

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, April 12, 2017
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton, Vice Chairperson; and LaBarbara James Wigfall

MEMBERS ABSENT: Angie Danner, Brandi Nelson

STAFF PRESENT: Doug May, Planner; Chris Kutz, Planning Intern

CONSIDER THE MINUTES OF THE MARCH 8, 2017, BOARD OF ZONING APPEALS MEETING.

Wigfall moved to approve the March 8, 2017 minutes which was seconded by Hamilton and 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 SIDE YARD SETBACK FOR AN ACCESSORY USE FROM THREE (3) FEET TO ONE (1) FOOT FOR AN EXISTING DECK LOCATED WITHIN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 1735 KINGS ROAD. (APPLICANT/ OWNER: JOSHUA MARTIN, FILE NO. EXC-17-023)

Kutz presented the staff report with two (2) conditions of approval.

Hardy opened the public hearing.

Joshua Martin, applicant/owner of 1735 Kings Road, said he purchased the home in good faith and was told by his realtor and title company not to conduct a property line survey. He said in hindsight, however, he should have completed a survey. He assumed the existing retaining wall was all within his property line, which guided how he originally built the deck. He was surprised to learn the northern end of the retaining wall, though, was not on his property after the survey, and he made adjustments to move the deck entirely within his property.

Hardy closed the public hearing.

Hamilton said she supports this case for the reasons stated in the staff report. She felt it was an unfortunate mistake, especially with the non-true property line being different than what the applicant/owner assumed. She wished code services notified the applicant/owner at the time of the survey that there was also a zoning requirement for the three-foot side yard setback for an accessory use. Therefore, when it was reconstructed, the deck layout would have

accommodated all regulations and allowed the applicant/owner to build by right and not have to apply for the Exception.

Wigfall 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 side yard setback for an accessory use from three (3) feet to one (1) foot for an existing deck within an R, Single-Family Residential District located at 1735 Kings Road, with the following conditions of approval:

1. The Exception shall be limited to the existing wood deck.
2. The deck shall be maintained in good condition.

Hamilton seconded the motion, which was passed 3-0.

The Board made the following findings of fact for the EXCEPTION at 1735 Kings Road:

PRESENT USE: Single-family detached dwelling

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Since this property is located within the R, Single-Family Residential District, the minimum side yard setback for an accessory use is three (3) feet. However, the current location of the wood deck, an accessory use, is within this setback in the north side yard. The subject site is compliant with all other applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties to the north, south, east and west are zoned R, Single-Family Residential District. The deck and privacy fence are constructed in an aesthetically pleasing way, similar to a typical privacy fence that is staked in the ground. Considering the residential nature of the neighborhood, there should be no adverse impacts on adjacent properties by approving the Exception request. The applicant submitted an Adjacent Property Owner or Resident Statement with six (6) signatures from neighbors that had no objections to the approval of this Exception. These signatures were dated January 25, 2017.

This set of signatures did not list the property directly to the north of the subject site. However, that neighboring property (1739 Kings Road) is owned by Advanced Property Management, Inc. according to the Riley County Appraiser's Office, meaning it is a rental property and the property owner may not have been available for a signature for no objections to the approval of the Exception. Also, this property does not face the wood deck or side yard, thus it does not impede any views.

On the west side of the subject site are power lines that run north to south. The deck does not impede access to these power lines, though, as it is constructed well to the east while also providing enough room for access from Kings Road along the north property line.

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. The deck is outside of any utility easements located on the subject site. In addition, the deck is built to maintain privacy for the rear yard as well as provide an aesthetically pleasing feature to the existing dwelling unit. Considering the deck's height being no taller than thirty-three (33) inches at its highest point, the structure and privacy fence serve a similar purpose to a typical privacy fence staked in the ground.

