

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, July 12, 2006
7:00 PM

MEMBERS PRESENT: Chuck Jackson, Chair Person; Calvin Emig, Connie Hamilton, Harry Hardy

MEMBERS ABSENT: Daniel Morin

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Jeremy Frazzell, Planner; Bret (Bee) Martin, Planning Intern

CONSIDER THE MINUTES

Hardy moved to approve the June 14, 2006, minutes, which were seconded by Hamilton and passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A MODIFICATION OF AN EXISTING CONDITIONAL USE AT 517 FAIRCHILD TERRACE IN THE R-1, SINGLE-FAMILY RESIDENTIAL, WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY AND UO, UNIVERSITY OVERLAY DISTRICTS FOR A SORORITY'S SINGLE LOT TO BE DIVIDED INTO TWO LOTS. (APPLICANT/OWNER: JERROD WESTFAHL/ GAMMA ALPHA HOUSE ASSOCIATION OF KAPPA KAPPA GAMMA FRATERNITY)

A PUBLIC HEARING TO CONSIDER A VARIANCE AT 501 FAIRCHILD TERRACE IN THE R-1, SINGLE-FAMILY RESIDENTIAL, WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY AND UO, UNIVERSITY OVERLAY DISTRICTS TO ALLOW A REDUCTION OF THE MINIMUM REQUIRED ONE-HUNDRED (100) FOOT LOT DEPTH, AND A REDUCTION IN THE MINIMUM REQUIRED 6,500 SQUARE FOOT LOT AREA, FOR PROPOSED LOT 2, IN THE KAPPA KAPPA GAMMA ADDITION, ON WHICH THERE IS AN EXISTING VACANT ANNEX HOUSE. (APPLICANT/OWNER: JERROD WESTFAHL/ GAMMA ALPHA HOUSE ASSOCIATION OF KAPPA KAPPA GAMMA FRATERNITY)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION AT 501 FAIRCHILD TERRACE IN THE R-1, SINGLE-FAMILY RESIDENTIAL, WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY AND UO, UNIVERSITY OVERLAY DISTRICTS TO ALLOW A DRIVEWAY TO BE GREATER THAN TEN (10) FEET IN WIDTH BETWEEN THE STREET AND A PARALLEL LINE DRAWN THROUGH THE NEAREST WALL OF THE FAÇADE OF THE RESIDENTIAL BUILDING THAT FACES TOWARDS THE STREET; A

REDUCTION OF THE MINIMUM EIGHT (8) FOOT SIDE YARD SETBACK FOR AN EXISTING HOUSE. (APPLICANT/OWNER: JERROD WESTFAHL/ GAMMA ALPHA HOUSE ASSOCIATION OF KAPPA KAPPA GAMMA FRATERNITY)

Frazzell presented the Staff Report with a recommendation for approval of the modification of an existing Conditional Use with six conditions, approval of the Variance with three conditions, and approval of the Exceptions with three conditions.

Jackson asked if the proposed lot size was going to be reduced from 7,500 square feet to 6,500 feet.

Frazzell indicated the lot size would be reduced from 6,500 square feet to 6,200 square feet.

Jackson asked if there could be additional square footage added to the north side of the lot to eliminate the request for the reduction in the rear yard setback. He mentioned the north lot line could be moved further north creating a larger setback.

Frazzell mentioned that a parallel parking space would be located in the way of doing that. Moving the lot line to the north would eliminate an extra off-street parking space, which would require the sorority to have to go before the BZA again for a reduction in their required off-street parking spaces.

Jackson asked about the current parking configuration with diagonal parking stalls and users having to make a U-turn in the off-street parking area to exit the property.

Frazzell confirmed that this diagonal parking arrangement is the way the parking on the lot is configured right now.

Hamilton asked that if the Board approved the requests and the house were sold to a third party, whether there would be nothing to prevent the third party from removing the house.

Frazzell mentioned that a transfer to a third party would remove the previous conditions placed on the house.

Hamilton asked, mentioning a screening requirement of a wood fence for parking lots, if the Board would be able to require a wood fence to be attractive from both sides as a condition so that there wouldn't be just one attractive side to it or if there was an existing Code addressing that issue.

Frazzell was unable to answer the question posed by Hamilton.

Hamilton mentioned that this may be the current Board's first modification to a Conditional Use permit. She mentioned the Staff Report was directed toward the impact of the separation of the two lots as opposed to a reexamination of the viability of the Conditional Use permit previously granted.

Jerrod Westfahl, 2037 Arthur Drive, attorney representing Kappa Kappa Gamma Fraternity, further provided a background for the issues at hand and introduced parties involved in the proposal.

Dixie Russell, 21155 Bison Road, Paxico, Kansas, President of the Kappa Kappa Gamma, Gamma Alpha House Corporation Board; Kerry Wefald, 3428 Churchill Street, Vice Chair, Kappa Kappa Gamma, Gamma Alpha House Corporation Board; and Marty Vanier, 5605 Blue River Road, advisor, Kappa Kappa Gamma, requested the Board's support for the proposal and its likelihood of solving ongoing problems with the configuration of the two lots.

Jerrod Westfahl further explained Kappa Kappa Gamma's case for removing existing conditions previously placed on the property; discussed how the proposed side lot line was determined; discussed the reasoning for not reducing off-street parking and allowing the curbs for parking for the sorority house to be up to the north edge of the house on the proposed Lot 2; mentioned that approval would benefit the sorority by releasing it from a financial obligation to maintain the existing house, which generates no income; mentioned that approval of the request would ultimately put the house to productive use, consistent with neighboring homes; and mentioned that there is a buyer in line who is interested in purchasing the property with the existing annex house.

Hamilton asked Westfahl to address the issue of whether the Variance requirement was created by the applicant.

Jerrod Westfahl responded by mentioning that the requirement is generated by a change in circumstances over time and asked the Board to take the broader long-term view of the productive use of property.

Hamilton responded by noting that the applicant could expand the size of proposed Lot 2, and come before the Board the request a reduction in off-street parking requirements. She mentioned that it may be harder to satisfy the standards for a Variance with the specifics of the current proposal than an Exception with an alternative request.

Westfahl responded by mentioning the applicant was comfortable coming forward with the current proposal, striking a balance under the circumstances of not forcing more cars to park on the street, but also allowing for an attractive residential lot without requesting a reduction in parking and increasing the proposed lot size.

Emig asked whether the party interested in purchasing the proposed Lot 2 property would own and occupy the home or would rent it out to another party.

Westfahl said the interest they had received was from someone who would refurbish the home and allow their graduate student child to reside there.

