

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, October 14, 2015
7:00 PM

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

MEMBERS ABSENT: LaBarbara Wigfall

STAFF PRESENT: Chase Johnson, Planner

CONSIDER THE MINUTES OF THE SEPTEMBER 9, 2015 BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the September 9, 2015 minutes which was seconded by Danner and passed with a vote of (4-0).

A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED NUMBER OF OFF-STREET PARKING SPACES FROM 338 PARKING SPACES TO 182 PARKING SPACES FOR A PROPOSED EXPANSION TO AN EXISTING CHURCH LOCATED AT 2800 CLAFLIN ROAD, IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: BG CONSULTANTS, INC.-MATTHEW KOHLS / OWNER: UNIVERSITY CHRISTIAN CHURCH-BARRY PARK)

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

Lavis asked Johnson about the slope and floodplain issue on the northwest side of the property. Johnson said it was not a concern, through the building permit process the potential issue would be addressed.

Hardy opened the public hearing.

Barry Park, Owner, 2800 Claflin Road specified that they own the land they intend to use across Browning Avenue.

Hardy closed the public hearing.

Hamilton made a motion to approve EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a reduction in the minimum required number of off-street parking spaces from 338 parking spaces to 182 parking spaces for a proposed expansion to an existing church located at 2800 Claflin Road, in the R-3, Multiple-Family Residential District with the following conditions of approval:

1. The Exception shall be limited to the reduction of the minimum required off-street parking as outlined in the application documents and shown on the applicant's site plan.
2. The parking lease agreement shall be maintained.
3. All applicable permits shall be obtained.

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

The Board made the following findings of fact for the Exception at 2800 Claflin Avenue.

PRESENT USE: University Christian Church

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site and the proposed development comply with all applicable regulations, other than for the Exception request. A Conditional Use was approved in 2009 for a Daycare program provided by University Christian Church. It is city staffs understanding that the proposed church addition does not alter the operations of the daycare program.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties immediately to the north and west are zoned R-3, Multiple-Family Residential District. The properties to east across Browning are zoned PUD, Planned Unit Development (Westport Commons). Properties to the south are zoned C-2, Neighborhood Shopping District and PUD, Planned Unit Development (Westloop Shopping Center). Farther west of the site properties are zoned C-1, Restricted Business District, and R-3, Multiple-Family Residential District. The properties to the north of Beechwood Terrace are zoned R, Single-Family Residential District.

The proposed Exception request is to reduce the minimum required number of off-street parking from 338 parking spaces to 182 parking spaces. The application documents state that "The granting of this exception will not cause a substantial adverse affect on nearby properties as the parking at UCC has been functioning in this manner since the Westport Commons development was constructed. The church has adequate onsite parking for their weekday use (preschool). The adjacent Westport Commons parking is only utilized on Sundays." The 182 parking spaces provided on the church site will accommodate the activities during the weekday. The parking utilized within the Westport Commons PUD is less than 600 feet away from the subject site. The only aspect that prevents the church from allocating the existing utilized parking within the Westport Commons development is the differences in zoning districts. In addition, UCC owns property within the PUD and has parking available for use outside of the separate lease agreement as a property owner. Given that the church has been utilizing the parking within Westport Commons since at least 2013 without any known issues

and that there is adequate parking available to the church, minimal adverse impacts to adjacent properties is anticipated.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Exception request should not affect the public health, safety or welfare. The church has been utilizing the parking within Westport Commons since at least 2013 without any known issues. During Sunday service times current operations include volunteers directing both vehicular traffic and pedestrians as they cross Browning Avenue. Currently, there are public sidewalks along the east side of Browning Avenue connecting to private walkways that serve the patrons parking in the Westport Commons development. The applicant has discussed plans to include a signed crosswalk providing pedestrian connectivity across Browning but no plans have been submitted at this time.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the Parking Regulations would require that the minimum number of parking spaces be provided for the proposed addition. Due to the existing development on the site the church is limited in options to meeting strict application. Since UCC is currently utilizing the existing parking within the Westport Commons development and adequate parking is available for the church, the Exception request is merely related to the differences in zoning districts between the two sites.

