

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, August 10, 2016**  
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton, Vice Chairperson; Angie Danner; La Barbara James Wigfall; Brandi Nelson

MEMBERS ABSENT: None.

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

**CONSIDER THE MINUTES OF THE JULY 13, 2016, BOARD OF ZONING APPEALS MEETING.**

Hamilton proposed a correction to the July 13, 2016 meeting minutes. Justin Browler should be corrected to Justin Brower.

Hamilton moved to approve the July 13, 2016 minutes as corrected, which was seconded by Wigfall and passed with a vote of (5-0).

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR CONSTRUCTION OF A COMPACTED GRAVEL PARKING PAD, LOCATED IN THE FRONT YARD SETBACK ASSOCIATED WITH A TWO-FAMILY HOME, LOCATED IN AN R-3, MULTI-FAMILY RESIDENTIAL DISTRICT, WITH A MULTI-FAMILY REDEVELOPMENT OVERLAY (M-FRO), LOCATED AT 831 BLUEMONT AVENUE. (APPLICANT: CRAIG LAUPPE, PROPERTY OWNER: BGCL PROPERTIES LLC)**

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

Hamilton asked how many cars would be parked in the parking area. May said a two family dwelling unit requires two (2) parking stalls per each unit, equaling a total of four (4) spaces.

Hamilton then asked if 39 feet for four (4) spaces was necessary. May said City regulations measure one space to be 8.5 feet wide, which equals 34 feet for the four (4) spaces, with an additional five (5) feet for extra room.

Hamilton asked how much of the area would have to be paved without the exception. May said it would be 25 feet measuring east from the lot line on 9<sup>th</sup> Street. Hamilton said she thought it was measured from the front of the house, and May clarified that since it is on a corner lot there are two front yard setbacks. Hamilton wanted to clarify that without the

exception, 25 feet of the 39 foot wide parking pad would have to be paved and May said that was correct.

Hamilton asked if this exception request was for two issues, the first being the location of the parking and the second being the gravel. May said that was correct. Hamilton asked if that was considered one or two exceptions, but May said it was one exception. Hamilton commented that in the past the items have been split up so one exception is not conditional on the other and there are two votes, one for each item.

Hardy opened the public hearing.

Craig Lauppe, applicant, commented that May advised him on the application of the zoning regulations once his application was submitted which is why an exception for ten feet to be paved was initially requested. Lauppe explained the additional five (5) feet on the parking pad area was added to take into account larger vehicles and providing extra space to avoid door dinging and small damage incidents.

Hamilton asked Lauppe if there would be a 39 foot cut in the alley to allow tenants parking access. Lauppe said that was correct and the curb along 9<sup>th</sup> Street would be reconstructed, as was recommended by Code.

Lauppe clarified that the property has been converted and the certificate of occupancy is meant to be issued the following day.

Hamilton asked if the curb reconstruction was meant to provide for the vision clearance triangle. Lauppe said that was correct. Hamilton asked why that was not in the staff report. May said that since the garage is being removed, there is nothing on the property to create an issue for the vision clearance triangle. Lauppe added that Code recommended the wrap around curb to prevent people from parking and creating sight issues. Hardy clarified what Hamilton was commenting on, stating that typically the staff report would include a sentence such as “based upon the fact that the garage is being removed and the applicant is required to seed and add the curb, no vision triangle issues are created, whereas the current configuration would create an issue.”

Betty Banner, 618 Osage Street, said that as a member of the TNO neighborhood, they have tried to maintain the neighborhood in the traditional style. She said as she walked around the subject property today, she became concerned that the gravel pad would extend from the west side of the house up to Bluemont A venue.

Hamilton clarified that the parking pad did not come near Bluemont, and a fence exists along the west side, in which the parking pad will not extend beyond. The parking pad would be located 15 feet from 9<sup>th</sup> Street.

Banner asked how far south from Bluemont Avenue the parking pad would be located . May explained that the parking pad is in the rear of the house and Hamilton added that it would be more than 100 feet from Bluemont.

