

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, June 14, 2017
7:00 PM

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

MEMBERS ABSENT: Brandi Nelson

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

CONSIDER THE MINUTES OF THE MAY 10, 2017, BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the May 10, 2017 minutes which was seconded by Wigfall and passed with a vote of 4 – 0.

A PUBLIC HEARING TO CONSIDER A VARIANCE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR NO REQUIRED LANDSCAPED SCREENING BETWEEN THE PARKING LOT AND FT. RILEY BOULEVARD AT THE AUTOZONE STORE LOCATED IN AN LM-SC, LIGHT MANUFACTURING-SERVICE COMMERCIAL DISTRICT, LOCATED AT 615 FORT RILEY BOULEVARD. (APPLICANT: BUCK DRIGGS – DRIGGS DESIGN GROUP, OWNER: AUTOZONE, INC.)

FILE NO. VAR-17-049

May presented the staff report, which recommended denial for the Variance request.

Hamilton asked to clarify that the Variance requested was based on the Manhattan Zoning Ordinance and not on any Variance granted for the property in the past. May confirmed the request was looking at the standards for a Variance and zoning regulations.

Hardy opened the public hearing.

Buck Driggs, Driggs Design Group and applicant, said he understood the standards for a Variance but “at least 50 percent” of the businesses along Fort Riley Boulevard are not in compliance with the landscaping screening requirement. He also said he did not believe there was a history of accidents caused by headlights from the parking lot, thus warranting the installation of landscaping screening. He said the AutoZone parking lot is about 18 inches shorter than the berm height near Fort Riley Boulevard, which would mean the landscaping would reach a height of about four feet after factoring in the zoning regulations requirement and parking lot surface height. This would cause a visual barrier that causes concern for the

property owner. He said the business does nonprofit events, such as car washes and barbecues, and tall landscaping would decrease their visibility. He understood the intent of the requirement is to provide screening that also beautifies the Fort Riley Boulevard corridor, but other properties have a range of landscaping or screening, including lawns and chain link fences.

Hardy closed the public hearing.

Hamilton asked May if there is a berm on the property, does the height of the berm get factored into the 30-inch minimum height requirement for landscape screening. May said the screening is measured starting from the grade of the parking lot. Therefore, if there is an 18-inch tall berm on the site, that is included within the 30-inch tall screening. Hamilton followed up by asking if that means the landscaping could be something that measures 12 inches in height and be combined with the 18-inch tall berm. May confirmed this was correct, as long as the combined height of the landscaped and natural features is 30 inches in height measured from the grade of the parking lot.

Driggs asked May if the berm is taller than landscaped parking lot, then would that count to the height requirement. May reaffirmed the requirement, as stated in zoning regulations.

Danner said she drove by the property and believed if one property is not in compliance with the screening regulation, then it gives an unfair advantage to some businesses. She said this Variance request does not meet the standards; therefore, she cannot support it.

Wigfall asked May if the landscaped screening must be continuous or have breaks to help create visible "alleys." May said the way the regulations read, the screening must be densely planted. He said based on that phrasing, it must be continuous.

Hamilton reinforced Danner's comments and supported City staff's recommendation for denial. She said the applicant has recognized part of the goal of the screening requirement is to beautify the Fort Riley Boulevard corridor as well as shield the headlights from parking areas. She said the effort to beautify Manhattan should not be taken lightly. She also said the application showed other properties along this corridor are not in compliance with the screening regulations and hoped this was recognized by City officials as well. She cited an example of O'Reilly Auto Parts near the subject site, which had restored landscaping for the screening of the parking area, but it was only six inches in height. She hoped the City had a way of determining how fast new landscaping would grow. She also echoed Wigfall's comments about continuity of screening. She said the landscaping may die out and would be left with gravel in its place. She said the City has also fallen out of compliance with its own property in terms of landscaped screening. She asked the applicant to adhere to the zoning regulations as well as asked the City to apply the same standard across the board, including on its own properties.

Wigfall said there are options for plantings and materials that do not create as much of a hardship to what may have been on the property in the past.

Hardy said the standards for a Variance are hard to meet, compared to an Exception, but the standard was met before the landscaping was removed. He said he empathizes with the applicant but “two wrongs don’t make a right.” If another property is not in compliance, that does not mean the applicant cannot comply with the regulations. He said the Board takes each application based on its own merits and whether it meets the standards. He added if the Board was presented with a similar request, it would act in the same way and hold the potential applicant to the same standards as the current applicant is being held.

