

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, September 13, 2006
7:00 PM

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

MEMBERS ABSENT: None

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Jeremy Frazzell, Planner

CONSIDER THE MINUTES

Hardy moved to approve the August 9, 2006 minutes which was seconded by Hamilton and passed with a vote of 4-0.

Jackson introduced and welcomed Kate Watson as the new member to the Board of Zoning Appeals.

A PUBLIC HEARING TO CONSIDER VARIANCES FOR 1431 POYNTZ AVE. IN THE C-1, RESTRICTED BUSINESS DISTRICT, TO ALLOW A REDUCTION OF THE MINIMUM 15,000 SQUARE FOOT LOT AREA TO 7,500 SQUARE FEET AND A REDUCTION OF THE MINIMUM ONE HUNDRED (100) FOOT LOT WIDTH TO FIFTY (50) FEET FOR A PROPOSED OFFICE BUILDING ON AN EXISTING VACANT LOT IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT/OWNER: TIM CLARK) REMOVE THE ITEM FROM THE TABLE AND CONDUCT A PUBLIC HEARING.

A PUBLIC HEARING TO CONSIDER EXCEPTIONS FOR 1431 POYNTZ AVE. IN THE C-1, RESTRICTED BUSINESS DISTRICT, TO ALLOW A REDUCTION OF THE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK TO FIVE (5) FEET FOR A PROPOSED ACCESSORY STRUCTURE FOR A GARAGE; A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO TWELVE (12) FEET FOR A PROPOSED OFFICE BUILDING; A REDUCTION OF THE MINIMUM TWENTY FIVE (25) FOOT FRONT YARD SETBACK TO SEVEN (7) FEET FOR OFF-STREET PARKING. THE PROPOSED SETBACK REDUCTIONS ARE ALONG S. 15TH STREET. (APPLICANT/OWNER: TIM CLARK) REMOVE THE ITEM FROM THE TABLE AND CONDUCT A PUBLIC HEARING.

Frazzell presented the Staff Report with a recommendation for approval of the Variances with one condition and Exceptions with two conditions for 1431 Poyntz Ave.

Emig asked what the parking requirements were for the proposed office building. Frazzell explained business and professional offices are required to provide at least one parking space for each 300 sq. ft. of floor area. In this case, the floor area is approximately 1,169 sq. ft., requiring four off-street parking spaces.

Hamilton asked what the setback along 15th Street had been previously reduced to. Frazzell stated he did not have the number with him, but the applicant might be able to answer the question.

Jackson opened for public hearing.

Karen McCulloh, 1516 Leavenworth, stated she was expressing concern on behalf of the neighborhood, with the lack of sidewalk on the property and along 15th Street.

Tim Clark, 224 Poyntz Ave., explained the previous setback reduction approved by the Board of Zoning Appeals was to one foot along 15th Street. He explained the previously approved project was too big and had become too expensive. The new project is smaller in scale and would accommodate his architecture firm and possibly an additional tenant. He said he had been in communication with the principal of Theodore Roosevelt School, who had expressed support for a sidewalk along the east side of 15th Street. Clark stated he could be willing to put in a sidewalk extending the length of his lot. He presented a new site plan which identified a sidewalk in the right-of-way, adjacent to the east curb of 15th Street. He said the proposed position of the sidewalk would retain the trees on his lot and would reduce the amount of pavement on his lot.

Steve Zilkie, Senior Planner, stated Public Works Department would determine where the sidewalk could be located.

Watson asked Clark if the curved sidewalk shown on the original site plan would remain. Clark stated it would.

Cheryl Strecker, 411 N. 16th St. said she uses 15th Street to take her children to school each day. She stated without a sidewalk along 15th Street, they have to walk in the street, which is unsafe. She said she was happy with having a sidewalk on the lot regardless whether there was a grass buffer between the sidewalk and street. She said using the 14th Street sidewalk to take children to school was not ideal as there are issues with safety crossing the Capitol Federal Savings driveway.

Watson asked Zilkie if there were known plans for Public Works to create a sidewalk along 15th Street. Zilkie responded by stating there were no known plans. Sidewalks are required to meet Public Works specifications.

Angela Hubler, 301 N. 15th Street, expressed support for a sidewalk along the east side of 15th Street and stated this was the time to address the need.

Kathy Dzewaltowski, 1715 Laramie Street, expressed concern of allowing the proposed detached garage with parking off of the alley. She questioned whether the location of the garage would negatively affect the sight of drivers using the alley.

Jackson closed for Public Hearing and opened for Board discussion.

Hardy commended the applicant for addressing the neighborhood's concerns and speaking with the school about the need for a sidewalk. He stated the proposed applications were for reductions less than what had been previously approved by the Board. He recommended adding a condition to the staff report requiring the proposed sidewalk based on City requirements. With the modification, he stated he could support both the variance and exception requests.

Emig stated he could support the request for the variances, as it is a unique property, however he had a problem with the proposed exceptions. He stated he could support the request for the setback reduction for the principal structure but not for the accessory structure. He offered suggestions for alternative placement of the structure and parking. He stated he was concerned that future uses might require additional parking than what was being proposed.

Jackson said the applicant was providing the required amount of parking for the proposed use and that parking was adequate.

Hamilton stated the request is less than what was previously approved. She stated she was not concerned with the accessory structure as the vision triangle would not be impaired in the proposed location and the structure would be available if the use was to change to residential in the future. She proposed a modification to the staff report conditions to include a sidewalk as approved by Public Works with accommodation for existing trees as much as possible. She stated she appreciated the public's comments and concerns.

