

# MINUTES

## MANHATTAN URBAN AREA PLANNING BOARD

City Commission Room, City Hall  
1101 Poyntz Avenue

**April 2, 2018**

**MEMBERS PRESENT:** Debbie Nuss (chair), Phil Anderson, John Ball, Ken Ebert (vice-chair), Neil Parikh, Jerry Reynard, Gary Stith

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Chad Bunger, Assistant Director of Community Development; Carol Davidson, Senior Planner; John Adam, Senior Planner; Ben Chmiel, Planner; Lesley Frohberg, Planning Intern

Nuss called the meeting to order at 7:00 p.m.

### **I. OPEN PUBLIC COMMENTS**

Mel Borst, 1918 Humboldt Street, shared with the board his experience appealing the exception granted for 210 North Evergreen Avenue. To challenge the Board of Zoning Appeals decision, Borst filed a request in Riley County District Court for judicial review of the exception in August 2017. The court case was dismissed in January 2018. Since the July 12, 2017 zoning appeal decisions, he said his goal is to identify and address the illegal procedures observed in the zoning appeal process. He wanted to meet with Chad Bunger last week regarding the issue, but Bunger said he was advised not to speak with Borst about the case.

Anderson asked if Section 8-302 was referring to legally non-conforming properties. Borst replied yes.

Anderson asked, if 8-302 was the rule, was there a rule that overturns regulation 8-302 or if there is a staff position with the authority to overturn that regulation.

Borst said the zoning regulations make clear that the strictest regulation or ordinance controls and 8-302 is in the section of non-conformities.

Anderson said he is confused by this because he had a property in the past that was legally non-conforming that burned down and whatever he put back had to be put back in the same footprint, this was a very specific. He had to go before the Board of Zoning Appeals just to rebuild in the same footprint. He asked Borst if he is suggesting is that 8-302 in this instance was not complied with. Borst said that is his view.

Anderson asked if Borst was trying to find someone in the city to provide him with the regulation, ordinance, or authority to overturn 8-302. Borst said yes.

Bunger commented that considering Borst's suit against the City's decision, there has been limited ability to speak on it other than through the City Attorney. If Borst would like to meet with the City he will need to contact the City Attorneys' office to set that up.

There was further back-and-forth between Borst and Bunger.

Nuss commented that when citizens come before the board with public comment that is not on the agenda, they rely on staff to give them information regarding the issue at a later time. As it is a part of the public record the board can monitor it from that point. Borst said he would appreciate that.

## **II. CONSENT AGENDA**

1. Approve the **MINUTES** of the March 19, 2018, Manhattan Urban Area Planning Board meeting.
2. Approve the **FINAL PLAT** of the **MATC ADDITION, UNIT 2**, generally located at the northwest corner of Dickens Avenue and Seth Child Road. (*Applicant: Westar Energy; file no. SUB-18-009*)

Stith asked, referring to the Final Plat, if restricted access would be placed on Dickens Avenue with a travel easement from MATC as discussed in the past. Davidson asked if he was referring to the discussion from the original plat in April 2017. Stith said he did not recall the date.

Davidson said the original MATC plat was recorded in April 2017. This is a revision to change a boundary line. The first plat that was recorded in April, they did not have any access easements along Dickens.

Stith asked if the changes were to maintain a strip along Seth Child so MATC could have their sign along the road. Davidson replied yes.

**Ebert moved that the Board approve the Minutes for the March 19, 2018 meeting; Reynard seconded. Motion passed 5-0-2.**

**Ebert moved that the Board approve the Final Plat of the MATC Addition, Unit 2; Reynard seconded. Motion passed 7-0-0.**

## **III. GENERAL AGENDA**

1. **TABLE** the **PUBLIC HEARING** to consider the **REZONING** a 19-acre (5 block) area from R-3/M-FRO/UO (Multiple-Family Residential District with the Multi-Family Redevelopment and University Overlay Districts) to UCR (Urban Core Residential District), generally located between N. Manhattan Ave. & 12th St., from Ratone St. to Vattier St., plus the north half of the blocks between N. Manhattan Ave. & 11th St. and Vattier St. & Bluemont Ave. (*Applicant: City of Manhattan; file no. REZ-18-001*).

**Stith moved to table the Public Hearing to consider the rezoning until the April 16, 2018 meeting; Anderson seconded. Motion passed 7-0-0.**

#### **IV. WORK SESSION**

1. A **WORK SESSION** to discuss specific Unified Development Ordinance topics, including New Zoning Districts, proposed Established Neighborhood Overlay District, Accessory Dwelling Units, and Tiny Home Villages.

Bunger presented the Unified Development Ordinances and covered the new proposed zoning districts.

