

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, February 13, 2013
7:00 PM

MEMBERS PRESENT: Harry Hardy, Vice Chairperson; Connie Hamilton, and Ray Thompson, Catherine Lavis.

MEMBERS ABSENT: Joe Aistrup, Chairperson

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II;

CONSIDER THE MINUTES OF THE January 09, 2013, BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the January 09, 2013 minutes, which was seconded by Lavis and passed with a vote of 4-0.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTION TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED NUMBER OF OFF-STREET PARKING SPACES FROM 63 PARKING SPACES TO 3 PARKING SPACES FOR A PROPOSED SELF-STORAGE UNIT BUSINESS ON PROPERTY LOCATED AT 4850 EUREKA DRIVE IN THE I-3/AO, LIGHT INDUSTRIAL DISTRICT AND AIRPORT OVERLAY DISTRICT.
(APPLICANT/OWNER: K & M HOLDING)

Hamilton moved to approve the request for a 180 day extension for approved exception to allow for a reduction in the minimum required number of off-street parking spaces from 63 parking spaces to 3 parking spaces for a proposed self-storage unit business on property located at 4850 eureka drive in the I-3/AO, light Industrial District and Airport Overlay District. Lavis seconded, which passed with a vote of 4-0.

TABLE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FOR AN ACCESSORY STRUCTURE FROM SIXTY (60) FEET TO ZERO (0) FEET

ALONG FAIRCHILD AVENUE FOR A PROPOSED TRASH ENCLOSURE AT 500 SUNSET AVENUE IN THE R-1/TNO/UO, SINGLE-FAMILY RESIDENTIAL DISTRICT, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT AND UNIVERSITY OVERLAY DISTRICT (APPLICANT/OWNER: BETA THETA PI HOLDING CO. – SCOT K. TENPENNY, TREASURER).

Hamilton asked about the progress in this case, to which Bungler responded saying that he is working towards contacting the concerned architect. Hamilton moved to table the public hearing to consider an exception to allow for the reduction of the minimum required front yard setback for an accessory structure from sixty (60) feet to zero (0) feet along Fairchild Avenue for a proposed trash enclosure at 500 Sunset Avenue in the R-1/TNO/UO, Single-Family Residential District, Traditional Neighborhood Overlay District and University Overlay District. Thompson seconded, which passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR A REDUCTION IN THE FRONT YARD SETBACK ALONG MCCAIN LANE FROM TWENTY-FIVE (25) FEET TO TWELVE (12) FEET, FOR A RE-DESIGNED OFF-STREET PARKING LOT FOR A PROPOSED FRATERNITY HOUSE WITH SEVENTY (70) OCCUPANTS THAT IS UNDER CONSTRUCTION AT 1632 MCCAIN LANE IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND UO, UNIVERSITY OVERLAY DISTRICT. (APPLICANT: MICHAEL CARSON, BOWMAN BOWMAN NOVICK, INC. OWNER: DELTA THETA CHAPTER OF ALPHA TAU OMEGA BUILDING CORPORATION).

A PUBLIC HEARING TO CONSIDER A VARIANCE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, FOR A REDUCTION OF THE MINIMUM REQUIRED PERCENTAGE OF LANDSCAPED OPEN SPACE IN THE FRONT YARD ALONG N. MANHATTAN AVENUE FROM SEVENTY-FIVE (75) PERCENT TO THIRTY-SIX (36) PERCENT, A REDUCTION OF THE MINIMUM REQUIRED PERCENTAGE OF LANDSCAPED OPEN SPACE IN THE FRONT YARD ALONG MCCAIN LANE FROM SEVENTY-FIVE (75) PERCENT TO FIFTY-SIX (56) PERCENT, ALL FOR A RE-DESIGNED OFF-STREET PARKING LOT FOR A PROPOSED FRATERNITY HOUSE WITH SEVENTY (70) OCCUPANTS THAT IS UNDER CONSTRUCTION AT 1632 MCCAIN LANE IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND UO, UNIVERSITY OVERLAY DISTRICT. (APPLICANT: MICHAEL CARSON, BOWMAN BOWMAN NOVICK, INC. OWNER: DELTA THETA CHAPTER OF ALPHA

TAU OMEGA BUILDING CORPORATION).

Bunger presented the staff report for both the items together. The City Administration recommended approval of the Exception and Variance, with three (3) and four (4) specific conditions of approval respectively.

Lavis asked if the proposed planter beds in the parking lot were required, to which Bunger explained the landscaping requirements for parking lots. Hamilton asked if the new building would have the same number of residents as the old one. Bunger stated that to avoid parking crisis, the new building would have ten (10) less residents and the way the parking lot is designed is to provide a parking space for every resident.