Bud Valerius, 1849 Fairchild Avenue, stated that the photos shown by Westfahl were inappropriate and irrelevant to the issue at hand regarding the size of lots in the neighborhood

compared with the subject property. Valerius mentioned he is mostly in favor of the applicant's proposal, provided a full-sized lot is maintained. He mentioned he has been opposed to allowing parking on Lot 2 from the start and so have many of the neighbors.

Jayne Morris-Hardeman, 1822 Laramie Street, explained the concerns about the existing house's condition expressed by the Neighborhood Association. Hardeman mentioned the main concern of the Neighborhood Association was maintaining the current house in good condition. She mentioned that the house on the property is a transitional piece for the neighborhood from large sorority houses to single-family residences. She also mentioned that the situation at hand is not ideal, but that the request is a compromise of putting the house to an actual productive use and for it to be maintained in good condition and at the same time allow the sorority to accomplish its goals.

Hamilton asked for Morris-Hardeman to address Valerius' concern about maintaining the full-size lot and parking off of Fairchild Terrace.

Morris-Hardeman mentioned that maybe screening should be provided in the island between the house and the parking lot for the sorority house.

Dean Zollman, 1845 Fairchild Avenue, expressed a concern about the curb cut for the proposed driveway. He stated that this is an additional curb cut on a street that is currently used as a thoroughfare, used by persons cutting through the nearby Delta Chi parking lot to access Sunset Avenue, who drive way too fast.

Chuck Jackson mentioned that everyone in the area has to back out of their driveways, so the additional curb cut would not be unique to the neighborhood.

Hamilton asked Zollman if he had a concern about the proposed reduced lot size.

Zollman stated he was concerned, but mentioned he understood the sorority was limited with what it could do.

Deborah Murray, 1830 Fairchild Avenue, stated that she appreciated the proposed compromise solution, but stated that a parking lot does not help reduce on-street parking. She also stated she would like for there to be less parking in the area and have more green space, which would generate less run-off.

Bob Haines, 226 Fordham Road, mentioned that over the years, Kappa Kappa Gamma has been a good neighbor in the area and has always taken care of their property and has taken neighbors' considerations into account.

Kristin Dreiling, 4100 Berkshire Circle, stated that the current proposal is a reasonable long-term solution for everyone involved. She stated that by passing the proposal, it would put all past issues to rest and put the existing house to productive use.

Paula Ford, 1841 Fairchild Avenue, mentioned that all of the neighbors want to see the structure retained and the lot to be conforming. She mentioned that the loss of potential parking in the Kappa Kappa Gamma parking lot would not impact the neighborhood by increasing the demand for off-street parking because on-street parking is already saturated.

Jerrod Westfahl addressed some of the concerns of neighbors who were partially opposed to decreasing the lot size on the proposed Lot 2, constructing an additional curb cut on Fairchild Avenue, and issues with the reduction of off-street parking spaces.

Chuck Jackson asked Westfahl how many persons currently reside in the Kappa Kappa Gamma house.

Jerrod Westfahl stated that there were 73 residents of the house.

Jackson asked how many employees worked at the house.

Jerrod Westfahl stated that there were four workers.

Shirley Unekis, 1822 Fairchild Avenue, mentioned the concern about parking being so close to the north side of the structure of the existing annex house. She stated she has seen no change in the amount of cars parked in the area in 29 years. She feels that the parking space(s) north of the structure should be removed to give the house and property a more conforming appearance.

Bruce McMillan, Architect, 555 Poyntz Avenue, clarified that if the lot size were expanded to the north, a potential four total parking spaces may have to be removed.

Valerius briefly offered another alternative proposal to the issue at hand.

Jackson closed the Public Hearing and after a short recess opened for Board discussion.

Hardy said the Variance for a reduction to a 6,200 square foot lot and 88 foot lot depth represents enough of a compromise to satisfy neighbors' concerns the best they can. Hardy stated the curb cut is not as big of an issue as the proposed lot size.

Emig stated that the sorority has been at that location since 1930 and the neighborhood and neighbors have changed during this time. He said that some of the conditions were made to exist because of an application by the same entity, and a Board decision was rendered that did not allow a logical scenario of how this proposal could have been approved at some prior time. He said he believes that what is now before the Board is a good compromise. He stated that the standards for the Exceptions and the Variance have been met. He said that he would follow suit with staff recommendations of approval of the Variance and Exceptions.

Hamilton stated that the previous decision was based on the idea that the annex house would be maintained at a time when there was a significant intrusion of additional parking in the

area, and the saving grace of the decision was that the residential structure would not be removed or demolished in a time when green space was being covered by parking areas. She states that the standards for a modification of a Conditional Use with the separation of the lots are probably satisfied. She also states the standards for the Exceptions are probably satisfied, but it is the Variance with higher standards that is more difficult to discern. Hamilton mentioned that with the overall scheme of things and with the overall history of the process of dealing with the extra lot, that the standards are probably met for a Variance. She states that she is prepared, with some modification, and taking into account the standard of unique conditions to the property not being in her opinion totally brought about by the applicant, to support all three requests.

Hardy said he is close enough to supporting the Variance.

Hamilton said that the Board has to have legal standards associated with its decisions. The financial gain or hurt to applicants is not something the Board gets to consider. She mentioned that if the standards were not satisfied, the requests would not be passed by the Board.

Jackson said that the current proposal to the issue at hand is as good as it's going to get.

Hardy moved to approve the modification to the existing Conditional Use based on the staff report with the conditions attached.

Hamilton suggested adding the conditions of having a six foot privacy fence and grass put in place with the three foot reduction to the north lot line and require the installation of the driveway to be constructed as proposed.

The Board made the following findings of facts for the modification of the Conditional Use at 517 Fairchild Terrace:

A. Proposed Lot 1, which will contain the sorority house, will comply with all zoning regulations; and previously approved Variances and Exceptions will continue to apply. Proposed Lot 2 will comply with all zoning regulations, if the following new Exceptions and Variance are also approved: an Exception for a reduction in the north side yard setback; an Exception to the TNO Site Design Standard to allow a driveway to be greater than ten (10) feet in width; and a Variance for lot size and lot depth.

B. Adjacent properties include other fraternities and sororities located to the north and west, single-family homes to the south, and a mixture of single and multi-family homes to the east. The status of the sorority house will remain the same, except that the southeast portion of the existing parking lot, located south of the existing sorority on proposed Lot 1, will be decreased by three feet to allow adequate separation between the existing annex house on proposed Lot 2 and the proposed side lot line. A six foot high, wood privacy fence will be installed to screen the sorority house's parking from the residential use on proposed Lot 2. Thus, with respect to the sorority house, there is minimal impact on surrounding properties. With respect to the

annex house, the permitted use will be as a single-family residential dwelling, which is consistent with the character of the neighborhood.

