

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, August 10, 2005**  
**7:00 PM**

MEMBERS PRESENT: Chairperson Chuck Jackson, Connie Hamilton, Daniel Morin, and Harry Hardy

MEMBERS ABSENT: Calvin Emig

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

**CONSIDER THE MINUTES**

Hamilton moved to approve the July 13, 2005 minutes which was seconded by Hardy and passed with a vote of 4-0.

**CONSIDER A 180 DAY EXTENSION FOR A VARIANCE TO ALLOW A REDUCTION OF THE REQUIRED MINIMUM LOT AREA OF 15,000 SQUARE FEET TO 7,500 SQUARE FEET; A REDUCTION OF THE REQUIRED MINIMUM LOT WIDTH OF ONE HUNDRED (100) FEET TO FIFTY (50) FEET; A REDUCTION IN THE REQUIRED NUMBER OF PARKING SPACES BASED ON SQUARE FOOTAGE FROM SEVENTEEN (17) REQUIRED SPACES TO EIGHT (8) PARKING SPACES; A REDUCTION OF THE REQUIRED EIGHT (8) FOOT SIDE YARD SETBACK TO FOUR (4) FEET ALONG THE EAST PROPERTY LINE; AN INCREASE OF THE REQUIRED MAXIMUM LOT COVERAGE FROM THIRTY (30) PERCENT TO THIRTY-EIGHT (38) PERCENT; AND THE REDUCTION OF THE REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO ONE (1) FOOT ALONG 15<sup>TH</sup> STREET, LOCATED AT 1431 POYNTZ AVENUE, IN THE C-1, RESTRICTED BUSINESS DISTRICT, FOR A PROPOSED OFFICE BUILDING.**  
(Applicant/Owner: Tim Clark/Darrell Hills).

Frazzell presented the staff report stating the applicants need for a 180 day extension.

Hamilton moved to grant a 180 day extension for a Variance at 1431 Poyntz Avenue, to allow a reduction of the required minimum lot area of 15,000 square feet to 7,500 square feet; a reduction of the required lot width of one hundred (100) feet to fifty (50) feet; a reduction of the required eight (8) foot side yard setback to four (4) feet along the east property line; an

increase of the required maximum lot coverage from thirty (30) percent to thirty-eight (38) percent; and the reduction of the required twenty-five (25) foot front yard setback to one (1) foot along 15<sup>th</sup> Street, in the C-1, Restricted Business District, for a proposed office building. Hardy seconded the motion which passed 4-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE FRONT YARD SETBACK FROM FIFTEEN (15) FEET TO ONE (1) FOOT FOR A PROPOSED GROUND SIGN ALONG DICKENS AVENUE AT GRACE BAPTIST CHURCH GENERALLY LOCATED AT 2901 DICKENS AVENUE.** (Applicant/Owner: Grace Baptist Church).

Frazzell presented the staff report.

Hernan Penaloza, 2508 Sunny Circle, represented the church in thanking the board for the opportunity to be able to apply for the exception. He explained that the existing sign located in the Right of Way has been there for many years and was probably constructed before Dickens Avenue was paved. He explained that the church did not know this was a problem until the church proposed the new sign.

Hardy said the sign will still encroach into the front yard setback; however it is out of the right of way and the architectural style of the sign is tasteful, therefore he could support the request based on the staff report.

Hamilton said when all the facts and circumstances are considered, the strict application of the regulations is unnecessary and she could support the request and conditions based on the staff report.

The Board made the following Findings of Fact for the Exception:

A. The subject property complies with all applicable requirements of the Zoning Regulations other than the existing front yard sign setback distance for which the Exception is being requested.

B. The existing sign has been within the right of way for many years, therefore with the new sign out of the right of way, there should be no adverse affects on adjacent properties or passing traffic.

C. The Exception requested will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. The granting of the proposed Exception will result in a sign being removed from the right of way.

D. There are no reasonable alternatives which would allow the property to meet the strict application of the sign requirements. The existing sign is located within the right of way. Requiring the sign to be located an additional fifteen (15) feet from the property line would place the sign approximately ten (10) feet from the building structure and forty (40) feet from

Dickens Avenue. Although the sign might be visible from this location, it appears to be unreasonable to require the additional fifteen (15) foot setback.

Hamilton moved to approve an Exception to reduce the front yard setback for a sign located within the R Single-Family Residential District from fifteen (15) feet to one (1) foot for Grace Baptist Church located at 2901 Dickens Avenue, with the following conditions:

1. The existing sign shall be removed once the new sign is constructed.
2. The applicant shall obtain all necessary permits.
3. The sign shall be constructed as shown on the site plan.
4. The sign and surrounding landscape shall be maintained in good condition.

