

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, August 13, 2014
7:00 PM

MEMBERS PRESENT: Connie Hamilton, Vice Chairperson; Angie Danner; Catherine Lavis

MEMBERS ABSENT: Harry Hardy, Chairperson; Ray Thompson

STAFF PRESENT: Chase Johnson, Planner

CONSIDER THE MINUTES OF THE JULY 9, 2014, BOARD OF ZONING APPEALS MEETING.

Lavis moved to approve the July 9, 2014 minutes which was seconded by Danner and passed with a vote of (3-0).

TABLE THE PUBLIC HEARING FOR AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO TWELVE (12) FEET FOR A PROPOSED FENCE ALONG LEONE CIRCLE IN THE R/AO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH AIRPORT OVERLAY.

Danner moved that the Board table the public hearing which was seconded by Lavis and passed with a vote of (3-0).

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR THE MODIFICATION OF A LEGALLY NON-CONFORMING THREE (3) UNIT RESIDENTIAL BUILDING; AND FOR EXCEPTIONS TO ALLOW FOR A REDUCTION OF THE REQUIRED NUMBER OF OFF-STREET PARKING SPACES FROM EIGHT (8) PARKING SPACES TO SIX (6) PARKING SPACES; AND TO ALLOW FOR 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; AND TO ALLOW FOR A DRIVEWAY GREATER THAN TEN (10) FEET IN WIDTH; AND TO ALLOW FOR MORE THAN ONE (1) CURB CUT FOR A SINGLE LOT ALL ASSOCIATED WITH A PROPOSED PARKING ADDITION LOCATED AT 330 N. 17TH STREET, IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH A TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT / OWNER: LARRY AND MARILYN FOX)

Johnson presented the staff report with the recommendation of denial.

Hamilton asked if the property currently has eight (8) valid parking spaces and if the conditional use permit is granted, it would force the property to be brought up to standards which would not allow driveway parking and that the property owner is asking for that requirement to be reduced to six (6) spaces.

Johnson answered under current regulations, tenants living on properties with up to two (2) units can park on the driveway but properties with three (3) or more units prohibit parking on the yard and/or driveway and parking is limited to areas behind the building.

Hamilton opened the public hearing.

Marilyn Fox, the applicant and property owner, addressed the Board and explained the property's history and the conditions.

Larry Fox, the applicant and property owner, addressed the Board and explained the parking situation and desired improvements. Fox stated that the site currently only has four (4) legal parking spaces rather than eight (8) and wish to increase the legal parking spaces to six (6).

Hamilton and Johnson clarified why there are technically eight (8) legally nonconforming parking spots on the property.

Fox decided to table the item for the next meeting, September 10, 2014.

John Pence, 2361 Grandview Terrace, stated that he attended the neighborhood meeting which had little opposition to the proposal. He asked why cars could not be parked on a driveway on a property with more than three (3) or more units and if this ordinance could be changed for the 2025 comprehensive plan update.

Hamilton explained that the Board of Zoning Appeals does not have the power to change the zoning ordinance and changes must be passed by the Planning Board and the City Commission.

Lavis motioned that the Board table the item for a Conditional Use and Exceptions at 330 N. 17th Street.

Danner seconded the motioned which passed with a vote of (3-0).

A PUBLIC HEARING TO CONSIDER A VARIANCE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR A PROPOSED SIGN ASSOCIATED WITH AN EXISTING BUSINESS TO BE LOCATED WITHIN THE VISION CLEARANCE TRIANGLE CREATED BY THE INTERSECTION OF POYNTZ AVENUE AND 9TH STREET LOCATED AT 830 POYNTZ AVENUE, IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT / OWNER: MIKE HAMLER)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SETBACK FROM TEN (10) FEET TO FIVE (5) FEET ALONG POYNTZ AVENUE AND ALONG 9TH STREET FOR A PROPOSED SIGN ASSOCIATED WITH AN EXISTING BUSINESS LOCATED AT 830 POYNTZ AVENUE, IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT / OWNER: MIKE HAMLER)

Johnson presented the staff report for the two (2) items together and recommended approval for the Exception but denial for the Variance.