C. The Kappa Kappa Gamma Sorority has been located at 517 Fairchild Terrace since 1930. Since that time, the main sorority house has been expanded and the annex house has been added. Other than a screening fence along the proposed south property line, the sorority has not proposed any physical changes to the use or layout of the sorority house. As such, the use of the sorority house does not dominate over the uses of neighboring properties. Furthermore, the annex house on new Lot 2 would become a single-family residential dwelling which is consistent with the neighboring properties, which are primarily single-family residential dwellings.

1. No physical changes are proposed to the structure on proposed Lot 1, Kappa Kappa Gamma Addition. The sorority has proposed to reduce the existing parking area, located at the south of the existing sorority house, by three feet in the southeast corner to create adequate space between the parking lot and the annex house. Currently, the parking abuts the exterior of the annex house, and the proposed three-foot buffer will allow a physical separation of the sorority house use and the new single-family residential use. The sorority has proposed to install a six-foot high wood fence to run along the south lot line, including within the new buffer zone, to screen the sorority house's existing parking from the residential uses to the south.

The annex house does not currently contain any type of driveway or garage. As mentioned, the sorority house's parking abuts the annex house, and when the annex house was used as a residence, its occupants accessed the annex from the sorority house's parking lot. To provide access to new Lot 2, the sorority would install a new curb cut, driveway and parking pad off Fairchild Avenue. The sorority has submitted a request for an Exception to widen the driveway to permit better access to the annex house.

2. The site is currently landscaped with several large mature trees, shrubs, and grasses. The sorority's parking lot, which will be decreased by three feet in the southeast portion of proposed Lot 1, will be screened from the adjoining proposed Lot 2 with a six foot high, wood fence. No additional landscaping is proposed at this time for either proposed Lot 1 or Lot 2. Presumably grass type vegetation will be installed between the existing annex house on proposed Lot 2 and the north side lot line.

D. The proposed modification to the existing Conditional Use Permit will not affect the number of off-street parking spaces on proposed Lot 1, Kappa Kappa Gamma Addition. Currently, the sorority has 54 off-street parking spaces, and all of the spaces will be retained if the sorority's requests are granted. The provision of parking and loading to Lot 1 is adequate.

In the southwest corner of proposed Lot 2, the sorority will add a curb cut, driveway, and parking pad to provide access and two off-street parking spaces to the existing annex house. Thus, the provision of parking and loading to new Lot 2 is adequate.

E. The proposed modification to the existing Conditional Use Permit will not affect how

proposed Lot 1, Kappa Kappa Gamma Addition is served by public utilities. A private utility easement has been created to provide adequate public utilities to proposed Lot 2, as needed. A proposed concrete drainage flume is proposed to be located within the northeast portion of proposed Lot 2. Thus, there will be adequate provision of drainage and other public utilities to both Lot 1 and Lot 2.

F. The sorority house on proposed Lot 1, is currently accessed from three curb cuts located along Fairchild Terrace. The existing access is adequate for new Lot 1, and it shall remain the same.

The sorority will create adequate provision of access to new Lot 2 through the proposed curb cut and driveway in the southwest corner off Fairchild Avenue. The proposed access to new Lot 2 is adequate to serve new Lot 2.

Hardy moved to approve the modification to the existing Conditional Use based on the staff report with the conditions attached.

Hamilton suggested adding the conditions of having a six foot privacy fence and grass put in place with the three foot reduction to the north lot line and require the installation of the driveway to be constructed as proposed.

Hardy considered Hamilton's suggestion to be a friendly amendment to his motion and moved as amended to approve a modification of an existing Conditional Use for proposed Lot 1, Kappa Kappa Gamma Addition; located in the R-1, Single-Family Residential, with TNO, Traditional Neighborhood Overlay and UO, University Overlay Districts with the following conditions:

1. The Kappa Gamma sorority house shall conform to all Fire, Building and Life Safety Codes.
2. Any condition related to the demolition of the annex house on proposed Lot 2, Kappa Kappa Gamma Addition, or that Kappa Kappa Gamma sorority cannot rent or allow the annex house to be used as a residence on proposed lot 2, Kappa Kappa Gamma Addition, shall no longer be applicable.
3. The Final Plat of the Kappa Kappa Gamma Addition shall be approved by the Manhattan Urban Area Planning Board, the City Commission shall accept easements and rights of way, and the Final Plat and Private Utility Easement shall be filed with the Register of Deeds.
4. Any previously approved Exceptions and Variances, not specifically mentioned herein, shall continue to apply to proposed Lot 1, Kappa Kappa Gamma Addition.
5. Proposed Lot 2, Kappa Kappa Gamma Addition, shall only be subject to the requirements for the applicable zones and not to the Conditional Use Permit; however, for proposed Lot 2, two Exceptions and two Variances shall be approved in order that the annex house be used as a single-family residential dwelling.
6. The Kappa Kappa Gamma sorority shall conform to Conditional Use Permit site plan identified as "Kappa Kappa Gamma Addition Proposed Lot 1 & Lot 2" dated July 7, 2006.

The motion was seconded by Hamilton and passed with a vote of 4-0.

The Board made the following findings of fact for the Variance at the proposed Lot 2, 501 Fairchild Terrace:

A. Proposed Lot 2 of the Kappa Kappa Gamma Addition is a corner lot with front yard setbacks along Fairchild Terrace and Fairchild Avenue. Proposed Lot 2 is located directly south of an existing off-street parking lot, which is part of proposed Lot 1. An existing property and residential building to the west restricts expansion of proposed Lot 2 to the west. Proposed Lot 2 cannot be increased in size to provide more lot area or lot depth without reducing the off-street parking area that serves the sorority house on proposed Lot 1, because such reduction would put the sorority house out of compliance with the regulations.

The current zoning lot of the Kappa Kappa Gamma sorority consists of Lots 6 and 7, Block B, Crestview Addition, and Lot 17A, Morningview Addition. Currently, the sorority house, its off-street parking lots and the vacant annex house are all on the same zoning lot. The Manhattan Zoning Regulations do not allow more than one principal residential structure on a zoning lot. The principal residential structure on the zoning lot is the sorority house.

The vacant annex house could not be used as a residence due to a condition of approval associated with a 1998 Conditional Use Permit and Exception. Assuming that the BZA has removed such conditions from the annex house, the property cannot be re-plated or sold without the proposed Variances. Thus, it could not be used as a single-family residence.

With previous decisions and the historical nature of the applicant's dealings with the Board of Zoning Appeals, the applicant is not solely responsible for creating conditions unique to the property requiring the requested Variance. The Board is a responsible party in creating unique conditions.

