



MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, June 8, 2022
7:00 p.m.

MEMBERS PRESENT: Harry Hardy, Chairperson; George Matthews; Ansley Chua; Andrew Dame

MEMBERS ABSENT: Connie Hamilton, Vice-Chair

STAFF PRESENT: Barry Beagle, Senior Planner; John Verssue, Planner I; John Adam, Senior Planner; Ben Chmiel, Planner III

Hardy called the meeting to order at 7:00 p.m.
Staff called roll and a quorum was established.

1. CALL TO ORDER

- 1.1. Hardy called the meeting to order at 7:00 PM. Staff called roll and a quorum was established.
- 1.2. Consider the minutes of the May 12, 2022, board of zoning appeals meeting.
Hardy moved to approve the May 12, 2022, minutes. The motion was seconded and approved; 4-0-0.

2. GENERAL AGENDA

- 2.1. A **PUBLIC HEARING** to consider a CONDITIONAL USE under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to permit 1550 Jarvis Drive in the RL, Low-Density Residential District to be used as an Institutional Office.
(Applicant: Terrance Cole; Owner: International Leadership, LLC; file no: EXC-22-027)

John Verssue presented the staff report for the CONDITIONAL USE case concerning 1550 Jarvis Drive. Because it is an existing residential structure and will retain its form, review criteria are met. Staff recommended approval of the conditional use permit with conditions.

Matthews asked if employees of this office will be driving and if there will be need for additional parking. Verssue explained that, per the application, employees are

able to walk and/or bike to the building, as well as there being sufficient parking for any employees who decide to drive.

At this time, it was opened to the public to speak on the application.

The applicant, Terrace Cole, came to the podium to make comments. He thanked the board for considering the case and explained how this space would be beneficial for both the non-profit and the people they serve.

Hardy closed the public hearing and opened board discussion.

Chua mentioned that he saw no problem with this application and the small amount of extra traffic it may cause. Matthews mentioned his only concern was parking, but the small number of employees who are commuting not via car means it will not be affected. Dame mentioned that the neighborhood had been properly notified, which was confirmed.

Vote was taken; motion was approved by a vote of 4-0 subject to the following conditions:

- 1. The conditional use shall be operated in compliance with the project description provided by the applicant.**
- 2. The conditional use shall be operated in compliance with all applicable State and City laws, including Sec. 26-2#-11.H of the Manhattan Development Code, as may be amended.**
- 3. Installation of a Type A Bufferyard along the south property line prior to the use and occupancy of the institutional office.**
- 4. The property being rezoned to RL/O-UF, Low-Density Residential District with University Fringe Overlay.**

The Board made the following findings of fact for the conditional use permit at 1550 Jarvis Drive.

SITE AND USE STANDARDS

[Sec. 26-2E-11, H. Institutional and Utility Uses, Institutional Office](#) of the MDC sets out standards that are applicable to this Conditional Use. The bold text states the MDC standard, and the regular text immediately thereafter states the staff finding with respect to the standard.

- 1. There will be no noise, smoke, dust, odor, or vibrations emanating from the property detectable beyond the property line.** Both organizations activities that occur inside the house will have no negative impact on surrounding neighbors

outside of students entering and exiting the house. The outdoor activities described in the application will have no impact on K-State residential facilities to the north or east of the property, which leaves us to examine impacts on residential properties to the south and west. With the requirement of a buffer to the property, the south property will be protected somewhat. Although there maybe a group larger than an average household family participating in the outdoor activities, the limited days and times the applicant has alluded to leads staff to believe there will not be exponentially greater impacts on the two residential neighbors.

2. **The property abuts a residential use outside of the O-UF, a Type A bufferyard is installed between the use and the abutting residential use.** Per [Table 26-7C-4.1 Bufferyard Types](#) for reference. The applicant indicates the house will remain residential in appearance and that there is only one (1) primary entrance to the home.

Based on this provision, the property owners will be required to install a bufferyard along the south property line.

STANDARDS FOR CONDITIONAL USE PERMITS

The provisions of [Sec. 26-9E-1](#) are applicable to all uses that are designated as “conditional” as set out in [Sec. 26-2C-3](#). The designation of a conditional use means that it is only allowed in a proposed location if all of the conditions applicable to the use, as set out in [Division 26-2E](#), as may be amended, and if all of the other applicable requirements of this Chapter or conditions of the Board of Zoning Appeals (BZA) are met.