Hardy opened the public hearing.

Mike Carson, who is the applicant presented himself to answer any questions and generally explained the reasons for applications and need for redesigning the parking lot. Bill Muir who is the Secretary of the Building Corporation of Alpha Tau Omega presented himself to generally discuss the project in terms of its financial implications.

With no more public comments Hardy closed the public comment section for Board discussion. Hamilton suggested the mentioning the hillside feature of the site as a condition unique to the site in the Staff Report to which Hardy agreed. Bunger and the Board agreed upon revising the first sentence of the second paragraph under the Section-Conditions Unique to the Property in the staff report for Variance to read as, *“The property is also unique in respect to the natural features and open space that immediately surround it – including the steep hillside which restricts the space available of parking building on the lot, the wide right-of-way and thick vegetation along N. Manhattan Avenue provides an unusually-large natural buffer between the subject site and the street.”*

The Board made the following findings of fact for Exception at 1632 McCain Lane.

PRESENT USE: Fraternity house and a new fraternity house under construction.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the Riley County Appraiser’s Office, the subject property was constructed in 1970 as a permitted use in the R-3, Multiple Family Residential District and U, University Overlay District. A number of nonconforming conditions have been corrected with the removal of the off-street parking lot that was devoted to the existing house during the construction of the new building.

In February, 2012, Exceptions and Variances were granted to allow for the elimination of off-street parking during the construction process and for the off-street parking lot associated with the new building to be as close as twenty-three (23) feet from the McCain Lane front property line and five (5) feet from the N. Manhattan Avenue front property line. In addition to the location of the parking lot; Variances were approved to eliminate the required screening of the parking spaces to the property to the north and a reduction of the required front yard open

space requirement.

As previously described, the revised site plan for the new fraternity house alters conditions previously approved through Exceptions and Variance. These new Exception and Variance requests address these issues. Other than these conditions, the property complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the immediate south and east are zoned R-3, Multiple-Family Residential District and UO, University Overlay District, with some properties zoned R-2, Two-Family Residential District and UO, University Overlay District further to the south. To the immediate north and east are properties zoned R, Single-Family Residential District. To the west is Kansas State University, zoned U, University District. The immediate area of the subject site, as might be assumed by its proximity to the Kansas State campus, is a university-oriented residential district, with a mix of multiple-family dwellings, fraternity and sorority houses, and other university-related uses in the vicinity. However, to the east, in the area zoned R, Single-Family Residential, there are many single-family homes, both renter- and owner-occupied. The educational uses of the American Institute of Baking, which borders the subject site immediately to the north, and the Kansas State University campus, located to the west across N. Manhattan Avenue, are also in the subject site's vicinity.

The revised location of the off-street parking lot will increase the degree of encroachment from the approved twenty-three (23) feet to twelve (12) feet from the McCain Lane front property line to eliminate the need to construct a large, long and expensive retaining wall to protect the embankment on the north property line. A finding of fact for the approval of the February, 2012 Exception was that there are already fourteen (14) parking spaces located in the front yard setback at that time and that several of the neighbors are currently in violation of the restrictions on parking in the front yard. The applicant has provided a number of aerial photos showing these surrounding properties and to what degree they encroach into the required front yard setback. Thus, granting an Exception to reduce the size of the setback will not drastically impact the character of the surrounding neighborhood.

Another contributing factor is that there is a substantial change in elevation between the grade of McCain Lane and where the proposed parking will be located; with the parking to be approximately four (4) to eight (8) feet above the street level. The elevated parking area should also help to decrease any adverse impacts that the new location of the off-parking lot will have on adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be minimal effect on the public health, safety or welfare due to the Exception requests. The reduction of the front yard setback should not substantially alter or impact the visual effect of the setback or line-of-sight down either N. Manhattan Avenue or McCain Lane. A number of properties along McCain Lane currently have off-street parking in the front yard setback. The proposed location of the off-street parking lot should not alter the existing character of the surrounding neighborhood or affect the public order. No impediments to the ease of vehicular or pedestrian travel are

expected to result from this Exception.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

As previously described, the subject site received Exceptions and Variances to have the off-street parking lot to be as close as twenty-three (23) feet from McCain Lane and five (5) feet from N. Manhattan Avenue. The strict application of the regulations would be to require that the parking lot be built as previously proposed. This would require that a large and long retaining wall be constructed along the north property line to protect the existing rock embankment from deteriorating and causing damage to the subject site or adjacent properties. The applicant is proposing to alter the original site plan to move the off-street parking lot approximately twelve (12) feet to the south towards McCain Lane (or approximately ten (10) feet from the front property line) to avoid the need for the retaining wall.

