

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, October 9, 2013**  
**7:00 PM**

MEMBERS PRESENT: Harry Hardy, Vice Chairperson; Connie Hamilton; Ray Thompson; and Angie Danner

MEMBERS ABSENT: Catherine Lavis

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

**CONSIDER THE MINUTES OF THE SEPTEMBER 11, 2013, BOARD OF ZONING APPEALS MEETING.**

Hamilton moved to approve the September 11, 2013 minutes, which passed on a vote of 4-0.

**CONTINUE A PUBLIC HEARING TO CONSIDER FOR A VARIANCE TO NOT BE REQUIRED TO INSTALL SIGHT OBSCURING SCREENING OF AN EXISTING OFF-STREET PARKING LOT LOCATED AT 1021 DENISON AVENUE IN THE R-3/UO, MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND UNIVERSITY OVERLAY DISTRICT. (APPLICANT/OWNER: KSU REAL ESTATE FUND, LLC)**

Hamilton moved to remove the item from the table and continue a public hearing, which passed on a vote of 4-0.

Bunger presented the Variance Staff Report with a recommendation of approval of the item with five (5) conditions.

Hardy opened the public hearing

Larry Fox, applicant, updated the board on the improvements to the landscaping and expressed that he was present to answer any questions.

Hardy closed the public hearing

Hamilton expressed her appreciation for the efforts of both the staff and the applicant for being accommodating. She then said that she could support the request.

Hardy said that the unique condition of the property could be the need to keep the site open to the campus and that might strengthen the unnecessary hardship.

Danner said the plans look great.

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

**PRESENT USE:** Vacant building, formerly the Ecumenical Campus Ministry Center

**CONDITIONS UNIQUE TO THE PROPERTY:** The existing structure was built in 1960 as a campus ministry. Several other multiple-family dwellings and fraternities were built in the immediate area during approximately the same time. Some of these uses do not provide the needed screening, as currently required. The Zoning Regulations at the time of construction for these properties did not mandate off-street parking lots to be screened as they are required to do today. The regulation to provide for sight-obscuring screening was not adopted until 1969. These conditions on the subject site and surrounding properties in the immediate area are considered to be legally nonconforming or “grandfathered.” However, the proposed change of use to offices and meeting rooms associated with Kansas State University, and the need for the Conditional Use, requires that the subject site is, or be brought into conformance with the Zoning Regulations or seek relief from the Board of Zoning Appeals. Because other uses in the area without the required screening are not altering or changing the use, they are not required to provide the needed screening. Other than the grandfathered condition for the lack of screening of the parking lot, there appears to be no unique condition of the property that would prohibit the installations of the required sight-obscuring screening fence.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the north, west and south are zoned R-3/UO, Multiple-Family Residential District and University Overlay District. To the east is the Kansas State University campus. The most immediate building on campus is the engineering complex. The adjacent properties consist of single-family, two-family and Greek housing. The majority of the single-family residential uses are rental properties.

The existing building and off-street parking lot has been in its current location since 1960 when the building was built as a campus ministry center. It is evident that the lack of screening of the existing parking lot has not adversely impacted the adjacent properties. Immediately to the south is the Sigma Alpha Epsilon fraternity. The fraternity has angled parking located adjacent to the off-street parking lot on the subject site. Beyond the off-street parking on the fraternity’s property is a large grass front lawn. The majority of the parking lot area that requires sight-obscuring screening on the subject site is adjacent to a parking lot on the neighbor’s property. The southeast area of the parking lot directly faces the fraternity house; however no residential rooms are located in this area of the house. It is evident that this area is a stairwell leading to the upper floors of the fraternity.

The applicant held a neighborhood meeting on July 25, 2013. The applicants explained the

project and proposed Conditional Use. Four (4) individuals from the surrounding properties attended the meeting. All four (4) individuals signed a form letter expressing their support for the proposed use on the subject site.

The properties most likely impacted by the lack of screening are to the immediate west. Both of these properties are two-family dwellings. There is dense vegetation in the rear yard of the dwellings to the southwest. It appears that this vegetation consists of volunteer trees, bushes and brush; not manicured landscaping that would adequately meet the definition of sight-obscuring screening. If the rear yard of this property was maintained, the property would most likely not be screened from the vehicles in the parking lot on the subject site. There is no screening fence for the property to the immediate west of the subject site.