Considering these factors and that the Exception request will have a limited impact on the adjacent properties or the general public, the strict application of the minimum required parking seems unreasonable.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, FOR A DRIVE-THRU ASSOCIATED WITH A NEW RESTAURANT LOCATED AT 2707 ANDERSON AVE., IN THE C-2, NEIGHBORHOOD SHOPPING DISTRICT (APPLICANT: BUSHWOOD INVESTMENTS, LLC / OWNER: PHOENIX LAND CO. INC.)

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

Hamilton made a motion to approve the Conditional Use for a drive-thru associated with a new restaurant located at 2707 Anderson Ave., in the C-2, Neighborhood Shopping District with the following conditions:

1. The subject site shall be developed as proposed on the site plan and described in the application documents.

2. The concurrent Exception for the reduction of the front yard setback shall be approved.
3. All applicable permits shall be obtained.

The board made the following findings of fact for the property at 2707 Anderson Avenue.

PRESENT USE: Vacant gas station

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: A concurrent Exception has been requested to allow for the reduction of the minimum required front yard setback to accommodate for three (3) proposed off-street parking spaces located within the required front yard setback. Other than the proposed Conditional Use and Exception requests, the subject site complies with all other applicable regulations.

B. Probable effect on adjacent properties: The area surrounding the subject site is a mix of commercial properties and single-family or two-family residential dwellings. The subject site and properties to the north, south and to the east are zoned C-2, Neighborhood Shopping District. Properties farther to the east are zoned C-1, Restricted Business District with the majority of the uses being professional offices. Farther to the west, towards Seth Child Road, properties are zoned C-2, Neighborhood Shopping District, C-5, Highway Commercial District, R-3, Multi-Family Residential District or located within the Westloop Shopping Center PUD.

No adverse impacts should occur if the proposed conditional use is approved. Anderson Avenue is classified as a minor arterial, according to the City's functional street classification system, which provides for through traffic movement to concentrated areas of activity with or without a median divider and providing access to abutting property subject to necessary control of entrances, exits and curb cuts and protected by stop signs or signals at cross streets and highways. Along the subject site, Anderson Avenue measures approximate sixty (60) feet wide, which consists of four (4) lanes and a designated median turn lane. Several commercial properties along this section of Anderson Avenue include drive-thru's with some being approved conditional uses. These include a number of restaurants and banks located on the north side of Anderson Avenue. Banks and financial institutions, including drive-in types are a permitted use within the C-2 District and do not require a conditional use.

According to the site plan, several improvements are proposed to increase the performance of the internal circulation and access off Anderson Avenue. These include narrowing the existing large curb cuts, one-way circulation patterns throughout the site and corresponding directional signage. With the modifications proposed for the site, there appears to be adequate "stacking" available for the drive-thru without interrupting traffic along Anderson Avenue. The City's Traffic Engineer has reviewed the site layout and approves of the design.

A neighborhood meeting was held on the evening of August 19, 2015 as a part of the conditional use application. No other parties attended the meeting besides the applicants.

C. Domination by use over neighboring properties: The proposed Conditional Use should not dominate over neighboring properties. The restaurant and its drive-thru match the character of other commercial properties along Anderson Avenue to the east and west of subject site.

- 1. Location, nature, and height of physical improvements:** The new restaurant is a single-story restaurant with a drive-thru aisle and window, sited generally in the middle of the lot. The structure is roughly 1,500 square feet in area and is approximately 23 feet tall. A pylon sign is to be located in the northeast corner of the site.
- 2. Landscaping and screening:** Areas along the east, south and west property lines are landscaped areas, primarily with manicured lawns and existing trees along the south property line. Two new trees are proposed to be planted within the existing manicured lawns. An existing chain link fence located towards the south of the site is proposed to be repaired. A trash dumpster and enclosure is located in the southeast corner of the site.

