

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, January 10, 2007
7:00 PM

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

MEMBERS ABSENT: None

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

CONSIDER THE MINUTES

Hamilton noted a few corrections for the Boards Findings and the referenced location of the fence on Yuma. Hardy moved to approve the December 13, 2006 minutes with the noted corrections, which was seconded by Watson and passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE/EXCEPTION FOR 1310 N. 11TH STREET TO ALLOW FOR A MODIFICATION OF AN EXISTING LEGAL NONCONFORMING USE, FOR PURPOSES OF REPLACING AN EXISTING TWO-FAMILY RESIDENCE WITH A NEW TWO-FAMILY RESIDENCE; AND AN EXCEPTION TO REDUCE THE MINIMUM FOURTEEN (14) FOOT FRONT YARD SETBACK TO SEVEN (7) FEET FOR PROPOSED STAIRS IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: VICTOR OLSON)
ACTION: REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING.

Hardy moved to remove the item from the table and conduct a public hearing. Emig, seconded the motion which passed with a vote of 4-0.

Frazzell presented the Staff Report with a recommendation for denial of the Conditional Use/Exception.

Vic Olson, 629 Pecan Circle, stated the building at 1310 N. 11th is in need of repair and the proposal would provide the needed repairs. He said the surrounding neighborhood is mostly rentals and across the street is the R-3, District which allows for this type of use. He said the proposal was not out of character of the neighborhood.

Tracy Anderson, Architect/Consultant, said they realize that the proposal increases the density from what currently exists and reiterated that the surrounding neighborhood is predominantly dominated by similar types of rentals. He said the applicant spoke with the surrounding neighbors, who have expressed opposition to an R-3 rezoning. He said the proposed structure is an improvement to the neighborhood, as the architectural style is consistent with the Traditional Neighborhood Overlay District.

Emig stated this option may be the most economically feasible, but asked Anderson if they had looked at other options using the existing building.

Anderson said a possible alternative they have explored is to replace the foundation and adding an additional bedroom, but would rather have the opportunity to construct a new structure. He said there may be ways to reduce the footprint to make it work. He further stated reducing the use to a single-family use was not likely, especially within that block.

Hamilton asked Anderson why they didn't think the increase in bedrooms would have an adverse effect on the surrounding neighborhood.

Anderson said most of the houses in the neighborhood have multiple mailboxes, indicating multiple units. He said they don't feel the proposal is increasing the density of the neighborhood from what really exists, as there are few existing single-family residences. He said neighbors within the block are not in support of the project or an R-3 zoning, but are not opposed to an R-2, District. He said they are trying to make the situation better and don't feel the proposed changes will have an adverse effect on the existing neighborhood.

Roger Luthi, 1410 Poyntz, said he owns rental property within the neighborhood and is in support of the proposed change. He said the existing property is in poor condition, and the proposed changes would increase the appearance of the neighborhood. He said the property currently does not provide off-street parking and the proposed changes would improve the situation. He further stated he would like to see the neighborhood up zoned to R-2, District.

Hamilton closed for Public Hearing and opened for Board discussion.

Hardy said he appreciated the comments of the neighbors. He said the Board can not base the standard on economics. He said the fact is the lot is not zoned R-2, it is zoned R-1. He said increasing the number of bedrooms from three to eight is increasing the density and intensity of the use in the neighborhood. He said even though they have proposed eight bedrooms, it is likely there will not only be eight residents. He said he didn't feel he could support the request.

Watson said she could support the staff recommendation. She said moving forward with the proposal would be going against the intent of the R-1 and Traditional Neighborhood Overlay District. She said she could not support the request.

Emig said the area had undergone changes in zoning and was recently down zoned approximately two to three years ago. He said the rezoning was a public process with a lot of public input. He said one neighbor supports the request while another is opposed. He said the best way to proceed with the request would be to pursue a rezoning. He recommended the applicant and consultant to find a way to alter the existing house which doesn't increase the intensity. He said based on these reasons, he could not support the request.

Hamilton said she appreciates the proposal, but increasing the density is detrimental to the current zoning of the neighborhood. She said she hoped they could find an alternative, but could not support the current proposal.

The Board made the following findings of fact for the Conditional Use/Exception at 1310 N. 11th Street.