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

The strict application of the regulation would be to screen the off-street parking lot along the south and west property lines. There appears to be no physical constraints of the subject site that would prevent the construction of sight-obscuring fences. The plat of the zoning lot shows a three (3) foot easement running along the south, west and north property lines. It is unknown what private or public utilities are located within this easement. Fences that are six (6) feet or less in height are allowed to be constructed in utility easements, with the understanding that if access to the easement is needed, the fence will be removed at the owner's expense. Fences are located throughout the City in this manner.

The application documents state that "a secure environment for the building's patrons is paramount to developing aesthetic screening adjacent properties. Adjacent properties are residential with predominately student occupants, who walk through the area to campus and back. Their safety is important." City Administration is unaware of safety issues created by the requirement of sight-obscuring screening fences. Several properties in the area have the required screening and it appears that no safety issues are generated by the requirements.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The application documents states by "not providing the screening will create a more open, safer environment." As previously stated, City Administration is unaware of any safety issues created by requiring screening fences of off-street parking lots. Denison Avenue is a well lit, heavily traveled collector street. The location of the subject site should not be subject to more safety issues compared to other areas around campus that has the same screening requirements.

Requiring that the sight-obscuring screening be installed would benefit the public health, safety, and general welfare. Providing screening would create a consistent order found in nearby properties and areas around the City, including residential areas near the campus. The screening will also shield adjacent properties from vehicular traffic generated by the new use on the subject site.

As previously described, there are, three (3) foot platted utility easements along the side and rear of the zoning lot. It is unknown what private or public utilities are located within this easement. Fences that are six (6) feet or less in height are allowed to be constructed in utility

easements, with the understanding that if access to the easement is needed, the fence will be removed at the owner's expense. Fences are located throughout the City in this manner. The construction of a sight-obscuring screening fence would not adversely impact the general public.

**RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the regulations to require sight-obscuring screening of off-street parking lots, containing six (6) or more parking spaces, from adjacent residential uses is to minimize the adverse impacts of the use and vehicular traffic on the residential uses. The adverse impacts would be in the form of increase in noise from a concentration of vehicles, vehicle headlights shining into residential uses and the sight of more vehicles that would not be customarily found in residential areas.

The previous use of a campus ministry center was established in 1960, prior to the screening requirement being adopted in 1969. It is apparent that the unscreened parking lot of the previous use has not cause a substantial adverse impact on adjacent properties. City Administration has evaluated the proposed use of the offices and meeting rooms associated with an educational use for the Conditional Use request. The staff report indicates that the proposed use is similar in nature to the previous use; should not adversely impact the adjacent property and has recommended approval of the Conditional Use request. Although City Administration has recommended approval of the proposed use, the required screening should be installed to completely meet the intent of the regulations and to lessen the possibility that the proposed use of offices and a testing center will adversely impact the adjacent properties.

Hamilton made a motion to approve a VARIANCE to not be required to install sight obscuring screening of an existing off-street parking lot located at 1021 Denison Avenue in the R-3/UO, Multiple-Family Residential District and University Overlay District with the following conditions of approval:

1. The Variance is for only the sight-obscuring screening on the south side the off-street parking lot as shown on the revised site plan and described in the application documents.
2. The screening fence on the west property line shall be installed as shown on the revised site plan.
3. The proposed landscaping shall be installed as shown on the revised site plan to provide the intended screening.
4. If the use of the subject site is changed through a Conditional Use, the future applicant shall provide the required screening on the south side or request a Variance to not provide the required screening.
5. The off-street parking lot and landscape area shall be maintained in good condition.

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

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE PARKING IN THE FRONT YARD AREA BETWEEN THE FRONT LOT LINE AND A LINE PARALLEL TO THE FRONT LOT LINE DRAWN THROUGH A POINT WHICH IS ON THE SIDE OF THE PRINCIPAL STRUCTURE FURTHEST FROM THE FRONT LOT LINE, EXTENDING TO THE EDGE OF THE ZONING LOT, YET STILL FACING THE FRONT LOT LINE FOR DRIVEWAYS LEADING TO GARAGES OF FOUR-FAMILY DWELLINGS ON LOTS 1 -6, CONGRESSIONAL ADDITION IN THE R-M, FOUR-RESIDENTIAL DISTRICT. (APPLICANT/OWNER: FIELDHOUSE DEVELOPMENT, LLC – ZACHARY J. BURTON, PRESIDENT)**

Bunger presented the Staff Reports together with a recommendation of approval for the Conditional Use with four (4) conditions and a recommendation of denial for the Variance.

Hamilton asked if the request is dealing with parking but is really just for driveways. Bunger elaborated on the request and agreed the request is for just the driveways.