Hamilton noted City staff recommended denial focusing on the applicant being the cause for the Variance request. She also wanted it to be pointed out there is no unnecessary hardship caused by the regulations in this application.

Hamilton made a motion to deny a VARIANCE to allow no required landscape screening between the parking lot and Fort Riley Boulevard at the AutoZone store located at 615 Fort Riley Boulevard, based on the staff report as modified, because a strict application of the provisions of the Manhattan Zoning Ordinance will not constitute an unnecessary hardship (Standard C) and the request for a Variance was created by the applicant.

Wigfall second the motion, which passed 4 – 0.

The Board made the following findings of fact for the VARIANCE at 615 Fort Riley Boulevard:

PRESENT USE: AutoZone retail store

CONDITIONS UNIQUE TO THE PROPERTY: The property is fairly typical of properties along Fort Riley Boulevard and in the LM-SC district. The lot contains no unique conditions other than that it has a stormwater detention basin in its eastern portion.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The Variance request to not require the landscape screening would likely have minimal effect on adjacent properties. However, the standards for a Variance reads that “the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant”. In this case, there are few unique features that distinguish this property from others along Fort Riley Blvd or in the LM-SC zoning district. Additionally, the request for a variance arises because the property formerly contained the required landscape screening, but it was removed because the vegetation had become infested with bagworms. The removal of the screening was done voluntarily by the property owners, and therefore the reason for the variance request was created by the property owners.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The strict application of the regulations do not create an unnecessary hardship for the applicant or the property owners. The property does not contain any unique features that would prohibit the property owners from installing the required landscape screening, and in fact, the property once contained said screening and it was removed voluntarily by the property owners.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: If the Board were to grant this Variance, it would likely not have many substantial effects on the public health, safety, morals, order, convenience, or general welfare. The required landscaped screening is intended to provide aesthetic enhancements to the Fort Riley Boulevard corridor as well as to screen headlights in the parking lots along this corridor from shining into oncoming traffic on the arterial road.

RELATIONSHIP TO INTENT OF REGULATIONS: The regulation that requires thirty (30) inch tall landscape screening between the parking lot and limited access arterials is intended to buffer the parking area from the public right of way as well as to provide year-round screening of headlights onto the roadway. Since the property contains no other method in which to screen the parking area, then this component of the zoning requirements will not be met if this Variance request were to be approved.

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 FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO ONE (1) FOOT FOR A PROPOSED WOODEN PRIVACY FENCE AT AN EXISTING HOUSE LOCATED WITHIN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 727 SUNSET AVENUE (APPLICANT: DAEMON HONEYCUTT – CTB HOLDINGS, INC., OWNERS: DAEMON HONEYCUTT AND KAIL KATZENMEIER – CTB HOLDINGS, INC.).

FILE NO. EXC-17-049

Kutz presented the staff report with recommendation of approval and three (3) conditions of approval.

Hardy asked if the existing hedge on the site would be removed. Kutz confirmed the hedge would be removed to allow for the construction of the proposed fence.

Hamilton said one of the conditions of approval states the proposed fence be constructed as described in the application and shown in the renderings, but the renderings do not show what the fence would like. Kutz said the fence would be a standard six-foot tall cedar privacy fence and showed the renderings supplied by the applicant. Hamilton said there is quite a big range of cedar privacy fences.

Hamilton asked if the fence is in line with the front of the house on the Sunset Avenue side or was it set back from the northeast corner of the residence. Kutz said the fence is set back from the corner of the house as shown in the renderings supplied by the applicant.

Hamilton asked if Kutz had anything in the record about what the neighborhood response was in relation to the proposed wooden privacy fence. Kutz said the applicant voluntarily held a neighborhood meeting, since a meeting is not required for an Exception request, and five neighboring properties attended and supported the proposed fence. He said that information

was included in the staff report, but he did not have a sign-in sheet of the attendees from the meeting.

Wigfall asked to clarify that fence would be slightly taller than the existing hedge on the site. Kutz confirmed this, stating the proposed fence would be six feet tall.

Hardy opened the public hearing.

Daemon Honeycutt, applicant, stepped to the podium. Hamilton asked Honeycutt to describe the proposed fence. Honeycutt said it would be a standard six-foot cedar fence, tightly built. Hamilton asked for clarification if these are cedar planks abutted against one another and not see-through. Honeycutt confirmed that was correct. Hamilton asked if the framing would face the house on the subject site. Honeycutt confirmed this and said the cedar would be the finished product facing Thackrey Street.