Pursuant to [Sec. 26-9E-1D](#) of the MDC, the Board of Zoning Appeals will base its decision on the following Review Criteria:

1. **The proposed conditional use’s compliance with all applicable requirements of this Chapter.** With the change in zoning district from RL, Low-Density Residential District to RL with O-UF, University Fringe Overlay, the use is compliant with applicable requirements of [Sec. 26-2C-3](#), *Residential Permitted Uses* and [Sec. 26-2C-4](#), *Residential Types and Standards*.
2. **The proposed conditional use’s impact on the value of other property in the neighborhood.** The use and operation of the conditional use will be limited by the standards of [Sec. 26-2E-11](#) of the MDC. To minimize its footprint in the neighborhood, the applicant indicates they do not plan to increase the existing structure or construct accessory structures or a parking lot.

As an owner-occupied structure, the homeowner will provide oversight of the Conditional Use and rely on the management of HIS while they are away. The

subject property is part of an established low-density residential neighborhood, but it is not anticipated that the structure's use as proposed will have a negative impact on the value of neighboring residential properties.

3. The location and size of the proposed conditional use, the nature and intensity of the operation involved in or conducted in connection with such use, and the location of the site with respect to the street network will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, the BZA will give consideration to:

- A. The location, nature, and height of buildings, structures, walls, and fences on the site.** The existing structure will remain residential in appearance and character. No exterior changes to the dwelling are proposed or alterations to any existing accessory structures.
- B. On-site and off-site vehicular, bicycle, and pedestrian traffic circulation.** With occupancy limited to the traditional size of a family, sufficient parking in the driveway, and the anticipation the majority of the target audience will walk or bike from close proximity there is no need for additional off-street parking beyond parking currently available in the street.
- C. The nature and extent of landscaping and screening on the site.** This conditional use will require the installation of a bufferyard per [Table 26-7C-4.1 Bufferyard Types](#).

The location and nature of the proposed conditional use is not anticipated to dominate the immediate neighborhood nor prevent the continued use and viability of neighboring property for residential use as presently zoned. With occupancy limited to the traditional size of a family as defined by the MDC, the operation of the conditional use will be consistent with the low-density residential character of the surrounding neighborhood and not generate site traffic inconsistent with the existing street network.

- 4. Adequate utilities, drainage, and other such necessary facilities have been or will be provided.** The proposed conditional use will not generate additional need for utilities, drainage, and other facilities beyond that which is currently available to the subject property and surrounding neighborhood. No modification to the site is proposed in conjunction with this request.
- 5. Provision of bicycle parking and of safe and equitable pedestrian and bicycle access.** The appearance and operation of the property as a single-family residence will not generate an additional need for bicycle parking and/or bicycle/pedestrian access beyond that which is currently available to the existing

home. Bicycle parking and provision of access would more than likely be in conjunction with guests bringing their own bicycles on-site from neighboring properties.

- 6. Provision of adequate access roads or entrance and exit drives that are designed to prevent traffic hazards and minimize traffic congestion in public streets and alleys.** Like other property in the neighborhood, the subject property is presently served by a single-wide access drive off Jarvis Drive located near the mid point of the property. The proposed conditional use will not alter site access or traffic conditions along Jarvis Dr.
 - 7. The conditional use's aid in preserving and/or increasing the viability of a designated historic structure, site, or district and/or its historic use.** The subject property is not part of nor in proximity to a designated historic district, structure, or site.
 - 8. Any Other Standards for Conditional Uses Specified in this Chapter.** The proposed conditional use is in compliance with the site and use standards of Sec. 26-2E-11.H of the MDC.
- 2.2.** A **PUBLIC HEARING** to consider an EXCEPTION to reduce the required minimum front parking setbacks from 20 feet to 15 feet for property located at **1112 Hayes Drive** and **1120 Hayes Drive** and both zoned the IL, Light Industrial District.
(Applicant: Olsson, Brayson Benne, Representative; Owner: Manhattan-Ogden USD 383; file no.: EXC-22-029)

John Verssue presented the staff report for the exception at 1112 Hayes Drive and 1120 Hayes Drive. Review Criteria applied by the staff from the MDC show that the changes will either meet or exceed the standards by the MDC. Staff recommended approval of the exception subject to conditions.