The Board made the following Findings of Fact for the Variance at 1431 Poyntz Ave.

1. Lot 112, Ward 6 does not meet the minimum lot width or minimum lot area for the C-1, Restricted Business District. The required lot area for this district is 15,000 square feet and the required minimum lot width is 100 feet. The subject property is characteristic of the old Ward district and has a lot area of 7,500 square feet and a width of 50-feet. The zoning history for this subject property shows that from 1925 to 1965 Lot 112 was zoned 'B' Residence, which required the side yard setback to be 10 percent but not less than 6-feet and the front yard setback to be 20 percent but did not have to be more than 25-feet. From 1965 to 1969 the subject property was zoned 'A' Single-Family, which required a minimum lot area of 8,000 square feet, a 10-foot side yard setback, a 25-foot front yard setback, and 30 percent maximum lot coverage. Since 1969 the subject property has been zoned C-1, Restricted Business District, with a required minimum lot area of 15,000 square feet, a minimum lot width of 100 feet, lot depth of 150 feet, an 8-foot side yard setback, a 25-foot front yard setback and a maximum 30 percent lot coverage.

The zoning regulations have changed over time and require a larger minimum lot size with a larger minimum width than when this subject property was originally platted. There may be other properties in this zoning district that do not meet the required minimum lot area or lot width, but there may be an opportunity for them to be joined with other property to create a larger zoning lot. On this particular block, the other lots have been combined to create the property that is now the Capitol Federal Savings Bank. As a result there is not another lot to combine to increase its size. A demolition permit was issued for Lot 112 on May 1, 2002 to remove a previously existing residence. Lot 112 has remained vacant to date. During the period of Lot 112's nonconformity, ownership has changed.

In general, a Variance for the minimum lot area and minimum lot width are reasonable requests due to the size of Lot 112.

2. There should be minimal effect on adjacent properties. On the east side of the subject property is Capitol Federal Savings with its parking lot immediately adjacent to the subject property. There are single-family residential properties located to the south with a twenty (20) foot alley separating them from the subject site. To the west of 15th Street, a 60-foot right-of-way, are single-family residential properties. To the north of Poyntz Avenue, a 100-foot collector street, are businesses allowed in the C-1, Restricted Business District.

Any negative effect on adjacent properties would most likely result from overflow parking. On street parking is available along 15th Street and Poyntz Avenue. The subject property is zoned C-1, Restricted Business District, and the proposed use is limited to business and professional offices, which are usually low intensity uses that most likely do not extend beyond the hours of 8 AM to 5 PM during the day.

Visually the proposed building will have minimal effect. Poyntz Avenue is zoned C-1, Restricted Business, therefore other businesses exist in the surrounding area. The proposed building elevations give the appearance of an office building and should fit well with the Capitol Federal Savings building. There are some smaller offices across Poyntz Avenue and some single-family homes around this property. The proposed site plan attempts to keep a consistent front yard setback along Poyntz Avenue and the existing trees will be retained, which will help maintain a minimal visual impact on the neighborhood.

3. The strict application of the required minimum lot width and minimum lot area is an unnecessary hardship for the subject property at this time. The required minimum lot width and lot area were established through zoning changes after the subject property was originally platted. All remaining lots on adjoining properties were combined to create one large lot for Capitol Federal Savings. Lot 112 is the only lot on the block that is undeveloped and cannot be combined with another lot on the same block to create a zoning lot that meets the required minimum width and size. The subject property cannot meet the minimum lot width and size for the C-1 requirements. Nothing can be constructed on the subject property without receiving a Variance for the required minimum lot area and required minimum lot width.

4. The proposed variances will allow a vacant lot to be improved. Other professional office uses and single family residential surround the subject property. There should be no adverse effects on the public as a result of the proposed site plan.

5. The minimum lot area and lot width regulations are intended to ensure that adequate yard, setback, and structural coverage do not exceed minimum or maximum standards for uniformity in a neighborhood, as well ensure that adequate light, air and access are provided for the inhabitants of the property. The regulations also ensure that properties within a zoning district are developed at a density that is consistent with the intent of the zoning district. While the subject property does not meet the minimum lot area requirement, the intensity of the proposed physical development of the site is similar to other properties within the C-1 District and appears to be consistent with the intent of the C-1 District regulations. The applicant is not responsible for Lot 112 not meeting the minimum lot area or lot width.

Hardy moved to approve Variances to allow a reduction in the minimum 15,000 square foot lot area to 7,500 square feet, and a reduction in the minimum 100-foot lot width to 50-feet, all for a proposed office building to be located at 1431 Poyntz Ave. in the C-1, Restricted Business District with the following conditions:

1. The Variances shall apply to the proposed office building as identified in the application documents and modified site plan dated September 13, 2006.
2. A sidewalk shall be constructed as approved by Public Works with accommodation for existing trees as much as possible as identified on the modified site plan dated September 13, 2006.

Hamilton seconded which passed with a vote 5-0.

The Board made the following findings of fact for the Exception at 1431 Poyntz Ave:

A. Lot 112, Ward 5 is a vacant lot which does not meet the lot area and lot depth requirements of the C-1, Restricted Business District. Companion Variances have been requested to alleviate the nonconformity. The property complies with all applicable regulations other than that which the Exceptions and companion Variances are being requested.

