

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, April 9, 2014**  
**7:00 PM**

MEMBERS PRESENT: Catherine Lavis; Ray Thompson; and Angie Danner

MEMBERS ABSENT: Harry Hardy, Chairperson; Connie Hamilton, Vice-Chairperson

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

**CONSIDER THE MINUTES OF THE MARCH 12, 2014 BOARD OF ZONING APPEALS MEETING.**

Thompson moved to approve the March 12, 2014 minutes, which passed on a vote of 3-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTIONS TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FOURTEEN (14) FOOT FRONT YARD SETBACK TO TWELVE (12) FEET ALONG 11<sup>TH</sup> STREET; AND TO ALLOW FOR AN INCREASE OF THE MAXIMUM LOT COVERAGE FROM THIRTY (30%) PERCENT TO APPROXIMATELY THIRTY-TWO (32%) PERCENT, ALL FOR A NEW PROPOSED SINGLE-FAMILY RESIDENTIAL BUILDING LOCATED IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH A TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT: DAN SHERLEY OWNER: MICHAEL & ANN DUDEK)**

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED LOT AREA FROM 6,500 SQUARE FEET TO 5,000 SQUARE FEET FOR A NEW PROPOSED SINGLE-FAMILY RESIDENTIAL BUILDING LOCATED IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH A TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT: DAN SHERLEY OWNER: MICHAEL & ANN DUDEK)**

Johnson presented the Exception and Variance staff reports together with recommendation of approval of the items with three (3) conditions each.

Lavis opened the public hearing.

Dan Sherley, applicant, summarized the proposal and said that he was there to answer any questions.

Mary Nyberg, 1027 Houston Street, expressed her concerns with the parking requirement for the subject property. Sherley said that there will be adequate parking provided on the driveway.

Dixie West, 1014 Houston Street, asked for clarification on the proposed parking. Johnson explained the site plan and clarified the location of the driveway.

West then asked about the design standards for the TNO District. Johnson said that the front of the structure would face 11<sup>th</sup> Street. Bunger said that the front porch guidelines under the TNO are suggestions and are not a requirement.

Ben Nyberg, 1027 Houston Street, expressed his concerns with the design of the property. Johnson explained the design guidelines for the TNO District.

Nyberg asked about the status of the historical environs law and if the city had any regulations regarding historical properties. Johnson said that the environs law was repealed and that the city currently does not have any similar regulations.

Sherley said that he was aware of the TNO regulations and had discussed them with Mr. Bunger and Mr. Johnson. He then said that he wouldn't build anything that is out of context with the neighborhood.

Nyberg expressed his concerns with the lack of assurance in the design of the proposed single-family home.

Ketty Reppert, 113 S. 11<sup>th</sup> Street, asked about the potential for a parking lot to be built on the subject site. Johnson said that any parking would have to comply with the city's parking configuration standards.

Reppert then said that the construction dates stated in the state report were inaccurate.

West said that the dates stated were inaccurate and then explained her thoughts on the

historical background.

Allison King, 1024 Houston Street, expressed her concerns with the history of the subject site in regards to past building demolitions.

West said that the past house burnt down but she was unaware of what happened to the remaining structure.

Bunger said that any issues with the land or soil will come up during the building permit process.

Lavis closed the public hearing.

Thompson expressed his appreciation for the comments by the neighboring property owners and said that several of the concerns are addressed during the building permit process and not during the Board of Zoning Appeals meetings.

Danner said that she appreciated the comments by the neighboring property owners and she could support the application.

The Board made the following findings of fact for the Variance at 1030 Houston Street

**PRESENT USE:** Residential vacant lot

**CONDITIONS UNIQUE TO THE PROPERTY:** Lot 376 of Ward 5 is a corner lot, which has been separated by deed into two sections, the north 50-feet and the south 100-feet. 1030 Houston Street. is the address for the south 100-feet of the lot, and is the location for a proposed single-family dwelling unit. Originally, Lot 376 was a 50-ft. by 150-ft. lot. According to Riley County Register of Deeds office, the north portion of the lot addressed 113 S. 11<sup>th</sup> Street, was established in 1915, prior to adoption of Zoning Regulations, which established minimum lot size.