Nelson asked Lauppe why he was not going to pave the entire parking pad and Lauppe said it was a fiscal choice.

Hardy closed the public hearing.

Danner asked if the removal of the garage should be a conditional of approval and Hardy said he didn't think that was necessary because the first condition of adhering to the proposed site plan covers it.

Wigfall said she preferred the gravel as it would create less run off.

Hamilton said that while the code does call for cement, properties on corner lots with alleys create different situations and create additional latitude and could support the item.

Hardy said he agreed with Wigfall on the gravel, and Hamilton added a comment that she hoped it would be maintained.

Wigfall added that the curb would assist with visual control.

Chris Banner, 618 Osage, asked where the fifteen feet came into discussion and May clarified that was the distance from the curb to the property line and that the property did not start at the curb.

Wigfall asked if Hamilton wanted the vision clearance triangle statement to be added to the staff report. Hardy said it would be helpful to add.

Danner made a motion to approve an EXCEPTION to allow for construction of a compacted gravel parking pad, located in the front yard setback associated with a two-family home, located in an R-3, Multi-Family Residential District, with a Multi-Family Redevelopment Overlay (M-FRO), with the following conditions of approval:

1. The Exception request shall be limited to the proposed compacted gravel parking pad as illustrated in the application and site plan.
2. The current driveway and curb cut shall be removed and replaced with sod/grass.
3. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed on a vote of (5-0).

Hamilton added that she was appreciative of the effort that was being done to maintain the structure.

The Board made the following findings of fact for the EXCEPTION at 831 Bluemont Avenue:

**PRESENT USE:** Single Family House

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject property is compliant with all applicable regulations other than the one from which the applicant is requesting the exception. In addition, the reconfiguration of the curb along 9<sup>th</sup> Street helps to maintain the vision clearance triangle.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding areas are zoned R-3, Multi-Family Residential District with a Multi-Family Redevelopment Overlay (MFRO). The surrounding areas are a mixture of single family homes, single family homes that have been converted into multi-family residences, and newer construction multi-family developments.

Minimal adverse impacts on adjacent properties are anticipated by approving the Exception request. The proposed parking pad moves access from 9<sup>th</sup> Street to the alley, and restores some green space with the removal of the driveway and curb cut on 9<sup>th</sup> Street. The proposal to convert this single family dwelling into a two-family dwelling will increase the number of vehicles accessing the subject property. The proposed parking pad would address the increase of cars parked in the neighborhood. There are no adjacent homes that have a direct view of the proposed parking pad.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal negative impacts are anticipated on the general public health, safety, and general welfare by approving the Exception to allow for a compacted gravel parking pad partially within the front yard setback. Based upon the fact that the garage is being removed and the applicant is required to seed and add the curb, no vision triangle issues are created, whereas the current configuration would create an issue.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The subject site is a corner lot, and as a result has two front yards as well as the regulations that are associated with front yards, such as larger required setbacks as compared to a side yard. The strict application of these regulations would prevent the applicants from providing the adequate parking spaces for the two-family dwelling due to the size of the lot and its location on a corner. Additionally, the strict application of the regulations, assuming the proposed location of the parking pad is approved, would require the applicant to pave a portion of the parking pad with concrete, while the remainder could remain as compacted gravel. As was previously mentioned, parking areas, parking spaces, travelways, driveways, ingress and egress may be constructed with compacted gravel for residential land uses that have six (6) or fewer dwelling units. As such, the strict application of the zoning regulations would not prevent the applicant from constructing at least a portion of the parking pad with compacted gravel. Considering all these facts and circumstances, the strict application of these regulations appear to be unreasonable.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM SIDE YARD SETBACK FOR ACCESSORY USES FROM THREE (3) FEET TO ZERO (0) FEET AND THE REDUCTION OF THE REAR YARD SETBACK FOR ACCESSORY USES FROM FIVE (5) FEET TO ZERO (0) FEET FOR AN EXISTING PERGOLA LOCATED AT TWO LEGALLY NONCONFORMING SINGLE FAMILY HOMES, LOCATED IN AN I-3, LIGHT INDUSTRIAL DISTRICT AS WELL AS AN EXCEPTION FOR THE REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY FEET (20) FEET FOR THE ADDITION OF AN ATTACHED GARAGE TO A LEGALLY NONCONFORMING SINGLE FAMILY HOME, LOCATED IN AN I-3, LIGHT INDUSTRIAL DISTRICT, LOCATED AT 1527 AND 1529 FAIR LANE. (APPLICANT: JASON ROTHWELL, PROPERTY OWNER: RW LAND CO. LLC).**

