

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, June 8, 2016**  
**7:00 PM**

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

MEMBERS ABSENT: La Barbara James Wigfall; Brandi Nelson

STAFF PRESENT: Doug May, Planner; Amelia Lewis, Planning Intern

**CONSIDER THE MINUTES OF THE MAY 11, 2016 BOARD OF ZONING APPEALS MEETING.**

Hamilton moved to table the approval of the May 11, 2016 minutes until the July meeting which was seconded by Danner and passed with a vote of (3-0).

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE PARKING IN THE FRONT YARD AREA BETWEEN THE FRONT LOT LINE AND A LINE PARALLEL TO THE FRONT LOT LINE DRAWN THROUGH A POINT WHICH IS ON THE SIDE OF THE PRINCIPAL STRUCTURE FURTHEST FROM THE FRONT LOT LINE, EXTENDING TO THE EDGE OF THE ZONING LOT, YET STILL FACING THE FRONT LOT LINE FOR DRIVEWAYS LEADING TO GARAGES OF FOUR-FAMILY DWELLINGS IN THE R-3, MULTIPLE-RESIDENTIAL DISTRICT, LOCATED AT 3511 & 3510 OCEAN CIRCLE AND 4904 & 4905 LAKE COURSE CIRCLE. (APPLICANT: ACTION PACT DESIGN – HEATHER PETERSON, PROPERTY OWNER: TJ VILKANSKAS)**

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

Hamilton said she had concerns that there are currently no zoning regulations regarding townhomes and did believe that was a suitable justification for an exception. She asked if this design of townhomes would be approved on Vattier Street. Hamilton questioned May's reference to the existing townhomes in Grand Mere, stating that they were not more than two attached units and those previous actions of the board should not have weight in current decisions.

May said he thought it might pass in Vattier. He also confirmed that the Congressional Townhomes have more than two attached units with driveways located in the front yard.

Hardy opened the public hearing.

Tracy Anderson, ActionPact Design, said this type of development was meant to blend in with the single family home appearance that currently exists in Grand Mere. He said the only other alternative would be to provide parking lots at the end of street or in front of the houses and by providing individual driveways it maintained a more single family appearance.

Hamilton commented that the design did not provide much front yard space for the residents.

Anderson said that was true, residents would primarily have a small landscaped area in the front.

Danner asked if the units would be for sale or rental properties.

Anderson said thought the way that the lots were platted that they would be leased properties and maintained by the individual owner.

Hardy closed the public hearing.

Hamilton said she was hesitant to approve this item because she did not want it to become a precedent for townhome development in Manhattan. She also expressed concern that the item was developed through straight zoning as opposed to a Planned Unit Development which would allow for additional design flexibility in certain circumstances.

Hamilton said she would support the item if the strict application portion of the staff report was amended to include a statement that the strict application was unreasonable in this case only because of the unique single family home style present in Grand Mere.

Hamilton made a motion to approve an Exception to allow for the parking in the front yard area between the front lot line and a line parallel to the front lot line drawn through a point which is on the side of the principal structure furthest from the front lot line, extending to the edge of the zoning lot, yet still facing the front lot line for driveways leading to garages of four-family dwellings on Lots 12-15, Congressional Addition in the R-3, Multiple-Residential District with the following conditions of approval:

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

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

The Board made the following findings of fact for the Exception at 3511 & 3510 Ocean Circle and 4904 & 4905 Lake Course Circle.

**PRESENT USE:** Vacant lots.

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

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties are located in the Grand Mere Master Planned Golf Course Community. The subject site is zoned R-3, Multiple-Family Residential District, and surrounded by properties zoned R, Single Family Residential and R-1, Single Family Residential. Directly to the west are properties located on Ocean Drive, zoned R-1. To the north are properties along Merced Drive zoned R, as well as portions of the Colbert Hills Golf Course, zoned R-S, Single Family Residential Suburban. The golf course also surrounds the subject site to the south and east. The area is a newly developing area with a mix of single-family, single-family attached, two-family and multiple-family dwellings in various stage of construction.

