

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, December 9, 2015**  
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton, Vice Chairperson; Angie Danner; LaBarbara Wigfall

MEMBERS ABSENT: Catherine Lavis

STAFF PRESENT: Chase Johnson, Planner; Amelia Lewis, Planning Intern

**CONSIDER THE MINUTES OF THE OCTOBER 14, 2015 BOARD OF ZONING APPEALS MEETING.**

Danner moved to approve the October 14, 2015 minutes which was seconded by Hamilton 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 THE REDUCTION OF THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO APPROXIMATELY SEVENTEEN (17) FEET FOR AN EXISTING SINGLE-FAMILY RESIDENTIAL BUILDING LOCATED AT 3308 ANDERSON AVENUE, IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: SMH CONSULTANTS – JEFFREY HANCOCK / OWNER: ROBERT SHIVLEY & MARLENE IRVINE)**

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

Johnson said the exception request is required for re-platting the lot by making the two lots conforming to the subdivision regulations of the Manhattan Urban Area Planning Board.

Hardy opened the public hearing.

Kay Taylor, 1128 Meadowbrook, was concerned new construction on the lots would be allowed to be within the twenty-five (25) foot setback.

Hardy closed the public hearing.

Hamilton clarified that the exception is limited to the structure on the existing lot, any new construction on the newly created lot would conform to setback regulations.

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 twenty five (25) foot front yard setback to approximately seventeen (17) feet for an existing single family residential building located at 3308 Anderson Ave in the R-1, Single-Family Residential District with the following conditions of approval:

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

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

The Board made the following findings of fact for the Exception at 3308 Anderson Avenue.

**PRESENT USE:** Single family home

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The Meadowbrook Acres Addition was platted in 1952, while the subject property wasn't annexed within the City until 1974. In addition to not being within the City's boundaries, the home was built prior to the adoption of Zoning Regulations in the City of Manhattan. The site was zoned R-1, Single-Family Residential District in 1974 when the property was annexed into the City, thus creating the nonconforming setback conditions. However, the Exception request will bring the house into compliance with the current Zoning Regulations and resolve the nonconformity issue. Other than the Exception request, the subject site complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is zoned R-1, Single-Family Residential District and is located in a predominately residential neighborhood. A few properties to the west of the subject property are zoned C-1, Restricted Business District and R, Single-Family Residential District. Properties to the south and southeast are zoned R-2, Two-Family Residential District.

In regards to the Exception, the existing house has been in its location and a part of the neighborhood since the early 1900s. It is apparent that the location of the house has not impacted adjacent properties.

**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 single-family home in response to the replat of the Sherley Place 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 the existing house

be removed or altered so that it is in compliance with the regulations. The home would need to move approximately eight (8) feet to the west to be located outside of the minimum twenty-five (25) foot front yard setback. Although the home was constructed in the required setback, it would be unreasonable to require it to be removed or altered under the circumstances. Because the home has been in its existing state since 1900 and has minimal impacts on adjacent properties, strict application of the regulations seems to be 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 “CROSSFIT” HEALTH AND FITNESS CLUB LOCATED AT 2800 AMHERST AVENUE, IN THE I-2, INDUSTRIAL PARK DISTRICT. (APPLICANT/OWNER: MATT KARSTETTER )**

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

Hardy opened the public hearing.

Matt Karstetter, applicant, said his building has met code requirements and they have added the required number of parking spaces.

Hardy closed the public hearing.

Danner made a motion to approve the Conditional Use for a “Crossfit” Health and Fitness Club located at 2800 Amherst Ave., in the I-2, Industrial Park District with the following conditions:

1. The applicant shall obtain all required permits.
2. The site shall be developed as shown on the site plan.

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

The board made the following findings of fact for the property at 2800 Amherst Avenue.

**PRESENT USE:** Vacant warehouse space and occupied professional front office space.

**STANDARDS FOR CONDITIONAL USE:**

**A. Compliance with all applicable regulations:** The subject property complies with all other applicable provisions of the Zoning Regulations.