Hardy seconded which passed 4-0.

Jackson dismissed himself for the next three agenda items and Hamilton took over as the acting chairperson.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW OFFICES AND MEETING ROOMS FOR THE UNITED METHODIST CAMPUS MINISTRY CENTER (A STUDENT RELIGIOUS ORGANIZATION) PROPOSED TO BE LOCATED AT 1741 ANDERSON AVENUE, WHICH IS WITHIN THE R-M FOUR-FAMILY RESIDENTIAL, UNIVERSITY OVERLAY, AND TNO DISTRICTS.**

*(Applicant/Owner: Bruce McMillan for United Methodist Campus Ministry Center at Kansas State University).*

**A PUBLIC HEARING TO CONSIDER A VARIANCE AT 1741 ANDERSON AVENUE LOCATED WITHIN THE R-M FOUR-FAMILY RESIDENTIAL, UNIVERSITY OVERLAY, AND TNO DISTRICTS, TO REDUCE THE REQUIRED LOT SIZE FOR A CONDITIONAL USE FOR THE UNITED METHODIST CAMPUS MINISTRY CENTER (A STUDENT RELIGIOUS ORGANIZATION).**

*(Applicant/Owner: Bruce McMillan for United Methodist Campus Ministry Center at Kansas State University).*

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE REQUIRED WEST AND EAST SIDE YARD SETBACKS AND A REDUCTION IN THE REQUIRED OFF-STREET PARKING REQUIREMENTS FOR THE PROPERTY LOCATED AT 1741 ANDERSON AVENUE LOCATED WITHIN THE R-M FOUR-FAMILY RESIDENTIAL, UNIVERSITY OVERLAY, AND TNO DISTRICTS FOR THE UNITED METHODIST CAMPUS MINISTRY CENTER (A STUDENT RELIGIOUS ORGANIZATION).**

*(Applicant/Owner: Bruce McMillan for United Methodist Campus Ministry Center at Kansas State University).*

Frazzell presented the staff reports.

Morin asked Frazzell if David Speaks', an owner in the adjacent neighborhood, concerns had been addressed regarding the character of the Traditional Neighborhood Overlay district and the parking requirements.

Frazzell responded that it appears that the concerns had been addressed as the proposed property is in conformance with the Traditional Neighborhood Overlay district regulations, no additions or modifications to the structure have been proposed, and the availability of off-street parking is consistent with the adjacent neighboring uses.

Bruce McMillan, 535 Poyntz Avenue, stated that he is the architect working with the United Methodist Campus Ministry and reemphasized what had been proposed in the staff report. McMillan called attention to the location for the student religious organization, as it is a beneficial opportunity to locate student religious organizations in an area with similar surrounding uses.

Mitch Todd, 933 Wildcat Ridge, stated that he is the United Methodist Campus Minister. Todd explained that the campus ministry offices are currently located within the ECM building on Denison Avenue and services are held at Kansas State University or in Methodist churches around the City. Todd explained that there is not a visible presence on campus and it is difficult for students and members to know where to go to find their offices. Todd went on to say that they understood the concerns of parking and that they were ready to inform users of the campus ministry to access the facility by foot not vehicle.

Hamilton asked Todd if the proposed campus ministry would be used differently than the other campus ministries in the neighborhood. Todd replied that he did not believe that the Methodist ministry would be any different than neighboring ministries.

Jim Reed, 612 Poyntz Avenue, stated he is a Senior Methodist Pastor at First United Methodist Church. Reed stated that the Methodist church at one time had a presence along Anderson Avenue, and would like to return. He stated that the church is committed to the Manhattan community as well as K-State. Reed further explained that the proposed student campus ministry has the support of three Methodist congregations in town.

Carol Shanklin, 4171 Deep Creek Rd, stated that she is a member of the Methodist church and is full support of the use. She said that the campus ministry would hold small meetings at the proposed location and would use other churches for large group activities.

Lynette Ford, owner of 1741 Anderson Avenue, said the home had been in her family for approximately fifty years. She said that there is a lot of history with the house and she and her mother are in favor for the use. She stated that she is a member of the church and allowing the church to have the home for the proposed use would feel like the property was still part of her home.

Mimi Balderson, 1917 Humboldt, said she is the owner of 1735 Anderson, and has been neighbors to the proposed location since 1949. She said she was in support of the use. She

mentioned that her driveway and the drive of 1741 Anderson are adjacent and that previously she and Lynette Ford had an unwritten agreement which would allow one another to use each others driveway if there was a need.