Hamilton asked if Honeycutt was in charge of the plantings that will be placed along Thackrey Street. Honeycutt said yes. Hamilton asked to clarify what the plantings will be. Kutz displayed the site plan from the staff presentation to help Honeycutt and the Board see what was proposed. Honeycutt said China Hollies and other low-growing plantings would be installed. He said the plantings would range in height from 10 to 36 inches to “stair step it down” to provide more of a curb appeal in combination with the privacy fence. Hamilton asked if the existing hedge would be removed. Honeycutt confirmed that was correct, stating the only existing landscaping that would be maintained is a tree on the southeast side. Hamilton asked if the two trees along Thackrey Street would be kept. Honeycutt said if those trees are in the right-of-way, then they would be kept.

Hamilton asked if the sidewalk entrance to the property along Thackrey Street would feature an open, gated entrance. Honeycutt reinforced the intent of the fence was to create a private area for the property and the sidewalk entrance would have a cedar gate as well. Hamilton questioned if Honeycutt was concerned about traffic noise along Thackrey Street. Honeycutt said the traffic noise could also come from Sunset Avenue. Hamilton said the proposed look was very solid and monolithic, and the proposed landscaping was minimal compared to the property to the north on Thackrey Street. She added the property across the street (2000 Thackrey Street) currently has an open view with greenery and two entrances and the proposal was for a “hard fence.” She said this was a concern she would have as a neighbor.

Hamilton said when this property was granted Exceptions for the existing structures in February 2016, that was standard because the Board grants those types of Exceptions. She recalled that the Board was saying at the time of those Exception request hearings that those requests were limited to the pre-existing structures and it was a modest intrusion because of the open look. She said now that the Exceptions were put in place for the existing house and detached garage, now the property is looking to expand upon it. She said the property has yards to the back and to the south, but one of those (to the south) has been cut off due to a lot split. She felt the property was taking advantage of the “neighborhood sensibilities.”

Honeycutt said the property to the north (2000 Thackrey Street) features a similar type of fence that they are trying to replicate. Hamilton said that fence is also offset, so it does not have a solid fence look.

Wigfall asked if there was a particular reason the fence had to be six feet tall. Honeycutt said there was no particular reason. Wigfall said she understands privacy. Honeycutt said they could lower the fence to five feet, if necessary.

Rodney Franz, 2000 Thackrey Street, asked the Board if they had seen the six-foot tall privacy fence on his property. Franz said about 40 years ago he requested from the Board of Zoning Appeals relief from the regulations to put the fence in the property's front yard. He said they installed the fence so it could provide a safe, enclosed area for his children. He said he supports the proposed fence from the applicant and appreciated the communication by the applicant about the proposal. He said while he was unable to attend the neighborhood meeting, the applicant approached him to discuss the proposal at a more convenient time. He said he was also happy with the applicant and current property owner that they were not constructing a house on the lot that is south of the subject site and was once a part of the property before a lot split. He said the applicant has shown plans that make the subject site more pleasant to look at than what previously existed. He and his wife, who live across the street, are happy with the proposal and do not see any problems with it, especially with it removing the hedge that exists there currently.

The Board said they appreciate Franz's comments.

Brad Koehn, 2008 Thackrey, said he looks at subject site on a daily basis because he lives across the street and to the northwest of the subject site. He said he is pleased the applicant purchased the home and is supportive of what they want to do. He said he is happy with the proposed fence and what they want to do with the enclosed area, but the Board brought up a good point about maybe incorporating a staggered look to the proposed fence, one that is similar to the fence at 2000 Thackrey Street. He said this would help soften the look of the fence. He appreciated the landscaping between the proposed fence and Thackrey Street, but his biggest concern about the plantings was the maintenance. He was confident the applicant was a professional enough to maintain it, however.

Hardy closed the public hearing.

Hamilton stated she appreciated the public comments. She also said she was happy there would not be two houses on the abutting lots, one of those lots being the subject site and the other being the lot to the south. She said she could go forward with the City's recommendation of approval of the Exception request, but she preferred that the fence be staggered planks as opposed to solid. She felt the request by the Board to make it five feet in height was reasonable, but if the fence was going to be staggered, the applicant should be allowed to mirror what exists across the street in height.

Danner said none of the original conditions of approval include language addressing the landscaping in front of the fence. Wigfall said she was trying to figure out the distance of the

landscaping from the street. Hardy said the Board could put a condition in the approval that the landscaping be planted as proposed. Danner said the landscaping would help soften the look of the fence.