Hamilton asked if the vision triangle was for the both sidewalk and street traffic.

Johnson answered that it was but primarily for the sidewalks. Johnson also elaborated that there are other alternative locations to place the sign rather than on the proposed location. The applicant also has the option to place a sign on each street front.

Hamilton opened the public hearing.

Tim Weixelmen, local resident at 112 N. 9th St., addressed the Board and stated that the applicant already has signs on every street facing façade and that a sign in the vision triangle could have the potential to negatively affect traffic. Weixelmen also was concerned that if a sign was allowed in the proposed location, if it could later be modified and have a detrimental effect on the area.

Lavis, Hamilton, and Johnson explained that the applicant would be able to modify the sign in compliance with the sign regulations but cannot expand the size without another permit. Hamilton also stated that the Board could place a condition for the Variance that the sign must be built as proposed and if it is not, then it would be in violation.

Hamilton closed the public hearing.

Hamilton stated that the case does not present an unnecessary hardship standard for a Variance since there are other locations on the site to place signs.

The Board made the following findings of fact for the Variance at 830 Poyntz Avenue:

PRESENT USE: Professional Doctors Office

CONDITIONS UNIQUE TO THE PROPERTY: According to the Riley County Appraiser's Office, the principal structure was built in 1922, prior to the adoption of Zoning Regulations in the City of Manhattan. In 1969, the subject site and surrounding properties along Poyntz Avenue were rezoned to C-1, Restricted Business District. The subject site is currently 7,500 square feet in area, which is significantly smaller than the current required minimum lot area of 15,000 square feet for the C-1, Restricted Business District. The limited space available for

the subject site could be seen as a unique condition. Although the lot size was not created by the applicant, the property itself is not unique to the surrounding area or other properties zoned C-1, Restricted Business District. Traditional ward lots with 7,500 square feet of area are not uncommon in the C-1, Restricted Business District. There are several other properties along Poyntz Avenue that are occupied by similar businesses with limited space due to higher lot coverage.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties along Poyntz Avenue are zoned C-1, Restricted Business District. To the north of the alley are properties zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of residential, commercial and institutional uses. Immediately to the west and north of the site are commercial office buildings and residential uses. To the east is a commercial office building and associated off-street parking lot. To the south of Poyntz Avenue are the Manhattan High School East Campus facility and its affiliated parking, as well as commercial office buildings.

Minimal adverse impact is expected on adjacent properties by granting the Variance. The proposed sign would encroach approximately five (5) feet into the fifteen (15) foot vision clearance triangle at the corner of Poyntz Avenue and 9th Street. The mature trees located to the west and east of the proposed sign location act as a visual buffer for the proposed location of the sign. Furthermore when accounting for the size of the proposed sign, adverse impacts on adjacent properties seems to be limited.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The strict application of the regulations would not allow for the sign to be located within the Vision Clearance Triangle. There appears to be no physical constraints of the subject site that would prevent the sign to be located outside of the Vision Clearance Triangle and still accomplish its objective. The applicant could still locate the hanging sign outside of the Vision Clearance Triangle along either Poyntz or 9th Street with approval of the Exception of the required setbacks. The proposed sign would still be visible from Poyntz Avenue and possibly more observable located farther from the large mature tree located to the west of the subject property. Therefore, the strict application of the regulations is not a hardship to the applicant.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Granting the proposed Variance would have no negative impact on the public health, safety, morals, order, convenience, prosperity, or general welfare. The proposed sign would not encroach into any easements or public rights of way. The proposal was reviewed by the City Engineer to determine whether or not the encroachment would adversely affect the safe movement of traffic at that intersection. The City Engineer determined that it would not adversely affect the safe movement of traffic. Upon City Administration review, it was determined that the encroachment into the vision clearance triangle would not impede visibility of the roads in any direction for drivers or pedestrians. The application documents include renderings of the proposed sign location that reflect these determinations.