The intent of the front yard setback regulations are to provide enough space for a use to function on its zoning lot, to allow for a uniform visual look to the neighborhood, to permit adequate line-of-sight down the street, to allow open space for adequate drainage, sunlight, and air for the building, and to provide adequate separation of structures. None of these intentions will be greatly compromised if the requested Exception is granted. As described in the "*Probable Effect On Adjacent Properties*" standard, the subject site will be one of several properties along McCain Lane that has parking in the front yard. In addition, the off-street parking lot is elevated approximately four (4) to eight (8) feet above the grade of McCain Lane and N. Manhattan Avenue. The elevation change will prevent the proposed location of the off-street parking lot from impacting the line-of-sight along McCain Lane or N. Manhattan Avenue or visually limit the amount of open space along the streets. Considering these unique conditions of the property, the strict application of the regulation appears to be unreasonable.

Hamilton moved to approve an EXCEPTION for a reduction in the front yard setback along McCain Lane from twenty-five (25) feet to twelve (12) feet, for a re-designed off-street parking lot for a proposed fraternity house with seventy (70) occupants that is under construction at 1632 McCain Lane in the R-3, Multiple-Family Residential District and UO, University Overlay District, with the following conditions of approval:

1. The Exception shall apply to the proposed development as outlined in the Staff Report and application documents and as illustrated in the site plan for the February 13, 2013 application.
2. The related Variances shall be approved
3. All conditions of approval set out by the Board of Zoning Appeals in the February 8, 2012 Notice of Decision stands as written unless updated by the conditions of approval listed below.

Lavis seconded the motion, which passed by a vote of 4-0.

The Board made the following findings of fact for Variance at 1632 McCain Lane.

PRESENT USE: Fraternity house and a new fraternity house under construction

CONDITIONS UNIQUE TO THE PROPERTY: Being a fraternity house, the use of the subject site is fairly unique to the R-3, Multiple-Family Residential District; in order to provide a roughly one-to-one ratio of parking spaces to residents, the size of the parking lot planned, containing seventy-two (72) spaces, is necessary in order to mitigate the possibility of over-parking in an already-crowded area of the City. Thus, due to the property's unique location adjacent to the University, the provision of adequate off-street parking at the expense of maintaining landscaped open space in the front yard becomes a public amenity rather than a hardship.

The property is also unique in respect to the natural features and open space that immediately surround it – including the steep hillside which restricts the space available of parking building on the lot, the wide right-of-way and thick vegetation along N. Manhattan Avenue provides an unusually-large natural buffer between the subject site and the street. Likewise, the height of the embankment that separates the subject site and the property to the north - being fifteen to twenty (15-20) feet tall and consisting of stones, trees, and other kinds of vegetation - creates an effective natural buffer between the two properties. Finally, the phasing of development, which will allow the residents to continue to live in the fraternity throughout the duration of the project, presents a unique condition that greatly benefits the fraternity members, but also restricts the ability of the design to accommodate alternative arrangements of front yard parking.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the immediate south and east are zoned R-3, Multiple-Family Residential District and UO, University Overlay District, with some properties zoned R-2, Two-Family Residential District and UO, University Overlay District further to the south. To the immediate north and east are properties zoned R, Single-Family Residential District. To the west is Kansas State University, zoned U, University District. The immediate area of the subject site, as might be assumed by its proximity to the Kansas State campus, is a university-oriented residential district, with a mix of multiple-family dwellings, fraternity and sorority houses, and other university-related uses in the vicinity. However, to the east, in the area zoned R, Single-Family Residential, there are many single-family homes, both renter- and owner-occupied. The educational uses of the American Institute of Baking, which borders the subject site immediately to the north, and the Kansas State University campus, located to the west across N. Manhattan Avenue, are also in the subject site's vicinity.

Due to the fact that the subject site is surrounded by natural buffers of various kinds, e.g. open space, trees, vegetation, and an embankment, the probable effect on adjacent properties due to the granting of these Variances will be minimal. The one-hundred and twenty (120) foot right-of-way along N. Manhattan Avenue provides a much larger effective quantity of open space adjacent to the subject site's front yard area along that street than is strictly allocated to it within its property lines – in that way, the proposed thirty-three percent (33%) reduction in landscaped open space in the front yard along N. Manhattan is mitigated.