B. Minimal impact is expected on surrounding properties and street rights-of-way. To the north is the off-street parking area for the Kappa Kappa Gamma sorority, which will be screened by a six (6) foot screening fence. To the west is a residential dwelling unit. The reduced lot area and lot depth should not adversely affect adjacent properties because the existing structures, including the annex house and the neighboring residential dwelling, have been part of the established neighborhood for many years. To the south and east are public streets, which should be unaffected by reduced lot area and lot depth.

C. Strict application of the regulations would not allow proposed Lot 2 to be Final Platted. If a separate lot is not created, then the existing annex house cannot be sold and used as a single-family dwelling unit, which makes the annex house virtually useless to its owner, the sorority. Allowing the reduced lot area and lot depth for proposed Lot 2 will allow the sorority to sell proposed Lot 2 and allow the conversion of the vacant annex house so that it can be used as a single-family dwelling.

D. The proposed reduction in lot area and lot depth for proposed Lot 2 are not expected to have any adverse impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare. Adequate off-street parking can be provided. There are no utility easements on Lot 2. The vision clearance triangle at the street intersection is provided as required.

E. The intent of the minimum lot area and depth requirements is to ensure that adequate light and space are provided on lots for single-family residential dwellings. In this case, existing improvements on proposed Lot 1, containing the sorority house's parking lot, make it difficult for new Lot 2 to meet the minimum lot area and lot depth requirements. The reduction in lot area from 6,500 square feet to 6,200, and in lot depth from 100-feet to 88-feet, will allow proposed Lot 2 to be Final Platted and the vacant annex house to be converted to a single-family dwelling unit in the R-1, Single-Family Residential District.

Emig moved to approve the Variance to allow a reduction of the minimum required one-hundred (100) foot lot depth, and a reduction in the minimum required 6,500 square foot lot area, for proposed Lot 2, in the Kappa Kappa Gamma Addition, on which there is an existing vacant annex house. Lot 2 is in the R-1, Single-Family Residential District with TNO, Traditional Neighborhood Overlay District, and UO, University Overlay District with the following conditions:

1. The Variances shall be as proposed in the application documents and as shown on the site plan identified as "Kappa Kappa Gamma Addition Proposed Lot 1 & Lot 2" dated July 7, 2006.
2. The existing house shall comply with all necessary Fire, Building and Life Safety Codes.
3. All applicable permits shall be obtained.
4. A six-foot wooden privacy fence shall be erected and grass shall be put in place between the structure on proposed Lot 2 and the north property line separating the Kappa Kappa Gamma parking lot from the existing house on Lot 2.

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

The Board made the following findings of fact for the Exceptions at 501 Fairchild Terrace:

A. The physical condition of the annex house located at 501 Fairchild Terrace currently violates the City's codes. A notice of violation was sent to the Gamma Alpha House Association in August 2005. According to Code Services, the sorority has corrected three of the four violations and has thirty days from July 12, 2006 (approximately August 11, 2006) to correct the fourth violation. The proposed modification to the existing Conditional Use Permit along with the additional Exceptions and Variance will allow the annex house to be sold to a third party. If the house is sold prior to correction of the violations, the buyer must sign an "Acceptance of Responsibility" contract with the City. The contract generally states that the new owner accepts responsibility for the violations and understands the repercussions if the violations are not alleviated. Assuming that the remaining violation is corrected, the annex house will comply with all applicable regulations.

B. The surrounding neighborhood is a mix of sorority and fraternity houses along with owner occupied and rental homes. To the west of 501 Fairchild Terrace is a neighboring sorority's annex house and associated parking lot. Fairchild Avenue is a unique local street with a large landscaped median separating the residential properties to the south from those to the north. Assuming that the Conditional Use modification is approved, the annex house can thereafter be used as a single-family residence, like many of the surrounding properties to the south and east.

The proposed Exceptions are not anticipated to have an adverse effect on surrounding properties. First, Manhattan City Code requires a minimum of three feet to be maintained between a property line and a residential structure. Manhattan Zoning Regulations require the R-1, Single-Family Residential District to maintain a minimum eight (8) foot side yard setback between the side lot line and the residential structure's overhang. Currently the sorority's off-street parking is located adjacent to the annex house. The proposed lot line creates the condition which requires the reduction in the minimum eight (8) foot side yard setback to three (3) feet. Although the sorority must reduce the overall size of the existing parking lot on proposed Lot 1 to create the proposed three-foot side yard setback, the number of off-street parking spaces serving the sorority house will not change. Second, the Exception increasing a portion of the driveway width will provide access to a proposed twenty (20) foot wide parking pad to be located to the west of the annex house. The proposed parking pad should not be out of character of the surrounding neighborhood and should not have an adverse effect on surrounding properties. The proposed location for the parking pad is intended to help retain a large tree on the west portion of proposed Lot 2, which should help to maintain the single-family character of the older neighborhood.

C. A Private Utility Easement has been created which will ensure adequate services and utilities are provided to proposed Lot 2. The proposed driveway and parking pad in the southwest corner of Lot 2 will not encroach into any utility easements. The proposed Exceptions will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

D. The BZA approved an Exception in December 1998 to reduce the front, side, and rear yard setbacks at 517 Fairchild Terrace to allow for building and parking lot additions and a reduction in the number of off-street parking spaces. The Exception included the condition that the sorority cannot "rent or allow [the annex house] to be used as a residence."

The condition requiring the setback reduction is due to a replat, which will establish a side lot line, and that will allow the annex house to be located on its own lot to be used as a single-family residence. The southeast portion of the parking area located south of the sorority house on proposed Lot 1 of Kappa Kappa Gamma Addition is proposed to be reduced by approximately three feet. Manhattan City Code requires a minimum of three (3) feet to be maintained between a residential structure and the nearest lot line. The R-1 Single-Family Residential District requires a minimum eight (8) foot side yard setback between the side lot line and the residential structure overhang. If the proposed location for the north lot line of Lot 2 is adjusted more to the north, creating a larger setback, the sorority house would lose

parking spaces, making the sorority house out of compliance with the regulations. Because the lot line cannot be increased to the north, the only option is to increase the distance from the north lot line to the residential structure by moving the annex house; requiring such a move to provide for the the minimum eight (8) foot side yard setback is unreasonable and unnecessary. Thus, the strict application of the minimum eight (8) foot side yard setback requirement is unreasonable and unnecessary in these circumstances. Plesae note that the sorority will install a 6-foot high wood privacy fence along the south property line of new Lot 1 to screen the off-street parking lot from the north side of new Lot 2.