RELATIONSHIP TO INTENT OF REGULATIONS: The intent of the vision clearance triangle regulation is to ensure that site line of drivers and pedestrians is not compromised along streets and sidewalks to utilize them safely. City Administration determined that the location of the proposed sign would not adversely affect the safe movement of traffic at the intersection of Poyntz Avenue and 9th Street due to its size and existing landscape. The proposed Variance meets the intent of the vision clearance triangle regulation.

Danner motioned that the Board deny the Variance to place a sign in the vision clearance triangle at 830 Poyntz Ave.

Lavis seconded the motion which passed with a vote of (3-0).

The Board made the following findings of fact for the Exception at 830 Poyntz Avenue:

PRESENT USE: Professional Doctors Office

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the Riley County Appraiser's Office, the principal structure was built in 1922, prior to the adoption of Zoning Regulations in the City of Manhattan. The front yard setback requirement of twenty-five (25) feet for structures in the "A" First Dwelling House District—the Zoning District in which the subject site was then located—was established with the initial Zoning Regulation Ordinance in 1926, thus creating the nonconforming setback conditions. In 1969, the subject site and surrounding properties along Poyntz Avenue were rezoned to C-1, Restricted Business District. A Variance was approved in 1979 for the reduction of the required setback along the south property line for a ground sign associated with the Free Methodist Church facility. An additional Variance for the reduction of the front yard setback along 9th Street was approved for the parking lot addition located to the north of the subject property.

The location of the proposed sign is located within the Vision Clearance Triangle created by the intersection of Poyntz Avenue and 9th Street. The applicants have concurrently applied for a Variance to locate the sign within the Vision Clearance Triangle. 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: The subject site and surrounding properties along Poyntz Avenue are zoned C-1, Restricted Business District. To the north of the alley are properties zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. The area is a mix of residential, commercial and institutional uses. Immediately to the west and north of the site are commercial office buildings and residential uses. To the east is a commercial office building and associated off-street parking lot. To the south of Poyntz Avenue are the Manhattan High School East Campus facility and its affiliated parking as well as commercial office buildings.

Minimal adverse impact is expected on adjacent properties. The sign will be located approximately five (5) feet from both the property lines along Poyntz Avenue and 9th Street.

There are several signs along Poyntz Avenue that are located within the required setback, including the property to the direct west of the subject site. In addition, the streetscape along both Poyntz Avenue and 9th Street acts as a visual buffer for the proposed location of the sign. This buffer includes mature trees located to the west and east of the proposed sign location and various landscaping associated with the subject site.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed sign does not encroach into any easements or public rights of way. The proposed sign does however encroach into the vision clearance triangle created by the sidewalk at the corner of Poyntz Avenue and 9th Street. The applicant is seeking a companion Variance at this time to address that encroachment. The proposed sign would encroach approximately five (5) feet into the fifteen (15) foot vision clearance triangle at the corner of Poyntz Avenue and 9th Street. The proposal was reviewed by the City Engineer to determine whether or not the encroachment would adversely affect the safe movement of traffic at that intersection. The City Engineer determined that it would not adversely affect the safe movement of traffic. Granting the proposed Exception will have no negative impact on the public health, safety, morals, order, convenience, prosperity, or general welfare, regardless of whether the companion Variance is approved.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the required sign setback regulations would be unreasonable in this case. If strict application was applied in this case, the hanging sign would have to abut the existing structure due to the buildings location of fourteen (14) feet from the south property line. The sign measures approximately four (4) feet long from edge to edge which would allow for compliance with the required ten (10) foot setback. The proposed sign could be located along 9th Street to allow separation from the front façade of the building, although the sign would still be encroaching into the required setback along the west property line. Similar setback issues would originate by locating the sign along the east property line. The applicant's options seem to be limited when looking at the location of the proposed sign.

Lavis motioned that the Board approve the Exception under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required setback from ten (10) feet to five (5) feet along Poyntz Avenue and along 9th Street for a proposed sign associated with an existing business in the C-1, Restricted Business District with the following conditions:

1. The Exception shall apply for the sign outline in the staff report and shown on the site plan.
2. City Administration approves the revised site plan with the proposed sign located outside of the Vision Clearance Triangle.
3. All applicable permits shall be obtained.

