

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, December 9, 2009**  
**7:00 PM**

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton Ricci Dillon; Joe Aistrup; and La Barbara J. Wigfall.

MEMBERS ABSENT: None

STAFF PRESENT: Eric Cattell, AICP, Assistant Director for Planning, Chad Bunger, AICP, CFM, Planner II

**CONSIDER THE MINUTES**

Aistrup moved to approve the November 12, 2009 minutes which was seconded by Dillon and passed with a vote of 5-0.

**TABLE the PUBLIC HEARING to consider an EXCEPTION to allow for a reduction of the minimum fourteen (14) foot front yard setback to three (3) feet along N. 9<sup>th</sup> Street to construct a proposed privacy fence at 901 Leavenworth Street located in the R-M/TNO, Four-Family Residential District and the Traditional Neighborhood Overlay District. (Applicant/Owner: Melvin Watson).**

Hamilton moved to table the item until the February 10, 2010 Board of Zoning Appeals meeting. Dillon seconded the motion, which passed 5-0.

**A PUBLIC HEARING to consider a VARIANCE to allow a proposed internally illuminated ground sign to be located along Denison Avenue for the ECM Campus Center at 1021 Denison Avenue in the R-3/UO, Multiple-Family Residential District with University Overlay District. The proposed sign is to replace the existing sign at the same located on the property. (Applicant/Owner: ECM Campus Center).**

Bunger presented the staff report, recommending approval of the Variance request with two

(2) conditions.

Hamilton asked for clarification of the proposed signs dimensions. Bunger provided the Board with the overall height and width dimensions of the proposed sign's face and structure, as well as the dimensions of the existing sign.

Hamilton asked why a Variance was not needed for the location of the new sign. Bunger responded that the Variance approved in 1991 to reduce the sign setback along Denison to one (1) foot ran with the land. As long as the new sign did encroach into the approved one (1) foot setback, a new Variance is not needed. Hardy expressed his understanding of the situation and why a new Variance was not needed.

Aistrup asked what process would the applicant need to go through if the sign was larger in area than allowed by the Zoning Regulation. Bunger responded that an Exception would be needed.

Wigfall asked for clarification on the proposed sign's overall sign compared to the existing sign. Bunger responded that the proposed sign is slightly larger at 40 square feet, compared to the existing sign, which is approximately 39 square feet in area. Bunger also clarified that the sign's orientation is changing.

Hamilton asked about the maximum allowable size of a sign in the R-3 Zoning District. Bunger responded that 40 square feet is the maximum size allowed.

Hardy opened the public hearing. No one spoke on the item, and the public hearing was closed.

Hamilton expressed her continued dismay of the approval of the internally illuminated sign for the United Methodist campus center on Sunset Avenue. She expressed her opinion that the sign damaged the surrounding neighborhood. She felt it was inappropriate to use the approval of that internally illuminated sign to make a case to approve this proposed sign. Hamilton understood how the apartment buildings and dorms in the area are not traditional residential uses, but felt that the other residential uses struggle with maintaining the character of the neighborhood. Hamilton stated that she has less of a problem with this proposed sign because it is located along a thoroughfare. She also felt that the size of the proposed sign pushed the

limits of allowing an illuminated sign and could potentially cause issues with future applications wanting a similar sized sign to be internally illuminated.

Wigfall expressed similar concerns that Hamilton had. She felt that the sign on Sunset Avenue has caused issues for the neighborhood. Wigfall asked what the options might be for a smaller sign.

Dillon said that she did not have the same concerns. She felt that the height of the sign on the elevated front yard and sign pedestal made for a safer driving condition along Denison Avenue because it was above street grade and you could see underneath the sign. She felt that the type of illumination of the sign was appropriate for its location along a collector street. Dillon also felt that the property did act as a transition from the university campus to the residential neighborhood. She felt that from a safety standpoint for drivers, the internally illuminated sign was more appropriate.