Hamilton closed for public hearing and opened for board discussion.

Hardy said he was in support of the use as it was a good use of the property. He felt that Speaks' concerns had been addressed as the use is consistent with the surrounding neighborhood. He also said that the other surrounding campus ministries in the area have similar parking as what is being proposed therefore he felt that the opportunity to consolidate the campus ministries into a single district is beneficial and should be approved.

Hamilton agreed with Hardy's comments but asked that the unnecessary hardship listed in the Variance staff report be more consistent with that which is listed in the Exception staff report, and that the Exception conditions include those outlined in the Variance staff report.

The Board made the following Findings of Fact for the Conditional Use:

A. The current use is a two-family dwelling with a residence on the main floor and a basement apartment. Under the R-M Four Family Residential District, the minimum lot area for a two-family dwelling is 7,500 square feet with maximum lot coverage of 35%. The current structure has lot coverage of 19%, below the maximum allowed, however the lot area is 7,444 square feet which is in nonconformance with the current zoning regulations. The proposed Conditional Use will require a concurrent Variance of lot area and lot width and Exception of side yard setbacks and off-street parking requirements.

B. The property and dwelling unit for the Conditional Use are in excellent condition and have been maintained as such by the current owner's family for approximately fifty (50) years. Property adjacent and to the west have similar uses by the Lutheran Campus Ministry and the Baptist Campus Center. The remaining residences to the south and east appear to be used primarily as student rentals. Anderson Avenue and Kansas State University are to the north. Occupancy by the religious organization may help to preserve the character of the neighborhood and appearance of the property. An increase in traffic from the facility can be expected in the evenings with small group meetings and special event gatherings. The applicant has stated that the bulk of the access into and out of the facility is expected to be from student foot traffic, not vehicles, which predominate elsewhere in the neighborhood. The surrounding neighbors are in favor of the proposed use as illustrated through their approval letters (attached) and similar uses that are located in the immediate neighborhood.

C. The proposed use as an office and meeting area for a student religious organization should not dominate the neighboring properties as similar uses are within the neighborhood. The applicant has not proposed any signage, additions, or modifications to the property other than creating additional parking within the rear yard, therefore the proposed use should maintain a similar appearance of usage as the current residence. If the campus ministry center decides at a later time to place signage on the property, compliance with the zoning regulations will be

required. Properties to the general east and south are primarily rental properties, and the University is located to the general north. The neighboring properties to the general west have similar uses as campus ministry centers, making the location ideal for this type of use. The proposed use and adjacent campus ministry centers may also help ensure that the character of the residence and neighboring properties are protected from future deterioration.

1. The existing building is a one story, two-family dwelling with a one car parking space located within the rear of the house. The site is currently fenced along the west, south, and a portion of the east property lines. The fencing will be retained.
2. Existing landscaping is extensive and includes mature trees and shrubbery adjacent to the building and in numerous planting beds. Additional landscaping and screening should not be needed for the amount of proposed parking. According to the site plan, two existing trees along the east property line in the rear yard will either be removed or relocated (a new location is not identified on the site plan). The applicant states “Additional landscaping should not be needed however relocation or modification will take place to accommodate additional on site parking.”

D. The proposed location of off-street parking is behind the existing structure in the rear yard with screening to the south and west by a wood fence. The east property and subject property have adjacent driveways which are separated by a narrow rock strip, but are not screened from one another. The applicant states “there is adequate maneuvering room available on-site.” Five off-street parking spaces including the space within the garage have been proposed for the conditional use. A reduction of the minimum off-street parking for the proposed use (15 parking spaces) is required. With the close proximity to the University and nearby marked crosswalks on Anderson Avenue, students and faculty have the opportunity to conveniently walk to the campus ministry center. A concurrent Exception has been filed to reduce the minimum off-street parking requirement.

E. Adequate utility, drainage, and other public utilities are provided.

F. Adequate access to the lot is provided. Pedestrian access is available with a sidewalk along the north side of the property. An existing single wide driveway provides access onto Anderson Avenue. According to the applicant, “parking will be designed to allow for adequate ingress and egress to prevent traffic hazards and minimize traffic congestion entering or exiting Anderson Avenue. Traffic can exit to Anderson Avenue without backing out of the driveway.”