Nuss asked if the Public/Institutional District was city buildings and schools. Bunger replied yes, and parks. Nuss asked if a similar district exist today. Bunger replied no.

#### **Established Neighborhood Overlay (O-EN) District**

Chmiel presented the draft regulations. .

Regarding the street-side setback changes, Stith asked if there are any instances in the established neighborhood where it may be difficult to determine which street was the side street and which is not.

Bunger said currently said there is no definition of a side street; currently a frontage is a frontage and both carry the same front yard setback. He said this may be an issue to the north where that ward districts end at the base of Manhattan Hill.

Stith said it would be good to look at aerial photos to see where this would apply. Bunger said it would only apply to areas that don't follow a right angle. The definition refers to the position of the home; where there is a strange angle or a fan-shaped yard, that will be a rare case. Staff will have to look if that applies anywhere.

Chmiel said it depends how they define a side street. Typically the broader lot side is going to be the side street in the ward lots but there are areas where the lots are more square. It could also default to the higher-order street for the frontage.

Chmiel continued presenting on the established neighborhood overlay district.

Anderson asked what was included in the 30% lot coverage. Chmiel said the principal structure or house and an attached or detached garage are included. Driveways and parking areas are not included. Temporary sheds under 200 square feet do not count towards the lot coverage.

Anderson asked if the purpose of limiting the lot coverage was to limit runoff or to limit density.

Chmiel said that the 30% lot coverage is a citywide requirement for single-family districts but staff analysis showed that it does not work well in the TNO Many BZA cases are for lot coverage exceptions of existing buildings.

Adam added that the coverage factor has nothing to do with runoff; it is a bulk control.

Bunger added that garden sheds or any built structure above the ground are counted toward the 30% lot coverage. Anderson commented that the issue with “super duplexes” was that they covered the entire lot with a structure or concrete. Not only is it a bulk issue but also an issue with runoff. The city has done a good job limiting that kind of development.

Chmiel continued presenting on the established neighborhood overlay district.

Regarding the requirement to have a visible foundation, Stith asked if the foundation materials are required if it is raised or if all new construction has to be raised.

Chmiel said all new construction must be off the ground but does not necessarily have to have a basement.

Stith asked if the requirement affects ADA requirements.

Chmiel said those requirements apply to multiple-family residences but are not required for single-family. Someone could put a ramp in front of their home or they could go to the Board of Zoning Appeals to go around it. The requirement was based on a common characteristic in the neighborhoods.

Stith said he understands but feels like there may be conflicting values. Aesthetically homes are usually raised but steps could be an issue for some people.

Anderson said that raising it at least 18 inches above the ground eliminates some moisture problems so there would be a practical construction reason to do it and it could still be made ADA compliant. He likes it because of the construction value and the look of it because it gives it integrity. He did not think it should be able to be overturned by the Board of Zoning Appeals; if that is the requirement they should stick with it.

### **Accessory Dwelling Units (ADUs)**

Bunger introduced the Planning Intern, Lesley Frohberg. He reiterated that all information being presented is in draft form and can be revised. Frohberg presented the draft regulations.

Ebert commented that he had several questions about the differences between integrated ADU and a two-family dwelling or duplex. He realizes that there are size limits on ADUs to make for a smaller overall unit. He asked what the advantages were in calling something an ADU versus a second residential unit.

Bunger said the difference is that an ADU would be allowed in single-family districts only on owner-occupied property. It is a tool to create affordable housing. In Manhattan the areas around campus, downtown, and Aggieville are attractive as investment property. The property's value for an investment for a rental property is based upon rent; if a family wants to buy that property the value is much lower. Allowing ADUs for owner-occupied properties will add a monthly income, more value, and the ability to pay the mortgage to close the financial gap between an investment property and an owner-occupied home. There are areas around town where ADUs would be valuable for a family or anyone that wants to own a house but would not be able to afford it compared to a developer or an investor.

Ebert asked about the permitting process. Bunger said that part has not been drafted; it will be in Module 3 of the UDO. Similar to Johnson County, there will be a permitting process to make sure it conforms to the regulations. Once approved the owner files an affidavit on the property stating the property is owner occupied and the ADU must be torn out if it is not owner occupied. There are many questions about enforcement. Bunger said he initially questioned the value of ADUs but staff has convinced him that there is value in it, but to make it work enforcement will be very important. He said he does not anticipate a lot of ADUs being built immediately. In their first year, Seattle only had nine ADUs and has had to incentivize them. He said there will not be ADUs on every property all over the city but it will be a valuable tool for some people.

Nuss asked if homeowners that have existing ADUs will be expected to obtain a certificate and register their property. She said she could think of three situations like that in the community.