Hardy asked for a map to show what the change will physically entail. Verssue described what exact changes are being made with the map from the presentation; paving over a small grassy area where people are already parking.

Dame asked if the problem was the grassy ditch. Verssue explained that it was the setback requirement for the property that limited the parking stalls. Verssue explained that the improvements would result not only in more parking, but that the parking would also be paved and striped.

At this point, Hardy opened the public hearing.

Brayson Benne, representing USD 383 came to the podium. He explained that they were excited for the infrastructure improvements, not only for the parking, but for pedestrian trail improvements/extensions as well.

No one else came to speak on the application. At this time, Hardy closed the public hearing.

Chua stated that, because people were parking there already, there was little reason not to offer the exception. He also stated that it would improve traffic flow.

Hardy mentioned that it already exists in a light industrial area, and that since the culvert is remaining, not much would tangibly change in the conditions related to the benefits of the extra parking.

Matthews mentions that the proposed changes aren't big, and that they will increase quality. Hardy praised how city staff and USD-383 worked together to improve infrastructure, which is mutually beneficial.

With no further discussion, Hardy called for a vote. It was approved 4-0, subject to the following conditions:

- 1. The Exception shall only be for the proposed front yard setback from 20 feet to 15 feet applied to parking lots as outlined in the application submitted and in this report.**
- 2. The applicant and owner shall comply with the architectural site plan submitted with the application and outlined in this report.**
- 3. The applicant and owner shall comply with the landscape site plan submitted with the application and outlined in this report.**

The Board made the following findings of fact for the exception request at 1112 and 1120 Hays Drive.

- 1. The property complies with all applicable requirements of this chapter, other than the exception being requested.** Per the project architectural site plan and landscaping site plan submitted along with the Exception application, the subject property will be compliant with Division 26-7B. Parking and Division 26-7C. Landscaping, Screening, and Buffering of the Manhattan Development Code, except for planting of street trees.

Sec. 26-7C-3, Development Landscaping, C. Minimum Planting Standards, Table 26-7C-3.1 Minimum Landscape Planting Requirements, Off-Street Parking Areas, Placement, which states, "Landscaping must be along at least 75 percent of the linear feet of frontage between the parking lot and the adjoining public street or

private drive.”

This requirement cannot be met because of a cost-share agreement between the City of Manhattan and Manhattan-Ogden USD 383 to install a multi-use path and improve public utilities within a space that crosses between the public right-of-way and private property. With the two improvements, there will not be enough space to adequately meet this requirement and ensure proper operation of any future infrastructure. Per Brian Johnson, P.E., City Engineer, “What [we] are looking at is roughly a 10’ pedestrian easement that parallels the ROW of Hayes Drive. USD is installing storm sewer and the trail [multi-use path] under a cost share agreement with the city. With the new trail project along the east side of Hayes Drive, we would prefer that no trees are planted along this east side ROW. In addition to installing underground storm sewer, we are installing underground power on the east side which would also be an issue with any tree plantings as the wire and tree roots could become a significant obstacle.” This determination by the City Engineer removes any requirement.

- 2. The proposed exception will not cause a substantial adverse effect on nearby properties.** The proposed Exception will not cause a substantial adverse effect on nearby properties due to the length of time the school facilities have already been in operation with the presence of both parking lots and the traffic it generates having no adverse effects reported to the city. It is possible there will be a positive effect on nearby properties due to the investment in the USD properties and public right-of-way, including pedestrian and utility infrastructure investments and aesthetic improvements.
- 3. The exception will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.** The proposed Exception will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare due to the length of time the school facility operations have been in existence without evidence of detrimental effects on these quality-of-life characteristics. The proposed property improvements will not change the land use of either property therefore no future adverse effects are anticipated by staff. It is possible there will be improvements to these listed conditions with the construction of the public multi-use path, less dust generated from the conversion of the current gravel driveway and parking to paved surfaces, and increased safety with improvements to parking surfaces, pedestrian infrastructure, and traffic flow.
- 4. The strict application of these regulations is unreasonable, or unnecessary when all facts and circumstances are considered. In determining this standard, the BZA must weigh all facts and circumstances, and place whatever emphasis and relevance it deems to be appropriate on each. Examples of such facts and circumstances to be considered include whether or not:**