Hardy made a motion to grant a Conditional Use to allow offices and meeting rooms for a proposed student religious organization to locate within the R-M, Four-Family Residential District, UO, University Overlay District, and TNO, Traditional Neighborhood Overlay District for the property located at 1741 Anderson Avenue based upon the staff report with the following conditions:

1. All applicable permits shall be obtained.

2. A concurrent Exception and Variance shall be granted.
3. The proposed use at 1741 Anderson Avenue shall be limited to the ownership of the property by United Methodist Campus Ministry at K-State.
4. The proposed use shall be operated and maintained as outlined in the application and accompanying site plans.
5. Signage shall conform to the Zoning Regulations.
6. The proposed use shall comply with all applicable codes.
7. The facility and lot shall be maintained in good condition.

Morin seconded which passed 3-0.

The Board made the following Findings of Fact for the Variance:

1. The Ingraham Addition was final platted in 1912 with subsequent construction of the single-family residence on Lot 47 in 1941. The lot currently resides in the R-M, Four-Family Residential; TNO, Traditional Neighborhood Overlay; and UO, University Overlay Districts. Office and meeting rooms for a religious organization is allowed as a Conditional Use in the University Overlay District. Minimum lot area for a Conditional Use is 10,000 square feet and the proposed lot is approximately 7,444 square feet. Minimum lot width for a Conditional Use is sixty (60) feet and the proposed lot is approximately fifty (50) feet. Expansion to meet the required lot dimensions is not possible given the surrounding residential development to the south, west, and east and Anderson Avenue right-of-way to the north. The conditions requiring the Variance were not created by the owner or applicant, but were originally created in 1912 when the addition was final platted and subsequently when the zoning changed from allowing the use as a permitted use in the university overlay to a conditional use in the late 1980's. A companion Exception has been filed for the set back reductions and reduction in required parking spaces.

2. The existing dwelling unit is in excellent condition and has been maintained as such by the current owner's family for approximately fifty (50) years. Neighboring the property and to the west are single-family residences with similar uses by the Lutheran Campus Ministry and the Baptist Campus Center. The remaining residences to the east and south appear to be used as rental housing. The proposed use of the residence is anticipated to be characteristic of the neighborhood and should have little effect on surrounding properties. An increase in traffic from the facility can be expected, however the bulk of the access into and out of the facility is anticipated to be from student foot traffic, not vehicles, which predominate elsewhere in the neighborhood. Occupancy by the religious organization should help to preserve the aesthetics of the property.

3. To require strict application of the regulations will constitute unnecessary hardship to the applicant given that the proposed conditional use is located within an area which has similar types of uses, the use should not dominate the neighborhood, and the adjacent property owners to the west, north, and east have expressed their support of the proposed use (see attached letters).

Conditions of the property are such that it was built in the 1940's as a private residence. The property is to be provided to the United Methodist Campus Ministry to allow it to serve students of the University; therefore the applicant did not create the conditions, but is rather attempting to allow the building to serve a different purpose. As a proposed student religious organization, the location is unique with the adjacent Lutheran Student Center to the west; St. Isidore's Catholic Student Center to the northwest; the Baptist Campus Ministry across Denison to the west and the Episcopal Ministry Center at 1823 Laramie. Similarly, located across the street from Kansas State University, the lot provides a convenient meeting location for students.

No other reasonable alternatives appear to exist which would allow the property to meet the strict application of the zoning regulations to allow the campus ministry use.

4. Staff anticipates minimal effects on the public as the proposed student religious organization is consistent with the surrounding neighborhood. No expansion of the existing structure is proposed at this time. The proposed student religious organization should fit in with the established order of the neighborhood, which consists primarily of institutions and a range of residential uses. Traffic may increase in the evenings with small group meetings, and special event gatherings however the impact should not be uncharacteristic of the neighboring uses.

5. Granting the Variance will not be opposed to the general spirit and intent of the zoning regulations. The intent of the minimum lot area and width regulations is to provide adequate buffering between more intense uses. The proposed campus ministry center will generally be as intensive as the adjacent ministry centers and neighboring student rentals currently in the neighborhood. The existing basement apartment has been proposed to be utilized by a staff person or caretaker and is not expected to have any additional impact to the neighborhood.

Morin moved to approve a VARIANCE to allow a reduction of the minimum lot area from ten thousand (10,000) square feet to approximately seven thousand four hundred forty-four (7,444) square feet and a reduction in the minimum lot width from sixty (60) feet to fifty (50) feet for a proposed student religious organization in the R-M, Four-Family Residential District, UO, University Overlay District, and TNO, Traditional Neighborhood Overlay District according to the staff report for the property at 1741 Anderson Avenue Lot 47 Ingraham Addition, with the modification as written and the following conditions:

1. The Variance shall be restricted to the United Methodist Campus Ministry at Kansas State University for purposes of a campus ministry center at 1741 Anderson Avenue.
2. An accompanying Conditional Use and Exception shall be granted.
3. The Variance shall be restricted to the proposed site plan and application.