1. THAT THE SIZE OF THE ZONING LOT IS NOT INCREASED FROM THAT WHICH CURRENTLY EXISTS

The subject property is Lot 26, Coronado Addition which is an irregularly shaped, internal lot with a front property line to the west, two side property lines to the north and south, and a rear property line to the east. The west portion of the lot measures approximately 95-feet in width (north to south) and 56-feet in depth (west to east), while the east portion of the lot measures approximately 74-feet in width (north to south) and 54-feet in depth (west to east). Lot 26 has an approximate lot area of 9,686 sq. ft. The lot size is not proposed to change.

2. THAT EITHER: (A) THE CURRENT EXISTING USE DOES NOT HAVE A SIGNIFICANTLY ADVERSE IMPACT UPON EITHER THE SURROUNDING NEIGHBORHOOD OR THE PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, AND THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL NOT WORSEN SUCH IMPACT; OR, (B) THAT THE CURRENT EXISTING USE DOES HAVE SUCH A SIGNIFICANTLY ADVERSE IMPACT AND THE GRANTING OF THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL BE MORE LIKELY TO REDUCE OR ELIMINATE SUCH IMPACT THAN A DENIAL OF SUCH PROPOSAL

The existing use as a two family residential dwelling unit consisting of a total of three bedrooms (two in the main floor unit and one in the basement unit) does not have any known adverse effects on adjacent properties or the public as a whole. According to the Opinion of Nonconformance letter, the two-family use may have been established around 1964. Having existed for approximately 42 years, the use itself has become part of the established neighborhood.

The applicant is proposing to remove the existing structure and replace it with a new structure located on a new foundation. The modification is proposed to increase the number of bedrooms per unit to four, giving a total of eight bedrooms in the structure. Surrounding properties to the north, south, and east are predominately single-family residential in character (although several two-family dwellings exist) and are located within the R-1, Single-Family Residential District and TNO, Traditional Neighborhood Overlay District. To the west is the R-3, Multiple-Family Residential District with M-FRO, Multi-Family Redevelopment Overlay District. Properties to the west are predominately a mixture of two-family dwellings (structure built as a two-family dwelling), single family conversions to two-family dwellings, and multiple-family dwellings.

It is likely that there would be an adverse effect on adjacent properties if the use of the subject property were allowed to increase its density from an existing three bedrooms to a proposed eight bedrooms. Any change which increases the opportunity for additional persons to live in either dwelling unit can be seen as a potential adverse impact on the neighborhood, which is zoned R-1/TNO District.

The Zoning Regulations indicate that a legally nonconforming use shall be deemed a

conditional use in the zoning district in which it is located. In general, a legally nonconforming use cannot be expanded, enlarged or increased in intensity beyond that which existed when it became legally nonconforming unless a conditional use is approved. An expansion, enlargement or increase in intensity is the use of additional structures, land area, or floor space within the same structure not originally designed or arranged for such use.

The use of the subject property as a two-unit dwelling with two bedrooms in the main floor unit and one bedroom in the basement unit may continue as has been determined by an Opinion of Nonconformance. If the existing house is allowed to be demolished and replaced with a new structure containing eight bedrooms, an increase in intensity will result and may adversely impact the neighborhood.

The subject property currently has limited off-street parking provided for the main unit and no off-street parking provided for the basement unit. The TNO, Traditional Neighborhood Overlay District requires a minimum of one parking space per bedroom and the applicant is proposing nine (9) off-street parking spaces and eight bedrooms total. Although the amount of parking exceeds what is currently required, the intensity associated with the number of potential vehicles on the property may have an adverse impact on adjacent properties.

3. THE PROPOSED CONDITIONAL USE COMPLIES WITH ALL APPLICABLE PROVISIONS OF THESE REGULATIONS, EXCEPT FOR THOSE EXISTING CONDITIONS THAT ARE LEGALLY NONCONFORMING; HOWEVER, THE PROPOSAL MAY CONTAIN REQUESTS FOR EXCEPTIONS TO SUCH REQUIREMENTS AS PROVIDED IN PARAGRAPH (F) HEREINAFTER

The proposed Conditional Use is inconsistent with the intent to not increase the intensity of a legally nonconforming use. The proposed eight bedroom structure with associated parking area may adversely affect the neighborhood and is contrary to the intent of the R-1/TNO District.