Minimal adverse impacts on adjacent properties are anticipated by granting the Exception to allow the townhome development to use off-street parking on driveways in the front yard. The general appearance of the dwellings will be that of single-family homes with attached garages. Although these single-family homes will be attached six (6) units wide, they will be similar to the single-family and two-family dwellings found in the general neighborhood. The multiple-family dwellings along Players Terrance and Bellerive Drive have off-street parking lots located in the defined front yard that were approved by the Board of Zoning Appeals in March, 2012. Another similar project, Congressional Townhomes, was approved by the Board of Zoning Appeals in October of 2013.

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

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

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the front yard parking restriction, as defined in Section 7-102(C)(2), would require all parking for the six (6) unit multiple-family dwellings to be behind the front façade of the building. The intent of the regulation is to prohibit off-street parking lots from being located in front of the building and disrupting the visual appearance of the front yard. The structures will appear to be single-family attached units, with front doors and attached

garages facing the street. As previously stated in the *Effects on Public Health, Safety, Morals, Order, Convenience, Prosperity, or General Welfare*; the four (4) lots could be reconfigured to provide lots for the same number of single-family detached, single-family attached or duplex dwellings. These lots would generally have the same appearance, number of dwelling units, attached garages and driveways. The proposed development is intended to meet a housing market that has been developed in other parts of the City, but through the PUD process. This development would use “straight zoning” to accomplish the housing product. Considering that the that the applicant has made an effort to construct a multiple family dwelling that fits in with the single family dwellings in Grand Mere, the regulations appear to be 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 FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO APPROXIMATELY TWENTY-THREE (23) FEET FOR A PROPOSED FRONT PORCH AND FROM (25) FEET TO APPROXIMATELY NINETEEN (19) FEET FOR A PROPOSED RETAINING WALL ASSOCIATED WITH A PROPOSED NEW HOME LOCATED IN AN R, SINGLE FAMILY RESIDENTIAL DISTRICT, LOCATED AT 3612 DICKENS AVENUE. (APPLICANT/PROPERTY OWNER: BRUCE AND CAROL CUBIE)**

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

Hardy opened the public hearing.

Bruce Cubie, applicant, clarified that the existing trees are located in the middle of the lot and in an attempt to preserve them, the house was moved forward towards Dickens, resulting in the cause for the exceptions. He added that the footprint of the house could have been smaller if it had been designed as a two-story but it was designed as single story to accommodate his family in a more efficient way.

Hardy commented that it was uncharacteristic to see an applicant want to preserve existing trees on the lot when building a new home, but commended the applicant for doing so.

Danner made a motion to approve an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum front yard setback from twenty-five (25) feet to approximately twenty-four (24) feet for a proposed front porch and from (25) feet to approximately nineteen (19) feet for a retaining wall associated with a proposed new home located in an R, Single Family Residential District with the following conditions:

1. The Exception shall only apply to the front porch and retaining wall associated with a new home shown in the application materials and site plan.
2. The subject site shall be developed as proposed.
3. All applicable permits shall be obtained.

Hamilton seconded the motion which passed on a vote of 3-0.

The Board made the following findings of fact for the EXCEPTIONS at 3612 Dickens Avenue:

**PRESENT USE:** Vacant lot

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site is compliant with all applicable regulations, apart from the exception requested for the reduction of minimum front yard setback.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and a majority of the surrounding properties are zoned R, Single Family Residential. Properties to the east, across Hudson Avenue are zoned R-1, Single Family Residential. Properties directly to the north, south, east and west of the subject site are single family homes. Open land owned by Amanda Arnold Elementary School sits just southeast of the subject site across Dickens Avenue.

It is unlikely that granting this exception for a reduced front yard setback would cause any adverse impacts upon the surrounding neighborhood and community. The proposed house would sit on an interior lot and would not cause any sightline problems, and since the neighborhood is low density, there would be little impact on the surrounding neighborhood.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:**

The exception will not 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:**

Since the purpose of requesting the reduction of the minimum front yard setback is to protect mature shade trees, and since the only portion of the proposed home that would be within the current front yard setback is the front porch, the strict application of these regulations seems unreasonable.

