

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, August 14, 2013**  
**7:00 PM**

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

MEMBERS ABSENT: Joe Aistrup, Chairperson; Connie Hamilton

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II; Chase Johnson, Planning Intern

**CONSIDER THE MINUTES OF THE JULY 10, 2013, BOARD OF ZONING APPEALS MEETING.**

Lavis moved to approve the July 10, 2013 minutes, which passed on a vote of 3-0.

**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)**

Thompson 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 the motion, which passed on a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO REDUCE THE MINIMUM DISTANCE BETWEEN A PROPERTY LINE AND THE FEEDING, GRAZING, OR SHELTERING OF ANIMALS OR POULTRY IN EITHER PENNED ENCLOSURES OR IN OPEN PASTURE FROM ONE-HUNDRED (100) FEET TO ZERO (0) FEET TO ALL PROPERTY LINES FOR THE PURPOSE OF RAISING CHICKENS AND**

**GOATS AT 1921 BLUESTEM TERRACE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: SUSAN AND JASON BERGTOLD)**

Bunger presented the Variance staff report with a recommendation of approval of the item with eight (8) conditions.

Hardy opened the public hearing

Susan Bergtold, Applicant, briefly explained the history of the property and the reasons for application for the variance.

Hardy asked if the applicant was satisfied with the conditions outlined in the staff report. Bergtold stated that she would like to have at least eight chickens and that they would serve a purpose instead of just household pets.

Kristine Polansky, 1925 Bluestem, expressed her concerns with the chickens located in the neighborhood and is worried about a decrease in property values.

Jason Bergtold, Applicant, expressed his concerns with the increase in terraced backyards in the neighborhood. Bergtold then discussed his backyard and support for the case.

Lavis expressed her comfort with the variance request.

Thompson said that he used to live in the neighborhood and didn't see any issues with the chickens at the time.

The Board made the following findings of fact for the Variance at 1921 Bluestem Terrace.

**PRESENT USE:** Single-family home

**CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is approximately eighty (80) feet wide by 205 feet deep, with 17,929 square feet of lot area. The subject site is less than 100 feet in width, so no point of the subject site would comply with the use limitation for the separation of the livestock and poultry to a lot line. The size of the lot is unique to the surrounding neighborhood, due to its width and area. There are a number of properties in the neighborhood that could comply with the locating of a stationary chicken coop or other pen. However, the applicants wish to use the entire rear yard for the chickens.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties are zoned R, Single-Family Residential District. The area consists of single-family homes. The surrounding area is heavily woods, with a steep ravine running along the back yard of the subject site and surrounding properties.

The application documents state that 3 hen chickens were already on the subject site several years ago, with no complaints or issues on record with the Community Development Department. The use of the chickens were stopped after the applicants became pregnant and required to stop caring for the chickens.

The applicant has provided information regarding the care and management of the poultry.

- The coop will be built and fencing purchased before any new birds will be brought on the property.
- The coop will be built to be sturdy, draft free, aesthetically pleasing and secure against local predators.
- The coop will include an enclosed run as well as time to graze in an enclosed area.
- Food will be stored in steel cans
- Feeding will occur from hanging steel feeders in the coop (secured from rodents).
- Fresh water will be given daily
- The coop will be cleaned weekly

The applicant has stated other residents in the neighborhood have chickens. The applicant provided a form letter with several signatures from residents in the neighborhood in support of the request. It appears that the applicants are planning to take the appropriate measures to minimize the impacts that the proposed chickens may have on the surrounding properties.

The proposal was allow for the entire yard to be used for the location of the chicken coop and the raising of chickens. It may be appropriate to limit this to the yard behind the house only to avoid conflicts with the streetscape along Bluestem Terrace and the potential for the chickens to impact traffic. City Administration is recommending a condition of approval to address this concern.