- a. **Conditions of the property requiring the exception were created by the applicant with prior knowledge and disregard of applicable regulations.** Although the property owner has operated with the existing conditions of the parking as is to-date, there was no prior knowledge of the applicable regulations to the purchase of the properties, especially since the sale occurred well in advance of the adoption and implementation of the Manhattan Development Code on January 1, 2022. In applying prior to construction of the proposed improvement, the applicant and owner have shown regard for the applicable regulations.
 - b. **The applicant acquired the property with knowledge of the conditions that prompt the exception, and whether or not the consideration for the acquisition took into account such conditions.** The property owner did not acquire the property with an understanding of the conditions or the regulations, especially since the regulations were only recently adopted and implemented starting January 1, 2022. Upon review of the Manhattan Development Code, the applicant pursued an exception as required for their future improvements to be considered by the BZA.
 - c. **There are reasonable alternatives that would allow the property to meet the strict application of this chapter.** The future improvements are on existing Manhattan-Ogden USD 383 owned properties with existing structures and infrastructure that would be more costly to relocate or to rebuild on newly purchased land. The current structures and use are permitted in the appropriate zoning district of IL, Light Industrial.
 - d. **Granting of the exception will result in a relative gain to the health, safety, and general welfare of the community.** The proposed Exception would permit a substantial investment in the property and provide improvement for employees, management, and visitors. In addition, construction of a public multi-use path and landscape improvements on the property will add value to the property and neighboring properties, as well as improve traffic flow, traffic and pedestrian safety, and the aesthetics of the properties over their current state. All of which will result in a relative gain to the health, safety, and general welfare of the community.
 - e. **The exception will aid in preserving and/or increasing the viability of a designated historic structure, site, or district and/or its historic use.** This criterion is not applicable as the structures, sites, or uses are not historic, nor contributing to a historic district.
5. **Consideration of any other standards for exceptions that are specifically identified in this chapter.** Other standards reviewed for this consideration

included the following:

The property is compliant with Manhattan Development Code, Sec. 26-2D-2. Lot and Development Standards Purpose. The standards of this Section establish the minimum lot area, street frontage, and the landscape surface ratio of non-residential development and provide for an adequate layout and arrangement of lots and their functional characteristics regarding access, parking, circulation, and site operations.

The property is compliant with Manhattan Development Code, Sec. 26-2D-4, Commercial & Industrial Permitted Uses. The table set out below describes which land uses are permitted by-right (permitted), permitted subject to standards (limited) or processes (conditional), and not allowed (prohibited) in each commercial and office, mixed use, industrial and service, special, and public or institutional (overlay) zoning district. All uses and most changes of use are subject to Chapter 8, Buildings and Building Regulations, of the Code of Ordinances.

- 2.3.** A **PUBLIC HEARING** to consider an **EXCEPTION** to exceed the 65-foot height limit in the CA, Aggieville District to allow a 75-foot tall building at the northwest corner of N 12th Street and Laramie Street. (*Applicant: Anderson Knight Architects; Owner: Back 9 Development; file no. EXC-22-039*)

Adam presented the staff report for the exception at 1208 Laramie Street. Staff found the 10-foot difference is negligible and is not adverse to public welfare, and that the building otherwise is completely in line with the MDC and the strategic plan. Strict application of this rule is unnecessary and unreasonable. Therefore, staff recommends approval of the exception to allow the proposed 75-foot-tall building at this location as presented.

Hardy asked Adam how the 65-foot standard was established. Adam stated earlier that the department was looking at getting rid of the rule, and isn't entirely sure where it came from.

Matthews asked, if a height limit were to be imposed, what it would be. Adam explained that generally buildings will have a tall first floor, and then will be storied according to need of the building. He said he would prefer that the code is silent on height and just have the standard set at number of stories.

Dame asked what the current highest building in proximity to this building is. Chmiel stated that the nearby parking garage is 55 feet.

Hardy said that the buildings are all in the same ballpark. Adam and Chmiel explained how the 65-foot standard became a guide, and how some planned developments were slightly higher.

Chua asked if the surrounding area was aware of the construction of the structure close by. Adam said that, per standards, a 200-foot notice was sent out, and no response was received. Adam added that the owner had attempted to buy Chipotle's, but had not been able to.

Hardy opened up the public hearing.