**A PUBLIC HEARING TO CONSIDER A VARIANCE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE REDUCTION OF THE MINIMUM LOT AREA FROM 10,000 SQUARE FEET TO APPROXIMATELY 4,800 SQUARE FEET, AND TO ALLOW FOR THE REDUCTION OF THE MINIMUM LOT WIDTH FROM SEVENTY-FIVE (75) FEET TO APPROXIMATELY THIRTY-TWO (32) FEET IN A C-5 HIGHWAY SERVICE COMMERCIAL DISTRICT, TO ALLOW FOR THE CONSTRUCTION OF AN OFF-SITE PYLON SIGN, GENERALLY LOCATED AT THE NORTHWEST CORNER OF LEAVENWORTH STREET AND TUTTLE CREEK BLVD. (APPLICANT: HOWARD SUMMERS, PROPERTY OWNER: FLINT HILLS HOLDINGS, LLC)**

**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 FRONT YARD SETBACK FOR OFF-PREMISE SIGNS FROM TWENTY-FIVE (25) FEET TO APPROXIMATELY TWENTY-FOUR (24) FEET, AND FOR A REDUCTION OF THE REAR YARD SETBACK FOR OFF-PREMISE SIGNS FROM TWENTY-FIVE (25) FEET TO ZERO (0) FEET IN A C-5 HIGHWAY SERVICE COMMERCIAL DISTRICT, GENERALLY LOCATED AT THE NORTHWEST CORNER OF LEAVENWORTH STREET AND TUTTLE CREEK BLVD. (APPLICANT: HOWARD SUMMERS, PROPERTY OWNER: FLINT HILLS HOLDINGS, LLC)**

May presented the staff reports for the two (2) items recommending approval of both.

Hamilton asked if this lot was cut out of another lot in order to make room for the sign. May said that it was not, and it was a result of past right of way for a no longer existing rail line. Referencing the unique shape and size of the lot, Hamilton asked if there were any other uses for the lot and what would happen if the variance were not approved. May said there were few other uses for the lot due to the size and it would likely remain vacant.

Hamilton asked if there were sign regulations for changeable copy signs in the zoning regulations. May replied that with regard to signs with changeable messages there were only regulations for digital signs.

Hardy opened the public hearing.

Bret Tremblay, Flint Hills Holdings LLC, gave a short speech which explained the history of the property as a right of way for the rail line, the previous permit which granted Taco Johns a temporary sign in the proposed location for the pylon sign which increased sales for the business.

Marcus Fischer, Hyvee, said as neighbors to Taco John's they were supportive of the sign. Fischer added that if these items were approved, Hyvee is interested in adding a sign for their business onto the proposed Taco John's pylon sign which would replace the changeable copy portion of the proposed sign.

Hardy asked if discussions between a joint Hyvee and Taco John's had already occurred. Tremblay replied that they had and Taco John's was willing to include Hyvee on the proposed sign.

Hardy closed the public hearing.

Hamilton commented that the location of similar signs located across Tuttle Creek Boulevard that were mentioned in the staff presentation of sign precedents in the area were too far from the potentially impacted area by the Taco John's sign and did not warrant consideration in the Board's discussion of these two items. Danner agreed.

Hamilton also found that an increase in sales was not a justifiable reason for granting the Variance or Exception as all signs generally increase sales for businesses. Hardy agreed.

Hardy asked if there was a way to include a provision for Hyvee potentially adding onto the sign. The Board commented that they did not want the overall design or height of the sign to change. May said he would make it a condition of approval.

Hamilton made a motion to approve a a VARIANCE under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum lot area from 10,000 square feet to approximately 4,800 square feet, and to allow for the reduction of the minimum lot width from seventy-five (75) feet to approximately thirty-two (32) feet in a C-5 Highway Service Commercial District, to allow for the construction of an off-site pylon sign with the following conditions:

1. The Variance granted is only applicable to the reduction of the minimum lot size and width
2. The sign shall be constructed as outlined in the application materials
3. All applicable permits shall be obtained

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

The Board made the following findings of fact for the Variance at the northwest corner of Leavenworth Street and Tuttle Creek Boulevard.:

**PRESENT USE:** Vacant lot.

**CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is unique due to the fact that it was once used as right of way for a railroad that has since been removed, which resulted in the lot's narrow, long shape.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is zoned C-5 Highway Service Commercial, as are the properties directly to the west and to the east, across Tuttle Creek Blvd. The properties to the north are part of the Manhattan Marketplace Planned Unit Development, and to the south, across Leavenworth Street, is Town Center Mall, zoned C-4 Central Business District.