Hardy said he is familiar with the property, but he wanted to give the applicant as much flexibility as possible when it comes to making it a straight fence. He said he appreciated the applicant willing to drop the height down to five feet, but if he was willing to go with a staggered look, then six feet in height would be appropriate as it would be comparable to the property at 2000 Thackrey. Danner said that would be better.

Wigfall commended the applicant for all of its proposed landscaping, which provides a softer look. She said the Board tends to get more proposals for a hardscape look. She also said there are ways to secure an area for children as well as provide privacy in terms of the height or look of the fence. She said she prefers a fence with more transparency, but she appreciates all of the landscaping.

Hamilton proposed the second condition of approval be modified to read, "The privacy fence and landscaping shall be constructed and maintained as described in the application or comparable to the existing fencing in the property to the north."

Hamilton made a motion to approve the Exception for the reduction in front yard setback from twenty-five (25) feet to one (1) foot for a proposed wooden privacy fence located in an R, Single-Family Residential District located at 727 Sunset Avenue, with the following conditions of approval:

1. The Exception shall be limited to the proposed fence.
2. The privacy fence and landscaping shall be constructed as described in the application and shown in the renderings as well as maintained in good condition. The fence shall also be constructed in a comparable manner to the property to the north at 2000 Thackrey Street.
3. All applicable permits shall be obtained.

Danner second the motion, which passed 4 – 0.

The Board made the following findings of fact for the EXCEPTION at 727 Sunset Ave:

PRESENT USE: Single-family detached dwelling

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property is in compliance with all applicable regulations other than the Exception requested through this application. It was granted Exceptions for the encroachment of the house and detached garage in the front yard setback along Thackrey Street in February 2016.

PROBABLE EFFECT ON ADJACENT PROPERTIES: There should be no adverse effects on adjacent properties by approving the Exception request. The fence is in line with the existing detached garage, and is proposed to have surrounding landscaping features to provide an

aesthetically-appealing amenity to the property. The privacy fence would limit noise from the private area enclosed at the subject site. It also does not hinder any vision clearance triangles as it is set back from the southwest corner of Sunset Avenue and Thackrey Street by about forty-eight (48) feet.

There is one property, which is north of the subject site at 2000 Thackrey Street, that faces the subject site and its proposed fence. However, the site currently features shrubs along the same line of the proposed fence. Therefore, the neighboring property that faces the subject would not experience any conditions that currently do not exist in terms of screening between Thackrey and the existing dwelling unit. The proposed fence would be taller than the shrubs, but the site plan also shows other landscaping features to soften the look of a privacy fence. Also, the height is a typical six feet tall.

The applicant held a neighborhood meeting in May, which was attended by five neighbors. Each of the five families supported the proposed fence.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be no adverse impacts on adjacent properties by approving the Exception request. The proposed fence will provide an aesthetically pleasing look to the subject site, increase privacy and screening for the property owners from the street and neighboring properties, and not impede any vision clearance triangles.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The privacy fence cannot be constructed at the minimum 25-foot setback in its proposed location because the existing house is already in this setback. Also, the proposed privacy fence does not disrupt the character of the neighborhood due to it being constructed in line with an existing detached garage in the front yard along Thackrey Street and at a length that is shorter than the length of the existing house. The subject is a corner lot, but the proposed fence is being built in the front yard in which it does not face. Therefore, strict application of the regulation is unreasonable when all facts are considered.

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 INCREASE OF THE THIRTY (30) PERCENT MAXIMUM LOT COVERAGE TO APPROXIMATELY THIRTY-THREE (33) PERCENT FOR A PROPOSED WOOD DECK AND STAIRS ASSOCIATED WITH AN EXISTING SINGLE-FAMILY RESIDENCE LOCATED WITHIN AN R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TRADITIONAL NEIGHBORHOOD OVERLAY, LOCATED AT 333 N. 15TH STREET. (APPLICANT/OWNER: RANDY COONROD)

FILE NO. EXC-17-046

Kutz presented the staff report with recommendation of approval and three (3) conditions of approval.