Danner seconded the motion which passed with a vote of (3-0).

A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO APPROXIMATELY TWENTY-TWO (22) FEET FOR AN EXISTING RESTAURANT LOCATED AT 901 N. 3RD STREET, IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT. (APPLICANT: SCHWAB EATON, P.A / OWNER: RAJEEV JAIN & DIMPLE JAIN)

Johnson presented the staff report with the recommendation of approval with one (1) condition.

Hamilton opened the public hearing.

Dan Manly, representing the owners and Schwab Eaton, explained that there was an error in construction and the owners are taking steps to bring the development into compliance.

Hamilton closed the public hearing.

The Board made the following findings of fact for the Exception at 901 3rd St:

PRESENT USE: Kentucky Fried Chicken Restaurant with drive-thru

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other than the Exception request, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned C-5, Highway Service Commercial District. The area is comprised of primarily commercial uses with residential uses to the direct west that are zoned R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay. Properties to the southwest of the subject property are zoned R-2, Two-Family Residential District with a Traditional Neighborhood Overlay. The area is a mix of commercial properties including small retail, drive-thru restaurants, and residences that are mainly single-family dwellings with a blend of owner-occupied and non owner-occupied units.

The location of the existing front façade eave does not appear to be out of character with the surrounding neighborhood in terms of location along N. 3rd Street. Several of the commercial buildings in the immediate area appear to encroach into the required front yard setback. The property to the direct east, across N. 3rd Street, is approximately seven (7) feet from that front property line and properties further to the north appear to have even shorter front yard setbacks. It appears that the adjacent property owners are not adversely impacted by the existing front façade eave encroaching into the N. 3rd Street front yard setback.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE,

PROSPERITY, OR GENERAL WELFARE: Minimal adverse effects on the general health, safety or welfare of the public are anticipated. There are no proposed additions to the property and the exception request is for the existing restaurant in response to the replat of the K.F.C. Addition.

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

The strict application of the front yard setback regulation would require that a portion of the existing restaurant be removed or altered so that it is in compliance with the regulations. The structure would need to be moved approximately thirty (30) inches to the west to be located outside of the minimum twenty-five (25) foot front yard setback. Although a portion of the restaurant was constructed in the required setback, it would be unreasonable to require it to be removed or altered under the circumstances. Because the structure has minimal impact on adjacent properties and public health, safety and general welfare, strict application of the regulations seems to be unreasonable.

Lavis motioned that the Board approve the Exception under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to approximately twenty-two (22) feet for an existing restaurant located at 901 N. 3rd St. in the C-5, Highway Service Commercial District with the one condition:

1. The Exception shall be limited to the existing restaurant as outlined in the application documents and shown on the applicant's site plan.

Danner seconded the motion which passed with a vote of (3-0).

A PUBLIC HEARING TO CONSIDER AN EXCEPTION 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 TEN (10) FEET FOR A PROPOSED FENCE ALONG YUMA STREET LOCATED AT 420 S. JULIETTE AVENUE, IN THE R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT WITH A TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT / OWNER: THOMAS AND VALERIE BECKER)

Johnson presented the staff report with the recommendation of approval with four (4) conditions.

Hamilton asked if the fences cited in the presentation have been approved by the Board.

Johnson explained that some of the fences on nearby properties are legally nonconforming while others are not, but were grandfathered in with the zoning changes.

Hamilton asked about a nearby property that was granted an Exception in 2008.

Johnson stated that he believed the property was at the corner of Pierre and 8th streets with an exception being granted for the construction of a fence in the setback of the secondary front yard.

Hamilton opened the public hearing.

Tanya Bachamp, local resident at 403 S. Juliette, spoke in support of the fence and believed that the fence will enhance the neighborhood. Bachamp asked for clarification about the conditions attached to the Exception.

Hamilton and Johnson explained the conditions attached to the Exception.

Hamilton closed the public hearing.

Hamilton discussed how the Board handles many fences in front yards that function as side yards and the site conditions.