B. There should be minimal effect on adjacent properties. On the east side of the subject property is Capitol Federal Savings with its parking lot immediately adjacent to the subject property. There are single-family residential properties located to the south with a twenty (20) foot alley separating them from the subject site. Across 15th Street, a 60-foot right-of-way, is a mix of single-family residential properties. To the north across Poyntz Avenue, a 100-foot collector street, are business allowed in the C-1, Restricted Business District. The proposed setback reductions will allow a proposed professional office, a permitted use in the C-1, Restricted Business District. The proposed Exceptions should not have an adverse effect on adjacent properties.

C. The Exception desired will not encroach into any utility easements, vision clearance triangles, or have an adverse effect on the neighboring street rights-of-ways. The proposed Exception is not anticipated to adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

D. The required front yard setback and side yard setbacks are affected by the width and area of the subject property. Since Lot 112 is a corner lot, there are two front yards and two side yards, which require a minimum twenty-five (25) foot and eight (8) foot setback, respectively. Because the subject property is only fifty (50) feet wide, the potential development of the subject property is limited without Exception of the front yard setback for the principal structure. Accessory structures are required to maintain a sixty (60) foot front yard setback, except that accessory buildings on corner lots shall be set back from the side street a distance not less than that required for the principal structure. In this case, the principal structure faces towards 15th Street and not Poyntz Ave., therefore the accessory structure is required to maintain the minimum sixty (60) foot front yard setback from 15th Street. Given the proposed configuration of the principal building on Lot 112, the width of the lot would not allow for an accessory structure without obtaining an Exception. Strict application of the regulations would require the principal building to be redesigned, the accessory structure to be removed, and the off-street parking spaces to be located on the east side of the lot. Given the fact that Lot 112 is a corner lot and is nonconforming in lot area and width, when all facts and circumstances are considered, strict application of the regulations is unreasonable and unnecessary.

Hardy moved to approve EXCEPTIONS for 1431 Poyntz Ave, in the C-1, Restricted Business District, to allow a reduction of the minimum sixty (60) foot front yard setback to five (5) feet for a proposed accessory structure for a garage; a reduction of the minimum twenty-five (25) foot front yard setback to twelve (12) feet for a proposed office building; and a reduction of the minimum twenty five (25) foot front yard setback to seven (7) feet for off-street parking, with the following conditions:

1. The Exceptions shall be limited to the application documents and modified site plan dated September 13, 2006.
2. All applicable permits shall be obtained.
3. A sidewalk shall be constructed as approved by Public Works with accommodation for existing trees as much as possible as identified on the modified site plan dated September 13, 2006.

Watson seconded, which was approved 4-1.

A PUBLIC HEARING TO CONSIDER A VARIANCE FOR 2500 KIMBALL AVE. IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW AN INTERNALLY ILLUMINATED SIGN FOR A CHURCH; AND, A REDUCTION OF THE MINIMUM TWENTY FIVE (25) FOOT FRONT YARD SETBACK, ALL FOR A PROPOSED GROUND SIGN ALONG KIMBALL AVENUE FOR PEACE LUTHERAN CHURCH. (APPLICANT/OWNER: PEACE LUTHERAN CHURCH)

Frazzell presented the staff report with a recommendation for approval of the Variance with three conditions.

Nancy Peterson, 2835 Kelly Dr., stated she had done much of the work on the application for the church and was available for any questions the board might have.

Jackson closed for Public Hearing and opened for Board discussion.

The Board made the following findings of fact for the Variance at 2500 Kimball Ave:

1. The subject property contains a church located on an unplatted tract of land in Section 1, Township 10, Range 7, located at 2500 Kimball Avenue, consisting of approximately 3.2 acres. The large lot is bound on two sides by public rights-of-way; Kimball Avenue a four lane arterial street to the south, and Sunnymeade Rd. a two lane local street to the west. The subject property has approximately 320-feet of frontage along Kimball Avenue.

Surrounding properties are separated through considerable distance to the proposed location of the sign. Surrounding land uses consist of a mix of single-family residential, multiple-family residential, a vacant senior complex, and the Manhattan Head Start School with associated yard and parking area. The church is a permitted use in the residential district.

2. As mentioned, Kimball Ave. is a four lane arterial street with approximately 90-ft. of right-of-way, located south of the unplatted tract of land. Sunnymeade Rd. is a local street with approximately 60-ft. of right-of-way, located to the west of the unplatted tract of land. Directly west is an existing school which is used for the Head Start program. Further to the north of the school district lot, on the west side of Sunnymeade Rd., are single-family residential homes which have their primary façade facing east. These residential properties are separated by considerable distance (greater than approximately 250-ft. of distance) from the proposed location of the internally illuminated sign. The adjacent single-family residential properties north of the unplatted tract of land, on the east side of Sunnymeade Rd., have their primary façade facing north and not south towards the church. Given the considerable separation distance and positioning of the houses to the north, the residential properties are not anticipated to be adversely impacted by the proposed internally illuminated sign. The Woodway Apartment complex, a Planned Unit Development, is located adjacent and to the east of the unplatted tract of land. Existing trees along the east property line of the unplatted tract of land provides screening of the apartment complex from the church. The apartment complex currently has an internally illuminated ground sign, and should not be adversely impacted by the church's proposed ground sign. South of the unplatted tract of land, south of Kimball Ave, are single-family residential homes and the former St. Joseph's Senior Community, which is currently vacant. The internally illuminated sign is proposed to be located in the same location as the existing sign and face east and west. The residential properties to the south face east and west and are separated from the unplatted tract of land by Kimball Ave., an arterial road. The proposed sign is not anticipated to have an adverse impact on the surrounding properties or to users of adjacent right-of-way.