Hardy opened the public hearing.

Zack Burton, applicant, said that he was present to answer any questions and that he is planning on developing more of these types of townhomes in the future.

Bunger said that the staff realizes that the exception for the townhomes is somewhat of a definition issue and that the board is likely to see similar cases until the text can be revised.

Jerry Petty, project director of Grand Mere Development, said that they have been working with the applicant and suggested adopting the definition for townhomes in the building codes because it isn't consistent with the zoning regulations.

Hardy closed the public hearing.

Hamilton expressed her support for the project.

The Board made the following findings of fact for the Exceptions for Lots 1 – 6 Congressional Addition.

**PRESENT USE:** Vacant land in the early stages of development.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site complies with all applicable regulations, other than for what the Exception requests are for.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties are in the Grand Mere Master Planned Golf Course Community. The subject site is

zoned R-M, Four-Family Residential District. The property immediately to the north is vacant land in rural Riley County and zoned County PUD, Planned Unit Development. To the northwest are vacant platted lots in the same subdivision of the subject site and are zoned R-1, Single-Family Residential District. The properties to the south are zoned R-3, Multiple-Family Residential District. To the east of the subject site is vacant land not annexed in the City and are zoned County PUD. Other property in the area is the Colbert Hills Golf Course, zoned R-S, Single-Family Residential Suburban District. The area is a newly developing area with a mix of single-family, single-family attached, two-family and multiple-family dwellings in various stage of construction.

Minimal adverse impacts on adjacent properties is anticipated by granting the Exception to allow the townhome development to use off-street parking on driveways in the front yard. The general appearance of the dwellings will be that of single-family homes with attached garages. Although these single-family homes will be attached (4 units) wide, they will be similar to the single-family and two-family dwellings found in the general neighborhood. Single-family homes will be built to the northwest on lots that are zoned R-1 in the same subdivision. In addition, the multiple-family dwellings along Players Terrance and Bellerive Drive have off-street parking lots located in the defined front yard that were approved by the Board of Zoning Appeals in March, 2012.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed development is six (6) lots, with four (4) unit townhomes. The development is essentially four (4) single-family dwellings that share common walls between each dwelling. Regardless of the design or construction, the Zoning Regulations views the development as four (4) unit, multiple-family dwellings and places a restriction on the location of parking on the multiple-family dwelling lot. Because of the building design, the general order should not be disrupted.

Because of the size of the subject site, the six (6) platted lots could most likely be reconfigured to provide lots that would accommodate twenty-four (24) single-family detached, single-family attached or twelve (12) duplex dwellings. The result would be the same number of dwelling units, and driveways leading to the same number of attached garages. The proposed development should not create an adverse affect on the public health, safety, order or general welfare.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the front yard parking restriction, as defined in Section 7-102(C)(2), would require all parking for the four (4) unit multiple-family dwellings to be behind the front façade of the building. The intent of the regulation is to prohibit off-street parking lots from being located in front of the building and disrupting the visual appearance of the front yard. The structures will appear to be single-family attached units, with front doors and attached garages facing the street. As previously stated in the *Effects on Public Health, Safety, Morals, Order, Convenience, Prosperity, or General Welfare*; the six (6) lots could be reconfigured to provide lots for the same number of single-family detached, single-family attached or duplex dwellings. These lots would generally have the same appearance, number of dwellings,

attached garages and driveways. The proposed development is intended to meet a housing market that has been developed in other parts of the City, but through the PUD process. This development would use “straight zoning” to accomplish the housing product. Considering that the proposed development is unlike a typical multiple-family dwelling and will appear more like single-family dwellings, the regulations appear to be unreasonable.

Hamilton made a motion to approve an Exception to allow for the parking in the front yard area between the front lot line and a line parallel to the front lot line drawn through a point which is on the side of the principal structure furthest from the front lot line, extending to the edge of the zoning lot, yet still facing the front lot line for driveways leading to garages of four-family dwellings on Lots 1 – 6, Congressional Addition in the R-M, Four-Residential District with the following conditions of approval:

1. The Exception shall only apply to the off-street parking as shown in the application materials and site plan.
2. The subject site shall be developed as proposed.
3. All applicable permits shall be obtained.

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

### **BOARD OFFICER ELECTIONS**

Hamilton made a motion to nominate Hardy for Chairperson, which passed on a vote of 4-0.

Thompson made a motion to nominate Hamilton as Vice Chairperson, which passed on a vote of 4-0.

Respectfully submitted by

Chase Johnson, Planning Intern