**B. Probable effect on adjacent properties:** The subject property and adjacent properties to the general south and east are within an I-2, Industrial Park District. To the north property is zoned within a Planned Unit Development. Property to the west along Seth Child Road are

generally zoned C-5, Highway Service Commercial District. Surrounding uses within the I-2 District range from Amherst Self-Storage, JS Sign & Awning, Ultra Electronics, Highland Dairy and Gymnastics Plus. Properties located across Amherst Avenue (generally south of the proposed property) are within the C-5, Highway Service Commercial District and range from church property and City of Manhattan Fire Station #3 directly to the south.

There are no perceived negative effects to the surrounding neighborhood. Gymnastics Plus received a conditional use for a Health and Fitness Club in 2005, which is a similar use to the proposed. The proposed cross-fit training sessions will likely be a low traffic generator, as the sessions are limited to groups of people unlike an open gym or fitness club. This should have no interference with surrounding uses. The nature and intensity of the use will not dominate the immediate neighborhood. The existing building proposed to occupy the cross-fit use is setback a significant distance from adjacent properties, further limiting any negative impacts. It will in no way prevent development and use of the neighboring properties. In addition, the applicant held a neighborhood meeting on September 17, 2015. According to the meeting summary, there was no one in attendance besides the applicant.

**C. Domination by use over neighboring properties:**

- 1. Location, nature, and height of physical improvements:** An existing approximate 10,000 square foot structure is on the subject property. Entrance to the lot is via an existing drive off of Amherst Avenue. No other improvements are proposed for the site.
- 2. Landscaping and screening:** A large portion of the lot is maintained as open space which consists of mature trees and vegetation. The site is naturally screened from both the street and adjacent properties due to its layout and design.

**D. Adequate provision of parking and loading:** The existing off-street parking area along the south and north sides of the building yard is adequate for the proposed conditional use. Fourteen (14) parking stalls are located to the south of the building with access to an additional nineteen (19) spaces after circulating to the north behind the building. The minimum number of off-street parking spaces required for the proposed use is twenty-seven (27) stalls. This was derived by using the occupancy load ratios for the unfinished floor area of one (1) parking space per three (3) occupants ( $49 \text{ maximum occupancy load} / 3 = 16$ ) and by using standard Zoning Regulation ratios for business and professional office use of at least one (1) off-street parking space per 300 square feet of floor area ( $3,300 \text{ square feet of floor area} / 300 = 11 \text{ spaces}$ ). The applicant's site plan shows a total of thirty-three (33) off-street parking spaces provided on the site.

**E. Adequate provision of drainage, and other public utilities:** The property currently has access to city water and sewer as well as other utilities including electric, gas, cable and telephone services. The existing storm water patterns for the site generally sheet flow to the north and eventually into Wildcat Creek. The back portion of the lot is located within the special flood hazard area (SFHA), although the building and majority of improvements are located outside of the floodplain associated with Wildcat Creek. The off-street parking area to

the north of the existing building is located within the Community Special Flood Hazard Area, which is determined using future land use conditions. The Community Special Flood Hazard Area is defined as follows:

*COMMUNITY SPECIAL FLOOD HAZARD AREA represents the community initiated flood study that has different parameters than the standard FEMA Flood Insurance Study. The Community Special Flood Hazard Area is the land subject to a one (1%) percent or greater chance of flooding in any given year from a Community Base Flood, as created by the community initiated flood study. It includes the FEMA Floodway, Zones A, AE, AH, AO and Zone X (Future Base Flood).*

A floodplain development permit has been issued for the off-street parking area and has satisfied the floodplain development requirements.

**F. Adequate provision of access:** The subject property has frontage along Amherst Avenue and parking lot access via a long driveway. Adequate access is provided to the site.

**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-ONE (21) FEET FOR A PROPOSED PRIVACY FENCE LOCATED AT 5405 HAUSTEAD COURT, IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: GRANT AND GREG JUNGHANS)**

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

Hardy opened the public hearing.

Greg Junghans, applicant stood for questions from the board.

Hardy closed the public hearing.

Hamilton stated her support, stating that the exception is modest and the front yard is not affected due to the orientation of the houses.

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 twenty-one (21) feet for a proposed privacy fence located at 5405 Haustead Court, in the R-1, Single-Family Residential 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 and site plan.