Hamilton asked, based on the conditions of approval, if the applicant or future property owner were to enclose the wood deck or restructure it, would the building permit process capture the fact that this Exception only applies to the specific wood deck in this application. Kutz said yes, the Exception request before the Board only applies to the wood deck as outlined in the submitted application. Hamilton asked how that process works within the City. She wanted to ensure that the Exception for lot coverage as caused by the wood deck will hold during future building permit processes. Hamilton did not believe the conditions of approval would allow that, but she wanted to know the permit process from the City's perspective. May said the condition of approval as outlined in the staff report indicates this Exception is only for the proposed wood deck. Hardy said he sees the condition as solely applying to the proposed wood deck. May added if a building permit was requested for a different configuration or structure, the inspection of the site should reveal the Exception before the Board only applies to the wood deck.

Hardy opened the public hearing.

Randy Coonrod, applicant, said he purchased the house about 10 years ago, and he has maintained it as a house for his children to live in during their time in college. He renovated the house and considers it the "best looking house on the street." He said the street, 15th Street, is mostly a renter-occupied area. He said the adjacent property owner to the south of the subject site approved of the proposed wood deck. He also said he installed a shadow fence between the adjacent property to the south and the subject site. He added a fence along the back property line to help screening from an abutting parking lot as well as landscaped the rear yard. He tried to contact the adjacent property owner to the north but was unable to contact the person. He also stated support from other neighboring properties. He said there was previously a wood deck in the same location as the proposed one but about a third of its size.

Wigfall asked Coonrod if the area underneath the deck would be enclosed. Coonrod confirmed this was correct.

Hardy said he appreciated what Coonrod has done to improve the property.

Hardy closed the public hearing.

Hamilton said she is all for making any single-family homeowner happy.

Hardy said yes, particularly in the TNO, Traditional Neighborhood Overlay. He said it is nice to see people want to improve the homes in the area.

Coonrod added the adjacent property owner to the south has been influenced by his renovation activity and is looking to improve her property.

Danner said it is a very minimal Exception for a maximum value.

Danner made a motion to approve an EXCEPTION to allow for the increase of the thirty (30) percent maximum lot coverage to approximately thirty-three (33) percent for a proposed wood deck and stairs associated with an existing single-family residence located within an R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay located at 333 N 15th Street, with the following conditions of approval:

1. The Exception shall be limited to the proposed wood deck and stairs as explained in the application and shown in the site plan.
2. The wood deck and stairs shall be constructed as proposed and maintained in good condition.
3. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed 4 – 0.

The Board made the following findings of fact for the EXCEPTION at 333 N 15th Street:

PRESENT USE: Single-family detached dwelling

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations except for the Exception requested through this application.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The proposed deck is unlikely to have any adverse effects on adjacent properties. The deck is proposed to be built with a wood-featured composite material and constructed over an existing concrete pad. It will add an aesthetically-pleasing and value-adding amenity to the property. The primary possible effect on adjacent properties would be the height of the deck. However, the deck is being built at the same height as the finish floor of the existing dwelling unit—thirty (30) inches. Currently, stairs allow for residents to access the home directly from the rear door. The deck would provide a gathering place at the same elevation as the home while moving the stairs to access the rest of the rear yard and detached garage to a location away from the adjacent property to the south.

The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential with Traditional Neighborhood Overlay. The adjacent property to the north is a dwelling converted into three (3) apartments while the property directly to the south is a single-family dwelling. The properties to the west, on the rear side of the house, are a mix of two single-family residences and a two-family unit. The increase in lot coverage and proposed wood deck would not have an adverse effect on these properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No adverse effects are anticipated on the public health, safety, morals, order, convenience, prosperity, or general welfare by approving the Exception. The request to increase the maximum lot coverage by three (3) percent for the 30-inch tall wood deck equals about 220 square feet. The increase in lot coverage is negligible and would not be noticed by the general public. The proposed deck is in the rear and side yard and will provide an attractive feature to the home as it is built of high quality composite

materials. The deck still allows access to the rear of the house while also directing foot traffic towards the driveway and detached garage. The proposed deck would not alter the order of the neighborhood or impact the health, safety and welfare of the general public.

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

The strict application of the regulations would not allow the proposed wood deck to be constructed. The subject site has reached its maximum allowable lot coverage in the TNO, Traditional Neighborhood Overlay District due to the recent construction of a new, larger detached garage. The applicant's only other option to the proposed wood deck is a no-build option. With this in mind, it must be noted that the purpose of the maximum lot coverage of thirty (30) percent in the TNO, Traditional Neighborhood Overlay is to help preserve green space on the lot. However, since the deck is being constructed over an existing concrete pad and will allow stormwater to filter down onto the ground level, there is no impact on existing green space on the lot.