3. According to the application documents, the church has maintained a non illuminated sign for approximately 25-years. A denial of the request would allow a new sign to be externally lit, but might not provide the clarity of the bulletin board sign to passersby as an internally illuminated sign might provide. Other churches throughout the residential neighborhood have similar internally illuminated signs.

4. There should be no adverse effects on the public. The proposed sign will be setback greater than the minimum 15-foot setback required for a sign in the residential district. The proposed sign will not encroach into the vision clearance triangle along Kimball Ave. and Sunnymede Rd. and is not anticipated to impact the utilities located along the unplatted tract of land. An externally illuminated sign is permitted in the residential district. The existing and proposed sign have no less effect than an externally illuminated signage. Internal illumination affords better readability of the bulletin board sign.

5. 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 compared to external flood lighting.

Hardy moved to approve a VARIANCE for an internally illuminated sign for a church at 2500 Kimball Ave. in the R, Single-Family Residential District for a proposed ground sign along Kimball Avenue for Peace Lutheran Church with the following conditions:

- 1) The Variance shall only apply to the proposed sign as proposed in the application documents and site plan.
- 2) The sign shall be maintained in good condition.
- 3) The sign shall be turned off by midnight.

Hamilton seconded, which passed with a vote 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 2144 BLUEHILLS RD. IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO TEN (10) FEET FOR AN EXISTING FENCE ALONG THE WEST FRONT LOT LINE OF 2144 BLUEHILLS ROAD. (APPLICANT/OWNER: MELISSA MILLS)

Frazzell presented the staff report with a recommendation of denial for the Exception.

Hardy commented that if the applicant were to put the fence within the setbacks as required, the applicant could have a six foot high privacy fence.

Dan Mitchell, 2144 Blue Hills Rd., applicant, stated prior to construction of the fence, they communicated with the neighbors to the north and east about the fence. He stated they were generally supportive and were happy to see the brush cleared and the property improved. He stated he contacted the City to find out the location of easements on the lot and to determine whether a building permit

would be required. He stated he left the conversation with the knowledge that a fence could be located twenty-five feet from the curb. He said the neighbor to the north provided him with a print out of information from the City's website indicating where he could place a fence. He stated there are drainage issues with the area directly to the west of the house. He stated the fence posts are currently in concrete.

Carroll Hess, 2104 Blue Hills Rd., explained he is the neighbor to the north and has lived there for forty years. He stated fences in the neighborhood are shorter and are chain link. He indicated he had supplied information regarding the location of the fence and reiterated his opposition to the location of the existing fence. He stated he was disclaiming the applicant's statement that he had no prior knowledge to the setback requirements.

Jackson commented there appeared to be a misunderstanding to the proper location of the fence, and it could have been an honest mistake. He asked Hess if he was ok with the fence being located at the setback.

Hess stated he would appreciate if the fence was to be moved back to be in line with the edge of his house to the north.

Stan Herman, 2021 Blue Hills Rd., stated the neighborhood is a safe and friendly neighborhood. He stated opposition to the request for the setback, as he stated it was a safety issue. He said the fence obstructs views to the north including views when traveling west on Blue Hills Rd.

Betsy Wilson, 2151 Blue Hills Rd., stated her support for the request. She said the fence looks great and offered support for the request to keep the fence in the existing location. She stated a large cypress tree hides most of the fence from view.

Kathleen Emig, 2025 Blue Hills Rd., stated her support for the request. She said the fence looks nice and does not obstruct the views in the neighborhood. She said previously bushes covered the area where the fence currently exists, and said those would have obstructed vision as well.

Mitchell stated vegetation six feet in height could be located in the location where the fence currently exists. He further stated that the fence is screened from view and that the vision clearance triangle is not impacted with the current location.

Watson asked Mitchell how much of the fence had been completed prior to obtaining written documentation that the fence was encroaching.

Mitchell said the fence was approximately three quarters complete and within two days it was finished.

Jackson closed the Public Hearing and opened for Board discussion.

Hamilton said it is not clear if the applicant was misled, therefore the board would have to address the standards. She said the board has allowed fences on corner lots, but not when the neighborhood is visually impacted. She said she understood that vegetation could be located within the setback but there are specific regulations for the location of fences. She stated she could support the staff report in this case.

Hardy said the board had granted similar types of fences in the past, with the most recent being located at the intersection of Kimball Ave. and Browning Ave. He stated those lots were unique however and

didn't have the impact on the neighborhood. He stated he could support the staff report.

Emig said it was unfortunate that the applicant received misinformation from the City. He said it seemed that the neighbors appeared to be willing to help move the fence. He said he could support the staff report.

Watson commended the applicant for cleaning up the property and sympathized that the information obtained was inadequate.

The Board made the following Findings of Fact for the Exception at 2144 Bluehills Rd.

A. The property complies with all applicable requirements of these regulations, other than the one for which the exception is being requested.