The Board made the following finds of fact for the Exception at 420 S. Juliette Avenue:

PRESENT USE: Single-Family Residence.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the site plan the proposed fence is located approximately seven (7) feet within the vision clearance triangle. City Administration is recommending a condition to address this issue. In addition, the subject site is legally non-conforming in regards to the existing lot depth zoning requirements of one-hundred (100) feet and the restrictions of one (1) curb cut per zoning lot for the R-2/TNO, Two-Family Residential District with a Traditional Neighborhood Overlay District. The subject sites' lot depth measures approximately seventy-six (76) feet, which was in compliance with the zoning regulations at the time the structure was originally built in 1920. Additionally, the number of curb cuts complied with the zoning regulations at the time. Other than the aforementioned and for which the Exception is being requested, the property complies with all applicable requirements of these regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties located directly to the west are located in the R-2/TNO, Two-Family Residential with Traditional Neighborhood Overlay District. Properties east across Juliette are zoned R-M/TNO, Four-Family Residential with Traditional Neighborhood Overlay District. Property further to the north is zoned R-1/TNO, Single-Family Residential with Traditional Neighborhood Overlay District. The area is a mix of single-family, two-family and three-family dwellings, with a combination of owner-occupied and rental units.

Although the area where the fence is proposed to be located is technically the front yard along Yuma Street, it functions as a side yard. Several properties in the surrounding neighborhood

have fences in similar locations in the secondary front yard. These include properties off of 9th Street and properties off of Pierre Street. An Exception was approved for a similar request in 2008 for a corner lot to the northeast of the subject site.

The adjacent property owner that will be most impacted by the proposed fence is the neighbor to the west. The adjacent property to the west is a large lot, totaling approximately 16,000 square feet in area. The residential structure is setback approximately eighty (80) feet from the closest point of the proposed fence. The distance and amount of open space between the fence and adjacent property should help alleviate any substantial adverse impacts. In addition, impacts to other properties in the area should be minimal. There are several residential structures along Yuma Street that encroach into the required fourteen (14) foot front yard setback, although these properties are legally nonconforming. The approval of the Exception should not cause a substantial adverse affect of the setback line along Yuma Street. The property directly south of the subject site, across Yuma Street, is located approximately eighty-three (83) feet from the proposed location of the fence. An additional setback of four (4) feet would be negligible in terms of the visual appearance of distance.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The Exceptions desired will not encroach upon any utility or drainage easements located within the subject site. However, the subject site has three (3) vision clearance triangles created by the two (2) driveways and the intersection of Juliette Avenue and Yuma Street. The proposed location of the fence is located approximately seven (7) feet within the vision clearance triangle created by the intersection of the two streets. If a condition is made to locate the fence outside of the vision triangle, the granting of the Exception should not have an adverse effect on 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 strict application of the front yard setback would require that the proposed fence be located a minimum of fourteen (14) feet from the property line along Yuma Street. Due to the location of the home on the subject site and the nonconforming lot depth, there is limited yard area available for the property. The fence in its proposed location within the fourteen (14) front yard setback minus the area located within the vision triangle provides for an area of approximately 1,373 square feet of enclosed yard. The proposed fence adjusted to the minimum fourteen (14) foot front yard setback along the south property line, would provide an area of approximately 1,101 square feet. Due to the driveway location on the north side of the subject site, alternative options to enclose open yard space seem to be limited to the applicant.

Considering these factors and that the proposed fence should not adversely impact the adjacent properties or the general public, it appears that the strict application of the front yard setback regulation is unreasonable.

Danner motioned that the Board approve the Exception to allow for the reduction of the

minimum required fourteen (14) foot front yard setback to ten (10) feet for a proposed fence along Yuma Street in the R-2/TNO, Two-Family Residential District with a Traditional Neighborhood Overlay District, with the following conditions:

1. The Exception shall be limited to the proposed fence
2. The proposed fence shall be maintained in good condition.
3. The proposed fence shall be constructed as outlined in the application materials, staff report and adjusted site plan.
4. The proposed fence shall be constructed outside of the ten (30) foot vision clearance triangle created by the intersection of Juliette Avenue and Yuma Street.

Lavis seconded the motion which passed with a vote of (3-0).