An Exception is proposed to reduce the front yard setback from a minimum fourteen (14) feet to seven (7) feet for proposed stairs into the residential building. The M-FRO, Multi-Family Redevelopment Overlay District located across N. 11th Street would allow steps leading to a basement and/or first story entrance, stoop, or porch to be located as close as six (6) feet to the front property line. In this case, it appears the reduced setback would maintain consistency with the immediate neighborhood. The proposed reduction in the front yard setback for the stairs is not anticipated to have an adverse effect on the surrounding neighborhood or the general public as a whole.

4. THE EXISTING USE CONTINUES IN A SUBSTANTIALLY SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE IT MORE MODERN OR EFFICIENT.

The applicant is proposing to remove the existing house and replace it with a more modern structure but continue the use as a two-family residential dwelling unit. The new structure

however is proposed to contain four bedrooms in each unit, for a total of eight bedrooms compared to that of the existing structure which contains a total of three bedrooms. The proposed change is not a substantially similar form to the two-family dwelling unit as it has been historically used. Renovating the existing structure to create a more modern and efficient structure may be plausible (depending upon the functional use and intensity) if the total number of bedrooms of the structure were to remain as three. It may be possible for this use to continue in a similar form and alter the structure to create a more modern and efficient use, without increasing intensity of occupancy.

Emig moved to deny the Conditional Use/Exception to allow for a modification of an existing legal nonconforming use, for purposes of replacing an existing two-family residence with a new two-family residence; and an Exception to reduce the minimum fourteen (14) foot front yard setback to seven (7) feet for proposed stairs in the R-1, Single-Family Residential District and TNO, Traditional Neighborhood Overlay District.

Hardy seconded, and the requests were denied with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION AT 905 ALLISON AVE. TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK ALONG ALLISON AVE. TO SIXTEEN (16) FEET FOR A PROPOSED COVERED PORCH ADDITION IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: JOHN & CAROLYN RING)

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

John Ring, 905 Allison Ave., said the request was to protect the front entry of the house. He said moving the front entry was not a feasible option. He said they went through the neighborhood and informed the neighbors of their request and received positive feedback. He said he was available for questions.

Hamilton said she appreciated the applicant's efforts to communicate with the neighbors.

Hamilton closed the Public Hearing and opened for Board discussion.

Hardy said he could support the request based on the staff report. He said it is always helpful when applicants speak with the neighbors about the request. He also said that he had identified several houses in the neighborhood with similar types of structures.

The Board made the following Findings of Fact for the Exception at 905 Allison Ave.

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

B. Properties to the north, south, and east are single-family residences located in the R-1, Single-Family Residential District. To the west are additional single-family residences located

in the R, Single-Family Residential District. The proposed structure is an open walled design with a roof line generally consistent with the existing structure. The proposed structure is intended to provide protection of the occupants and the front entryway from weather and the elements and the proposed design is generally consistent with other structures in the neighborhood. Although structures located within the front yard setback is not characteristic of the surrounding neighborhood, the proposed design and intent of the addition is not anticipated to have an adverse effect on the established neighborhood.

C. An eight (8) foot utility easement crosses the west portion of the property in a north to south direction. The proposed addition is not located within the utility easement and will not affect the vision clearance triangle. Approval of the setback reduction is not anticipated to have an adverse effect on the health, safety, and general welfare of the community.

D. The existing design and location of the single-family residence prevents a roof covering from being built over the present front door without encroaching into the front yard setback. The intent of the proposed roof overhang is to provide additional protection of the front entry and occupants of the house from the weather. The proposed design is generally consistent with the design of the existing structure and the surrounding neighborhood. The applicant submitted a petition which states general support from the surrounding neighbors. When all facts and circumstances are considered, strict application of the regulations is unreasonable and unnecessary.

Hardy moved to approve an Exception for 905 Allison Ave. to reduce the minimum twenty-five (25) foot front yard setback to sixteen (16) feet for a proposed covered porch addition in the R-1, Single-Family Residential District with the following conditions:

1. The Exception shall be for the addition as proposed in the application documents and site plan.
2. All applicable permits shall be obtained.