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

There is not a specific hardship to the applicant by denying the Variance request. The site is not large enough to meet the minimum requirements for separation of the area for feeding and shelter of livestock and poultry and all lot lines. If the Variance is denied, the applicants will simply not be able to build the chicken coop and not have the chickens. However, if the request for the proposed chicken coop with a maximum of 6 -8 hens is viewed as a unique hobby or as unique pets, as the applicants have stated they view the chickens, and then a hardship may be present. If the chicken are viewed as pets, similar to that of a dog or cat, then certain City Ordinances should be reviewed. The location of a dog houses or shelters for cats must be setback in accordance to the accessory structure requirements, which are sixty (60) feet from the front property line along Bluestem Terrace, three (3) feet from the south and north property lines and five (5) feet to the west property line. Section 6-24 (b), Nuisances, of the City Code of Ordinances states: "There shall be a rebuttable presumption that a nuisance is created if any person keeps or harbors more than five dogs or cats, or any combination of such animals exceeding five in number, over the age of 90 days, upon any premises within the City of Manhattan, Kansas, unless such premises are licensed as a kennel by the City of Manhattan, Kansas." Other City Ordinances relating to the care and sanitary requirements of pets would

also apply to the proposed chicken coop and chickens. The Zoning Regulations view the feeding and sheltering of chickens as an agricultural use, which requires a greater setback from property lines, when compared to more common pets. It may be appropriate to limit the number of chicken to be in line with the maximum number of five (5) cats and/or dogs allowed on property within the City limits.

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

Minimal affects on the public health, safety or general welfare is anticipated. As the applicant has stated in the applicant documents, efforts will be made to reduce the impact of the chickens on the surrounding property owners and neighborhood. Hens will only be raised in the chicken coop as pets and for the harvesting of the eggs. Typically, hens do not create the noise nuisance that roosters do. The chicken coop will be built to prevent predators from entering the coop and measures will be made to prevent rodents from eating the chicken feed.

**RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the use limitation for agricultural uses in the R, Single-Family Residential District, is to minimize the conflict between the agricultural use and adjacent residential property owners by creating a minimum separation distance between the sheltering, feeding and grazing of animals and the residential uses. The use limitation does not differentiate between larger agricultural uses or larger animals, such as horses or cattle, compared to the hobby uses of chickens. As previously stated, the possible conflicts with the chickens and the adjacent residential properties have been accounted for. The proposed chicken coop will house hens, instead of the noisier roosters. The applicant has stated that the construction of the coop will resist predators and that the storage of chicken feed will be in rodent proof containers. Because the applicant's proposal for the chicken coop; including having only hens and a plan to care for the chickens, the conflicts between this agriculture use and residential uses are minimized. The proposed Variance to allow chickens within 100 feet of all property lines meets the intent of the use limitations.

Lavis made a motion to approve a Variance to reduce the minimum distance between a property line and the feeding, grazing, or sheltering of animals or poultry in either penned enclosures or in open pasture from one-hundred (100) feet to zero (0) feet to all property lines for the purpose of raising chickens at 1921 Bluestem Terrace in the R, Single-Family Residential District, with the following conditions of approval:

1. The Variance should apply to the proposed use of chickens as outlined in the application documents.
2. The Variance shall apply only to the applicants - Susan and Jason Bergtold
3. The chicken coop shall be constructed as proposed.
4. The chicken enclosure shall be constructed as proposed.
5. No roosters shall be raised on the property.
6. A maximum of five (5) chicken hens shall be housed in the chicken coop or on the subject site.
7. The chickens shall only be raised in the rear yard, behind the rear of the house on the subject site.

8. The chicken coop and the care for the chickens shall comply with all applicable City of Manhattan Ordinances.

Thompson seconded the motion, which passed by a vote of 3-0.

**A PUBLIC HEARING TO AN EXCEPTION TO ALLOW FOR THE INCREASE IN THE MAXIMUM LOT COVERAGE FROM THIRTY (30%) PERCENT TO THIRTY-THREE (33%) PERCENT FOR A PROPOSED DETACHED GAZEBO IN THE REAR YARD AT PROPERTY AT 3017 PAYNE DRIVE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: DAVID AND DIANNA HORNER)**

Johnson presented the Exception staff report with a recommendation of approval of the item with two (2) conditions.

Hardy opened the public hearing.

David Horner, applicant, discussed his property and reasons for the exception request.

The Board made the following findings of fact for the Exception at 3017 Payne Drive.