D. Adequate provision of parking and loading: A minimum of nineteen (19) off-street parking spaces are required for the restaurant use. This was derived by using the parking requirement for Establishments providing for the sale and consumption of food and/or beverages, and refreshments: At least one (1) parking space for each three (3) customers based upon the maximum design occupancy. In addition, there shall be one (1) parking space for each employee as related to the work shift when the maximum number of employees are present. According to the applicant, there are 8 employees per shift (8 employees = 8 parking stalls) and a total seating capacity of 33 (33 seats / 3 = 11 parking stalls). A total of nineteen (19) parking spaces including one (1) ADA accessible space are shown on the site plan. Adequate parking is provided for the site. In addition to parking, the site plan shows adequate “stacking” available for the drive-thru aisle.

E. Adequate provision of drainage, and other public utilities: The site is generally built-out. Storm water appears to either sheet flow towards Anderson Avenue then continue on into the City’s stormwater system or towards the rear of the property into a natural drainage way and eventual into Wildcat Creek. Adequate storm water drainage is provided for the subject site and no increase in discharge over existing conditions is anticipated. Adequate utilities are provided to serve the use on the subject site.

F. Adequate provision of access: Access to the subject site is from Anderson Avenue via a fifteen (15) foot wide curb cut. This curb cut accommodates ingress to the site and leads to a one-way circulation pattern. A second twenty-five (25) foot wide curb cut is located on the east side of the lot, providing egress for both left and right turns out of the site. Directional signage is shown on the site plan depicting drive-thru access and exit only reflecting the site’s one-way circulation pattern.

An improved sidewalk is provided along the south side of Anderson Avenue with internal walkways connecting to the building. Access to the subject site is adequate for both vehicles

and pedestrians.

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 FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO APPROXIMATELY ELEVEN (11) FOR A PROPOSED OFF-STREET PARKING LOT ASSOCIATED WITH A NEW RESTAURANT LOCATED AT 2707 ANDERSON AVE., IN THE C-2, NEIGHBORHOOD SHOPPING DISTRICT. (APPLICANT: BUSHWOOD INVESTMENTS, LLC / OWNER: PHOENIX LAND CO. INC.)

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

Hardy opened the public hearing.

Rich Seidler, spoke on behalf of the owner stating the project is an ideal infill project, maximizing the highest and best use of the property.

Hamilton commented that proposal reflects compliance with the zoning ordinances and reflects work with City staff.

Hamilton made a motion to approve the Exception to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to approximately eleven (11) for a proposed off-street parking lot associated with a new restaurant located at 2707 Anderson Ave., in the C-2, Neighborhood Shopping District with the following conditions:

1. The Exception shall be limited to the reduction to the front yard setback for off-street parking lot as proposed in the site plan and application documents.
2. The concurrent Conditional Use request for the drive-thru shall be approved.
3. All applicable permits shall be obtained.

Lavis seconded the motion which passed on a vote of (4-0).

PRESENT USE: Vacant gas station

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: A concurrent Conditional Use has been requested to allow for a drive-thru within the C-2 District. Other than the proposed Conditional Use and Exception requests, the subject site complies with all other applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The area surrounding the subject site is a mix of commercial properties, single-family and two-family residential dwellings. The

subject site and properties to the north, south and to the east are zoned C-2, Neighborhood Shopping District. Properties farther to the east are zoned C-1, Restricted Business District with the majority of the uses being professional offices. Farther to the west, towards Seth Child Road, properties are zoned C-2, Neighborhood Shopping District, C-5, Highway Commercial District, R-3, Multi-Family Residential District or located within the Westloop Shopping Center PUD.

The location of the proposed off-street parking lot should not adversely impact adjacent properties. A total of three (3) parking spaces are proposed to be located within the required front yard setback along Anderson Avenue. There are other off-street parking areas located in the required front yard along Anderson Avenue including properties to the direct east and north, across Anderson Avenue. The three (3) parking spaces that are located within the setback will be minimally noticeable, especially when considering the site improvements related to the existing conditions. Considering these factors, the Exception request should not adversely impact the adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be minimum affects on the public health, safety or general welfare. As previously mentioned, similar parking spaces and other paved surfaces are located in the required front yard along Anderson Avenue. The location of the off-street parking in the front yard setback will not impact platted easements or any vision clearance triangles. The design of the off-street parking conforms to the City's off-street parking standards. In addition, the site layout is an enhancement over existing conditions in terms of access safety due to the defined curb cuts and clearer circulation patterns proposed for the site.