According to Riley County Appraiser records, the most recent house located on the south portion of the lot was constructed around 1949 while the existing house on the north portion of the lot was constructed around 1959. According to the Appraiser's records, the previous house

at 1030 Houston Street was utilized as a multi-family dwelling until 1981, at which point it became damaged and was subsequently torn down and removed. Since removal of the previous house, the south portion of the lot has remained vacant.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Adjacent properties to the north, east, south, and west are currently zoned R-1, Single-Family Residential with TNO, Traditional Neighborhood Overlay District. Property further to the north is zoned C-1, Restricted Business District. 11<sup>th</sup> Street borders the property along the west, while Houston Street borders along the south. The minimum eight (8) foot side yard and twenty-five (25) foot rear yard setbacks will be met, which will ensure light and open space is maintained to neighboring properties to the east and north. Minimal impact is expected on adjacent properties and streets.

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

The existing lot size is a condition created by previous owners of the property and is not a condition created by the applicant. The south 100 feet of Lot 376 is an existing nonconforming lot. The south 100 feet of Lot 376 has remained vacant since approximately 1981. A single-family dwelling could not be built on the lot without attaining a Variance to the minimum lot area.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed reduction in lot area will allow a vacant lot to be used for a single-family dwelling unit, which is compatible with the surrounding neighborhood. The side and rear yard setbacks will be retained providing adequate light and space to neighboring properties. The proposed Variance is not anticipated to have an adverse affect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

**RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the regulations regarding minimum lot size is to reduce densities and to create adequate open space between properties. The subject property meets the intent of the regulations even though minimum lot area is less than required. The south 100 feet of Lot 376 has historically had a dwelling unit on the reduced lot area. The design of the dwelling unit meets the site design requirements of the TNO District and will be required to meet the building design standards. The applicant does not have building elevations available at this time but will be required before a building permit

is issued.

Thompson made a motion made a motion to approve a Variance under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required lot area from 6,500 square feet to 5,000 square feet for a new proposed single-family residential building located in the R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay District with the following conditions:

1. Companion Exceptions shall be approved.
2. The Variance shall be limited to a single-family dwelling unit as proposed in the site plan and application documents.
3. All applicable permits shall be obtained.

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

The Board made the following findings of fact for the Exceptions at 1030 Houston Street

**PRESENT USE:** Residential vacant lot

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The south 100-feet of Lot 376 of Ward 5 is currently nonconforming in lot size. The applicants have concurrently applied for a Variance to reduce the minimum lot area for a single-family dwelling. The property complies with all applicable requirements of these regulations, other than the ones for which the Exceptions and Variance are being requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Adjacent properties to the north, east, south, and west are currently zoned R-1, Single-Family Residential with TNO, Traditional Neighborhood Overlay District. Property further to the north is zoned C-1, Restricted Business District. 11<sup>th</sup> Street borders the property along the west, while Houston Street borders along the south. The side and rear yard setbacks are proposed to be retained, which will ensure that light and open space are maintained to neighboring properties to the east and north. The request for an increase in lot coverage from 30% to 32% will allow the proposed single-family residential dwelling to be built on the reduced sized lot. Minimal

impact is expected on adjacent properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The Exceptions desired will not encroach upon any utility easements or the vision clearance triangles. The proposed Exceptions will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

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

The south 100-feet of Lot 376 is 5,000 square feet in area, which does not meet the minimum 6,500 square foot minimum requirement for a single-family dwelling. The south 100-feet of Lot 376 is a corner lot with front yard setbacks along 11<sup>th</sup> Street and Houston Street. The two front yard setbacks and reduced lot area present unique challenges to the lot with regards to meeting the maximum lot coverage and front yard setbacks. The south 100-feet of Lot 376 is not accessible from an alley, therefore access to the lot must be made from either Houston Street or 11<sup>th</sup> Street. When all facts and circumstances are considered, requiring strict application of the regulations seems unreasonable.

Danner made a motion to approve EXCEPTIONS under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required fourteen (14) foot front yard setback to twelve (12) feet along 11<sup>th</sup> Street; and to allow for an increase of the maximum lot coverage from thirty (30%) percent to approximately thirty-two (32%) percent, all for a new proposed single-family residential building located in the R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay District with the following conditions of approval:

1. A companion Variance shall be approved.
2. The Exceptions shall be limited to a single-family dwelling unit as proposed in the site plan and application documents.
3. All applicable permits shall be obtained.