Danner removed herself from the Board on this item due to a potential conflict of interest.

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

Hamilton said that the staff report led her to believe that a structure could not be built across two lot lines and asked if May said that one of the options presented to the applicant allowed that. May said there was no zoning issue about the pergola crossing the lot line, however there were zoning issues addressing the required side yard setbacks along the lot line. May said it was primarily a concern of the Code Services Department regarding fire safety issues which is why one option to remove the middle portion of the pergola was given to the applicant. The second was to remove the chimney three (3) feet in height.

Hamilton asked if it was primarily a fire safety issue and if the chimney did not exist, would there be concerns about access for emergencies. May said that was correct.

Wigfall asked if which of the two (2) options did the applicant choose and May said either option would meet the conditions in the staff report.

Hardy opened the public hearing.

Jason Rothwell, applicant and property owner, came forward to address any questions or concerns of the Board.

Wigfall asked if Rothwell had a timeline on how long it would take him to convert the properties from residential to being functions of Rothwell Landscaping, as that was mentioned as the applicant's primary long term goal in the staff presentation. Rothwell said he did not have a timeline and it was primarily dependent on how much business they would receive. The landscaping feature was being constructed as time and money allowed.

Nelson asked if the pergola was located outside the fence so it could be a show piece along Fort Riley Boulevard. Rothwell said he brought the fence in to create the landscaping feature and he would add gates to the fence so the tenants of the two properties could access and use the outdoor kitchen and dining area associated with the landscaping feature.

Hamilton asked if tenants would be using the landscaping feature. Rothwell said a condition created by the City was to add a gate so both properties could access it if they wanted to. Hamilton said her comfort level was resting on the fact the landscaping feature would remain a showpiece and not be used within such proximity to Fort Riley Boulevard.

Rothwell said he was more than happy to remove the gates and the original intention was that it would be used as a display. He added that he had begun this project awhile ago and received approval from a former City employee and KDOT official. Rothwell said he thought it being zoned I-3 would not create an issue, however because it is being used as residential, it was suggested to him that he add gates so it conforms to the residential use. He said he did not foresee it being used and was happy to remove the gates.

Rothwell added that he thought they would add the additional three (3) fee to the chimney.

Hardy said he thought the gates should be removed for the public health and safety standpoint with the thoughts of individuals being that close to Fort Riley Boulevard. Hardy added that as a showcase for Rothwell Landscaping, it was a positive thing for the business and the community in addition to it improving the views along Fort Riley Boulevard. Rothwell said the gates would not be added.

Hardy closed the public hearing.

Hamilton asked May if the gates could be removed as a condition. May said the reason for the gates was to make it a function of the residential use as there exists a City regulation that there cannot be two land uses on one property.

May said the safety concerns addressed by the Board were valid and the condition requiring the gates could be removed. Nelson asked if that would go against any City codes and May said that it would not.

Hamilton asked if the lot line across Fort Riley was considered a front yard and Hardy clarified that it was a rear yard, the front yard was along Fair Lane.

Nelson asked if the setbacks for the exception were after the fact because the structure was already built and May said that was correct.

Hamilton asked why it was not a front yard. May said that it was not a corner lot, which is the only type of lot that requires two front yard setbacks. Hamilton asked about through lots and May said that the way the lots are platted there is no access along Fort Riley Boulevard, making that lot line the rear yard.

Hamilton asked about the policy that there could not be two land uses on one lot and asked if this was to address the commercial use of the landscaping feature and the non conforming residential use. May said that was correct as the landscaping project was a feature of the neighboring commercial property.