Wigfall agreed with the aspects of safety

Aistrup agreed with Dillon's opinions. There is an existing sign. The new sign is similar in size and location and would improve the appearance of the property and not be an expansion that would be unreasonable for the type of facility. He felt that given what uses are around the subject site and that it is on a collector street, he could support the request.

Hamilton said that Aistrup gave compelling reasons to support the Variance request. She said that the proposed sign does look better compared to the existing sign and that the street is busier and the fact that there is a parking lot across the street on the university campus are reasons to approve the Variance. She did want the record to reflect that one of the reasons that the proposed sign was approved was because it was similar in size to the existing sign and that the new sign was not greatly increasing the size of a sign on the property.

Hardy expressed that the Board reviews each request based on its on facts and circumstances. Hardy felt that the signs approved on College Avenue were similar in nature. He felt that because the sign is on a collector street and similar in size to the existing sign, it is appropriate. He understood Hamilton's concerns about using past approved items to justify other cases. Hardy stated he could support this request.

Bunger made a point of clarification that he did not use the approved internally illuminated sign on Sunset Avenue as a justification of approving this request, but rather showing that the uses are identical and it also has an internally illuminated sign.

Wigfall re-stated that the sign will improve the readability of the sign on the site, which will help with traffic safety.

The Board made the following findings of fact for the Variance at 1021 Denison Avenue:

**CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is located along Denison Avenue, a collector street, and the outer edge of residential neighborhood. To the west is a mix of residential use, including single-family house, two-family dwellings, multiple-family dwellings and fraternities. To the east is the Kansas State University campus. The use of the subject site is related to its proximity to the University and is made up of a mix of a residential apartment, classrooms and religious center. The property acts as transition between the University and the adjacent residential neighborhood to the west.

Due to the volume of traffic on Denison Avenue, a collector street, sign readability becomes an issue, especially at night. The applicant has stated that the internally illuminated sign will help the building and the classes and services they offer to be better identified. An internally illuminated sign will better accomplish this goal when compared to the uneven lighting effects of external illumination.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and adjacent properties to the north, south and west are zoned R-3/UO, Multiple-Family Residential District with the University Overlay District. Further to the north, along Claflin Road and Denison Avenue is Kansas State University, zoned U, University District. To the south of the subject site is the Sigma Alpha Epsilon fraternity. To the west are the Farmhouse fraternity and single-family and two-family dwellings. A majority of the dwellings to the west of the subject site are rental units, with only a few owner-occupied homes. To the north of the subject site are two-family rental units, a 15-unit apartment building and Marlatt Hall and Goodnow Hall, Kansas State University resident halls. To the east is the Kansas State University campus, zoned U District. Directly across from the subject site is the Feidler/Durland/Rathbone Halls complex for the engineering school.

Probable affects on the neighboring properties should be minor. The proposed sign will replace the existing sign at its same location, which is approximately one (1) foot from the property line along Denison Avenue. The existing building will obscure the sign from neighbors to the west and south. A screening fence and a row of evergreen trees are present to screen the property to the north from the subject site. To the east of the subject site, across Denison Avenue is the Engineering Department complex on the Kansas State University campus.

An internally illuminated sign would not be out of character for the neighborhood. Approximately one (1) block north at the intersection of Denison Avenue and Claflin Road is the Wildcat Landing commercial center, zoned PUD, Planned Unit Development, where there are multiple internally illuminated signs. Two (2) blocks to the east, on Sunset Avenue, is an internally illuminated sign that the Board of Zoning Appeals approved in March, 2009 for the United Methodist Campus Minister Center.

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:**

The applicant has stated in the application documents that “The strict adherence to the regulations would not cause us great hardships. But the variance would greatly enhance our ability to minister to the students.” The proposed sign would not only identify the ECM Campus Center, it would also relate information on activities of interest to the public traveling on Denison Avenue.

The proposed illumination is appropriate for this type of sign and the visual message it is relating. Denison Avenue is a busy collector street. It will create less of a glare and will be less obtrusive than an externally illuminated sign that would normally be required. One of the conditions of approval from the August, 1991 Board of Zoning Appeals case was “Indirect lighting of the sign shall not interfere with the motoring public” (*see attached Notice of Decision and Board Minutes*). The proposed sign will be placed in the front yard, perpendicular to Denison Avenue, identical to the existing sign. The internal illumination would make the sign and its messages easily visible to those traveling down Denison Avenue, without causing people to slow down or strain to read the sign.