Hardy seconded which passed 3-0.

The Board made the following Findings of Fact for the Exception:



A. The property's current use as a two-family residence does not conform to the required lot area for the R-M, Four-Family Residential District, but meets all other applicable regulations in the R-M, Four-Family Residential; TNO, Traditional Neighborhood Overlay; and UO, University Overlay Districts. A Variance of lot area and width, and a Conditional Use Permit for a student religious organization is required.

B. The reduction in side yard setbacks should not cause an adverse effect on adjacent properties. The minimum side yard setback distance allows a greater separation between different types of uses to minimize the impacts on neighboring properties. Similar types of uses are located to the west (Lutheran, Baptist and Catholic Student Centers), student rentals and a convenience store P.U.D to the east, and Kansas State University located to the north.

The reduction in off-street parking from fifteen (15) parking spaces to five (5) parking spaces is considerable, however given the close proximity to the University; it is anticipated and should be encouraged that most access to the facility will be from other forms of transportation such as bicycles and foot traffic. The five (5) off-street parking spaces are provided as two (2) off-street spaces for the one bedroom apartment, two (2) off-street spaces for the office and one (1) off-street space for the meeting room. The amount of off-street parking space proposed for 1741 Anderson is comparative to the adjacent Lutheran Campus Ministry (6 off-street spaces), Baptist Center (5-6 off-street spaces), and nearby Episcopal Ministry Student Center (6 off-street spaces).

A University parking lot west of the Old Stadium is located within the R-M, Four-Family Residential District, and University Overlay Zone; within 600 feet of the subject property; and the student religious organization has written permission from the University to use the lot on the weekends, have University parking passes, or use the lot after 5:00 p.m. during the week.

C. Anderson Avenue has a high volume of traffic. The reduction in off-street parking will require students and users to either walk, use other forms of transportation, or find other off-street parking. According to the applicant, there is sufficient room for maneuvering in the rear, preventing vehicles from having to back out onto Anderson Avenue. The granting of the Exceptions should not cause adverse effects on public health, safety, morals, order, convenience, prosperity, or general welfare.

D. To require strict application of the regulations is unreasonable and unnecessary given that the proposed conditional use is located within an area which has similar types of uses, the use should not dominate the neighborhood, and the adjacent property owners to the west, north, and east have expressed their support of the proposed use (see attached letters).

Conditions of the property are such that it was built in the 1940's as a private residence. The property is to be provided to the United Methodist Campus Ministry to allow it to serve students of the University; therefore the applicant did not create the conditions, but is rather attempting to allow the building to serve a different purpose. As a proposed student religious organization, the location is unique with the adjacent Lutheran Student Center to the west; St. Isidore's Catholic Student Center to the northwest; the Baptist Campus Ministry across

Denison to the west and the Episcopal Ministry Center at 1823 Laramie. Similarly, located across the street from Kansas State University, the lot provides a convenient meeting location for students.

No other reasonable alternatives appear to exist which would allow the property to meet the strict application of the zoning regulations to allow the campus ministry use.

Hardy made a motion to approve an EXCEPTION to reduce the required west side yard setback from fifteen (15) feet to six (6) feet, east side yard setback from fifteen (15) feet to ten (10) feet, and a reduction in the required off-street parking from fifteen (15) parking spaces to five (5) parking spaces for a proposed student religious organization Avenue in the R-M Four-Family Residential District, UO, University Overlay District, and TNO, Traditional Neighborhood Overlay District for the property located at 1741 Anderson with the following conditions:

1. A companion Conditional Use and Variance shall be approved.
2. The Exception shall be restricted to the United Methodist Campus Ministry at Kansas State University for purposes of a campus ministry center at 1741 Anderson Avenue.
3. A reduction in on-site parking shall be contingent that stacking of cars on the driveway shall not be permitted.
4. All applicable permits shall be obtained.
5. The site plan shall be implemented as proposed.

Morin seconded which passed 3-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO FIFTEEN (15) FEET FOR A BEDROOM ADDITION AT 2303 WILDWOOD LANE, IN THE R SINGLE-FAMILY RESIDENTIAL DISTRICT.** *(Applicant/Owner: David and Katherine Poole).*

Frazzell presented the staff report.

David Poole, 2303 Wildwood Lane, explained the location of the proposed addition and expressed the need for a nursery.

Jackson closed the public hearing for board discussion.

Hamilton commented that there appears to not be any objection from the neighborhood as no one was out to comment on the proposal. She continued by saying that the proposed location appears to be very well screened from neighboring properties. Hamilton asked that a modification be made to the strict application section of the Exception staff report.