**PRESENT USE:** Single-family home

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The Conrow Addition was platted in 1960 before the current zoning regulations were established. According to the Riley County Appraiser's Office, the principal structure was built in 1967 as a single-family home, with the current property owners gaining title in 1986. The subject site was zoned "A" Residence District during the year of construction which required lots to be a minimum of six thousand (6,000) square feet for single-family use. The lot does not meet the minimum lot width of seventy-five (75) feet or the minimum lot area of ten thousand (10,000) square feet under the current zoning regulations. The City of Manhattan's Zoning Regulations allows "any improved lot which is devoted to a use permitted in the zoning district where it is located, but which is legally nonconforming for other reasons, may be utilized in its existing state, so long as it remains otherwise lawful, subject to the remaining sections of this part (Section 8-301)".

The subject site's current building footprint is nonconforming under the R, Single-Family Residential District zoning regulations. The existing structures cover approximately thirty-two (32%) percent of the lot. The Exception would bring the current subject site into compliance and allow for the gazebo addition by increasing the maximum lot coverage to

thirty-three (33%) percent. The subject site currently complies with all other 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 is zoned R, Single-Family Residential District, and is located in a predominantly single-family neighborhood. Manhattan Area Technical College and Cico Park are located to the north and northwest, respectively. Properties to the west are zoned R-1 Single-Family Residential; while properties to the north of Manhattan Area Technical College and east across Seth Child Road are zoned primarily R-3, Multi-family Residential with a small area zoned R-2, Two-Family Residential.

Due to the location of the proposed gazebo there are minimal anticipated adverse impacts on adjacent properties. The properties that would be impacted the most from the proposal are 3008 and 3004 Conrow Drive—the properties directly adjacent to the south. The applicant has submitted a form letter from ten (10) surrounding neighbors offering their support for the proposed gazebo; including the neighbors to the direct south and east of the lot.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** According to the site plan the proposed gazebo will be located five (5) feet from the rear property line. The gazebo is considered an accessory structure and complies with the setback limitations under Section 5-103(B)(3) of the zoning regulations.

The proposed gazebo will be encroaching upon a sixteen (16) foot wide utility easement. The property owners need to be aware that if access to the utility easement is required the cost of replacing the gazebo will be the responsibility of the property owners.

Adverse impacts on the public are not expected. The increase in lot coverage is anticipated to have a negligible or nonexistent impact to open space provision, and on the overall visual appearance of the surrounding neighborhood.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the maximum lot coverage would prohibit the gazebo structure to be built as proposed. City code requires swimming pools to be enclosed by a barrier to prevent children from having open access to the pool. The proposal would have to be modified in order to comply with City code. According to the application, this modification would likely be in the form of a fence structure. The application states “this [gazebo] will also allow emergency personnel easy access to entire building instead of fencing the entire backyard”.

The subject site and several of the surrounding lots exhibit characteristics of the R-1, Single-Family Residential District. The R-1 requires a minimum lot size of 6,500 square feet and thirty-five (35%) percent maximum lot coverage. Seventy-two (72) out of one-hundred and nine (109) or sixty-six (66%) percent of the lots located within the Conrow Addition are legally nonconforming under the R, Single-Family Residential District zoning regulations.

These lots are legally nonconforming since they possess less than the minimum lot size requirement of 10,000 square feet. These characteristics place limitations on lot coverage in comparison to conforming lots possessing a minimum area of 10,000 square feet.

Considering the proposed gazebo addition will have a limited impact on the adjacent properties, several neighbors have signed a support letter for the project, and the implications due to the legal nonconformity to the minimum lot area, the strict application of the maximum lot coverage seems unreasonable.

Lavis made a motion to approve an EXCEPTION to allow for the increase in the maximum lot coverage from thirty (30%) percent to thirty-three (33%) percent for a proposed detached gazebo in the rear yard at a property in the R, Single-Family Residential District with the following conditions:

1. The Exception shall be limited to the proposed gazebo as outlined in the application documents and shown on the applicant's site plan.
2. All applicable permits shall be obtained.

Thompson seconded the motion, which passed by a vote of 3-0.

Respectfully submitted by

Chase Johnson, Planning Intern