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

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A STEALTH MONOPOLE TELECOMMUNICATION FACILITY AND ACCESSORY GROUND EQUIPMENT AT 1531 N. 10<sup>TH</sup> STREET, COMMONLY KNOWN AS MANHATTAN COUNTRY CLUB. (APPLICANT: VERIZON WIRELESS REPRESENTED BY SSC OWNER: MANHATTAN COUNTRY CLUB)**

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR AN INCREASE IN THE MAXIMUM HEIGHT FROM FIFTY (50) FEET TO FIFTY-FIVE (55) FEET FOR A STEALTH MONOPOLE TELECOMMUNICATION FACILITY AT 1531 N. 10<sup>TH</sup> STREET, COMMONLY KNOWN AS MANHATTAN COUNTRY CLUB. (APPLICANT: VERIZON WIRELESS REPRESENTED BY SSC OWNER: MANHATTAN COUNTRY CLUB)**

Johnson presented the Conditional Use and Exception staff reports together with recommendation of approval of the items with four (4) conditions for the Conditional Use and three (3) conditions for the Exception.

Danner asked for clarification on the exception request. Johnson explained the exception request.

Lavis opened the public hearing

Justin Anderson, applicant, explained the project and said that he was there to answer any questions.

Lavis closed the public hearing

The Board made the following findings of fact for the Conditional Use at 1531 N. 10<sup>th</sup> Street

**PRESENT USE:** Country Club

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed stealth monopole wireless telecommunication facility and accessory structures comply with the requirements of Article XII, Telecom Structures, except for the proposed increased height of the stealth monopole. A companion Exception has been requested to allow for an increase in the maximum height from fifty (50) feet to fifty-five (55) feet.

The applicant will be required to submit the necessary documentation for the administrative permit required by Article XII prior to the issuance of any building or electrical permits. According to the application materials the proposed stealth monopole will meet the City's Building Code requirements and requirements of Article XII, Telecom Structures. The tower is designed to accommodate one (1) additional wireless service provider for a total of two (2)

providers. Future wireless telecommunication providers locating in the lease area and on the tower will be required to submit a completed administrative permit, as required by Article XII, as well.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed stealth monopole telecommunication facility and accessory structures are to be located in a predominantly residential area that has a few areas of commercial uses. The subject site and the adjacent properties to the west are zoned R, Single Family Residential. Properties adjacent to the south are located in R-1, Single Family Residential. A mix of residential and commercial properties are located to the east and north of the subject property located in the Country Club Estates Residential PUD and C-5, Highway Service Commercial. The majority of the surrounding properties consist of single-family homes.

The subject property is an approximate 146 acre lot with adequate open space and sits at a higher elevation above adjacent properties. The proposed leased area is generally forty (40) feet above the surrounding properties with the exception of one (1) single-family home located directly to the north, which is roughly ten (10) feet below in elevation. The higher elevation acts as a visual barrier from the adjacent properties and helps screen the stealth monopole. In addition to the higher elevation, the proposed telecommunication facility and associated equipment will be screened by a seven (7) foot tall vinyl fence.

According to the application, the fall zone for the stealth monopole is no more than 55 feet. The stealth monopole is approximately 69 feet from the property line to the east and 88 feet from the property line to the south. The closest property to the structure is approximately 206 feet to the southeast, which lies outside of the fall zone.

The applicant held a neighborhood meeting on February 20, 2014 regarding the proposed tower on the subject site. According to the application documents, three (3) property owners attended the meeting, including a representative from the Manhattan Country Club, and there were no complaints regarding the proposal. The proposed stealth monopole and accessory ground structure facility should not adversely affect adjacent properties.

#### **DOMINATION BY USE OVER NEIGHBORING PROPERTIES:**

**1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** The maximum height of a stealth monopole allowed by the Zoning Regulations is 50 feet, not including lightning rods. The height of the proposed stealth monopole is 55 feet. A companion Exception has been requested to allow for an increase in the maximum height from fifty (50) feet to fifty-five (55) feet. According to the application, "This height was determined as a "maximum height" given the exceptional altitude of the location over the surrounding area. This location has also enabled the site to preserve the natural screening from the adjacent properties helping minimize any perceived visual impact". Considering the subject property's high elevation obstructing the view of the telecommunication facility from nearby property owners, the proposed stealth monopole tower should not dominate the surrounding properties.