B. Adjacent properties to the north, south, west, and east are single-family residential homes, located in the R, Single-Family Residential District. Two public rights-of-ways are adjacent to the west and south property lines of Lot 25. The presence of a six (6) foot tall, wood privacy fence is not uncommon of the residential district; however the extent of the fence into the west front yard setback along Bluehills Road is less common. The house on Lot 25 is positioned so that the front of the house faces Bluehills Road to the south, while the rear of the house faces the north. Given the positioning of the existing house on Lot 25, the yard to the north is viewed by the applicants as the functional rear yard. Adjacent properties to the north and northwest are situated with the front of their house facing the west and east towards Bluehills Road respectively. The applicant states in the application documents that "two primary factors were considered when determining the fence location: maximizing the size of the backyard and maintaining a look of symmetry and balance on the property." Extending the fence into the west front yard increases the amount of space usable by the applicants for the functional rear yard on Lot 25. From adjacent properties to the north however, the fence is within the front yard and obstructs views to the south. Similarly, property adjacent to Lot 25 to the north is screened from view from the south and southwest by the extent of the fence. Two medium sized, deciduous trees located to the south and west of the fence along the west property line of Lot 25, help to screen the fence from view. The applicant has also recently planted additional shrubs along the northwest portion of the fence to aid in screening the fence from adjacent properties. A large evergreen tree located on the adjacent lot to the north screens the northwest corner of Lot 25, providing additional screening of the existing fence. Although the present extent of the fence may not have a direct adverse effect on properties to the south, east, or west, views from properties to the north may experience an adverse effect.

C. The eastern portion of the existing fence is located within a five (5) foot utility easement which crosses the property north to south. The location of the fence within the easement would require the property owner to remove the fence at the owner's expense if deemed necessary by the utility company. The present location of the fence does not encroach into the vision clearance triangles along the intersection of Bluehills Road in the southwest corner of Lot 25. The exception desired will not adversely affect the overall public health, safety, morals, order, convenience, prosperity, or general welfare.

D. Lot 25 is a corner lot, with twenty-five (25) foot front yard setbacks along Bluehills Road, generally along the west and south property lines. The two front yard setback requirements limit the location for a fence on the property. The applicant obtained Lot 25 in approximately February 2006 and began constructing the present fence in May 2006. According to the application documents, the applicant "spoke with both adjacent neighbors and briefed them of my intentions to remove the existing overgrown brush and build a privacy fence. At that time, neither one of the neighbors

expressed any concern and seemed supportive as it cleaned up the property drastically”. The applicant states in the application documents, “I had no knowledge of the regulation prior to being notified of my infringement.” The encroachment was identified through a complaint and a notice of zoning violation was issued to the applicant. Instead of moving the fence, the applicant has proposed an Exception to the regulation. Other than the fact that Lot 25 is a corner lot, and the fence currently exists, there are no physical conditions which would prevent the fence from meeting strict application of the regulation. The fence in its present location provides for an area of approximately 5,819- s.f. The fence in its present location, but reduced to the minimum twenty-five (25) foot front yard setback along the west property line, would provide an area of approximately 4,949-s.f., a loss of approximately 870-s.f. The fence could be closer to the front yard setback along the south property line to compensate for the lost area by meeting the setback. For instance, if the fence was moved south, to be flush with the front façade of the house, an additional 866-s.f. of area could be obtained, compensating for that which would be lost by meeting the west front yard setback. When all facts and circumstances are considered, strict application of the regulations is not unreasonable.

Hamilton moved to deny an EXCEPTION to allow a reduction of the minimum twenty five (25) foot front yard setback to ten (10) feet for an existing fence along the west front lot line of 2144 Bluehills Road.

Hardy seconded which passed with a vote 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 2725 BUTTONWOOD DR. IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT, TO ALLOW A REDUCTION OF THE MINIMUM TWENTY FIVE (25) FOOT REAR YARD SETBACK TO FOURTEEN (14) FEET FOR A PROPOSED SINGLE-FAMILY ATTACHED DWELLING UNIT. (APPLICANT/OWNER: BILL VON ELLING)

Frazzell presented the staff report with a recommendation of approval for the Exception with two conditions.

Bill Von Elling, 3600 W. 88th, explained part of the problem is he has to center the building on the center of the property line to meet code requirements. The irregular shape of the lot creates a challenge to meet the required setbacks, meet the requirements for single-family attached structure and maintain an aesthetically pleasing structure.

Watson asked for clarification for the proposed positioning of the building.

Von Elling explained the single-family attached dwelling is required to have fire separation, as they are sold separately and the structure would have to center on the property line.

Jackson closed for Public Hearing and opened for Board discussion.

There was no Board discussion.

The Board made the following Findings of Fact for the Exception at 2725 Buttonwood Dr.

A. The property is currently vacant and meets all applicable regulations other than the one for which the Exception is being requested.

B. Prairie Lakes, Unit 2 is a developing residential subdivision, zoned R-2, Two-Family Residential District and intended to provide a mix of single-family, single-family attached, and two-family residential dwellings. Buttonwood Drive, a local street with a 50-foot right-of-way, is located to the north of Lot 68B, followed by a recently constructed single-family attached dwelling and vacant lots. Butterfield Road, a local street with a 66-foot right-of-way is located to the west of Lot 68A, followed by a mix of owner occupied and rental two-family and single-family homes. To the east and south are vacant lots, platted for a mix of single-family, single-family attached, and two-family residential dwellings. The proposed rear yard setback reduction will place the southeast corner of the proposed structure within five (5) feet of a drainage and utility easement. The proposed reduction in the rear yard setback will reduce the amount of usable space in the rear yard by a future property owner and will reduce the amount of separation distance between the proposed structure and a future structure to be located on Lot 67 to the south. Other amenities such as fences, decks, patios, sheds, playground equipment, etc. are not allowed to be located within drainage easements, therefore reducing the amount of usable rear yard, will reduce the space available for similar amenities and may have an adverse effect on future property owners or tenants. In addition, drainage easements are intended to provide an avenue for stormwater runoff associated with rain fall. Locating the rear of a residential structure as close as five (5) feet to an area which is intended to convey rain water away from the lot, could become an inconvenience. The proposed reduction in the rear yard setback is not anticipated to have an adverse effect on surrounding properties, but may become an inconvenience to future property owners or tenants on Lots 68A and 68B.