To provide access to the annex house on Lot 2, a curb cut and subsequent driveway are proposed in the southwest portion of the lot. Currently, the annex house is accessed by the parking area next to the sorority house. Through the replat, the annex house will need its own access and off-street parking area. The new driveway is proposed to be ten-feet in width up to approximately five feet from the front façade of the existing annex house on proposed Lot 2, at which point the driveway is proposed to widen beyond the maximum ten-feet required by Section 4-111(F)(1)(a)(2) of the Manhattan Zoning Regulations. The proposed widening will allow the proposed parking pad to be easily accessed and will allow a large mature tree to remain on the west side of proposed Lot 2. The parking pad permits two vehicles to park side-by-side, and the proposed widening prior to reaching the façade of the house permits the vehicles to enter and leave the parking pad from the ten (10) foot wide driveway. Strict application of the regulations would require the driveway to retain the ten-foot width up to the front façade of the house, which could cause difficulty in vehicles entering and leaving the proposed parking pad, or could require removal of the existing tree. Preserving the existing tree could help to retain the residential character of the neighborhood. The proposed driveway will retain the ten-foot width for approximately 28-feet prior to widening. When all facts and circumstances are considered, strict application of the regulations is unnecessary.

Hardy moved to approve an Exception to allow a driveway to be greater than ten (10) feet in width between the street and a parallel line drawn through the nearest wall of the façade of the residential building that faces towards the street; a reduction of the minimum eight (8) foot side yard setback for an existing house; and a modification of an existing Exception for a sorority located at 501 Fairchild Terrace in the R-1, Single-Family Residential District, with TNO, Traditional Neighborhood Overlay and UO, University Overlay Districts with the following conditions:

1. The Exceptions shall be as proposed in the application documents and as shown on the site plan identified as “Kappa Kappa Gamma Addition Proposed Lot 1 & Lot 2” dated July 7, 2006.
2. The existing house shall comply with all necessary Fire, Building and Life Safety Codes.
3. The driveway shall be constructed as proposed on the site plan.

Emig seconded the motion and it passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A VARIANCE AT 1030 HOUSTON STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICTS TO ALLOW A REDUCTION OF THE

MINIMUM LOT AREA OF 6,500 SQUARE FEET TO 5,000 SQUARE FEET FOR A PROPOSED SINGLE-FAMILY RESIDENTIAL DWELLING UNIT ON AN EXISTING VACANT LOT. (APPLICANT/OWNER: BOWMAN BOWMAN NOVICK/ RENEWAL VENTURES)(THIS ITEM WAS TABLED AT THE JUNE 14, 2006, BOARD OF ZONING APPEALS MEETING. REMOVE THE ITEM FROM THE TABLE AND CONDUCT A PUBLIC HEARING.)

A PUBLIC HEARING TO CONSIDER EXCEPTIONS AT 1030 HOUSTON STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICTS TO THE TNO, TRADITIONAL NEIGHBORHOOD OVERLAY COMPATIBILITY STANDARDS FOR A PROPOSED DRIVEWAY GREATER THAN TEN (10) FEET IN WIDTH, LOCATED WITHIN A FRONT YARD BETWEEN THE STREET AND THE FRONT BUILDING FACADE ALONG 11TH STREET; ALLOW A GARAGE WITH DOORS FACING A STREET TO NOT BE SET BACK A MINIMUM DISTANCE OF TWELVE (12) FEET BEHIND THE NEAREST PORTION OF THE FACADE OF THE RESIDENTIAL BUILDING THAT FACES TOWARDS THE STREET; A REDUCTION IN THE MINIMUM FOURTEEN (14) FOOT FRONT YARD SETBACKS ALONG 11TH STREET AND HOUSTON STREET; AND AN INCREASE IN THE MAXIMUM 30% LOT COVERAGE; ALL FOR A PROPOSED SINGLE-FAMILY RESIDENTIAL DWELLING UNIT LOCATED IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH THE TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: BOWMAN BOWMAN NOVICK/ RENEWAL VENTURES) (THIS ITEM WAS TABLED AT THE JUNE 14, 2006, BOARD OF ZONING APPEALS MEETING. REMOVE THE ITEM FROM THE TABLE AND CONDUCT A PUBLIC HEARING.)

Frazzell presented the staff report and recommended approval of the Variance with two conditions and approval of the Exceptions with three conditions.

Jesse and Robin Blanton, 113 S. 11th Street, expressed concerns about the width of the proposed driveway and stated that the extra width would alleviate the concern of potential parking over the sidewalk, but they expressed their need for off-street parking for their residence because they do not have a driveway. They also stated that the extra wide curb cut would take up some of the on-street parking spaces they must rely on. Jesse asked how the applicant was planning on tapping into utilities because they are pulled off of the alley between Poyntz Avenue and Houston Street.

Frazzell mentioned that the City Engineer had indicated that water and sewer utilities could be provided through the right-of-way, just to the west of the existing sidewalk.

J. Blanton wanted to know if the existing brick material for the current sidewalk would remain in the portion of the sidewalk of where the driveway extends or if the applicant was proposing to pave over that portion.

Emig asked about where the Blanton's park.

The Blanton's said they usually park on 11th Street.

Mike Carson, of Bowman Bowman Novick, 1837 Concord Lane, said that the design of the driveway could be modified to preserve the brick sidewalk. Carson reiterated that the lot would not be able to be built upon without the Variances and Exceptions and that the design of the house conforms well with the neighborhood, as was approved by the State Historic Preservation Office.

Jackson closed the Public Hearing and opened for Board discussion.

Hamilton said she didn't have a problem with the Variance.

Hardy said that the applicant is doing the best with the lot that they can.

Emig mentioned that the applicant made an honest attempt to satisfy the TNO requirements given the condition of the lot size. He also mentioned that if the Board decides to approve the request he feels there should be no increase in bedrooms provided within the structure. He also wants the brick with the current sidewalk to be reinstalled with a concrete base after the construction of the proposed driveway. Emig also proposed that as a condition of approval, that there be no parking in the proposed driveway.

The Board made the following findings of fact for the Variance at 1030 Houston Street:

A. Lot 376 of Ward 5 is a corner lot, which has been separated by deed into two sections, the north 50-feet and the south 100-feet. 1030 Houston St. is the address for the south 100-feet of the lot, and is the location for a proposed single-family dwelling unit. Originally, Lot 376 was a 50-ft. by 150-ft. lot. According to Riley County Register of Deeds office, the north portion of the lot addressed 113 S. 11th Street, was established in 1915, prior to adoption of Zoning Regulations, which established minimum lot size. According to Riley County Appraiser records, the most recent house located on the south portion of the lot was constructed around 1949 while the existing house on the north portion of the lot was constructed around 1959. According to the Appraiser's records, the previous house at 1030 Houston Street was utilized as a multi-family dwelling until 1981, at which point it became damaged and was subsequently torn down and removed. The City of Manhattan attained ownership in approximately 1987 and has retained ownership to date. Since removal of the previous house, the south portion of the lot has remained vacant.