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

The board made the following findings of fact for the property at 5405 Haustead Court.

**PRESENT USE:** Single-family residential property

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

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties located directly to the north, south and west are located in the R-1, Single-Family Residential District. Properties to the east across Highland Grove Drive are zoned R-2, Two-Family Residential District and property farther to the east are zoned R-3, Multi-Family Residential District. The area is a mix of newly developed single-family, two-family and multi-family dwellings.

Although the area where the fence is proposed to be located is technically the front yard along Highland Grove Drive, it functions as a side yard. The adjacent properties that would be most impacted by the proposed fence are the single-family houses to the north and south of the subject property. These properties are sited facing their respective cul-de-sacs, similar to the subject site and maintain functional side yards along Highland Grove Drive. In addition, the four (4) foot encroachment is negligible and would not be noticed by the general public especially being located adjacent to existing landscaping. Due to the location and design of the proposed fence, adverse impacts on adjacent properties should be minimal.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The Exception desired will not encroach upon any utility easements or vision clearance triangles located within the subject site. The proposed fence will not substantially encroach on the street or change the visual effect of the setback along Highland Grove Drive as the fence is proposed to line up with the existing landscaped bed. 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 twenty-five (25) feet from the property line along Highland Grove Drive. According to the applicant, there are existing sprinkler lines that are located at the twenty-five (25) foot setback mark. Due to the placement of the sprinkler lines, the applicant has limited options under strict application. The proposed fence could be moved to the west of the irrigation lines or the irrigation lines could be relocated in order to install the proposed fence under strict application. Moving the proposed fence to the west seems to be the more

logical option, however, this would decrease the already restricted amount of enclosed space the property has available due to the two (2) front yard setbacks.

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.

**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 TWELVE (12) FEET OFF OF LONDONDERY CIRCLE FOR A PROPOSED FOUR (4) FOOT TALL “WROUGHT IRON” STYLE FENCE LOCATED AT 2208 LONDONDERY DR, IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT / OWNER: BRAD AND CAROL STRATHE)**

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

Hamilton commented that the properties most affected would be the properties along the Circle, rather than the property to the west.

Hardy opened the public hearing.

No one spoke.

Hardy closed the public hearing.

Danner made a motion to approve the Exception to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to twelve (12) feet for a proposed fence located at 2208 Londondery Dr, in a R-1, Single-Family Residential District with the following conditions:

1. The Exception request shall be limited to the proposed fence and follow the plans identified in the application and shown on the site plan.
2. All applicable permits shall be obtained.

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

The Board made the following findings of fact for the Exception at 2208 Londondery Dr.

**PRESENT USE:** Single-family home.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than the current Exception request, the subject site complies with all applicable regulations. The lot width and depth exceed the minimum regulations in the R-1 district and all other setbacks are adhered to.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and immediately surrounding properties are zoned R-1, Single Family Residential. Within the larger area properties are zoned R-2, Two Family Residential and R, Single Family Residential. The area is primarily composed of single family homes on large lots with ample green space.

The property most impacted by the fence would be the property to the west as the fence runs along the property line between the two properties. However the fence is low in height and would not obstruct any existing views. The proposed placement along the side yard of the neighboring property would not impact the side yard views or functionality of the property. Impacts on adjacent properties should be minimal. The applicant submitted an adjoining property owner support statement signed by three (3) adjacent property owners, indicating they had no objection to the proposed fence.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** There should be minimal effects on the public health, safety or welfare by approving the Exception. The Exception requested will not encroach upon any known utility easements on the subject site. The proposed fence will not be located in an area that would inhibit the view of drivers or impact pedestrian safety. The proposed fence is also low in height, which would not restrict the existing views of property owners. In addition, wrought iron style generally has minimal visual impact.

**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 twenty-five (25) feet from the property line along Londondery Circle. Due to the design of the lot and the bulb of the cul-de-sac the subject site is limited to the area available to locate a fence under strict application. In addition, the area of the fence encroaching into the front yard setback is minimal.

Considering these facts and that the proposed fence 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.

Hardy adjourned the meeting.

Respectfully Submitted by,

Amelia Lewis, Planning Intern