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 for the off-street parking lot would prohibit any parking within twenty-five (25) feet of the front property line along Anderson Avenue. Based on the existing use, a minimum of nineteen (19) off-street parking spaces are required. The application site plan shows three (3) of the minimum required spaces located as close as fourteen (14) feet into the front yard setback. It appears that the applicant has few alternatives in this case. Due to the elevation changes and existing retaining wall located along the south side of the lot the buildable area is limited, pushing the layout towards the north. The proposed parking lot would need to be re-designed so all spaces are located behind the setback line, the existing building would need to be re-designed to require less parking or an Exception to reduce the number of required off-street parking spaces would need to be approved. Considering the site access and sidewalk improvements being made by the applicant to enhance traffic and pedestrian safety, the request to allow for the reduction of the minimum required front yard setback seems to be reasonable.

Considering these factors and that the location of the parking 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.

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 SIXTY (60) FOOT FRONT YARD SETBACK TO FORTY-THREE (43) FEET FOR A PROPOSED ACCESSORY STRUCTURE LOCATED AT 2909 BROOKVILLE DR., IN A R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT / OWNER: JUSTIN AND JENNIFER HOLMES)

Lewis presented the staff report for the item with the recommendation of approval with two (2) conditions of approval.

Hamilton asked if the privacy fence was allowed to be in the setback. Johnson said the fence was in compliance as it is set behind the line of the primary structure and does not fall under the regulations for accessory structures.

Hardy opened the public hearing.

Justin Holmes, property owner, came forward.

Lavis made a motion to approve the Exception to allow for the reduction of the minimum required sixty (60) foot front yard setback to forty-three (43) feet for a proposed accessory structure located at 2909 Brookville Dr., in a R-2, Two-Family Residential District with the following conditions:

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

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

The Board made the following findings of fact for the Exception at 2909 Brookville Dr.

PRESENT USE: Single family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property is in compliance with all other applicable regulations. The existing driveway measures thirty-one (31) feet wide, exceeding the twenty-four (24) foot width maximum under general circumstances. However, section 7-102(3)(e) provides for driveways to exceed to the maximum widths if seventy-five percent (75%) of the front yard is maintained as landscaped open space. Since the subject site maintains well over eighty percent (80%) of landscaping open space this criteria is satisfied.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site is zoned R-2, Two-Family Residential District, and is located in a predominantly single-family and single-family attached neighborhood. The surrounding properties are recently constructed single-family homes and duplexes.

Due to the location and design of the proposed accessory structure, adverse impacts on adjacent properties should be minimal. The properties that would be impacted the most from the proposed Exception are the properties directly to the northeast of the subject site. There are several properties whose front yards face the location of the proposed structure. However, since the proposed structure is to be placed behind the existing privacy fence, it will be partially concealed.

The applicants have submitted a signed form from seven (7) adjacent property owners stating that they do not object to the proposed shed.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal adverse affects on the general health, safety or welfare of the public is anticipated. The proposed accessory structure will not substantially alter the existing appearance of the yard or impact the view for surrounding properties. The proposed accessory structure will be outside of any utility easements and vision clearance triangles located on the subject site. The proposed location behind the privacy fence minimizes the visual impact of the accessory structure. In addition, the structure will not impact the pedestrian or car traffic along Brookville Drive.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the minimum front yard setback would prohibit the construction of the accessory structure as proposed. It appears that the intent to locate the structure as proposed behind the privacy fence is an effort to minimize the limited potential impact of the structure. For the shed to be setback 60 (sixty) feet from the property line, it would have to be placed differently, limiting the open space in the backyard. The proposed location appears to be the most logical given the layout of the site.

Considering the proposed accessory structure will have a limited impact on the adjacent properties and the general public, the strict application of the minimum front yard setback seems unreasonable.

Hardy adjourned the meeting.

Respectfully Submitted by,

Amelia Lewis, Planning Intern