Emig seconded which passed with a vote 4-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT AT 1431 POYNTZ AVE. TO ALLOW FOR A SINGLE-FAMILY RESIDENTIAL USE IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT/OWNER: TIM CLARK)

A PUBLIC HEARING TO CONSIDER EXCEPTIONS AT 1431 POYNTZ AVE. TO REDUCE THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK ALONG S. 15TH STREET TO FIVE (5) FEET FOR A PROPOSED ACCESSORY STRUCTURE CONTAINING A PROPOSED SINGLE-FAMILY RESIDENCE, AND A PROPOSED MODIFICATION OF THE PRINCIPAL STRUCTURE DESIGN WHICH WAS PREVIOUSLY APPROVED TO TWELVE (12) FEET ALONG S. 15TH STREET, IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT/OWNER: TIM CLARK)

Emig stepped down.

Frazzell presented the staff reports and recommended approval for the Conditional Use with three conditions and approval of the Exception with three conditions.

Tim Clark, 224 Poyntz Ave., said he worked with the design after the previous requests were approved and said this is a better design. He said he was pursuing the Conditional Use for the residential portion at this time, as he felt it was best to pursue everything at one time to prevent coming back to the Board in the future. He said he was available for questions.

Hamilton asked if any comments were made by the neighbors on the site plan, especially the sidewalk location and design.

Clark stated he had shown the design to several of the neighbors. He said the design was a compromise of what he would like and what was allowed for a public sidewalk.

Hamilton closed the Public Hearing and opened for Board discussion.

Watson said the footprint of the structures has not changed from what was previously approved. She said she liked the design and innovation and said she could support the requests.

Hardy said he could support both requests as he agreed the design was in the original footprint and it was a good design.

Hamilton said she could support the requests as she was in support of the mixed commercial and residential use design and the continued preservation of the existing trees.

The Board made the following Findings of Fact for the Conditional Use Permit at 1431 Poyntz Ave.

A. Compliance with all applicable regulations: Variances were granted to reduce the minimum lot size on September 13, 2006. Similarly, Exceptions were granted to reduce the minimum twenty-five (25) foot front yard setback along S. 15th Street to twelve (12) feet for a proposed office building and to five (5) feet for an accessory structure, and to allow parking within the front yard setback. Companion Exceptions have been proposed to allow design modifications to the approved office building design and to allow an apartment to be constructed above the accessory structure. The property complies with all applicable regulations other than the ones for which the Conditional Use Permit are requested.

B. Probable effect on adjacent properties:

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 used as rental property. To the north across Poyntz Avenue, a 100-foot collector street, are businesses allowed in the C-1, Restricted Business

District. The proposed addition to the accessory structure to accommodate for the proposed apartment is not anticipated to have an adverse effect on adjacent properties.

C. Domination by use over neighboring properties:

The proposed single-family residential use is consistent with the surrounding properties to the general west, south, and north. The height of the accessory structure with the proposed apartment structure as reflected on the site plan will be twenty-nine (29) feet tall and will consist of three levels (garage, main apartment level, second apartment level). As indicated on the site plan, the apartment will be a loft type, with a general open floor plan and one designated bedroom.

1. Location, nature, and height of physical improvements:

An accessory structure was approved on September 13, 2006 to be located as close as five (5) feet to the west property line and approximately thirty-four (34) feet from the south property line. The accessory structure with proposed apartment is located outside of the vision clearance triangle. The proposed apartment structure above the garage will be within the footprint of the approved accessory structure and will not further encroach into the front yard setback. The height of the approved accessory structure is proposed to increase from eleven feet four inches (11' 4") to twenty-nine (29) feet, which is one foot less than the maximum height of thirty (30) feet allowed in the C-1, District.

2. Landscaping and screening: A landscaped yard along the north and west property lines is proposed and the existing trees will be retained as much as possible, which will help maintain a minimal visual impact on the neighborhood. No additional landscaping or screening is required or provided.