A PUBLIC HEARING TO CONSIDER EXCEPTIONS UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW A DRIVEWAY TO BE GREATER THAN TWENTY-FOUR (24) FEET IN WIDTH AND TO REDUCE THE MINIMUM LANDSCAPED OPEN AREA REQUIRED IN THE FRONT YARD FROM SEVENTY-FIVE (75%) PERCENT TO APPROXIMATELY SIXTY-FIVE (65%) PERCENT FOR A PROPOSED ADDITION TO THE PAVED DRIVEWAY; AND FOR A REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO APPROXIMATELY TWENTY-FOUR (24) FEET FOR THE EXISTING SINGLE-FAMILY HOUSE; AND FOR A REDUCTION OF THE MINIMUM REQUIRED REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO APPROXIMATELY EIGHTEEN (18) FEET FOR AN EXISTING DECK; AND FOR A REDUCTION OF THE MINIMUM REQUIRED REAR YARD SETBACK FROM FIVE (5) FEET TO APPROXIMATELY TWO (2) FEET FOR AN ACCESSORY STRUCTURE ALL FOR AN EXISTING SINGLE-FAMILY DWELLING LOCATED AT 1514 JARVIS DRIVE, IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT / OWNER: SHARON LOWER)

Johnson presented the staff report with the recommendation of denial of the Exception to reduce the minimum landscaped open area but recommended approval of the remaining three (3) Exceptions with one (1) condition.

Hamilton asked about an area east of the front façade.

Johnson clarified the language used in the staff report and the location of the east façade.

Hamilton opened the public hearing.

Sharon Lower, the applicant, addressed the Board and elaborated on the design/expansion proposal.

Lavis asked for the applicant to elaborate on the cinder block retaining wall located near the north property line.

Lower explained the wall's location and function as well as some additional site details including that they are only asking for an additional forty (40) inches to provide more space for parking but have no plans to alter the retaining wall.

Hamilton asked if the applicant wants to expand the driveway to provide parking space for additional vehicles.

Lower explained that they can currently park three (3) vehicles on the driveway but are very crowded. The additional forty (40) inches will provide more space to space vehicles more comfortably from each other. Lower also explained the paving to the north of the structure will be used as a patio space rather than for parking.

Brad DeBey, local resident at 1551 Jarvis Drive, addressed the Board and discussed how changes could have a strong impact on the area since lots are small. DeBey believes that the driveway on the property is already wide enough and if the Exception is granted, it will set a precedent for other properties to follow.

James Tubach, local resident at 1538 Jarvis Drive, addressed the Board and discussed how busy the street and how there are already too many vehicles. Tubach stated his disapproval of a driveway expansion if it already accommodates two (2) vehicles.

Miriam Clark, local resident at 1524 Harry and property owner at 1508 Harry, stated her disapproval of the driveway expansion because she believes that it alters the character of the neighborhood in a negative manner.

Hamilton closed the public hearing.

Danner stated how the existing two (2) feet allow for sufficient space to expand while going any farther may jeopardize the character of the neighborhood.

The Board made the following findings of fact for the Exception at 1514 Jarvis Drive:

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The Kershaw Heights Addition was platted in 1953 and according to the Riley County Appraisers' Office the house was built in 1955. Currently, the required minimum lot depth for the R-1, Single-Family Residential District is one-hundred (100) feet. The subject site was platted before the current regulations were adopted, thus creating the non-conforming condition of lot depth. The subject site complies with all other applicable regulations, other than for what the Exception requests are for.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-1, Single-Family Residential District. The neighborhood is a combination of single-family and two-family residential dwellings with a mix of owner-

occupied and rental units. There appears to be a few properties within the general neighborhood that contain driveways greater than twenty-four (24) feet in width. All of these properties are nonconforming but it is unknown at this time if these driveways are legally nonconforming. The adjacent property owner that will be most impacted by the proposed fence is the neighbor to the north. The location and size of additional driveway will likely increase the amount of cars parking in close proximity to the neighboring property reducing the amount of perceived open space. The zoning regulations limit driveway widths to twenty-four (24) feet in the area located in front of the front façade but allows for greater widths behind the front façade. Although the driveway can be expanded past twenty-four (24) feet to the east of the front façade of the subject property, increasing the availability of parking space, the addition of paved driveway as proposed may adversely impact adjacent properties.