B. Adjacent properties to the north, east, south, and west are currently zoned R-1, Single-Family Residential with TNO, Traditional Neighborhood Overlay District. Property further to the north is zoned C-1, Restricted Business District. 11th Street borders the property along the west, while Houston Street borders along the south. Minimum eight (8) foot side yard setbacks will be met, which will ensure light and open space are maintained to neighboring properties to the east and north. Lot 376 is within the historic environs of the Fitz House located at 1014 Houston Street. The State Historic Preservation Office reviewed the proposed project and found it will not encroach upon, damage, or destroy any historic property or its environs. Minimal impact is expected on adjacent properties and streets.

C. The existing lot size is a condition created by previous owners of the property and is not a condition created by the applicant. The south 100 feet of Lot 376 is an existing nonconforming lot. The south 100 feet of Lot 376 has remained vacant since approximately 1981. A single-family dwelling could not be built on the lot without attaining a Variance in lot area.

D. The proposed reduction in lot area will allow a vacant lot to be used for a single-family dwelling unit, which is compatible with the surrounding neighborhood. The side yard setbacks will be retained providing adequate light and space to neighboring properties. The proposed Variance is not anticipated to have an adverse affect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

E. The intent of the regulations regarding minimum lot size is to reduce densities and to create adequate open space between properties. The subject property meets the intent of the regulations even though minimum lot area is less than required. The south 100 feet of Lot 376 has historically had a dwelling unit on the reduced lot area. The design of the dwelling unit meets the requirements of the TNO District

Hamilton moved to approve a Variance for 1030 Houston Street to allow a reduction of the minimum lot area of 6,500 square feet to 5,000 square feet for an existing nonconforming lot located in the R-1, Single-Family Residential District with TNO, Traditional Neighborhood Overlay for a proposed single-family residential dwelling unit with the following conditions:

1. Companion Exceptions shall be approved.
2. The Variance shall be limited to a single-family dwelling unit as proposed in the site plan and application documents.
3. All applicable permits shall be obtained.

The motion was seconded by Hardy and passed with a vote of 4-0.

Hamilton asked about any concerns regarding the number of bedrooms and potential parking on the sidewalk as a problem with the Exception request.

The Board made the following findings of fact for the Exceptions at 1030 Houston Street:

A. The south 100-feet of Lot 376 of Ward 5 is currently nonconforming in lot size. The applicants have concurrently applied for a Variance to reduce the minimum lot area for a single-family dwelling. The property complies with all applicable requirements of these regulations, other than the one for which the Exceptions and a Variance are being requested.

B. Adjacent properties to the north, east, south, and west are currently zoned R-1, Single-Family Residential with TNO, Traditional Neighborhood Overlay District. Property further to the north is zoned C-1, Restricted Business District. 11th Street borders the property along the west, while Houston Street borders along the south. The side yard setbacks are proposed to be retained, which will ensure light and open space are maintained to neighboring properties to the east and north. The proposed reduction in the minimum front yard setback from fourteen

(14) feet to thirteen (13) feet along Houston Street is to allow for the first step leading onto a proposed front porch, which is not uncommon of the neighborhood. The proposed reduction in the minimum front yard setback from fourteen (14) feet to seven (7) feet along 11th Street is to accommodate for a guardrail around an emergency egress window. The egress window is required by Code to provide emergency access from the basement, and the window well is required to either be covered or safe guarded by a railing thirty inches in height. Within the application materials, the applicant states the guardrail “will be hidden from view with landscaping.” The request for an increase in lot coverage from 30% to 43% will allow the proposed single-family residential dwelling to be built on the reduced sized lot. Lot 376 is within the historic environs of the Fitz House located at 1014 Houston Street. The State Historic Preservation Office reviewed the proposed project and found it will not encroach upon, damage, or destroy any historic property or its environs. Minimal impact is expected on adjacent properties and streets.

C. The Exceptions desired will not encroach upon any utility easements or the vision clearance triangles. The proposed Exceptions will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

D. The south 100-feet of Lot 376 is 5,000 square feet in area, which does not meet the minimum 6,500 square foot minimum requirement for a single-family dwelling. The south 100-feet of Lot 376 is a corner lot with front yard setbacks along 11th Street and Houston Street. The two front yard setbacks and reduced lot area present unique challenges to the lot with regards to meeting the maximum lot coverage and front yard setbacks. The south 100-feet of Lot 376 is not accessible from an alley, therefore access to the lot must be made from either Houston Street or 11th Street. An existing curb cut exists along the southwest portion of the lot, however a driveway in this location could be out of character with the surrounding single-family residential neighborhood to the east, south, and southwest, as the surrounding houses front onto the streets with garages located on the alleys. The TNO attached garage 12-foot setback was intended to keep the front yards clear of garages and to maintain the residential character of the traditional neighborhood, with garages located behind or offset from the house. Single-family residential dwellings are required to have a minimum of two off-street parking spaces. The proposed driveway width would allow two vehicles to park on the driveway side by side, without encroaching onto 11th Street. Without access to an alley, being a corner lot, and having reduced lot area, when all facts and circumstances are considered, requiring strict application of the regulations is unreasonable and unnecessary.

Hardy moved to approve the Exceptions at 1030 Houston Street to TNO, Traditional Neighborhood Overlay Compatibility Standards for a proposed driveway greater than ten (10) feet in width, located within a front yard between the street and the front building façade along 11th Street; allow a garage with doors facing a street to not be set back a minimum distance of twelve (12) feet behind the nearest portion of the facade of the residential building that faces towards the street; a reduction in the minimum fourteen (14) foot front yard setbacks along 11th Street and Houston Street; and an increase in the maximum 30% lot coverage; all for a proposed single-family residential dwelling unit located in the R-1, Single-Family Residential District with the TNO, Traditional Neighborhood Overlay District, with the following

conditions of approval:

1. A companion Variance shall be approved.
2. The Exceptions shall be limited to a single-family dwelling unit as proposed in the site plan and application documents.
3. All applicable permits shall be obtained.
4. The brick sidewalk shall be retained after the construction of a driveway and shall be supported underneath with a structurally appropriate concrete base.

The motion was seconded by Hamilton and passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A VARIANCE AT 2510 DICKENS AVENUE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT TO ALLOW AN EXISTING CHURCH SIGN TO BE INTERNALLY ILLUMINATED. (APPLICANT/OWNER:TROY BOWMAN/MANHATTAN CHURCH OF CHRIST)

Martin presented the staff report and recommended approval of the Variance with two conditions.

