the two (2) building that have been used as commercial or residential space (not the detached garage). The comparison used the minimum required off-street parking ratios of residential, day care (1 space for each employee and 1 space for each 5 children), boarding house (2 spaces plus 1 space for each sleeping room) and professional office building (1 space per 300 square feet of floor area). The applicant's analysis shows that any combination of the existing spaces in the three (3) buildings would not comply with the minimum requirements of the off-street parking regulations.

The proposed site plan shows a re-organization of the parking lot layout to provide the eleven (11) spaces. The number of parking spaces is adequate for the tenant parking, but does not address visitor parking. Unrestricted on-street parking is provided on Poyntz Avenue, which may alleviate the parking demand during most hours of the day and night.

The adjacent properties with the most potential to be impacted by the parking condition would be those along Poyntz Avenue. The on-street parking along Poyntz Avenue should alleviate these impacts. The residential properties to the north of the subject site most likely will not be impacted. Tenants or visitors to the subject site will most likely use available parking on Poyntz Avenue rather than the on-street parking on Juliette Avenue, Humboldt Street and N. 8th Street.

An email was sent to City Administration from Linda Jones on April 18th expressing her concerns for the proposed development and the impact that the off-street parking would have on her and her property at 714 Poyntz Avenue(*see attached letter*).

Letters of support for the project was submitted from Kathy Dzewaltowski, President of the Manhattan/Riley County Preservation Alliance, Donald and Arlene Bechtel and from Thomas Hintz, Varney & Associations, CPAs LLC. All three (3) correspondences expressed support for maintaining the historic elements of the subject site and that the proposed off-street parking count should not affect the area (*see attached letters*).

Considering these factors, there should be minimal impacts on adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No affects on the public health, safety or general welfare is anticipated by approving the Exception requests. The subject site has been in this condition since at least 1940 with no know issues.

The Exception request for the reduction of off-street parking should not impact the general public as well. The subject site provides adequate parking for each tenant. Any on-street parking demanded by the subject site will be minimal, which Poyntz Avenue would be able to accommodate.

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

No options exist to bring the property into compliance with the building setback and maximum lot coverage requirements for the existing buildings. The main building and northeast building have been in existence before Zoning Regulations were adopted in 1929. All three (3) buildings are a part of the character of the area and do not impact the adjacent properties or general public.

Based on the layout of each dwelling unit proposed on the subject site, a minimum of sixteen (16) off-street parking spaces are required. The site plan shows eleven (11) parking spaces are to be provided. Based on the strict application of the regulation more parking spaces would need to be provided on the subject site or a reduction in the number of dwelling units or bedrooms in each dwelling unit.

Without eliminating an existing building, the only logical place to provide more off-street parking would be along Poyntz Avenue. The placement of parking in this area would encroach into the twenty-five (25) foot front yard setback and require an additional Exception request. Considering the character of Poyntz Avenue in this area, parking in the minimum required front yard may not be the most accepted solution to meet the strict application of the regulation.

The garage has used to park vehicles or for storage. The applicant is proposed to renovate the garage into a dwelling unit with two-bedrooms. The minimum parking requirement for this new unit is three (3) parking spaces. If this unit was eliminated, the minimum parking requirement for the remaining four (4) dwelling units would be thirteen (13) spaces. Based on the number and width of the garage doors on this structure, it appears that at least two (2) parking spaces are available in the structure, which would bring the new total to thirteen (13) spaces. This would meet the minimum requirement for the dwelling units in the two (2) existing buildings that have traditionally have had residences located in them, albeit, not completely legal because of building permit issues.

At the March 13th, 2013 Board of Zoning Appeals public hearing, the applicant, project consultant and property owner expressed their desire to place the subject site on the National Registry of Historic Places so that the project can be financially viable by using tax credits. A letter from Kristen Johnston, Tax Credit Coordinator, State Historic Preservation Office has been submitted to address a previous discussion that modifying the detached garage to raise its roof line would prohibit from being considered for the National Registry. City Administration had a phone conversation with Ms. Johnston, where it was explained that generally converting the detached garage as proposed in the Conditional Use request would not impact its eligibility for the historic listing

In reviewing the proposed development of the subject site, it does not appear that the proposed Exception request to reduce the parking requirements for the five (5) dwelling units would impact adjacent property owners or the general public.

The Board of Zoning Appeals finds that the proposed development plan provides one (1) off-street parking space for each bedroom proposed in the five (5) dwellings, which the Board finds to be sufficient. The Board feels strongly that the historical preservation project should include all three (3) buildings and not jeopardize the detached garage. The number of units that are being proposed is essential to ensure that the site is preserved for its historic significance. The Board is willing to weight that heavily against the strict application of the off-street parking standards in the applicant's favor.

Aistrup made a motion to 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 718/720 Poyntz Avenue in the C-1, Restricted Business District, with the following conditions of approval:

1. The Exception shall be only for the proposed development as shown on the site plan and floor plans and described in the application documents.
2. The Conditional Use to establish the proposed five (5) dwelling units shall be approved.
3. The development shall be constructed as proposed.

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

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