In regards to the Exception to the front yard setback, the existing house has been in its location and a part of the neighborhood since 1955 without any known complaints. It is apparent that the location of the house has not impacted adjacent properties. Adverse impacts by approving the Exceptions to the rear yard setbacks for the existing deck and storage shed appear to be minimal. According to the Riley County Appraisers' Office, the attached deck was built in 1993 but no building permit could be obtained. It is unknown when the storage shed was built because sheds less than two-hundred (200) square feet do not require a building permit, although zoning requirements must still be met. Storage sheds are considered accessory structures and are required to be setback a minimum of five (5) feet from the rear property line. Neither one of these structures appears to have conformed to the Zoning Regulations at the time. However, the fence located along the east property line provides screening for both of the structures reducing any impacts to the adjacent properties to the east. In addition, there have not been any known complaints about the encroachments into the rear yard setbacks.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: An eight (8) foot utility easement is located along the east property line. The fence and storage shed appear to be located within the existing easement. The property owners need to be aware that if access to the utility easement is required and the shed or fence must be removed, the cost of replacing the fence will be the responsibility of the property owners. Due to the parking history associated with the area, City Administration feels that the approval of the Exception for the driveway may set a precedent for future requests, thus adversely affecting the order along Jarvis Drive and the residential character of the neighborhood.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the regulations would require the proposed driveway to be no more than twenty-four (24) feet in width. There appears to be a reasonable alternative that would allow the property to meet the strict application of these regulations. Currently, the driveway is twenty-two (22) feet in width which allows for a two (2) foot expansion of the driveway under the current zoning regulations. In addition, according to the site plan the area proposed to be expanded that is located to the east of the front façade measures thirty (30) feet long and fourteen (14) feet wide. The added paved area would be sufficient for additional parking on the subject site.

Considering these factors and that the proposed addition to the driveway may impact adjacent properties or the general order of the neighborhood, strict application of the regulations appears to be reasonable.

Danner motioned that the Board deny the EXCEPTION to allow a driveway to be greater than twenty-four (24) feet in width and to reduce the minimum landscaped open area required in the front yard from seventy-five (75%) percent to approximately sixty-five (65%) percent for a proposed addition to the paved driveway; and approve the EXCEPTIONS for a reduction of the minimum required front yard setback from twenty-five (25) feet to approximately twenty-four (24) feet for the existing single-family house; and for a reduction of the minimum required rear yard setback from twenty-five (25) feet to approximately eighteen (18) feet for an existing deck; and for a reduction of the minimum required rear yard setback from five (5) feet to approximately two (2) feet for an accessory structure all for an existing single-family dwelling located in the R-1, Single-Family Residential District with the following conditions of approval:

1. The Exceptions shall be limited to the existing single-family home and accessory structures as outlined in the staff report and shown on the applicant's site plan.

Lavis seconded the motion which passed with a vote of (3-0).

A PUBLIC HEARING TO CONSIDER EXCEPTIONS UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO APPROXIMATELY TWENTY (20) FEET FOR A PROPOSED ATTACHED GARAGE ADDITION; AND TO ALLOW FOR MORE THAN ONE (1) CURB CUT ALL FOR AN EXISTING SINGLE-FAMILY HOME LOCATED AT 1916 & 1920 BLUE HILLS ROAD, IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT / OWNER: ERIC AND JULIA KEEN)

Johnson presented the staff report with the recommendation of approval with three (3) conditions.

Lavis asked if the original driveway needs to be removed.

Johnson stated that it does not because zoning laws allow one (1) curb cut per zoning lot.

Hamilton asked about the language used in the staff report and why the site is being considered one (1) zoning lot.

Johnson explained that the site is two (2) lots in the plat but is technically considered one (1) zoning lot/unit since the applicant owns both lots.

Hamilton opened the public hearing.