Bunger said that has not specifically been discussed but his instinct is that they would leave it alone unless the owner want to make changes, similar to a non-conforming use.

Ebert asked if an ADU and a duplex had the same off-street parking requirements.

Bunger responded that the requirements are different. A duplex, or two-family dwelling, requires two parking spaces per dwelling unit because you can have any size of family or four unrelated people in each side of the duplex. With an accessory dwelling unit the single-family house has to have a minimum of two parking spaces and the ADU will require one parking space because they are limited to two individuals living in them.

Chmiel continued. He said there are regulations aimed at making ADUs less obtrusive, such as only allowing one meter on the property, one mailbox, and the ADU entry must be at the side or rear. It is designed so it is not apparent that the ADU is there. That was also a consideration with parking: if two spaces per dwelling unit were required there would have to be four parking spaces; there would be a lot of pavement and would make it more conspicuous. As written, you can convert a garage into an ADU but you still have to replace the parking spaces eliminated.

Ebert said he is having a hard time picturing this implemented in a postwar subdivision like University Heights. There are no alleys so all access is from the street; for independ-

ent units it would be difficult to have parking in the back yard. Having ADUs permitted city wide on single-family properties seems intrusive. But since 42% of properties in the TNO (O-EN) exceed the lot coverage, few independent ADUs would be permitted. Changing the lot coverage to 35% would decrease that to 12% that exceed the lot coverage but only marginally.

Ebert asked if there was know to be a high level of desire to have ADUs. Bungler said they have had questions from individuals that want to implement ADUs. He knows of at least three properties that are owner-occupied that have a home that was build before zoning prevented it to occur and they rent out the back. There is not a high desire but there has been steady interest and it is a trend nationwide.

Ebert said he can appreciate the financial incentive of these units but on the other side, referencing Ellen Rose's letter [included with the packet], is a counterpoint of concern about the potential negative impact of subsequent taxes if property values increase. He has not heard anyone speak positively of ADUs.

Bunger said he thinks there are some valid concerns and some concerns, like traffic and over crowdedness, that are less valid.

Ebert commented that the new subdivisions on the west side of the city are built on many restrictive covenants that would exclude or preclude ADUs, only allowing single-family.

Stith commented that could help with affordability but he does not think ADUs will become rampant, especially if the regulations are written as proposed; there will be limited situations where this could be applied. Another issue he would like to see addressed is where the off-street parking is allowed. Bungler said that current regulations restrict the amount of paving allowed for a driveway and they would apply, but there are no location requirements in the current draft.

Ball commented that he is uncomfortable about ADUs being permitted. Just because other cities are allowing ADUs does not mean Manhattan should do it. An issue that the board has been dealing with is the encroachment of rental properties into single-family residential neighborhoods; they do not need encouragement. For the past 40 years rental properties encroaching into single-family neighborhoods has made them worse and he thinks this tool needs to be taken out. He suggested watching ADUs over the next few decades to determine if they should be implemented.

Anderson commented that he agrees that there are issues with rental properties; he attributes that to lax and timid city oversight. He said he sees ADUs as a possible way to improve these neighborhoods. . The Landlords Association has complained that they have legally non-conforming properties—such as three units in a single-family home—that they cannot change or improve, but permitting ADUs will allow landlords to reconfigure the property to allow for a main unit and a basement unit that are permitted and conforming. This is a good opportunity for investors to get out of a poor situation with a legally non-conforming property. This will only be beneficial if it is tightly regulated, which has

not been done in rental properties for the past 40 years. This can be a positive tool to restore the older neighborhoods.

Stith said it may be a good idea to only allow ADUs in the O-EN district to protect existing single-family neighborhoods that are not designed to accommodate ADUs. Areas with alleys will be able to more easily accommodate ADUs and will allow someone to convert a rental unit back to a single-family home but still provide an economic incentive as Anderson mentioned.

Parikh commented that the concept of the Urban Core District was to consolidate the students in one area close to the university to prevent them from encroaching on other neighborhoods. He understands that the community is founded on the university but he is concerned with affordability for the regular Manhattan resident and ADUs seem to be targeted at student housing. There are numerous existing enforcement issues with rentals and by allowing ADUs a new set of enforcement problems will arise. He said he sees the positives of ADUs but does not see a short-term benefit for the city. He understands the motivation to pay off a mortgage sooner but he also sees this as another situation that could cause more neighborhood disputes. He understands that it could be positive in some ways but does not think the city needs it at this point.

Bunger commented that this will also be presented to the city commission and the community to receive additional input.