D. Adequate provision of parking and loading: According to the floor area of the principal office building, a minimum of three (3) off-street parking spaces are required (873 s.f. / 300) and two (2) are required for the single-family residential use (at least two (2) parking spaces for each dwelling unit). The previously approved site plan identified a total of five (5) parking spaces provided on-site (including parking space within the garage), which would satisfy the parking requirements for both the office and residential uses. The new site plan identifies an additional parking space and accessible hatched area in the east portion of the parking lot, behind the S. 15th Street twenty-five (25) foot front yard setback. The additional parking space would provide a total of six (6) off-street parking spaces on-site including the parking space within the garage. The proposed parking exceeds what is required for the uses and is proposed behind the front yard setback.

E. Adequate provision of drainage, and other public utilities: Adequate drainage and other public utilities are currently provided to the site.

F. Adequate provision of access: Lot 112, Ward 5 is a corner lot with frontages along Poyntz Ave. and S. 15th Street. Access to the site is from the fifteen (15) foot wide alley which crosses along the south portion of the lot in an east to west direction. Adequate access is provided to

the site.

Hardy moved to approve a CONDITIONAL USE PERMIT to allow for a single-family residential use in the C-1, Restricted Business District with the following conditions:

1. The Conditional Use Permit shall be for a single-family use as proposed in the application documents and shown on the site plan.
2. A companion Exception shall be granted for the single-family apartment to be located above the accessory structure.
3. All applicable permits shall be obtained.

Watson seconded, which passed with a vote 3-0.

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

A. A Variance was approved for Lot 112, Ward 5 to reduce the lot area and lot depth requirements of the C-1, Restricted Business District. At the same time, Exceptions were approved 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. A companion Conditional Use Permit has been proposed for the single-family residential use above the detached garage.

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. To the west, across S. 15th Street (a 60-foot right-of-way) is a mix of residential and commercial properties. To the north across Poyntz Avenue (a 100-foot collector street) is a mix of commercial and residential properties. The proposed setback reduction will allow a modification of the design of the previously approved professional office, a permitted use in the C-1, Restricted Business District, and would allow the garage to be increased in height to accommodate for an apartment. The total height of the accessory structure with the proposed apartment is twenty-nine (29) feet, one foot less than the maximum height of the district. A minimum of three (3) off-street parking spaces are required for the principal office use and two (2) are required for the single-family residential use. The previously approved site plan identified a total of five (5) parking spaces provided on site (including parking space within the garage), which would satisfy the parking requirements for both the office and residential uses. The new site plan identifies an additional parking space and accessible hatched area in the east portion of the parking lot, behind the S. 15th Street twenty-five (25) foot front yard setback. The additional parking space would provide a total of six (6) off-street parking spaces on site including the parking space within the garage. The proposed parking exceeds what is required for the uses and is proposed behind the front yard setback. The 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 proposed design adjustment to the principal and accessory structures will not further decrease the front yard setback along S. 15th Street. The amount of required parking is satisfied on the lot. The proposed Exceptions are required based on a condition placed on the previously approved Exception. The findings made by the Board on September 13, 2006, still apply to the proposed Exceptions. The Board of Zoning Appeals found that 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. The proposed configuration of the principal building on Lot 112, based on the width of the lot, would not allow for an accessory structure without obtaining an Exception. 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 reduce the minimum twenty-five (25) foot front yard setback along S. 15th Street to five (5) feet for a proposed accessory structure containing a proposed single-family residence, and a proposed modification of the principal structure design which was previously approved to twelve (12) feet along S. 15th Street, in the C-1, Restricted Business District, with the following conditions:

1. The Exceptions shall be limited to the application documents and site plan.
2. A Conditional Use Permit shall be approved for the single-family residential use.
3. All applicable permits shall be obtained.

Watson seconded, which passed with a vote 3-0.

A PUBLIC HEARING TO CONSIDER EXCEPTIONS AT 2601 ANDERSON AVE. TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK ALONG ANDERSON AVE. TO SEVEN (7) FEET FOR A PROPOSED SIGN AND TO FOUR (4) FEET FOR PROPOSED OFF-STREET PARKING; AND TO REDUCE THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK ALONG CONNECTICUT AVE. TO THREE (3) FEET FOR PROPOSED OFF-STREET PARKING IN THE C-2, NEIGHBORHOOD SHOPPING DISTRICT. (APPLICANT/OWNER: CALVIN EMIG)

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

Calvin Emig, 1431 Anderson Ave., said he has owned the property for approximately seven years and has made continued improvements to the property. He said the requests are a direct result of the widening of Anderson Ave. which required approximately eight feet of the north portion of his lot. He said the requests are to replace what previously existed and said he was available for any questions.