Hamilton asked staff if there were any objections or comments from the public regarding the issue.

Staff indicated that there was not.

Troy Bowman, applicant, 2500 Farm Bureau, mentioned that there were some concerns about their lights in the rear of the property being too bright and the church was working to address that issue. Bowman also mentioned that the existing sign and its proposed internal illumination did not invoke complaints from neighbors, only the lighting in the back.

Emig asked Bowman about the timing of the lights and when they would be turned off. He mentioned that staff presented that they were proposed to be turned off at 2:00am.

Bowman said that he had already changed the timing of the lighting to turn off at midnight.

Jackson closed the Public Hearing and opened for Board discussion.

The Board made the following findings of fact for the Variance at 2510 Dickens Avenue:

A. The applicant states that the area to the west of the church's driveway, where the previous externally illuminated sign was located, is about "seven (7) to ten (10) feet higher in elevation than the street, and persons traveling on Dickens Avenue were unable to see the previously existing sign on that side of the drive." In May, 2006, the church requested and was granted a permit to move their sign to the east side of their driveway, where its elevation is more level with Dickens Avenue. The applicant states that the new sign is "now visible, but exterior lighting poses a hazard in the winter during snow removal since lighting would be near both

the drive and the street.” Where the elevation of the front yard of the lot is more even with the street on the east side of the driveway, the applicant is concerned about a limited amount of space because much of the space available to the south of the church structure facing Dickens Avenue is covered with the church’s parking lot. This amount of impervious coverage limits the amount of space the church has available for locating the sign to be close to Dickens Avenue and be properly setback from the street. A small portion of area (approximately two hundred thirty six (236) square feet) directly to the east of the sign and just north of the fifteen (15) foot setback area exists for the sign to be located on the east side of the property’s driveway. The applicant also states that with exterior illumination and the necessary positioning of the lighting in relation to the sign, street, and driveway, there is a concern that “elderly church members may run them over if they take a corner too sharp near the church’s driveway.” The applicant expresses that if the parking lot did not cover most of the area to the east of the driveway, where the ground elevation is more level with Dickens Avenue, there may be ample room to place the sign in that location with external lighting.

B. Little but some potential impact to adjacent properties can be anticipated due to the limited proximity and sight of the proposed sign to residential properties. While the subject lot is zoned R, Single-Family Residential District, some nonresidential uses surround the subject property to the west and southeast. The adjacent properties to the west are zoned as a PUD with office uses. The adjacent lot to the southeast is zoned as R, Single-Family Residential District, however, its use is a large-scale USDA research center for grain marketing and production and appears to have been involved or currently is involved with some degree of grain processing or storage. The lot adjacent to the southwest corner of the subject property is zoned as a PUD and consists of two-story apartment buildings. The lot adjacent to the east side of the subject property is also zoned as a PUD and consists of two-story townhouses. The lots adjacent to the north side of the subject property are zoned as R, Single-Family Residential and consist of a total of five (5) single family dwellings.

Other than Dickens Avenue, there are three other nearby streets, Jefferson Ridge, serving as a travel easement for the Claflin Residential PUD to the southwest of the sign located approximately 66 feet away, Copperfield Place giving access to Dickens Place PUD, Unit 1 to the west located approximately 145 feet away, and Woodcrest Drive giving access to Walnut Woods PUD to the east located approximately 200 feet away. There is a marginal possibility that the lighting from the sign proposed for internal illumination may affect traffic and travel along and onto these subsidiary streets. It is also possible, however, given that existing street lighting is almost nonexistent, that the internally illuminated sign may help ingress and egress to and from adjacent properties and onto both Jefferson Ridge and Copperfield Place.

From the surrounding residential PUD’s neighboring the subject property to the east and southwest, the sign can be visible to two (2) townhomes to the northeast and one (1) of the apartment buildings containing two (2) dwelling units to the southwest. However, the sign does not directly face any of the surrounding residences and a fair amount of screening with trees separates these residential uses (approximately 124 feet away to the southwest and 127 feet away to the east) from the view of the sign making direct visibility from dwelling units unlikely. The single-family homes on the five adjacent lots to the north are approximately 650

feet or greater from the sign proposed for internal illumination and are separated from the sign by the church building as well as an ample amount of trees on the north side of the church building. These trees and the church building combined should provide an adequate amount of screening to shield the view of the sign from those residences. No screening separates the church sign from the tract of land used by the USDA to the southwest, but its use is for research purposes.

Although there are no surrounding commercially zoned properties, there is a commercial Planned Unit Development consisting of medical offices directly to the west of the subject property. Internally illuminated signs are permitted in commercial zones, however, one of the standards of a PUD, if for a commercial use, is to blend in with the character of the surrounding zones, and in this case residential zones. The adjacent properties surrounding the church do not imply a commercial feel. Signage on adjacent properties is very small in size and primarily consists of building identification wall signs that generally blend well with the construction materials of the structures on which they are placed and are not internally illuminated.

C. The applicant states that an unnecessary hardship from the strict application of the regulations on the property arises from its topography and the inability of passersby on Dickens Avenue to see their previously existing externally illuminated sign which displayed messages relating to church services, the same purpose the church's new sign serves. According to the applicant, the hardship also arises from the large amount of parking lot coverage near the south lot line and Dickens Avenue and the limited amount of room available for a sign to be externally illuminated with lights near the road on the east side of the driveway, which is more level with the street. In this location, external lights illuminating the church's sign can potentially be damaged by or be a hazard to snow removal. If the church were strictly permitted to only have the sign externally illuminated, given the limitations expressed by the applicant, it would have to be located on the west side of the driveway on top of a hill, which could potentially defeat the purpose the sign is serving. This location is seven (7) to ten (10) feet higher in elevation than Dickens Avenue, which is potentially out of sight of those traveling by the church.

D. The effects on the public are expected to be minimal, as the existing sign proposed to be internally illuminated is anticipated to be marginally visible to traffic using Dickens Avenue, a collector street.

E. The intent of the Sign Regulations within residential districts is to limit the size, placement, number, and illumination characteristics so that residential properties are not negatively impacted. The specific intent of the restriction of internally illuminated identification and bulletin board signs is to lessen the potential commercial feel to a residential area, permitting only external illumination. Externally lit ground signs may appear less commercial in nature and may be more conforming to the aesthetic character of a residential setting. The intent is also to control the amount of potential light pollution or spillover into residential areas. The amount of potential light pollution or spillover should be minimal as the wattage of the bulbs placed inside the sign is 110 watts for each of five fluorescent bulbs. The company the church

purchased the sign from (Stewart Signs®) states that “the bulbs will be brighter for the first two weeks of use and will become dimmer after they are broken in.” Stewart Signs® also states that “the brightness of the bulbs in the sign can be adjusted safely by placing electrical tape around areas of the bulbs to lessen the amount of light the bulbs emit.”