The Board made the following Findings of Fact for the Exception:

A. Soderberg Addition Unit 3, Lot 1, 2303 Wildwood Lane, is in compliance with all

applicable regulations except for that which the Exception is being applied. Total square footage of the existing structures and proposed addition is approximately 2,471 square feet with total lot coverage of 21%. Maximum lot coverage in the R Single-Family Residential District is 35%.

B. Soderberg Addition Unit 3, Lot 1, 2303 Wildwood Lane, and neighboring properties are all located within the R Single-Family Residential District and are primarily owner occupied. The subject lot is odd shaped with the curve of Anderson Avenue along the north property line. The north front yard is densely landscaped with a mix of shrubbery type vegetation and trees. The existing structure is well screened from Anderson Avenue.

The neighboring house to the west is constructed in a manner in which the driveway and garage is located near the subject property's southwest property line. Existing trees and shrubs screen the 2303 Wildwood Lane lot from the adjacent neighbor, therefore the proposed addition should not reduce the neighbor's privacy.

The proposed addition has been designed to be consistent with the existing structure along the proposed master bedroom exterior and natural stone for the lower bedroom/bonus room. The majority of the addition should not be visible or intrusive to the west neighbor or users of Wildwood Lane with the existing vegetative barrier in place.

Along the south property line is a six foot high, wood privacy fence which will help to screen the addition from the neighbor to the south. The lot directly south was granted a reduction in the rear yard setback to accommodate for an addition in February 2003.

The applicant states that the adjacent properties to the west and south have setbacks less than the proposed fifteen (15) feet, therefore the Exception is not unique to the area. It is not perceived that a reduction in the Wildwood Lane front yard setback will have an effect on adjacent properties.

C. The proposed Exception should not adversely affect the public's health, safety, morals, order, convenience, prosperity, or general welfare.

D. Wildwood Lane is a unique and narrow road with a south leg extending approximately 130 feet from Anderson Avenue; followed by a ninety degree bend, and a northwest continuation until it "dead ends". The subject property is to the east along the entire south leg of Wildwood Lane and extends an additional thirty-three (33) feet south of Wildwood Lane. The proposed addition lies generally southeast of Wildwood Lane, in the general southwest corner of the lot.

As a corner lot, the subject property is restricted to two front yard setbacks along Anderson Avenue and Wildwood Lane. However, given that the lot is not a typical corner lot, and the location for the proposed addition extends past Wildwood Lane, there are not the same concerns as there would be for a typical corner lot. If the Exception is granted, the location of the addition is not likely to impact the neighborhood in an adverse way.

Hamilton moved to approve an Exception to reduce the front yard setback from twenty-five (25) feet to fifteen (15) feet along the southwest property line at 2303 Wildwood Lane for a proposed bedroom addition. The subject property is located with the R, Single-Family Residential District with frontage along Anderson Avenue and Wildwood Lane modifications as written and the following conditions:

1. Applicant shall obtain all necessary permits.
2. The Exception shall be limited to the site plans as proposed.
3. The shrubbery and trees along the west property line shall remain and be replaced if damaged, to provide screening to the neighboring properties.
4. The proposed bedroom addition and lower bedroom/bonus room shall be generally consistent with the existing structure appearance, and maintained in good condition.

Hardy seconded which passed 4-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK TO THIRTY (30) FEET ALONG COLLEGE VIEW ROAD FOR A PROPOSED ACCESSORY BASKETBALL COURT FOR THE PI KAPPA ALPHA FRATERNITY AT 2021 COLLEGE VIEW AND TO REDUCE THE MINIMUM TWENTY FIVE (25) FOOT FRONT YARD SETBACK TO FIFTEEN (15) FEET ALONG COLLEGE VIEW ROAD FOR A PROPOSED SIX (6) FOOT WHITE VINYL FENCE.** (*Applicant/Owner: Mike Riley/Pi Kappa Alpha Association Inc.*).

Frazzell presented the staff report.

Mike Riley, P.O. Box 3, Hiawatha Kansas, spoke for the Pi Kappa Alpha Association Inc. He expressed concern about the location for the court as amended, as he wanted to ensure that there was adequate room between the fence and the court. He asked that the Board still consider the request for the Exception to reduce the front yard setback to fifteen feet for a fence.

Hamilton said the conditions proposed in the staff report would require the applicant to place the court as amended by City Administration. She asked Mike Riley if he was prepared to accept that, or if he would require more flexibility than what has been amended by City Administration.