Del Crawforth, 2613 Anderson Ave., said he supports the requests for the sign as it is the life line of his carpet and interior business. He said without the sign, customers do not know where his business is located.

Hamilton closed for Public Hearing and opened for Board discussion.

Watson asked about the pole sign and if a separate permit would be required. Staff indicated it would require a permit.

Hardy said he appreciated the history of the sign and could support the requests based on the staff report.

Watson stated she could support the request as the loss was for the overall benefit associated with the Anderson Ave. project.

The Board made the following Findings of Fact for the Exceptions at 2601 Anderson Ave.

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

B. To the north is Anderson Ave. followed by a bank and other commercial properties in the C-2, District. To the west is a gas station, and a paint store in the C-2, District followed by the Riley County Public Works office in the R, District. To the south is Washington Square, a residential subdivision containing single-family attached dwellings in the R-2, District. East is Connecticut Ave. followed by a commercial building in the C-1, District. The proposed off-street parking and pole sign along Anderson Ave. previously existed and were part of the established neighborhood without known implications on the surrounding neighborhood. Replacement of the off-street parking and pole sign along Anderson Ave. is anticipated to be generally consistent with other properties along the south side of Anderson Ave. and is not anticipated to have an adverse effect on adjacent properties. Parking proposed along Connecticut Ave. is proposed to generally face towards the northeast and the location is not anticipated to have an adverse effect on the public right-of-way, adjacent residential properties, or the adjacent commercial property. The reduction in the setback along Connecticut Ave. to allow an additional five (5) off-street parking spaces is not anticipated to have an adverse effect on surrounding properties.

C. The proposed pole sign has been designed to be compatible with the ten foot vision clearance triangle required at the intersection of a driveway and a sidewalk. The location of the sign on the east side of the north driveway has been proposed to prevent interference with

the utilities currently along the north portion of the lot. The proposed parking is not located within any utility or drainage easements. The loss of the previous parking and pole sign for Anderson Ave. road improvements was an attempt to increase the health, safety and general welfare of the public and to replace what previously existed through the exceptions will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

D. The previous pole sign location and off-street parking along the north portion of the lot had been previously approved and was in compliance with the regulations. The applicant did not create the condition which required the previous pole sign and parking to be removed, but instead was created by an act which improved Anderson Ave. for the health, safety, and general welfare of the community at large. The number of parking spaces which previously existed was approximately eleven. In order to replace the parking that previously existed and still maintain compliance with the parking lot configuration standards, a different configuration was required. The new configuration reduces the number of off-street parking spaces available along the north portion of the lot, therefore the remainder of the spaces are proposed to be located along Connecticut Ave. The proposed location is not anticipated to have an adverse effect on the neighboring properties or the general public at large. In this case, when all facts and circumstances are considered, strict application of the regulations is unnecessary and unreasonable.

Hardy moved to approve EXCEPTIONS at 2601 Anderson Ave. to allow a reduction of the minimum ten (10) foot front yard setback along Anderson Ave. to seven (7) feet for a proposed sign and to four (4) feet for proposed off-street parking; and to reduce the minimum twenty-five (25) foot front yard setback along Connecticut Ave. to three (3) feet for proposed off-street parking in the C-2, Neighborhood Shopping District with the following conditions:

1. The Exceptions shall be for the off-street parking and pole sign as identified in the application documents and site plan.
2. All applicable permits shall be obtained.

Watson seconded which passed with a vote 3-0.

Emig returned to the Board.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION ON LOT 16, SKYVUE ADDITION, TO ALLOW AN ALTERNATIVE SURFACING OTHER THAN PAVEMENT, AS REQUIRED FOR AREAS UTILIZED FOR THE PARKING AND STORAGE OF EQUIPMENT AND SERVICE VEHICLES IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: JIM WILLIAMS)

A PUBLIC HEARING TO CONSIDER A VARIANCE ON LOT 16, SKYVUE ADDITION, TO NOT PROVIDE SIGHT OBSCURING SCREENING OF NOT LESS THAN SIX (6) FEET IN HEIGHT FOR OUTDOOR STORAGE OR DISPLAY ITEMS IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: JIM WILLIAMS)

Frazzell presented the staff reports and recommended approval of the Exceptions with two conditions and approval of the Variance with one condition.