- 2. LANDSCAPING AND SCREENING:** No landscaping or screening is required in the R, Single-Family Residential District. The applicant has proposed to install a seven (7) foot high vinyl fence surrounding the entire leased area to screen the associated facility equipment. The entrance to the enclosed area will be 12 feet wide with a double swing access gate located on the north side of the lease area.

**ADEQUATE PROVISION OF PARKING AND LOADING:** Section 12-112 (E) requires at least one (1) off-street parking space to be located on the site. The submitted site plan does not show a specific area for an off-street parking space associated with the lease area. The subject site is a large zoning lot with ample parking for service vehicles and other associated equipment. A 20 foot wide utility/access easement is proposed to be dedicated between the property owner and lease holder leading from North 10<sup>th</sup> Street on the west side of the subject site, to the lease area. Adequate space is located immediately in front of the lease area in this utility/access easement to accommodate the parking of vehicles to inspect and service the wireless telecommunication equipment.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Adequate utilities are provided to the subject site. The site drains to the south away from the proposed lease area. An approximate 150 foot long erosion control fence is proposed to be installed and backfilled to create a level surface along the south side of the lease area. In addition, an erosion control plan is included with the proposal (*see drawing C-3*). Other than existing and proposed structures, the majority of the site is open, grassy areas. When all facts are considered, the proposed facility should not adversely affect the stormwater run-off from the site.

**ADEQUATE PROVISION OF ACCESS:** An existing driveway leads from North 10<sup>th</sup> Street on the west side of the subject site to the lease area site. A proposed 20 foot wide utility/access easement between the property owner and the lease holder is to follow this existing driveway leading to the lease area to provide access to the wireless telecommunication facility. Adequate access is provided.

**Whether substantial evidence exists to demonstrate that existing or approved telecom structures or antenna support structures are unsuitable for co-location or to serve the proposed service area:** The applicant has submitted information in the application packet that their client, Verizon Wireless, currently has 12 wireless telecommunication sites in and around the City of Manhattan. The written information states that a new location is needed to offload the Alpha sectors on the existing Manhattan 5 and Manhattan 9 sites located to the southwest and southeast respectively. The applicant's RF Engineer has concluded that because of the subject site's location in relationship to other Verizon Wireless sites and the improvement to the provider's wireless system, this site was the preferable site. The application states that no other site located in the immediate area would be effective in achieving the projects goals.

**Whether the proposed telecom structure(s) has incorporated a reasonable level of stealth design to minimize the visual impact of the telecom structure(s), given the type of**

**telecom structure and the character of the area in which the structure(s) is proposed to be located:** Stealth design is, “A method of designing, constructing, and/or locating any telecom structure to blend in with the character and environment of the area in which it is located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles of Article XII, Section 12-114.” Given the 55 foot monopole incorporates stealth design features by locating all antennas and cables inside a canister tower, and the elevation of the subject property compared to other adjacent properties, the proposed telecom structure has incorporated a sufficient amount of stealth design in the proposal.

Thompson made a motion to approve a CONDITIONAL USE under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a stealth monopole telecommunication facility and accessory ground equipment at 1531 N. 10<sup>th</sup> Street, commonly known as Manhattan Country Club, with the following conditions of approval:

1. The site shall be developed as proposed in the site plan and application documents and shall be maintained in good condition.
2. The Exception to allow for an increase in the maximum height from fifty (50) feet to fifty-five (55) feet shall be approved.
3. All applicable permits shall be obtained.
4. An administrative permit for a telecom structure shall be approved prior to the construction of the proposed telecommunication tower and before each additional telecommunication provider’s equipment is installed.

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

The Board made the following findings of fact for the Exception at 1531 N. 10<sup>th</sup> Street

**PRESENT USE:** Country Club

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed wireless telecommunication tower and accessory structures comply with the requirements of Article XII, Telecom Structures, except for the proposed increased height of the stealth monopole, which is what the Exception request is for. A companion Conditional Use has been applied for to construct the proposed stealth monopole facility on the subject site.