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

The strict application is unnecessary when all facts and circumstances are considered. Due to the constraints of the lot, which include the slope and existing retaining wall, accessory uses are forced to the side yard near the north property line. Also, the applicant purchased the property in good faith and originally constructed the wood deck and attached privacy fence to an assumed property line. After meeting with a code services official, the applicant reconstructed the deck within his property line while still providing adequate space for his original intention of the accessory use. The official survey following the purchase of the home and original construction of the deck also revealed a diagonal nature to the north property line. Therefore, reducing the size of the wood deck by two (2) feet at the northwest corner would make it too narrow to use.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR THE OPERATION OF AN ELECTRONICS RECYCLING CENTER WITHIN AN LM-SC, LIGHT MANUFACTURING-SERVICE COMMERCIAL DISTRICT, LOCATED AT 515 & 520 SOUTH 8TH STREET. (APPLICANT/ OWNER: WB REAL ESTATE, LLC; FILE NO. CUP-17-035)

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 ZERO (0) FEET AND A REDUCTION OF THE REAR YARD SETBACK FROM TEN (10) FEET TO ZERO (0) FEET FOR AN EXISTING WAREHOUSE, AS WELL AS AN EXCEPTION FOR A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO FIVE (5) FEET FOR AN EXISTING GARAGE, AS WELL AS AN EXCEPTION FOR THE REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO THREE (3) FEET FOR AN EXISTING QUONSET HUT, AS WELL AS AN EXCEPTION FOR THE REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO ZERO (0) FEET FOR A PROPOSED FENCE, LOCATED IN AN LM-SC, LIGHT MANUFACTURING-SERVICE COMMERCIAL DISTRICT, LOCATED AT 515 & 520 SOUTH 8TH STREET. (APPLICANT/ OWNER: WB REAL ESTATE, LLC; FILE NO. EXP-17-024)

May presented the Conditional Use staff report with nine (9) conditions of approval and Exception staff report with four (4) conditions of approval.

Hardy asked for clarification that no modifications were being made to any buildings or the property except for the installation of fences on 8th Street and these requests were aiming to bring nonconformities into compliance. May confirmed this was correct as the Exceptions and Conditional Use were needed to be approved concurrently.

Hamilton asked how many storage containers were on the site. May said there were currently seven. Hamilton wanted to add a condition of approval to the Conditional Use application that once the lease expired on the Quonset hut, that the storage containers be removed from the site since that Quonset hut would be used for storage. May said he will add the condition.

Hamilton asked for clarification about the condition of approval for the Conditional Use that originally said the temporary storage containers shall not sit on the site longer than 180 days. May said this was a code services requirement, and he was trying to be compliant with the International Building Code (IBC) regulations. Hamilton reiterated she wanted the conditions of approval to reflect that once the Quonset hut was available to be used for storage, the temporary storage containers would be removed from the site. Her concern was the site would become a storage facility without the Board realizing what it was doing by approving the Conditional Use.

Hardy opened the public hearing.

Greg Wilson, applicant/owner, said he spoke with City staff before purchasing the property and had the intention of meeting all requirements necessary for the Conditional Use. As for the storage containers, he said he had a written agreement with the City that the temporary storage containers would be removed in thirteen (13) months when the lease on the Quonset hut ends. He and the other property owners leased the Quonset hut before learning of the requirements necessary for the proposed Conditional Use, thus creating the delay.

Hamilton asked if the property owners had any building plans for the land currently be used to house the storage containers. Wilson said they have gone over some options, but they do not have any commitments at this time.

Hamilton asked about the demand for delivery trucks entering and leaving the site. Wilson said it is minimal as they ship out materials three to four times a year.

Wigfall asked if the vacation of the street between the two buildings was approved, what are the advantages, and if it was not approved, what are the effects to the proposed use. Wilson said it would help make it a contiguous site in which they can screen the entire lot with a fence and provide safety.

Hamilton asked how the applicant will accommodate the fire hydrant on the property. Wilson said he would work with the fire department to make sure it is accessible from both sides of the proposed fence. He originally had the intention of creating a gate to allow for this access.

Wigfall asked if the applicant would use the gate as ingress and egress. Wilson said no, it would be a small gate with a padlock only used by the fire department.