Tracy Anderson, representing Anderson Knight Architects, stated he would be happy to answer questions. He also stated that the building code considered it to be a high-rise if it was at 75 feet or above, and if it was at 74 ft 11 inches, it would be considered a low- or mid- rise. There were no other questions for Anderson.

Hardy closed the public hearing.

Matthews said that the structure looked impressive, and that while different, it was a positive different. Chua stated that if it looked anything like its concept art, it would be fantastic for the Aggieville area. Hardy stated that it felt like a step in the right direction, and noted how people had been skeptical but that this step was positive.

Matthews explained how parking had been increased with the creation of the parking garage, and that while this structure was taking out about 80 or 90 spots, the garage had added over 100, leaving it net positive. It was also stated that there is parking in the structure.

Dame if the 65-foot height standard applied to Moro Street or just the outside edges. Adam explained that the 65-foot allowance applied in the Bluemont–Anderson corridor and Laramie Street, and that the historic core of Aggieville was to be kept around two stories. Dame said that the larger buildings in the main core bring a positive effect to the outer edge developments of Aggieville.

With no further discussion, Hardy called a vote on the exception. It was approved 4-0.

The Board made the following findings of fact for the exception to building height for property located at the northwest corner of North 12th Street and Laramie Street.

- 1. The property complies with all applicable requirements of this Chapter, other than the exception being requested.** The Midtown building complies with the CA district design standards, the use regulations, and the other bulk standards.
- 2. The proposed exception will not cause a substantial adverse effect on nearby properties.** When the City adopted the bulk and design standards for Aggieville it determined that five-story buildings would have no adverse effect on the district. The height cap was set at 65 feet, although buildings at “gateway” intersections, such as this one at North 12th and Laramie Streets, are allowed to be 75 feet tall within the first 100 linear feet from the intersection. The illustration below is a development concept from the Aggieville Community Vision plan. The view shows the intersection of Laramie and North 12th Street.

The building shown is sitting where the applicant’s project will be, although the building design is clearly not the same. This and similar images in the ACV Plan were intended to show bulk differences that were recommended along the Laramie Corridor.

- 3. The exception will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.** The building follows the Aggieville district design standards in all respects. The requested exception is a change to one bulk standard. The relationship of a building’s height to public health, safety, and welfare is the provenance of building and fire codes, not zoning regulations.
- 4. The strict application of this Chapter is unreasonable or unnecessary when all facts and circumstances are considered. In determining this standard, the BZA must weigh all facts and circumstances, and place whatever emphasis and relevance it deems to be appropriate on each. Examples of such facts and circumstances to be considered include whether or not:**
 - A. Conditions of the property requiring the exception were created by the applicant with prior knowledge and disregard of applicable regulations.**
 - B. The applicant acquired the property with knowledge of the conditions that prompt the exception, and whether or not the consideration for the acquisition took into account such conditions.**
 - C. There are reasonable alternatives that would allow the property to meet the strict application of this Chapter.**

- D. Granting of the exception will result in a relative gain to the health, safety, and general welfare of the community.**
- E. The exception will aid in preserving and/or increasing the viability of a designated historic structure, site, or district and/or its historic use.**

The applicant was aware of height standards when they entered into a development agreement with the City. But while soliciting office tenants the applicant learned that they generally desire greater ceiling heights in their work environments.

The applicant does not have a reasonable alternative to consider—widening the building, for example, would not achieve their design objective.

There is no gain to health and safety to be had by granting the exception, but neither is there a detriment. The ability to attract office tenants by having some additional height to work with may make the project more viable and therefore more economically successful, which may have a positive effect on general welfare.

A taller building would also be assessed at a higher value, so it would generate more revenue for the Aggieville tax-increment financing (TIF) district. For example, for every additional million dollars of assessed value, the TIF will generate an estimated \$625 thousand. The TIF was created to fund public infrastructure improvements in Aggieville, so the greater revenue would be beneficial to public welfare by funding things like streetscape improvements, utility and stormwater upgrades, parking garages, and park improvements.

By staff's projections, the project's construction would result in about \$20 million in TIF revenue.

The exception does not involve a historic structure, site, or district.

- 5. Consideration of any other standards for exceptions that are specifically identified in this Chapter.** There are no other standards in Chapter 26 concerned with exceptions for height.

3. Adjournment

Hardy adjourned the meeting at 7:45 PM.

- 3.1. **NEXT MEETING:** Wednesday, July 13, 2022