Strict application of the Zoning Regulations would not allow construction of a visible and readable sign along Denison Avenue, especially during evening hours.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:**

The effects on the health, safety, or general welfare of the neighborhood should be minimal. The proposed internally illuminated sign should have little or no effect on the public. The approved Variance request in August, 1991 found that the location of the sign would not impact turning movements into and from the campus center (*see attached Notice of Decision and Board minutes*). The proposed sign will be elevated by an existing five (5) foot retaining wall and a two (2) foot tall pole, similar to the existing sign. The height of the sign should prevent adverse impact on traffic along Denison Avenue. The internal illumination of the proposed sign should not change the order of the neighborhood. The proposed sign will not obstruct the vision clearance triangles of the intersection of the subject site's driveway and Denison Avenue more than the existing sign, which was approved in March, 1991 (*see attached Notice of Decision and Board minutes*).

**RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the Sign Regulations within residential districts is to limit the size and illumination characteristics so that residential properties are not negatively impacted. Identification and bulletin board signs are allowed to be externally illuminated, ground lit for example. The intent is of an aesthetic nature to maintain a residential character. However, the residential character in this particular location has already been compromised by fraternity houses, multiple-family dwelling, the Wildcat Landing commercial area, Kansas State University and other campus-related uses.

Ground lit signs are generally less commercial in appearance. Internally illuminated signs are found in or adjacent to residential areas throughout the City. Denison Avenue is a collector street, not a local street, where internally illuminated signs may be more appropriate.

Aistrup moved to approve the VARIANCE to allow a proposed internally illuminated ground sign to replace the existing sign at the same located on the property along Denison Avenue at 1021 Denison Avenue, in the R-3/U-O, Multiple-Family Residential District with a University Overlay District, with the following conditions.

1. The Variance should only apply to the proposed Site Plan and the proposed sign.
2. A sign permit should be obtained prior to construction of the sign.

Dillon seconded the motion, which passed unanimously.

**A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum required eight (8) foot side yard setback to three (3) feet for an existing single-family house at 804 Fossil Ridge Drive in the R/AO, Single-Family Residential District with Airport Overlay. No addition is proposed and the Exception is to allow for clear title of the property. (Applicant/Owner: Horace and Claire Chandler).**

Bunger presented the staff report for the Exception request, recommending approval with one (1) condition.

Dillon asked about the building permit process and how the bay window and roof overhang was later added. Bunger answered that the window and roof overhang was added after the building permit was issued and that the permit was not amended to reflect the addition. Bunger further explained that the issues with the house and deck were cause by the construction occurring in the wrong location because a survey did not done to verify the property lines.

Hardy stated that the problem occurs when the hole for the foundation is dug without making sure it is in its proper location. He expressed his concerns that some builders may not properly locate the building, knowing that nothing will be done to them other than needing an Exception. Hardy asked what the procedure would be to ensure that this doesn't happen. Bunger said that the appropriate procedure would be for the builder to have the foundation location staked prior to construction by a surveyor to reduce the possibility for errors.

Dillon asked how the error discovered. Bunger understood that the error with the location of the house was caused by the bay window and roof overhang not being on the building permit plans, which raised concerns with Code Service Department.

Bunger said that the Board has had to deal with surveying errors and lack of surveying issues in the past. Hamilton said that one solution would be to deny the request and let the home owner file civil action against the builder if it was determined that the error was done maliciously or with disregard for the regulations.

Aistrup felt that if a pattern was created by a developer creating this type of error, a strong

statement should be made that the Board will not tolerate the errors.

Dillon did state that the lot and surrounding lots are difficult to build on because of their unique shapes and terrain.

Hardy added that the Code Service Department is aware of these issues and will keep an eye out for similar situations.