Hamilton asked about the written agreement provided by City staff in the information packet detailing what will be done with the temporary storage containers on the site. May said it was given to the Board to show the applicant and code services had come to an agreement on the matter.

Hamilton asked about the last condition in the Conditional Use request regarding plugging or abandoning floor drains on the site in the existing warehouse on El Paso Lane. Wilson said he was not aware of this condition. May said one of the City engineers requested this condition be added to make sure no chemicals enter into the city's water system. Aaron Brent, 17005 Glendwood Lane, said there are two floor drains in the warehouse on El Paso Lane: one is by the water heater but away from the area in which they will be dismantling electronics and the other is by the garage. They would plug this second drain.

Hamilton asked if the City engineer asked for both floor drains to be plugged. May said he requested both, but if one is not going to be used, not plugging the unused one would suffice the requirement. Hardy said, however, Brent was going to use one of the drains. Brent said he was concerned if they plugged the one by the water heater, it could be a code violation for the pressure release valve. May said he would rewrite the condition so that it specifies, "to prevent chemicals entering into the water system." Hardy said this would clarify the ninth condition.

Hamilton asked for the purpose of the recycling facility, would the applicant need to use the drain. Brent said no.

Hardy closed the public hearing.

Hamilton said the staff report and presentation were very good and all of the Board's questions were able to be answered. She said the Conditional Use was not going to be any more disruptive than what is already there in the neighborhood. She also said as long as the fire hydrant is accommodated with the proposed fencing, then she can support the Exception requests. As for the Conditional Use application, she would be able to support it with some modified language in the conditions of approval. She was glad the site was going to be used. She said the fourth condition of approval needed language added to say, "with accommodation for the fire hydrant location." She said the sixth condition had a typo. She concluded by saying the ninth condition should say "floor drains shall be plugged or abandoned as necessary to prevent chemical disposal." May said he can make those edits.

Hamilton made a motion to approve a CONDITIONAL USE to allow for the operation of an electronics recycling center located within an LM-SC, Light Manufacturing-Service Commercial District, with the following modified conditions of approval:

1. The associated Exception requests must be approved concurrently.
2. The vacation of the South 8th Street right of way must be approved by the City Commission.

3. The fire hydrant at the end of South 8th Street shall be kept on the south side of any screening fencing installed along the southern edge of the property.
4. The property shall be screened as proposed in the application documents.
5. The screening fencing shall be maintained in good condition.
6. Temporary storage containers shall follow the standards set forth by the Code Services Department.
7. A six-inch curb, earthen berm, or other reasonable methods should be provided to create a separation from El Paso Lane, as well as the adjoining private properties.
8. Floor drains in the warehouse shall be plugged or abandoned in areas where electronics will be dismantled.
9. The temporary storage containers shall be removed and the Quonset hut shall be used for storage once the current lease ends on March 31st, 2018.

Wigfall seconded the motion, which passed by a vote of 3-0.

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 from twenty-five (25) feet to zero (0) feet and a reduction of the rear yard setback from ten (10) feet to zero (0) feet for an existing warehouse, as well as an EXCEPTION for a reduction of the minimum front yard setback from twenty-five (25) feet to five (5) feet for an existing garage, as well as an EXCEPTION for the reduction of the minimum front yard setback from twenty-five (25) feet to three (3) feet and a reduction of the minimum side yard setback from eight (8) feet to five (5) feet for an existing Quonset hut, as well as an EXCEPTION for the reduction of the minimum front yard setback from twenty-five (25) feet to zero (0) feet for a proposed fence, located in an LM-SC, Light Manufacturing-Service Commercial District, with the following conditions of approval:

1. The proposed fence shall only be installed once the South 8th Street right of way has been vacated.
2. The fence shall be maintained in good condition.
3. The fence shall be incorporated with screening slats as described in the application.
4. The associated Conditional Use must be approved concurrently.

Wigfall seconded the motion, which passed by a vote of 3-0.