Nuss commented that she has mixed feelings about ADUs. She thinks they do address some affordability issues but not the issues that the Manhattan community is experiencing. She personally likes the concept of ADUs and would build one on her property. There isn't a neighborhood in Manhattan that rentals have not encroached on and the board is not going to change that dynamic, so she doesn't feel that is an issue. The city already has ADUs that exist as rental units and those happened out of necessity for people, the City is just not regulating them. She said she would like to better understand the affordability issues in the city and how ADUs might address it.

Bunger said he agreed that ADUs will not solve all the affordability issues but they could be one among many tools to address those issues.

### **Tiny Home Villages**

Bunger presented the draft regulations.

Going back to Bunger's earlier presentation, Ebert asked about the reduced number of zoning districts in the UDO. Currently there are 24 districts with three overlays and the UDO proposes 18 districts and five overlays. He commented the he would have like to see a larger reduction. He asked if staff felt like that was sufficient. He recalled that the consultant said it could be as few as seven districts. He asked, referring to Mel Borst comment from the previous meeting, if the Historic Resources Board would be eliminated under the UDO.

Borst said he now understood that HRB provisions were simply being moved into Chapter 35, not being eliminated.

Ebert asked what work Gateway Planning was doing for Aggieville since the city recently adopted a new Aggieville plan. Ebert said there are design standards in the recent master plan. He asked if they were rewriting or reinventing the Aggieville plan or just polishing it.

Bunger said an area master plan for Aggieville was recently completed but it did not create the zoning district, it just gave the vision for what is planned. The UDO will codify the vision from the master plan. It will go out to the public soon and primarily is a set of design standards that are not in existence today.

Ebert said he personally thinks tiny homes are silly but has more potential to address affordability issue than accessory dwelling units. There are a few around town but he is not sure about a whole village of them, he thinks they could be positive though.

Parikh said the village might possibly help with the affordability issue more than ADUs. He asked if the parking requirement would be similar to or different from the single-family home requirement.

Chmiel said the requirement said one space per dwelling unit and also requiring a second space within 200 feet of the unit. The idea is to have a parking space next to the unit and guest parking nearby.

Parikh said functionally and aesthetically he does not know how good it will look for cars next to the tiny homes. He understands that streets will be incorporated into the villages but he did not know if those streets would be large enough for vehicle access. He thinks this may be something that could work.

Nuss said she likes the idea of the village concept. She thinks it would be nice for the university to pilot a project with architecture students designing tiny homes and it could be a co-op opportunity to address the affordability issue with housing. She thinks this would be a good use of City–University funds or economic development funds because getting into the housing market is an issue.

Stith said he is intrigued by the concept. He asked where the 400-square-foot maximum originated. Bunger said the consultant proposed it. He thinks it has to do with the desired density of the villages. Most are in the 200–600 square foot range and the building code would allow as small as 350 square feet.

Stith asked if there were occupancy limits. Bunger said there is not in the zoning regulations but may be in the building code.

Nuss said there are tiny homes in Riverchase and Habitat for Humanity is currently selling theirs. Bunger said both of those are on chassis, which the regulations do not allow.

Nuss said she thinks they could be converted to be put on permanent foundations. Bunger said some of it is problematic because the Code Services was not a part of the permitting so they don't have knowledge of how it was built.

Anderson commented that if a tiny home is build on a chassis they are limited to 8 feet wide so they have to build up, but if not limited there are many comfortable configurations within 400 square feet.

Bunger said to give any further comments to him and they will present these topics to the city commission in a couple weeks. Staff will present another set of topics to the board in a few weeks.

2. **REPORTS and COMMENTS** by Board Members and Staff

Anderson shared that there is an affordable housing conference on Thursday, April 12, at the Public Library at 7:00 p.m. It being very well organized and he thinks it will be very well attended. He plans on attending.

Nuss said they discussed it at the last meeting, if planning board members do plan to attend notice will need to be given to the public so there is no issues in terms of perception that the board may be violating open meeting laws.

Anderson said the purpose is not to conduct business; it is as a private citizen.

Nuss said city commissioners have do this too. Board members just can speak to each other and be in the same group. She commented that they are serving food.

Stith said on May 16 from 9:00 a.m. to 3:00 p.m. The Flint Hills Regional Council is planning a regional conference at the Manhattan Conference Center and it will address a lot of issues that have regional consequences. He will send the flyer out to the board and ask that everyone share the information and encourage people to attend.

Bunger ask Stith to send him and he would relay the information to the board.

Nuss said it is on Facebook.

Bunger said if Stith sends it to staff they will get it to the board.

Ebert commented that there was an article in the Preservation Alliance Newsletter about the architect Henry Winter.

Bunger said there is a schedule that needs to be distributed to board members and there is a plat that needs to be signed.

Meeting was adjourned at 9:11 p.m.

Submitted by Lesley Frohberg, Planning Intern