Eric Keen, applicant and property owner of 1916 & 1920 Blue Hills Road, addressed the Board and described the design and conditions.

Hamilton asked if the applicant is planning to remove the existing driveway.

Keen answered that there are no plans to remove the existing driveway. Keen also explained that the proposed driveway would be used to access the garage expansion.

Hamilton closed the public hearing.

The Board made the following findings of fact for the Exception at 1916 & 1920 Blue Hills Road:

PRESENT USE: Single-Family House and Vacant Lot

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations, other than for what the Exception requests are for. According to the Riley County Appraiser's Office, the principal structure was built in 1963 as a single-family home the following year after the Keen Addition was plated in 1962. At that time the property was located in the "A" First Dwelling House District, which required a front yard setback of twenty-five (25%) percent of the total lot depth but no more than twenty-five (25) feet. It is presumed that the front yard setback was measured to the foundation of the main portion of the structure, which is approximately twenty-five (25) feet from the front property line, and not the covered front porch. No other information could be obtained but it does not appear to have conformed to the Zoning Regulations at the time. However, the Exception the front yard setback request will bring the house into compliance with the current Zoning Regulations and resolve the nonconformity issue.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R, Single-Family Residential District. The neighborhood is comprised primarily of single-family dwellings with mainly owner-occupied units. Kansas State University Research Park is located to the west of the subject site across Manhattan Avenue and zoned University District.

The proposed attached garage addition should not adversely impact adjacent properties. It appears that several other properties in the area have front yard setbacks similar to the proposed subject site. In addition, the existing attached garage has been in its location and a part of the neighborhood since 1963. It is apparent that the location of the structure has not impacted adjacent properties.

The property impacted the most by the proposed addition is the lot to the northwest across Blue Hills Road. Due to the shape of the lot, the portion of the proposed garage addition that expands the existing footprint is setback approximately twenty-three (23) feet from the west property line. The amount of open space remaining directly across from the adjacent property

should limit any impact of the proposed addition.

In regards to the second curb cut, there are properties in the area that have more than one (1) curb cut along the same street frontage. In addition, the second (2nd) curb cut will be located on a separate lot approximately forty-seven (47) feet, centerline to centerline, from the existing curb cut. The distance of the proposed second (2nd) curb cut is similar to several neighboring properties in the area. The addition of a second curb cut should not have substantial adverse impacts 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 addition would not alter the order of the neighborhood or impact the health, safety and welfare of the general public.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: According to the application documents “moving the garage to conform with the zoning regulations would require that only a two-stall garage be built due to the slope of the site. The garage would also look odd in relation to the existing house”. Under the current zoning regulations two curb cuts are allowed for circle drives provided that there is a minimum street frontage of one-hundred twenty (120) feet along the street in question and at least seventy-five percent (75%) of the front yard area is maintained as landscaped open space. The proposed addition to the subject site complies with these regulations. In addition to these regulations, the City’s engineering standards for circle drives require the two curb cuts to be seventy-five feet (75) from centerline to centerline.

The option of adding a circle drive is available to the applicant by redesigning the driveway, albeit the design of the circle drive would reduce the amount of landscaped open space. The application documents state “My concern with a circle drive of full width is that I'd end up with a lot of concrete in my front drive...”. Additionally, the applicable regulations would only require the removal of the curb cut and not the existing driveway.

Considering these factors and that the proposed addition will not adversely impact adjacent property owners or the general public, the strict application seems unreasonable when all of the facts and circumstances are considered.

Lavis motioned that the Board approve the EXCEPTIONS under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to approximately twenty (20) feet for a proposed attached garage addition; and to allow for more than one (1) curb cut all for an existing single-family home on 1916 & 1920 Bluehills Road in the R, Single-Family Residential District with the following conditions of approval:

1. The Exception request shall be limited to the proposed attached garage and driveway addition as explained in the application and shown on the site plan.

2. The subject site shall be developed as proposed.
3. All applicable permits shall be obtained.

Danner seconded the motion which passed with a vote of (3-0).

Hamilton adjourned the meeting.

Respectfully Submitted by Everett Haynes, Planning Intern