The applicant will be required to submit the necessary documentation for the administrative permit required by Article XII prior to the issuance of any building or electrical permits. Future wireless telecommunication providers locating in the lease area and on the tower will be required to submit a completed administrative permit, as required by Article XII, as well.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed stealth monopole telecommunication facility and accessory structures are to be located in a predominantly residential area that has a few areas of commercial uses. The subject site and the adjacent properties to the west are zoned R, Single Family Residential. Properties adjacent to the south are located in R-1, Single Family Residential. A mix of residential and commercial properties

are located to the east and north of the subject property located in the Country Club Estates Residential PUD and C-5, Highway Service Commercial. The majority of the surrounding properties consist of single-family homes.

The subject property is an approximate 146 acre lot with adequate open space and sits at a higher elevation above adjacent properties. The proposed leased area is generally forty (40) feet above the surrounding properties with the exception of one (1) single-family home located directly to the north, which is roughly ten (10) feet below in elevation. The higher elevation acts as a visual barrier from the adjacent properties and helps screen the stealth monopole. In addition to the higher elevation, the proposed telecommunication facility and associated equipment will be screened by a seven (7) foot tall vinyl fence.

According to the application, the fall zone for the stealth monopole is no more than 55 feet. The stealth monopole is approximately 69 feet from the property line to the east and 88 feet from the property line to the south. The closest property to the structure is approximately 206 feet to the southeast, which lies outside of the fall zone.

The applicant held a neighborhood meeting on February 20, 2014 regarding the proposed tower on the subject site. According to the application documents, three (3) property owners attended the meeting, including a representative from the Manhattan Country Club, and there were no complaints regarding the proposal. The proposed stealth monopole and accessory ground structure facility should not adversely affect adjacent properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed telecommunication facility should not impact the public's health, safety or general welfare. The stealth monopole is approximately 69 feet from the property line to the east and 88 feet from the property line to the south. The closest property to the structure is approximately 206 feet to the southeast. In the event of a structural failure or damage from an intense storm event, the surrounding properties are located outside of the fall zone.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the height limitation requirements for wireless telecommunication stealth monopoles would require the applicant to decrease the proposed structure by approximately five (5) feet. The proposed stealth monopole will include a ten (10) foot area for future co-location antennas, which is a requirement for stealth monopoles. The strict application would prevent the stealth monopole structure to include the area for additional antennas. Considering the design of the proposed stealth monopole, the high elevation of the subject property, and that the proposal should not adversely affect adjacent properties, the strict application of the regulations appears to be unreasonable.

**For all exceptions, whether the proposed telecom structure has incorporated a reasonable level of stealth design measures to minimize the adverse visual impact of the telecom structure(s), given the character of the telecom structure and the area in which the telecom structure(s) is proposed to be located:** Stealth design is, "A method of

designing, constructing, and/or locating any telecom structure to blend in with the character and environment of the area in which it is located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles of Article XII, Section 12-114.” Given the 55 foot monopole does incorporate stealth design features by locating all antennas and cables inside a canister tower and the elevation of the subject property that the monopole is proposed to be constructed on compared to other adjacent properties, the proposed telecom structure has incorporated a sufficient amount of stealth design in the proposal.

**In the case of a request for an exception of the height limit, that the exception is necessary to do the following:**

**(a) To facilitate co-location of other providers in order to avoid construction of a new tower; or,** The proposed stealth monopole telecommunication facility will include a ten (10) foot area for future co-location antennas, which is a requirement under Section 12-111 (C) for stealth monopoles. In order to facilitate the co-location of other providers, the stealth monopole will need to extend above the maximum height of fifty (50) feet to fifty-five (55).

**(b) To meet the coverage requirements of the applicant’s personal wireless telecommunications system:** not applicable

Danner made a motion to approve made a motion to approve an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for an increase in the maximum height from fifty (50) feet to fifty-five (55) feet for a stealth monopole telecommunication facility at 1531 N. 10<sup>th</sup> Street, commonly known as Manhattan Country Club, with the following conditions of approval:

1. The Exception shall be limited to the proposed stealth monopole as shown on the site plan and outlined in the application documents.
2. The Conditional Use for the proposed wireless telecommunication tower and accessory structures shall be approved.
3. All permits shall be granted prior to construction.

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

Respectfully submitted by

Chase Johnson, Planner