Hamilton clarified the Variance condition, stating that the Variance was only to not provide screening of utility trailers, and all other equipment not classified as a motor vehicle would require screening.

Watson asked if environmental and health conditions associated with the millings were evaluated. Frazzell responded they were not.

Jim Williams, 3025 Amherst, said he owns the property to the south where the parking lot is paved. He said the millings on the site now work well for maneuvering this type of construction equipment. He said this type of equipment would tear up pavement. He said they maintain the lot in good condition and do not have any drainage problems.

Steve Williams, 3412 Churchill St., said he is the owner of the property and supports the application. He said he does not want anything permanent on the lot at this time, as he plans on further developing the lot in the future.

Hamilton said the Board has the authority to grant this type of temporary request, however since this is the second time for the request, she does not want to see this continue on into the future.

Steve Williams said he is not financially ready to further develop the lot at this time and this will be a temporary request.

Hamilton said if in two years the applicant comes back to the Board with the same request, the request will no longer be temporary.

Hardy said he can sympathize as sometimes plans change, but he agreed in two years if the applicant came back with the request, he would not want to support it.

Hamilton closed for Public Hearing and closed for Board discussion.

Hardy said he could support the request for another two years as it is still temporary and the applicant is still trying to work out the development. He said he could also support the request for the Variance for not providing the screening, provided it was conditioned to the trailers only.

Watson said she could support the requests provided the surface is maintained.

Hamilton said she could support a condition that the surface be maintained.

The Board made the following Findings of Fact for the Exception on Lot 16, Sky-Vue Addition.

A. According to 4-205(E)(5) of the Manhattan Zoning Regulations, “any outdoor storage and display, with the exception of sales lots for boats and motor vehicles, shall be enclosed by sight obscuring screening of not less than six (6) feet in height.” Motor Vehicle is specifically defined in the Manhattan Zoning Regulations as “a self propelled vehicle”. The utility trailers therefore do not meet this definition and are required to be screened with sight obscuring screening. The applicant has proposed a companion Variance to not provide the required screening. Other than for which the Exception and Variance are being requested, the subject property complies with all applicable provisions of the Zoning Regulations.

B. No adverse affect to adjacent properties is expected. The subject property and the surrounding adjacent properties are located within a C-5, Highway Service Commercial District and are developed as service commercial type establishments. The property to the north is developed as a bakery outlet, and the three (3) adjacent properties to the south from west to east are developed as professional offices, Quick Lube and auto mechanic shop, and the Manhattan Athletic Club, respectively. The adjacent properties to the west are developed as Homestead Rental and Furniture Warehouse. To the east is Rosencutter Rd. followed by an I-3, Light Industrial District which generally caters to building contractors. The rental and sale of construction vehicles is generally in character with the surrounding area due to the large Briggs Auto Center being located directly to the northwest, across Stagg Hill Road; and several automobile service businesses being located nearby along Sky-Vue Road.

C. No adverse affects on the general public is expected as the proposed parking area does not encroach into any public utility or drainage easements.

D. Provided the conditions placed on the previously approved request, the applicant is required now to remove the asphalt millings from the parking area and resurface it with pavement if the plan is to continue to use the area. The applicant has indicated that the owner still intends on developing the property in the future but is not able to do so at this time. The additional two years would provide continued use of the property in its current state before the property is further developed for a permanent use. Several of the findings the Board made in 2004 are still applicable. Those findings stated: “The strict application of the Regulations would require the applicant to utilize pavement for surfacing the proposed temporary sales and parking area. The proposed asphalt millings surface would be much easier to remove at the time of future development. The required pavement surfacing may restrict future development options, or result in more pavement surfacing that what may be needed for the undetermined future use.” When all facts and circumstances are considered, allowing an additional two (2) years for the use of asphalt millings as surfacing of the parking area is not unreasonable.

Hardy moved to approve an EXCEPTION on Lot 16, Sky-Vue Addition to allow an alternative surfacing other than pavement, as required for areas utilized for the parking and storage of equipment and service vehicles in the C-5, Highway Service Commercial District with the following conditions:

1. The asphalt millings shall be removed or replaced with pavement within two (2) years of the Notice of Decision.
2. The parking area shall be as proposed in the application documents and site plan.