Riley said that they could accept the amended site plan as proposed by City Administration, however it was not ideal and they would like to have more flexibility with the location of the basketball court west to east. Riley said that the basketball court is priority one and the fence is important for the fraternity's privacy and for screening to the surrounding neighbors. Riley said he had visited with the surrounding neighbors about the basketball court and fence and no one appeared to be opposed to the proposal.

Morin said he appreciated Riley going door to door to provide additional public notice to the

neighbors.

Mike Hill, 3314 Kennington, is a neighbor and property owner of 2000 College Heights. Hill spoke in favor of the proposed basketball court saying the court as proposed should be a nice addition, the court should not have an adverse effect on surrounding properties, and offered that the basketball court could give a positive outlet to the fraternity members.

Jackson asked Hill if he had any problem with the proposed location of the fence encroaching into the setback.

Hill said there were compelling reasons both ways and had not put a lot of thought into the location of the fence. He further stated he didn't think ten feet would make a tremendous difference but he would leave that up to the Board to decide.

Hamilton asked if Hill had seen the proposed fence and commented that the selection could be visually restrictive along College View.

Hill suggested giving the applicant more flexibility in material selection for the fence.

Jackson closed the public hearing and opened for board discussion.

Hardy said he suggested to give the applicant flexibility for placement of the basketball court within the thirty foot setback given the constraints of the property, but to put the fence at the minimum twenty-five foot setback, which would provide the applicant flexibility on the type of fence chosen.

Morin agreed with allowing flexibility for the basketball court, and further asked Mike Riley if emphasis had been made on the fence or on the basketball court when he talked with the neighbors. Riley responded saying the importance of enclosing the court with a fence was stressed and pictures had been shown. Morin stated that he felt the amended proposal would adequately serve the fraternities needs.

Jackson said he did not have a problem with the location of the court, and the style of fence chosen would help to reduce the noise from surrounding neighbors. He stated that he did not have a problem with the staff report recommendations.

Hamilton asked to amend the staff report conditions to allow flexibility to the placement of the basketball court. She continued by stating she could support the staff report as proposed which grants the Exception to the basketball court but not to the fence.

The Board made the following Findings of Fact for the Exception:

A. 2021 College View, Lot 3 College View Addition, was final platted in 1951 and is unique to the area as it has two front yards, one facing College View and the other facing College Heights. The down zoning from R-3 to R-M in the late 1980's changed the present fraternity

use from a Permitted Use to a Conditional Use. The property is in compliance with all applicable regulations except for the proposed Exceptions for a reduction in the minimum sixty (60) foot front yard setback to thirty (30) feet along College View Road for a proposed accessory basketball court and a reduction in the minimum twenty five (25) foot front yard setback to approximately fifteen (15) feet along College View for a proposed six (6) foot high fence.

B. Properties located to the general north, west, and southwest are within the R Single-Family Residential District while properties located to the general south, east, and southeast are within the R-M, Four-Family Residential District and UO, University Overlay. The introduction of a basketball court use on the north front yard of Lot 3 may increase the amount of noise heard by neighboring properties to the general west, north and east during use; however the noise increase is not anticipated to be significant. The surrounding neighborhood on College View is Single-Family Residential with open front yards along College View. The residential lots north of College View generally have an average width of seventy (70) feet and generally a twenty (20) foot setback from the residential structures to the property line. The residential lots south of College View generally have an average width of seventy (70) feet and generally a thirty (35) foot setback from their residential structures to the property line. The subject property, Lot 3 of College View Addition, has an approximate two hundred sixty-seven (267) foot width, almost four times as much width as the surrounding lots and has a building setback of approximately eighty (80) feet. Although front yard fences are permitted in both the R and R-M Districts with a minimum front yard setback of twenty-five (25) feet, the extent of the proposed fence and the proposed reduction of ten (10) feet to the minimum twenty-five (25) foot front yard setback appears to be inconsistent with the existing south side of College View. Opportunities exist to place the fence at the minimum twenty-five (25) foot setback distance to attain compliance with the Zoning Regulations, use the property as proposed for the accessory basketball court, and prevent additional inconsistencies within the neighborhood.

C. No adverse effects to the public health, safety, or welfare are expected.

D. Requiring the accessory basketball court to be located sixty (60) feet from the front property lines appear to be unreasonable as the building's location on the lot prevents adequate usage of the lot. To require strict application to the zoning regulations would prevent the applicant from utilizing the property as desired. There is not an alternative location on the existing lot which would not require an Exception to the accessory use front yard setback.