Emig moved to approve the Variance to allow the Manhattan Church of Christ, at 2510 Dickens Avenue, to have an existing sign be internally illuminated in the R, Single-Family Residential District, based on the following conditions:

- 1) The Variance shall only apply to the proposed site plan and the existing sign in its present location.
- 2) The existing sign shall be maintained in good condition.
- 3) The lights internally illuminating the sign shall be turned off at or before 12:00am every night.

The motion was seconded and passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION AT 1427 VISTA LANE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT TO REDUCE THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO SEVENTEEN FEET SIX INCHES (17-FT. 6-IN.) ALONG VISTA LANE FOR AN EXISTING ROOF OVERHANG. (APPLICANT/OWNER: POYNTZ AVENUE PROPERTIES, LLC.)

Martin presented the staff report and recommended approval of the Exception with three conditions.

Darrell Hill, owner of the subject property, mentioned that all of the letters sent in support of the Exception request were from the owner-occupied homes on the same block as the subject property.

Jackson closed the Public Hearing and opened for Board discussion.

The Board made the following findings of facts for the Exception at 1427 Vista Lane:

A. The applicant applied for and was granted a building permit in September, 2004, to add an attached garage and a deck facing east on the front of the existing home. This permit only applied to the existing deck proposed to be constructed and did not include authorization for a roof overhang to cover it that would encroach into the established front yard setback. Other than the aforementioned, the property complies with all applicable requirements of these regulations except the one for which an exception is being requested.

B. The condition requiring the Exception is existing and has had no known adverse impacts on adjacent properties. Tracts to the general north, south, and east are residential homes in the R, Single-Family Residential District utilized as both rental and owner-occupied properties.

Directly to the west of and adjacent to the subject property is a 4.58-acre lot containing a multiple-family complex with seven (7) large residential buildings zoned as R-3, Multiple-Family Residential District with its frontage along McCain Lane. This large lot is screened from the view of the single-family homes on Vista Lane. The materials of the overhang built by the applicant coincide with the materials on the exterior of the house. There are three (3) other properties out of a total of seven (7) on the west side of Vista Lane on the same block that have decks attached to their front facades that may extend into the required minimum twenty-five (25) foot front yard setback. However, the other decks on the street do not have overhangs, and decks that are not roofed over are permitted as close as fifteen (15) feet to the front lot line. In general, the roof over the existing deck is not out of character with adjacent or surrounding properties and the open view along the street generally remains preserved. The encroachment may have a very minimal effect on the character of the neighborhood because it is the only property with a covered deck, but other properties on the same side of the street have uncovered decks protruding similar distances into their front yards.

C. The proposed reduction will not encroach upon any utility easements, vision clearance triangles, or other setbacks established by the Manhattan Zoning Regulations.

D. The applicant asserts in documents submitted with his application that he “was unaware that a roof covering the allowable deck was not permitted.” The existing structure without the porch on the subject property is set back approximately twenty-five (25) feet from the east property line. Before the construction of the existing deck, a previously existing roof covering a previous porch encroached approximately five (5) feet into the required front yard. The applicant states that the five (5) foot encroachment associated with the previously existing roof, covering the former porch, was a “previously existing nonconforming encroachment before his acquisition of the property in 2003.” According to records from the County Appraiser’s office, in 1962, when the required front yard setback for the property was approximately twenty (20) feet (based on 25% of lot depth), the previously existing (prior to 2003) front porch overhang existed and was in compliance with zoning regulations. The existing lot is estimated by the County Appraiser’s office to have been annexed by the City in 1954 into the “A-First Dwelling House District” zone, and the house and the existing front porch overhang was estimated to have been built in 1957 in conformance with zoning regulations.

With the addition of the permitted deck, the applicant extended the previously existing roof overhang an additional two (2) feet, six (6) inches into the front yard setback beyond the existing five (5) foot encroachment, equating to a total reduction of the set back of seven (7) feet, six (6) inches. This leaves a total of approximately seventeen (17) feet, six (6) inches of open space between the deck and its roof and the east property line. With the construction of the new deck, the applicant states in documents submitted with his application that he “constructed/extended this additional roof hanging over the deck to protect occupants and visitors from the weather when entering the front door, to protect the deck itself from the elements, and add to the aesthetic value of the existing structure and the surrounding neighborhood.”

The property is a legal nonconforming unplatted tract of land. The minimum lot size for a single-family residence in the R, Single-Family Residential District is 10,000 square feet and this tract is 7,587 square feet. The minimum lot depth for a single-family residence in the same district is 100 feet and the depth of this tract is approximately eighty-four (84) feet. The minimum permitted lot size at the estimated time of construction in 1957 in the subject zone was 5,000 square feet, and the minimum lot widths and depths were also lower than with the present zoning regulations. Therefore, the tract and its improvements were in compliance when constructed. The applicant is not requesting to make changes to the existing tract but only to place the existing house into conformance with the current zoning regulations and to be granted an exception to an established front yard setback regulation.

The intent of the setback regulation is to ensure uniformity of space in front of structure facades in the residential district for a number of reasons. These include preserving views up and down the street, greater access to light and air, separation of structures for fire protection and access for fire fighting, and the preservation of privacy in and around single-family homes. The strict application of the Regulations would result in the existing roof covering the deck having to be removed. The removal of the overhang could cause the deck to not be as materially consistent with the existing structure as with the existing overhang, and the structural integrity of the deck below could be jeopardized over time if exposed to the elements without overhead protection. There would also be no protection from the weather for occupants and visitors entering and exiting the front of the house if the overhang were removed. If the strict application of the Regulations were enforced, it would not be permissible at all for the front entry to have an overhang covering the attached deck.

Hardy moved to approve the Exception at 1427 Vista Lane for a reduction of the minimum twenty-five (25) foot front yard setback to seventeen (17) feet for an existing roof overhang at 1427 Vista Lane in the R, Single-Family Residential District with the following conditions:

1. The Exception shall only apply to the existing roof overhang as indicated and shown in the application documents and the site plan.
2. The proposed overhang shall not be enlarged or modified.
3. The existing deck overhang shall be maintained in good condition.

The motion was seconded by Emig and passed with a vote of 4-0.

Jackson adjourned the meeting.

Respectfully submitted,
Bret (Bee) Martin, Planning Intern

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