3. The existing asphalt millings shall be maintained in good condition.

Watson seconded, which passed with a vote 4-0.

The Board made the following Findings of Fact for the Variance on Lot 16, Sky-View Addition.

1. There is not a specific unique condition to the property which would prevent the installation of sight obscuring screening for the utility trailers or other display or storage items on the lot. The lot is currently vacant with a parking area along the southeast side which is used for displaying the compact construction equipment and utility trailers. The lot is located within a service commercial district and is surrounded by similar types of automotive sales, and service type operations. Topographically, the lot is lower in elevation than Fort Riley Blvd. and is generally screened from Stagg Hill Rd. and Fort Riley Blvd. by buildings to the north. The display area faces towards Rosencutter Rd., a collector road which does not experience a high level of traffic and is primarily used by users of the commercial properties to the south, the light industrial area to the east, or the transfer station further to the south and east.

2. No adverse affect to adjacent properties is expected. The subject property and the surrounding adjacent properties are located within a C-5, Highway Service Commercial District and are developed as service commercial type establishments. The property to the north is developed as a bakery outlet, and the three (3) adjacent properties to the south from west to east are developed as professional offices, Quick Lube and auto mechanic shop, and the Manhattan Athletic Club, respectively. The adjacent properties to the west are developed as Homestead Rental and Furniture Warehouse. To the east is Rosencutter Rd. followed by an I-3, Light Industrial District, generally consisting of contractor type operations. The rental and sale of compact construction vehicles is generally in character with the surrounding area due to the large Briggs Auto Center being located directly to the northwest, across Stagg Hill Road; and several automobile service businesses being located nearby along Sky-View Lane.

3. The nature of the applicant's business is to provide for the sale and rental of compact type construction equipment which currently involves motor vehicles as defined by the Manhattan Zoning Regulations and utility trailers. According to the applicant, requiring sight obscuring screening "obscures the equipment we want people to see what you have available to rent or purchase. A lot of this looking is done after hours and on weekends." The applicant has proposed a chain link fence around the perimeter of the display area to enclose the equipment for insurance purposes but has proposed to not provide the sight obscuring screening.

4. The display area does not encroach into any utility easements or negatively affect the public rights-of-way. Not providing the sight obscuring screening is not anticipated to have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

5. The C-5, Highway Service Commercial District provides for businesses offering

accommodations, supplies, or services to motorists, and for certain specialized activities which require access to major streets and highways. The compact construction equipment currently located on the site for sale or for rent includes skid steers, backhoes, and utility trailers. Construction equipment sales and rental, not including heavy equipment types such as bulldozers and cranes are permitted uses within the C-5, Highway Service Commercial District. The use limitation of the C-5, District however requires any outdoor storage or display of items not classified as boats or motor vehicles to be enclosed with sight obscuring screening, therefore the utility trailers displayed for sale or for rent would have to be screened.

To not require screening could allow any number of items associated with construction equipment, which could potentially have an adverse affect on the surrounding neighborhood. If the intent of the regulation however is to allow motor vehicles, which could include items that might not necessarily be driven off-site, a utility trailer could conceivably be seen as accessory but a necessary component to the transport of a motor vehicle. In this case, it appears the addition of trailers along with the compact construction equipment (provided it meets the definition of “motor vehicle” as defined in the Manhattan Zoning Regulations) could meet the intent of the C-5 District, Use Limitation regulation.

Hardy moved to approve a VARIANCE for Lot 16, Sky-View Addition to not provide sight obscuring screening of not less than six (6) feet in height for outdoor storage or display items in the C-5, Highway Service Commercial District with the following conditions:

1. The Variance to not provide sight obscuring screening shall be limited to trailers only. All other outdoor storage or display items except as outlined in Section 4-205(E)(5) shall be screened with sight obscuring screening.

Emig seconded, which passed with a vote 4-0.

ANNUAL BOARD ELECTION

The Board held its annual election and nominated Connie Hamilton as Chair Person and Harry Hardy as Vice Chair. Emig seconded which was approved 4-0.

Respectfully Submitted,

Jeremy Frazzell, Planner

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