C. The proposed setback reduction will not cause the proposed residential structure to be located within any utility or drainage easements, or adversely impact the public street rights-of-way. The proposed rear yard setback reduction is not anticipated to adversely affect the overall public's health, safety, or general welfare.

D. In portions of the R-2, Two-Family Residential District, individual lots are reduced in size to accommodate for half of a duplex. In situations where corner lots abut internal lots, minimum setback distances are different, requiring changes to be made to typical duplex building designs or requiring Board of Zoning Appeal action. In this case, Lot 68B not only has different setbacks, the two lots are irregularly shaped and contain drainage and utility easements along the south property lines, which creates additional reductions in useable building area. The applicant states in the application documents that when the properties were obtained, it was "believed that the corner lot rules for setback applied to the entire structure and not the half lot only." To require strict application of the regulations would require a redesign of the current duplex design, or a change to the proposed residential use. A redesign of the duplex could enable more separation space between the utility and drainage easements, providing the user of the residential dwelling with space for convenience and desired amenities (fences, patios, decks, playground equipment, etc.). When all facts and circumstances are considered, requiring strict application of the regulations is unreasonable and unnecessary.

Emig moved to approve an EXCEPTION at 2725 Buttonwood, in the R-2, Two-Family Residential District to allow a reduction of the minimum twenty five (25) foot rear yard setback to fourteen (14) feet for a proposed single-family attached dwelling unit, with the following conditions:

1. The Exception shall be limited to the application documents and site plan.
2. All applicable permits shall be obtained.

Hardy seconded, which passed with a vote 5-0.

PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 111 DIX DR. IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO ELEVEN (11) FEET FOR AN EXISTING FENCE AND STORAGE SHED LOCATED ALONG GLADIOLA COURT. (APPLICANT/OWNER: CHARLES BROWN)

Frazzell presented the staff report with a recommendation of approval for the fence and denial for the shed.

Charles Brown, 111 Dix Dr., applicant, stated he had attempted to bring the shed into conformance once he obtained a letter of violation. He stated he had contacted City Administration to determine where to put the fence. He said he moved the shed in line with the fence and three feet from the north property line, and moved the north part of the fence to be in line with the shed. He said the shed is not on a permanent foundation and he is attempting to solve the issue.

Emig asked if Brown could move the shed since it was on skids, to be in compliance.

Brown said if he went sixty feet from the property line, it would put the structure within twenty feet of the side property line, which would locate the shed out his back door.

Emig asked if he could move it to the twenty-five foot setback and have it parallel with the side of the house.

Brown said no, he would rather get it out. He said he took it back to be in line with the fence so it wouldn't obstruct the views. He said to go back to the twenty-five foot would block his view of the neighbor to the north. He said the current position allows the neighbors to talk over the fence.

Dawn Goscha, 105 Dix Dr., said she lives across the street and supports the request to keep the shed and fence where they are currently located. She said if the shed was to be moved, the location of the house would still impair the line of sight for properties to the north. She recommended the board approve the requests.

Jackson closed the Public Hearing and opened for Board discussion.

Hamilton said that she could support the fence, and was struck by the applicant's willingness to accommodate the placement of the shed, the neighborhood support, and the limited space the applicant has for storage.

Hardy agreed and asked what the value would be for moving the shed eleven feet. He said that moving the shed further back would break up the backyard and could be more intrusive than its present location. He said the applicant has made a good faith effort to comply and with no opposition from the neighbors, he could support the request.

Jackson said he had no problem with leaving the shed where it is, as it could be more intrusive further into the yard.

Hamilton stated her support of the shed is significantly based on the historical approval of the fence to eleven feet.

The Board made modifications to the staff report and the following are Findings of Fact for the Exceptions at 111 Dix Dr.:

A. The property, Lot 7, Dix Subdivision Unit One, complies with all applicable requirements of the Zoning Regulations, other than the ones for which an Exceptions are being requested. In addition, the storage shed is at, or closer than the minimum 3 foot side yard setback along the north side property line. The structure is in violation of Manhattan Fire Code Regulation R302.1, which deems that the structure shall be at least 3 feet from the property line.

B. Lot 7 is situated on the east side of the entrance to the Gladiola Court cul-de-sac. There are six other homes around Gladiola Court. All homes on Gladiola Court are single family homes. The fence has been part of the neighborhood for 16 years; however, the presence of the 11 foot tall storage shed blocks the line of sight from the neighboring lot at 2004 Gladiola Court due to the mass and setback of the storage shed. It is not characteristic of the front yards on Gladiola Court for sheds to be in the front yard setback. No adverse effects are expected if the fence retains its current position.

The neighbors stated support for the request to retain the location of the shed in its existing location. There was no opposition from surrounding property owners at the public hearing.

C. The shed now meets Fire Code standard R302.1, which states that “exterior walls with a fire separation distance less than 3 feet (914 mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides”. Upon speaking with the representative who sold the shed to the property owners, the existence of a fire-resistive rating on the shed is unknown. The fence, on the other hand, has been in its current position since 1991 and has no known negative effects on the public. The fence and shed do not encroach upon right of way, utility or drainage easements, or the vision triangle at the front property line intersections of Gladiola Court and Dix Drive.