The proposed nine percent (9%) reduction in the required landscaped open space in the front yard along McCain Lane should not present a significant impact to the surrounding

neighborhood, as the proposed site plan calls for an increase in the amount of landscaped open space in this front yard than is currently in place on the site. Also, many of the adjacent properties do not maintain the required seventy-five percent (75%) of landscaped open space in their front yards; thus, the Variance would not create a condition that affords additional rights to the property owner than are enjoyed by the neighboring properties. Similarly, it will not be in any way out of character with the immediate neighborhood.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

Under the strict application of the regulations, the property owner would be required to eliminate a significant number of parking spaces from the lot, reducing the ability of the fraternity to provide one (1) space to each of its residents, therefore likely exporting additional parking to an already-crowded street. Considering the potential net negative effects to the property owner and the public, the strict application of the Zoning Regulations is unreasonable in this case.

The intent of regulations requiring a minimum amount of landscaped area in the front yard are to ensure a high-quality visual front to properties in residential districts, reduce the negative impact of front yard parking on the streetscape, to minimize automobile interference with pedestrians, to encourage the retention of existing trees and natural features, and to mitigate negative storm water drainage impacts. Due to the fact that the property had existing parking lot in the front yard area, prior to the beginning of the construction process and that the subject site is surrounded by natural buffers of various kinds which increase its effective amount of open space, and the use is of a higher intensity than typical residential properties – thus requiring a larger parking lot in order to mitigate public impact - none of these intentions will be greatly compromised if the requested Variance is granted

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

There should be minimal effect on the public health, safety or welfare due to these Variances – in fact, the reduction in the required amount of landscaped open space in the front yard will allow the fraternity house to minimize its impact on the public health, safety, and welfare by allowing it to provide a parking space for each of its residents. In addition, the exceptionally wide right-of-way along N. Manhattan Avenue and the presence of dense existing vegetation further mitigate the impact to the public of the lack of landscaped open space in the front yard; in fact, the newly-proposed parking lot will contain more open space in the front yard along McCain Lane than was available on the property prior to the construction of the new fraternity house. Therefore, it seems that any impacts resulting from this Variance will most likely result in a relative gain to the public health, safety, and welfare, rather than a loss.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of regulations requiring a minimum amount of landscaped area in the front yard are to ensure a high-quality visual front to properties in residential districts, reduce the negative impact of front yard parking on the streetscape, to minimize automobile interference with pedestrians, to encourage the retention of existing trees and natural features, and to mitigate negative storm water drainage impacts. Due to the fact that the subject site is surrounded by natural buffers of various kinds, e.g. open space, trees, vegetation, and an embankment, the

probable effect on adjacent properties due to the granting of these Variances will be minimal. The one-hundred and twenty (120) foot right-of-way along N. Manhattan Avenue provides a much larger effective quantity of open space adjacent to the subject site's front yard area along that street than is strictly allocated to it within its property lines – in that way, the proposed thirty-nine percent (39%) reduction in landscaped open space in the front yard along N. Manhattan is mitigated.

The proposed nine percent (9%) reduction in required landscaped open space in the front yard along McCain Lane should not present a significant impact to the surrounding neighborhood, as the proposed site plan calls for an increase in the amount of landscaped open space in this front yard than is currently in place on the site. Also, many of the adjacent properties do not maintain the required seventy-five percent (75%) of landscaped open space in their front yards; thus, the Variance would not create a condition that affords additional rights to the property owner than are enjoyed by the neighboring properties. Similarly, it will not be in any way out of character with the immediate neighborhood.

Hamilton moved to approve a VARIANCE for the reduction of the minimum required percentage of landscaped open space in the front yard along N. Manhattan Avenue from seventy-five (75) percent to thirty-six (36) percent, a reduction of the minimum required percentage of landscaped open space in the front yard along McCain Lane from seventy-five (75) percent to fifty-six (56) percent, all for a re-designed off-street parking lot for a proposed fraternity house with seventy (70) occupants that is under construction at 1632 McCain Lane in the R-3, Multiple-Family Residential District and UO, University Overlay District, based on the modified Staff Report with the following conditions of approval:

1. The Variance shall apply to the proposed development as outlined in the Staff Report and application documents and as illustrated in the site plan.
2. The related Exceptions shall be approved
3. All applicable permits shall be obtained.
4. All conditions of approval set out by the Board of Zoning Appeals in the February 8, 2012 Notice of Decision stands as written unless updated by the conditions of approval listed below.

Thompson seconded the motion, which passed by a vote of 4-0.

Hardy adjourned the meeting.

Respectfully submitted by
Jose Abraham, Planning Intern