The Board made the following findings of fact for the CONDITIONAL USE at 515 and 520 South 8th Street:

PRESENT USE: Electronics recycling facility

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: The property currently has several setback nonconformities. The warehouse building at 515 South 8th Street currently has setbacks of zero (0) feet from the north lot line (El Paso Lane) and zero (0) feet from the west lot line

(South 8th Street). The metal garage has a setback of four (4) feet from the south lot line (Fort Riley Boulevard).

The Quonset hut at 515 South 8th Street has a setback of three (3) feet from the south lot line (Fort Riley Boulevard). See the associated Exception staff report for more details.

Additionally, the LM-SC Light Manufacturing-Service Commercial District requires a minimum lot size of 20,000 square feet. 520 South 8th Street measures approximately 15,311 square feet, which is a non-conforming lot size. However, the end of South 8th Street from its intersection with El Paso Lane to its terminus at Fort Riley Boulevard is scheduled to be vacated, pending the City Commission's decision at the April 18th City Commission meeting. Once that portion of South 8th Street is vacated, 515 and 520 South 8th Street, will effectively become one lot, which will be in compliance with the minimum lot size requirements in the LM-SC District. See the associated Variance staff report for more details.

B. Probable effect on adjacent properties: The subject property is zoned LM-SC, Light Manufacturing-Service Commercial District, as are properties directly to the east and south, across Fort Riley Boulevard. Properties to the north and west are zoned R-2, Two Family Residential District with Traditional Neighborhood Overlay (TNO). Directly to the east of the subject property is O'Reilly Auto Parts. To the south, across Fort Riley Boulevard is NAPA Auto Parts. The remaining surrounding properties are residential.

The electronics recycling facility that this Conditional Use request is for is already in operation. There seems to be little adverse impact on adjacent properties currently, however the additional storage containers and paving will alter the drainage pattern and increase the rate of runoff. The general neighborhood is industrial and commercial oriented, with residential properties to the north.

The applicants held the neighborhood meeting required by the Conditional Use process on January 26, 2017. Four (4) nearby property owners attended the meeting. According to the application documents, the only concern brought up at the meeting was from a property owner who resides behind O'Reilly Auto Parts and was concerned about additional watershed from the property due to the proposed increase in paving area at 515 South 8th. The applicants addressed this issue by stating that the area proposed to be paved will be sloped away from the alley. According to the application documents, apart from the drainage concerns, everyone that attended the meeting expressed their support of the proposal. Additionally, the City Stormwater Engineer is requesting a concrete curb be installed along the alley to further prevent rainwater runoff from flowing into properties to the north.

C. Domination by use over neighboring properties:

- 1. Location, nature, and height of physical improvements:** The only physical improvements proposed for the property is the paving of 1,950 square feet of the northwest portion of 515 South 8th Street, as well as the screening of 515 and 520 South 8th Street with chain link fencing with screening slats.

- 2. Landscaping and screening:** According to the application, only roughly 30% of the subject site is currently screened. The applicant states that if the Conditional Use request is granted, then all sides of the property will be screened with chain-link fencing with privacy slats.

The property is currently minimally landscaped. There are two mature trees on the east side of South 8th Street, and there are trees along the north and west sides of 520 South 8th Street, and there is a tree between the metal garage and Fort Riley Boulevard at 515 South 8th Street.

No new landscaping is proposed as part of this Conditional Use request.

D. Adequate provision of parking and loading: The site currently contains enough parking for five (5) vehicles, which is an adequate amount of parking for the use. The zoning regulations do not specify the required number of parking spaces for recycling centers specifically, but at least one (1) parking space for each 2,000 square feet of floor area is required for uses related to warehousing, storage, and wholesale establishments. This land use most closely matches the proposed use for this Conditional Use request. The subject property contains a total of 10,012 square feet between the warehouse at 515 South 8th and the Quonset hut at 520 South 8th, which would require at least five (5) parking spaces.