For the proposed fence, the applicant has proposed a reduction of ten (10) feet to the minimum front yard setback to allow for adequate space between the proposed basketball court and proposed fence. As proposed by the applicant, both the north fence and basketball court and the east fence and basketball court would have a separation distance of fifteen (15) feet.

A shift of the location of the court south ten (10) feet from the twenty-five foot front yard setback line and east ten (10) feet from the proposed location, means the fence could be located to meet the minimum twenty-five (25) foot front yard setback; the court could be

located outside of the ten (10) foot utility right of way; meet the minimum three (3) foot east side yard setback (Article V 5-103(B)(2)); and provide adequate unobstructed space for the basketball court. In doing such, the separation distance from the north fence to the basketball court would be reduced from fifteen (15) feet to ten (10) feet. The fence along the east has been proposed to be located approximately one (1) foot from the property line, giving a possible separation distance of seven (7) feet from the court to the fence. Although the revised separation distance is eight (8) feet less than that proposed by the applicant, it would allow the fence to be in compliance with the minimum twenty-five (25) foot front yard set back required by the Zoning Regulations, prevent encroachment to the utility right of way, and allow usage of the area for a basketball court. The National Federation of State High School Associations recommends a minimum of three (3) feet of unobstructed space outside a basketball court with preference to ten (10) feet. There appears to be adequate unobstructed space for the proposed basketball court and compliance with the minimum front yard setback for the fence.

Another possibility is that since the northeast corner of the building, northwest concrete walkway, and existing northwest driveway are all located over the utility right of way, that the court could be moved over the right of way as well. It appears that alternatives exist to allow full use of the accessory basketball court while attaining compliance with the Zoning Regulations for the fence.

Hardy made a motion to grant an Exception to reduce the minimum sixty (60) foot front yard setback to thirty (30) feet along College View Road for a proposed accessory basketball court for the property located at 2021 College View, but deny the Exception to reduce the minimum front yard setback from twenty-five (25) feet to fifteen (15) feet along College View for a proposed six foot high fence based upon the staff report and staff recommendations, and the following conditions:

1. The accessory basketball court shall be maintained in good repair.
2. Applicant shall obtain all necessary permits.
3. No exterior lighting of the basketball court shall be allowed.

Hamilton seconded which passed 4-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM EIGHT (8) FOOT EAST SIDE YARD SETBACK TO SIX (6) FEET FOR AN EXISTING RECENTLY CONSTRUCTED SINGLE-FAMILY RESIDENCE LOCATED AT 2720 KIMBALL AVENUE, IN THE R SINGLE-FAMILY RESIDENTIAL DISTRICT.** (*Applicant/Owner: Brown & Co. of Manhattan Inc./Will Kotterman*).

Frazzell presented the staff report.

The Board made the following Findings of Fact for the Exception:

A. 2720 Kimball Avenue, Brown Addition, Lot 1 complies with all applicable regulations except for that which the Exception is being requested. According to the applicant, “when the

basement was formed, the boundaries were mistakenly moved to the east.” This created the structure with overhangs on the southeast corner of the property to be six (6) feet and the northeast corner of the property to be seven (7) feet instead of the minimum eight (8) foot required side yard setback.

B. Brown and Co. of Manhattan, Inc. is currently building a home on the lot directly to the east of 2720 Kimball. According to the applicant, they are staying twelve (12) to fourteen (14) feet away from the common property line of the subject property and the adjoining lot. This will leave a distance of eighteen (18) to twenty (20) feet between the houses. The house on the subject property is situated ten (10) feet away from the west property line, two (2) feet farther than the required eight (8) foot set back. In granting the proposed Exception, there are no perceived negative effects on adjacent properties, only an increase in spacing and compliance with the regulations.

C. The granting of the Exception does not result in the dwelling encroaching in a utility or other easement. The public should not be adversely affected.

D. The situation was created, in part due to an error on the concrete subcontractor and Brown and Co. of Manhattan, Inc. as the general contractor. The subcontractor had poured the footings and the basement walls prior to their inspection. Since the basement had already been poured, Brown and Co. of Manhattan, Inc. altered the floor plan of the house to be built directly to the east, to allow additional room between the houses to the west. Strict application of the regulations would not allow the owner to have clear title. The owner did not create the need for the Exception.

Hardy made a motion to approve an Exception to allow a reduction of the minimum eight (8) foot east side yard setback to six (6) feet for an existing recently constructed single-family residence located at 2720 Kimball Avenue, Brown Addition, Lot 1 in the R Single-Family Residential District with the following condition:

1. The Exception shall be restricted to the reduction in the east side yard setback for the existing house.

Morin seconded which passed 4-0.

Respectfully Submitted,

Jeremy Frazzell, Planner

081005