D. A former property owner applied for and was granted a Variance in 1991 to construct the existing fence at the 15 foot front yard setback along Gladiola Court. The current fence does not conform to the approved Variance and is setback 11 feet from the west property line. The current owner and applicant acquired the property in 1999 with the fence in its current location, and could reasonably be said to have had no knowledge that the fence did not conform to the approved Variance. Strict application of all regulations may be unreasonable for the fence, which has been in the current position since 1991, and seems to have caused no adverse effects on the public. No complaints are of record regarding the fence.

Moving the storage shed to the required 25 foot and 3 foot setbacks is not unreasonable. The

utility shed will have to be moved to meet the fire code that requires a setback of 3 feet from the side yard setback from the north property line or the structure must be fire rated. Strict application of the regulations is reasonable in regard to the storage shed, as it compromises views of the surrounding lots and poses a fire hazard due to noncompliance with fire separation standards.

The historical approval of the fence at eleven feet however has established an order in the neighborhood. Although the shed enhances the existing setback encroachment, requiring the shed to be located further into the yard would create a condition where there would be fourteen feet of dead space between the shed and the fence. Given the identified support of the neighbors, strict application of the regulations is unreasonable.

Hamilton moved to approve an Exception to allow a reduction of the twenty five (25) foot front yard setback to eleven (11) feet for an existing fence and an existing shed with the following conditions of approval:

1. The Exception shall be limited to the existing fence at the eleven (11) foot front yard setback along Gladiola Court, based on the application site plan and supporting documents

Hardy seconded which passed with a vote 5-0.

A PUBLIC HEARING TO CONSIDER VARIANCES FOR LOTS 281-282, BROOKFIELD ADDITION, UNIT 7. IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW OFF-STREET PARKING IN THE REQUIRED MINIMUM TWENTY FIVE (25) FOOT FRONT YARD SETBACK; TO ALLOW OFF-STREET PARKING BETWEEN THE FRONT LOT LINE AND THE FURTHEST POINT BACK ON THE FRONT OF THE RESIDENTIAL BUILDING FACING THE FRONT LOT LINE; TO ALLOW A REDUCTION OF THE MINIMUM SEVENTY FIVE PERCENT (75%) LANDSCAPED AREA BETWEEN FRONT LOT LINE AND FURTHEST POINT ON THE FRONT OF THE RESIDENTIAL BUILDING FACING THE FRONT LOT LINE; TO ALLOW AN INCREASE IN THE MAXIMUM TWENTY FOUR (24) FOOT DRIVEWAY WIDTH AND NINE HUNDRED AND SIXTY (960) AREA FOR A DRIVEWAY; TO ALLOW A REDUCTION OF THE REQUIRED NUMBER OF OFF-STREET PARKING SPACES; AND, TO NOT REQUIRE THE OFF-STREET PARKING TO BE SCREENED. ALL OF THE VARIANCES ARE FOR TWO PROPOSED FOUR-FAMILY DWELLING UNITS SOUTH OF WALTERS DRIVE AND WEST OF DONNA'S WAY. (APPLICANT/OWNER: KNIGHT INVESTMENTS, LLC.)

Frazzell presented the staff report and recommended approval of the Variances with two conditions.

Hamilton expressed concern for the requests as the conditions requiring the variances were being created by the applicant. She said it appeared the applicant was trying to go around the replatting process with the variances. She said she did not want to overlook the component which states that the applicant did not create the conditions requiring the variance.

Dan Knight, 7645 Saddle Dr., said he previously thought about replatting, however chose to go this route as he thought it would be easier and less expensive.

Jackson closed for Public Hearing and opened for Board discussion.

Hardy said normally if there was another avenue to attain a request, an applicant would pursue that option instead of going to the board. He said in this case, the applicant could replat or rezone the lots, despite the monetary and time costs. He said given that condition, it would be hard to approve a variance.

Hamilton said the request was consistent with the rest of the development.

Watson stated if this request was granted, it could set a precedent which could create future problems.

Emig stated a PUD would take approximately six months. He said the applicant was creating the condition requiring the variance and would be difficult to approve.

Hardy moved to table the requests until the October 11, 2006 meeting and encouraged the applicant to explore other options.

Emig seconded which passed 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 3513 STAGECOACH CIRCLE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW A REDUCTION OF THE MINIMUM FIFTEEN (15) FOOT FRONT YARD SETBACK TO SEVEN (7) FEET FOR A PROPOSED DECK AND TO EIGHT (8) FEET FOR AN EXISTING DECK AND TO ELEVEN (11) FEET FOR EXISTING STAIRS; A REDUCTION OF THE MINIMUM TWENTY FIVE (25) FOOT FRONT YARD SETBACK TO ZERO (0) FEET FOR AN EXISTING FENCE AND TO SIX (6) FEET FOR A PROPOSED FENCE; AND, A REDUCTION OF THE MINIMUM TWENTY FIVE (25) FOOT FRONT YARD SETBACK TO FIVE (5) FEET FOR AN EXISTING SHED. ALL SETBACK REDUCTIONS ARE ALONG THE HUDSON AVENUE FRONTAGE. (APPLICANT/OWNER: RICHARD HILL)

Frazzell presented the staff report with a recommendation of approval with three conditions.