Hardy opened the public hearing

Jeff Hancock, SMH Consulting and applicant's agent, explained the error at the time of construction that caused the need for the Exception.

Dillon asked if the home purchasers asked to have the bay window and roof overhang installed. Hancock did not know the answer to the question.

Hamilton was glad that the discussion was had and could support the request. She did express concerns that in the past the Board did not use characteristics of neighboring properties to justify the approval of a request. Hamilton suggested that the third paragraph of "probable effect on adjacent properties" standard be stricken

With no other comments, the public hearing was closed.

The Board made the following findings of fact for the Exception at 804 Fossilridge Drive.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site currently complies with all applicable requirements of the Zoning Regulations, other than the one for which an Exception is being requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the immediate north and south are zoned R/AO, Single-Family Residential District with Airport Overlay District. The properties to the east of the subject site are zoned R-1/AO, Single-Family Residential District with Airport Overlay District. To the west, across Scenic Drive are tracts of land located in Riley County and are zoned County G-1, General Agriculture District. The area to the north, south and east is in the Scenic Meadows Subdivision, a new residential development. Several homes are recently completed. Others are in various stages of construction. The area to west is undeveloped, agricultural land.



Approving the request should not cause an adverse affects on adjacent properties. The property to the north of the subject site will be unaffected by approving the Exception. The area requiring the Exception is blocked by the remainder of the house. The properties to the east, across from the subject site are not anticipated to be impacted by the proposed Exception. Visually, the encroachment is undetectable because it involves a portion of the house that is below the grade of the front yard and street and is at the rear of the house. The bay window and the roof overhang are on the second story of the house, which should not visually impact the neighboring properties to the east. Furthermore, part of the house on the subject site that encroaches into the setback is opposite of an area of the adjacent house that is currently offset and further away from the subject site. This gives the visual perception that the two houses are further apart then they really are. The property most impacted by the encroachments into the side yard setback is the adjacent property to the south. This house is still under construction and is owned by the developer, which also built the house on the subject site. Minimal adverse affects are anticipated on adjacent properties by approving the proposed Exception request.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exception should not adversely affect the public health, safety or welfare. The house, deck, roof overhang and bay window do not encroach into any platted easements.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The condition of the property that requires the Exception was not created by the applicant with prior knowledge and disregard of applicable regulations. The developer created the condition by incorrectly measuring the distance from the house to the side property line and not providing the window and roof overhang details with the building permit application. These architectural features were not shown on the approved building permit (*see attached*). This issue was brought to the attention of the City Administration during the final inspection of the house. A Certificate of Occupancy was issued with a condition that the Exception request would be applied for so that the applicant could finalize purchasing the house and begin to move in.

There are no reasonable alternatives that could be done to the existing house to meet the strict application of the Zoning Regulations. The southwest corner of the house, including the deck, foundation, exterior walls and roof would need to be removed and have the house reconstructed to meet the minimum eight (8) foot side yard setback. Requiring the strict application of the setback requirement is unreasonable when the facts and circumstances are considered

Hamilton moved to approve the EXCEPTION to allow a reduction of the minimum required eight (8) foot side yard setback to three (3) feet for an existing single-family house at 804 Fossil Ridge Drive in the R/AO, Single-Family Residential District with Airport Overlay

District, with modifications to the “Strict Application” standard and with the following condition:

1. The Exception shall be limited to the existing house as described in the application documents and shown on the site plan.

Dillon seconded the motion, which passed 5-0.

Hardy adjourned the meeting.

The Board then moved into a work session to discuss the topic of **PUBLIC NOTICE FOR BOARD OF ZONING APPEALS HEARINGS** and revisions suggested by City Administration.

Cattell provided information on the topic and asked for the Board input so that a formal change to the City’s processes of notifying property owners and interested parties can be created and approved by the City Commission.

The Board provided Cattell with a variety of thoughts, ideas and opinions as to how to better inform the public of upcoming Board of Zoning Appeals public hearings.

Respectfully Submitted,  
Chad Bunger, AICP, CFM, Planner II

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