There are other facts and circumstances to consider as well. The applicant is building the wood deck at a minimal height relative to the home and rear yard. Also, the deck does not encroach on any other bulk regulations nor adversely impact neighboring properties or general public. Therefore, strict application of the regulation seems unreasonable.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF MANHATTAN, KANSAS, TO ALLOW FOR THE REDUCTION IN THE REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO FIFTEEN (15) FEET FOR A PROPOSED SINGLE-FAMILY RESIDENCE WITHIN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT MUIRFIELD ADDITION, LOT 19. (APPLICANT: TRACY ANDERSON, OWNER: LISA BARR, TRUST)

FILE NO. EXC-17-036

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

Hamilton asked if the rear yard structure was not connected to the residence through the retaining wall, would the structure at its location as shown in the site plan be classified as an accessory use and not require an Exception. Kutz said yes, if this was an accessory structure, it would be held to a minimum five-foot rear yard setback requirement.

Danner asked what was the structure in the setback as she was unable to tell from the drawings. Kutz said it was a gazebo-like structure.

Hamilton said if the applicant builds out the residence within the valley shown in the staff presentation, then it would not create a natural buffer. Kutz clarified to show the proposed residence is built to the west of the valley and not within it.

Hardy opened the public hearing.

Dan Knight, representing the applicant, Tracy Anderson, said there is a stair component to the gazebo. He also said the wall is a retaining wall due to how everything laid out on the site.

Hardy closed the public hearing.

Hamilton said the Board deals with unique lots, especially in this area, and has no problem supporting this Exception. However, she reiterated her concern for relying on open space provided by neighboring properties for justification of rear yard setback encroachment. She said that has shown up in previous residential applications. She also said this case was different because of the golf course. She did not want future applicants going down the path of requesting rear yard setback Exceptions because of the proximity to the golf course. She stated her support for this project because of the retaining wall feature connecting the gazebo and residence as well as the site layout and topography.

Hardy said she agrees with Hamilton's opinion, and he wants the focus to remain on the uniqueness of the site being its topography and not the adjacent property being a golf course.

Wigfall made a motion to approve an EXCEPTION to allow for the reduction in the rear yard setback from twenty-five (25) feet to fifteen (15) feet for a proposed single-family residence within an R, Single-Family Residential District located at Lot 19 of the Muirfield Addition, with the following conditions of approval:

1. Exception shall be limited to the rear yard structure shown within the proposed site plan in the application.
2. All applicable permits shall be obtained.

Danner seconded the motion, which was passed 4 – 0.

The Board made the following findings of fact for the EXCEPTION at Muirfield Addition, Lot 19:

PRESENT USE: Undeveloped

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site is currently undeveloped, but the site plans for the entire residence show compliance with all applicable regulations outside of the Exception requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: There should be no adverse effects on adjacent properties by approving the Exception request. The subject site is a large lot, and the encroachment is in the rear yard setback. The rear yard of the property abuts the Colbert Hills Golf Course, and there is a nature buffer between the property and nearest point of the golf course, which is a golf cart path. Despite the encroachment, there is about forty-four (44) feet between the structure and the nearest point of the golf cart path.

The Exception also does not encroach on any easements. The nearest easements are a utility easement that runs along the easterly property line as well as a utility easement to the south, within the Colbert Hills Golf Course.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No adverse effects on the public health, safety or general welfare are anticipated from this Exception. No neighboring residential properties will be impacted by the Exception, and the setback between the golf course property line and proposed residence still maintains a fifteen (15) foot buffer. The proposed rear yard structure will not be used as the main living quarters; it is a feature surrounding the pool and other amenities. In addition, the use to the south of the rear yard property line—the golf course—does not feature 24-hour pedestrian traffic or a residential use that could conflict with the proposed structure and subject site.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: While strict application of these regulations may not be unnecessary, they may be considered unreasonable when considering all facts and circumstances regarding the intent of the rear yard setback. The Exception is for an undeveloped residence that abuts a golf course. The closest point of the rear yard structure to the golf course cart path is about forty-four (44) feet. Despite the reduction in the rear yard setback, a buffer between the two properties – the subject site and golf course – is maintained in which neither use conflicts with one another. In addition, considering the topography of the subject site and area just outside of the south property line, the ability to build on either side is cumbersome. The cart path also turns south – or away from the subject site – to allow for more of a buffer between the two properties. The intent of the rear yard setback is still being maintained due to the uniqueness of the two neighboring sites.

Hardy adjourned the meeting at 8:18 p.m.

Respectfully submitted by,
Chris Kutz, Planner