E. Adequate provision of drainage, and other public utilities: The site at 515 South 8th currently retains approximately 9,500 square feet of unpaved area, and 520 South 8th Street currently retains approximately 6,000 square feet of unpaved area, and only minor paving work is planned for these sites. Any modifications to these sites, including the addition of containers or pavement, that increases the impervious area and the rates of runoff will require the owner to provide a way to manage site drainage to avoid an adverse impact on adjoining property owners. All efforts shall be made to avoid directing additional runoff to El Paso Lane as well as adjoining property owners. Drainage shall be routed to the Right-of-Way along 8th Street or south toward Fort Riley Boulevard for both properties. A six-inch curb, earthen berm, or other reasonable methods should be provided to create a separation from El Paso Lane, as well as the adjoining private properties.

F. Adequate provision of access: 515 South 8th is currently accessed via a gate in the chain link fence on 8th Street. There is also a door in the warehouse building that leads directly to the public sidewalk on 8th Street. There is another gate in the chain link perimeter fence to El Paso Lane, at the northwestern edge of the property.

520 South 8th is currently accessed from 8th Street. There is a concrete ramp leading from 8th, near its terminus at Fort Riley Boulevard that accesses the sliding double doors of the Quonset hut. Once the South 8th Street right of way is vacated, then the access to the site will change to one access point just south of the intersection of South 8th Street and El Paso Lane, which will be a gate in the proposed fence.

The Board made the following findings of fact for the EXCEPTIONS at 515 and 520 South 8th Street:

PRESENT USE: Electronics Recycling Facility

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: In addition to the setback non-conformities described in this staff report, the applicants are requesting a Conditional Use permit to legally establish an electronics recycling facility, which is currently in operation. Reference the associated Conditional Use staff report for more information.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property is zoned LM-SC, Light Manufacturing-Service Commercial District, as are properties directly to the east and south, across Fort Riley Boulevard. Properties to the north and west are zoned R-2, Two Family Residential District with Traditional Neighborhood Overlay (TNO). Directly to the east of the subject property is O'Reilly Auto Parts. To the south, across Fort Riley Boulevard is NAPA Auto Parts. The remaining surrounding properties are residential.

The setback reductions for existing structures would have little impact on adjacent properties. These structures have existed with setback encroachments since the 1950s with virtually no effect on adjacent properties.

The setback reductions for the proposed screening fence will help screen the property from surrounding properties. The proposed use of the property as an electronics recycling facility is industrial in nature. Many of the surrounding properties are also industrial or commercial. However, properties to the north are residential and the proposed screening will create a buffer between land uses.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Setback non-conformities have existed since the structures were built in 1956 and 1950 respectively. The structures were built before the existing zoning regulations were in place, and there appear to be no adverse impacts upon the surrounding neighborhood as a result of these setback non-conformities.

The setback reductions for the proposed screening fence will have a positive effect on the public health, safety, morals, order, convenience, prosperity, or general welfare. Considering the mix of land uses in the immediate area consisting of industrial, commercial, and residential, the proposed fencing will help maintain the safety, health, and order of the area by securing the subject property and screening it from surrounding properties, especially the residential properties to the north.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the zoning regulations would require the applicant to either move all three structures so they no longer encroach on the setbacks or remove the encroaching portions of the structures. Considering that these structures were in place before the current zoning

regulations were established, then the strict application of the zoning regulations seems unreasonable in this instance.

Additionally, once the right of way for the southern end of South 8th Street has been vacated, 515 & 520 South 8th Street will effectively become one lot, with a unique shape. Additionally, the subject property essentially has two front yards: one where South 8th Street dead ends and one along Fort Riley Boulevard. Due to the industrial nature of the subject site, the screening fencing is required to create a secure, safe, and aesthetically pleasing environment. Additionally, because of the unique shape of the lot, it creates challenges for the applicant to follow the strict application of the regulations and also adhere to the screening requirements of the zoning regulations.

Hardy adjourned the meeting at 7:39 p.m.

Respectfully submitted by,
Chris Kutz, Planning Intern