Richard Hill, 3513 Stagecoach Circle, applicant, stated the shed and fence was installed in their present locations by the previous owner when Hudson Ave. was a gravel road. He stated a building permit was obtained for the existing deck. He reiterated that he technically does not have a backyard given his lot is a through lot. He said if strict application of the regulations was enforced, he would have around three feet of space off of his back door.

The Board closed for Public Hearing and opened for board discussion.

Hamilton stated there is a unique condition given the shape of the lot, the varying topography, and the fact they are existing improvements.

Emig stated he could support the request.

Kevin Thompson, 1008 Cox Circle, clarified the new site plan dated 9/11/06 proposed the fence to be at zero feet.

Hardy asked staff if the proposed fence was advertised at zero feet.

Frazzell read the advertisement which identified the proposed fence was advertised to six feet.

Hamilton stated the board could only take action for the requests based on what was advertised, and that portion of the Exception could be tabled.

Zilkie informed the board if the applicant wanted to pursue the reduction to zero feet, a new application would be required.

The Board made the following Findings of Fact for the Exceptions at 3513 Stagecoach Circle:

A. The property currently complies with all applicable regulations other than those for which the Exceptions are being requested.

B. Adjacent and to the west of Lot 113 is Hudson Ave., a collector street with approximately 70-ft. of right-of-way. Further to the west are single-family residences located slightly below grade of Lot 113 and within the R, Single-Family Residential District. The existing 6-foot tall, wood privacy fence, generally located at zero feet along the west property line of Lot 113, provides screening of the back of the house and additional improvements on Lot 113. The fence is screened to the west by landscaped vegetation including multiple medium sized cedar trees. To the north, south, and east are single-family residences located within the R-1, Single-Family Residential District. Fences enclosing the functional rear yards are not uncharacteristic of the residential neighborhood along Hudson Ave. The existing fence on Lot 113 screens Lot 113 from the south lot. The proposed Exceptions to reduce the front yard setback for the existing and additional improvements should not have an adverse impact on the adjacent properties to the north and south based on the fact that the property is currently screened to the south and the proposed fence will screen the improvements to the north. Adjacent and to the east is Stagecoach Circle, a local cul-de-sac street with approximately 60-ft. of right-of-way. Properties located on Stagecoach Circle are screened from the existing and proposed improvements by the existing house and screening fence on Lot 113. The reduction in the front yard setback for the proposed deck extension, accessible ramp, and additional screening fence are not anticipated to have an adverse impact on surrounding properties.

C. Existing improvements do not encroach into the ten (10) foot utility easement located to the north. The proposed location of the improvements will not affect the adjacent rights-of-way or vision clearance triangles. The proposed Exceptions are not anticipated to have an adverse effect on the public's health, safety, or general welfare.

D. Lot 113 is a through lot, with twenty-five (25) foot front yard setbacks along the west and east property lines, and eight (8) foot side yard setbacks along the north and south property

lines. Although Lot 113 is relatively large in size, the odd shape of the lot and the double front yard setbacks greatly reduces the buildable area on the lot. Maintaining the required setbacks on Lot 113, approximately 1,000-s.f. of space is available in the south portion of the lot for potential improvements. To require strict application of the regulations, a fence located in the west portion of the lot would essentially be along the west façade of the house, which is unreasonable and unnecessary. Decks, steps, ramps, terraces, and landings are all allowed within the required front yard, provided that they are not located closer than 15-feet to the front property line. In this case, the existing deck is located seven (7) feet from the west property line and the stairs are eleven (11) feet. To require strict application of the regulations, the existing stairs and deck as well as the proposed deck extension would be required to be reduced. The proposed deck extension could be reduced to meet the required setback, however allowing the proposed reduction would maintain consistency with the existing deck. The utility shed, an accessory structure, is located approximately 5-feet from the west property line. A through lot is similar to a corner lot, given the two front yard setbacks. Accessory structures on corner lots are required to be located generally 60-feet from the front property line (east property line), maintain a front yard setback consistent with the underlying zoning district along the side street (west property line), and have a three (3) foot setback from the side property line (south and north property lines). In order to comply with the strict application of the regulations, the shed would have to be located directly south of the existing residence, virtually adjacent to the existing residence. According to the applicant's consultant, the applicant did not place the accessory structure on Lot 113 and was unaware the location of the shed was not in compliance. When all facts and circumstances are considered, requiring strict application of the regulations for the existing and proposed improvements is unnecessary and unreasonable.

Hamilton moved to approve EXCEPTIONS at 3513 Stagecoach Circle, in the R-1, Single-Family Residential District to allow a reduction of the minimum fifteen (15) foot front yard setback along Hudson Avenue frontage to seven (7) feet for a proposed deck and to eight (8) feet for an existing deck and to eleven (11) feet for existing stairs; a reduction of the minimum twenty five (25) foot front yard setback along Hudson Avenue to zero (0) feet for an existing fence and to six (6) feet for a proposed fence; and, a reduction of the minimum twenty five (25) foot front yard setback along Hudson Avenue to five (5) feet for an existing shed with the following conditions:

1. The Exceptions shall be limited to the existing and proposed improvements as outlined in the application documents and shown on the Certificate of Survey dated August 2006.
2. The existing and proposed improvements shall be maintained in good condition.
3. All applicable permits shall be obtained.

Watson seconded, which passed with a vote 5-0.

With no further business, Jackson closed the Public Hearing.

Respectfully Submitted,

Jeremy Frazzell, Planner

091306