There is unlikely to be many adverse impacts upon surrounding properties by granting this variance. The proposed sign does not inhibit upon any vision clearance triangles since the proposed location for the sign is not close enough to the intersection to cause sightline problems. There currently exists a number of similar pylon signs on properties adjacent to Tuttle Creek Blvd.

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** The unique size of this lot is not a result of the applicant, and resulted from the removal of a railroad right of way. The applicant proposes to construct a sign on the subject site. The small size of the lot would eliminate most uses of the property, and a sign is a logical use and is intended to help the applicant increase business at the Taco John's restaurant, located two lots

to the west. Additionally, the lot's unique and small shape means that its uses are limited, but placing a sign on the site is a logical use.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:**

The variance will not affect 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 sustain densities and to maintain adequate open space between properties. However, the applicants are not proposing a structure on the site, and only wish to construct a single pylon sign.

Hamilton made a motion to approve an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum front yard setback for off-premise signs from twenty-five (25) feet to approximately twenty-two (22) feet, and for a reduction of the rear yard setback for off-premise signs from twenty-five (25) feet to zero (0) feet in a C-5 Highway Service Commercial District, with the following amended conditions:

1. The exception shall only apply to the pylon sign outlined in the staff report
2. The sign shall be constructed as outlined in the application materials.
3. Hyvee shall be allowed to replace the changeable copy portion of the proposed Taco John's sign with their own business sign.
4. The dimensions of the proposed sign shall not change.
5. All applicable permits shall be obtained.

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

The Board made the following findings of fact of for the exception at the northwest corner of Leavenworth Street and Tuttle Creek Boulevard.:

**PRESENT USE:** Vacant lot

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site is compliant with all applicable regulations, except for the minimum lot area and minimum lot width in a C-5 Highway Commercial District (see Variance staff report).

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is zoned C-5 Highway Service Commercial, as are the properties directly to the west and to the east, across Tuttle Creek Blvd. The properties to the north are part of the Manhattan Marketplace, zoned PUD – Planned Unit Development, and to the south, across Leavenworth Street, is Town Center Mall, zoned C-4 Central Business District.

There is unlikely to be many adverse impacts upon surrounding properties by granting this exception. A number of similar pylon signs currently exist on properties adjacent to Tuttle



Creek Blvd.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:**

The exception will not affect the public health, safety, morals, order, convenience, prosperity, or general welfare. Additionally, the sign is proposed in a location that it will not affect the views of pedestrians or motorists at the intersection of Tuttle Creek Blvd and Leavenworth Street.

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

The unique size of this lot is not a result of the applicant, and resulted from the removal of a railroad right of way. The applicant proposes to construct a sign on the subject site. The small size and unusual shape of the lot would eliminate most uses of the property, but a sign is a logical use and is intended to help the applicant increase business at the Taco John's restaurant, also owned by the applicant, located two lots to the west.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO ZERO (0) FEET FOR AN EXISTING SPLIT RAIL FENCE ASSOCIATED WITH AN EXISTING SINGLE FAMILY HOME, LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 3112 AMHERST AVENUE. (APPLICANT/PROPERTY OWNER: IMAD KHAMIS)**

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

Hamilton asked if the garden, not including the fence, was allowed to be in the front yard setback. Lewis commented that once the portion of the garden was removed from the right of way, the plantings would be allowed to remain as they are not built structures.

Hamilton asked if it was a retaining wall as opposed to a fence, if it would need an Exception. May said it would. The Board asked if hedges would be an appropriate substitute for the fence. Lewis said she thought it would be in terms of the zoning regulations as long as it was not placed in the right of way.

Hardy opened the public hearing.

No one from the public was there.

Hardy closed the public hearing.

Danner questioned the strict regulation requirement for exceptions.

Lewis clarified that the strict regulation requirement was not met because the split rail fence was not a typical privacy fence which would impede the views of neighbors and was more of a landscaping feature. Hardy agreed.

Danner asked about the views of the neighbors across the street. Lewis said a house was currently being constructed across the street from 3112 Amherst.

Hardy commented that there appeared to be a retaining wall on the property to east upon looking at an aerial of the subject site.

Danner felt that strict application of the zoning regulations, condition (D) for exceptions, was not met and recommended denial of the Exception.

Hamilton seconded the motion which passed on a vote of 3-0.

Hardy adjourned the meeting.

Respectfully Submitted by,

Amelia Lewis, Planning Intern