Wigfall said it was unfortunate that the applicant was granted approval and the rules changed during the length of time it took to construct the project. Hamilton asked when the policy change went into effect, if it was the date included on the staff memorandum being August of this year and May said he was unsure of when it was exactly, however it was not August of this year.

Hamilton clarified that the exceptions for the side yard setbacks were for the existing pergola and May said that was correct. The Board agreed they did not have a problem with those exceptions.

Hamilton said she did not have a problem with the mixed uses under the circumstances.

Nelson asked if the Board posed any sight line issues. May said it did not. Nelson asked about the neighboring house and May clarified that the driveway on the adjacent house was on the opposite side of the lot.

Hamilton made a motion to approve an EXCEPTION to allow for the reduction of the minimum side yard setback for accessory uses from three (3) feet to zero (0) feet and the reduction of the rear yard setback for accessory uses from five (5) feet to zero (0) feet for an existing pergola located at two legally nonconforming single family homes, located in an I-3, Light Industrial District, with the following amended conditions:

1. The exception requests shall be limited to the existing pergola and the proposed attached garage
2. The central portion of the pergola shall be removed, separating the pergola into two separate structures, per the requirements of the Manhattan Fire Department and Code Services

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

Nelson made a motion to approve an EXCEPTION for the reduction of the minimum front yard setback from twenty-five (25) feet to twenty feet (20) feet for the addition of an attached garage to a single family home, a legally non-conforming use, located in an I-3, Light Industrial District, with the following condition of approval:

1. The proposed garage at 1527 Fair Lane will abide by the 8 foot side yard setback regulation on the west side of the property

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

The Board made the following findings of fact for the EXCEPTIONS at 1527 and 1529 Fair Lane:

**PRESENT USE:** Two single family homes on two adjacent lots

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject properties are legally non-conforming residential uses in an I-3 Light Industrial Zoning District. However, when using R-1, Single Family Residential District regulations, the subject properties are compliant with all applicable regulations, other than the regulations from which the applicant is requesting exceptions.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** There would be minimal adverse effect on adjacent properties upon the approval of these exceptions. The pergola and associated outdoor living area help to beautify the Fort Riley Boulevard corridor, and offer an amenity to the residents of 1527 and 1529 Fair Lane. To the north, across Fort Riley Boulevard, is the Ag Press complex, in an I-3, Light Industrial District. Properties to the east and south are single and multi-family dwellings in an I-3, Light Industrial District, making them legally nonconforming uses as well. To the west is Rothwell Landscaping Company in an I-3, Light Industrial District. To the southwest are R.M. Baril General Contractor, Inc. and Manhattan Trenching, Inc., both in an I-3, Light Industrial District.

Considering the mixture of uses in this neighborhood, and considering the location of the pergola and outdoor living space in the rear of two residential lots, the landscaping project would have no negative impacts on adjacent properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The subject sites are legally nonconforming residential uses in an I-3, Light Industrial District. Properties directly to the north, south, east and west are also zoned I-3, Light Industrial. The existing pergola and outdoor living space have no negative effects on the public health, safety, morals, order, convenience, prosperity, or general welfare of the neighborhood or the community.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The pergola and outdoor living area do not pose any harm to the surrounding properties and contribute to creating a more visually appealing environment along Ft. Riley Boulevard, and the surrounding area, which is primarily Industrial in nature. The applicant had met with the City of Manhattan and Kansas Department of Transportation before he began construction on the project and was given approval from both entities. However, since this approval was given, there has been a change in City policy regarding the mixing of uses on a legally nonconforming lot.

Additionally, due to the small lot size of 1527 Fair Lane and the orientation of the house on the lot, there are no reasonable alternatives for the applicant to add a garage and be compliant with the zoning regulations regarding minimum front yard setbacks. Considering all these



facts and circumstances the regulations seem unreasonable in this situation.

Hardy adjourned the meeting.

Respectfully Submitted by,

Amelia Lewis, Planning Intern