

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

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

MEMBERS ABSENT: Brandi Nelson; LaBarbara James Wigfall

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

CONSIDER THE MINUTES OF THE JUNE 14, 2017, BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the June 14, 2017 minutes which was seconded by Danner and passed with a vote of 3 – 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 THE REDUCTION OF THE MINIMUM REQUIRED LOT AREA FROM 10,000 SQUARE FEET TO APPROXIMATELY 7,028 SQUARE FEET; AND FOR A REDUCTION OF THE MINIMUM LOT DEPTH FROM 100 FEET TO FORTY-ONE (41) FEET, ALL FOR AN EXISTING LOT AND PROPOSED RENOVATION AND EXPANSION TO AN EXISTING SINGLE-FAMILY RESIDENCE LOCATED WITHIN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 210 N. EVERGREEN AVENUE. (APPLICANT: EVAN AND ANDREA GRIER; PROPERTY OWNER: TPU INVESTMENTS, LLC)

FILE NO. EXC-17-055

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-NINE (39) PERCENT; AND TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO APPROXIMATELY ZERO (0) FEET; AND TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACKS OF EIGHT (8) FEET TO FIVE (5) FEET ON THE WEST SIDE OF THE PROPERTY AND EIGHT (8) FEET TO ONE (1) FOOT ON THE EAST SIDE OF THE PROPERTY; AND TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED REAR YARD SETBACK FROM TWENTY-FIVE (25) FEET TO APPROXIMATELY NINE (9) FEET, ALL FOR THE PROPOSED RENOVATION AND EXPANSION TO AN EXISTING

SINGLE-FAMILY RESIDENCE LOCATED WITHIN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 210 N. EVERGREEN AVENUE. (APPLICANT: EVAN AND ANDREA GRIER; PROPERTY OWNER: TPU INVESTMENTS, LLC)

FILE NO. EXC-17-055

Kutz presented the staff reports, which recommended approval for the Variance requests, with one condition of approval, and the Exception requests, with three conditions of approval.

Hardy opened the public hearing.

Evan and Andrea Grier, 1816 Concord Lane and applicants, provided commentary on their application and requests. Evan thanked neighbors for their time and consideration as he and Andrea communicated with them during the application process. He said the intent of engaging with the neighbors was to gain their approval of the projects and let them know he and his family were wishing to move into the property. He provided background on the family attachment to the home since 2001 when his parents purchased the property. He also said the intent of the addition is to provide more family space, a bedroom and garage, making it the family's "25-year home." He said they are "eager and excited" to move back into the neighborhood of the subject site after living elsewhere in town since 2006. Andrea added the intent of the requests are because "they love the neighborhood and want to make it their family home." She said the home has been unoccupied for the last two years and been a void for the neighborhood. She stated she and the family understand the importance of the home next to the Landmark Water Tower as well as the importance of the Landmark Water Tower to the community and neighborhood. She said they have invested in historical properties in Downtown Manhattan and try to remain "stewards" of historical sites.

Evan presented images provided by BBN Architects showing renderings of the proposed addition on the site from the intersection of N. Evergreen Avenue and Sunset Road as well as from the intersection of N. Evergreen Avenue and Humboldt Street. The renderings demonstrated the proposed addition's relationship to the Landmark Water Tower and along N. Evergreen Avenue. Andrea said she and her husband worked to maintain as much open space between the proposed addition and Landmark Water Tower. She said she was mindful of the impact of the proposed garage and Exception request to reduce the east side yard setback from eight feet to one foot to the adjacent property to the east. She said she personally reached out to all of the neighbors within the 200-foot boundary of the subject site.

Hamilton asked to clarify if the proposed addition will be adding a bedroom and bathroom to the home. Evan said that was correct, the proposed addition would bring the number of bedrooms and bathrooms in the home to four each. Andrea said the home was originally a two bedroom, two bathroom home, but the current property owners remodeled the home to add another bedroom and bathroom in 2013 or 2014.

Patrick Schaub, BBN Architects, said he and his firm have been working with the applicants on the design of the project. He said the firm prepared the renderings shown by Evan as a direct result from hearing concerns from neighbors during the neighborhood meeting. The

intent of the renderings is to show the relationship and impact of the proposed addition relative to the Landmark Water Tower. He stated the applicants were sensitive to the project's impact on the Landmark Water Tower, including making the second story of the proposed addition to more of a half-story. He added one of the Exception requests is to go over the lot coverage, but if the subject site were its minimum size based on the zoning district, it would be under the thirty percent for similar properties in the same type of zoning district. He said they are creating a home that is similar in size to other existing homes in the neighborhood. He also said the proposed addition is not any closer to the Landmark Water Tower than the existing home to the north of the subject site.

Hamilton asked if the original chimney would remain on the house. Schaub said it would remain a part of the home.

Hamilton stated she appreciated the renderings because it was difficult to visualize the impact of the proposed addition.

Hamilton asked for the height of the proposed addition. Schaub said the original chimney is about fourteen feet tall and the proposed chimney will be taller than the addition based on code requirements. Hamilton asked if the addition would be twenty-one feet tall and the new chimney twenty-six feet. Schaub confirmed this was correct.

Mel Borst, 1918 Humboldt Street, displayed the former 500-foot environs radius for his home. He mentioned the upcoming survey for historic properties around the Sunset Cemetery and consideration of the Landmark Water Tower for listing on the state and national historic registries in August 2017. He said the state's historic environs law was repealed in 2013, and zoning regulations were the "only protection for public and private historic property environments." He said the proposed addition is in "direct opposition to the general spirit and intent of Manhattan's Zoning Regulations," including Article 8, Section 302. He said this section prohibits a nonconformity on an improved nonconforming lot. He added the subject site is not unique due to its size or shape, and the applicants' desire to expand the home is a self-created hardship. He cited a 2012 decision by the Kansas Court of Appeals that stated the "desire to improve a nonconformity is not an exception of the general rule that an unnecessary hardship may not be self-created, especially if the existing nonconformity is economically viable." He said previous owners of the house on 210 N. Evergreen Ave. received reasonable return on the property and enjoyed beneficial use. He said the proposed addition would negatively affect the public space in the area and historic properties' environment. He stated other issues he had with the requests, including the fall zone of the Landmark Water Tower; "dangerously reduced Evergreen Avenue traffic width due to increased curb radius parking;" limited access to neighboring properties and Landmark Water Tower park due to construction; noise by construction; loss of mature trees that soften the impact of the existing house. He also stated if the requests were approved, future proposals to "circumvent zoning regulations by way of self-created hardships may be based on the neighborhood-relations damaging process of this proposal."

Hamilton said she would ask City staff to comment on Article 8, Section 302 of the Manhattan Zoning Regulations.

Torben Amtoft, 1928 Humboldt Street, said he and his wife, who live at the adjacent property to the east property line of the subject site, support the project. He believes the application helps improve the current conditions of 210 N. Evergreen Avenue.

Sara Fisher, 811 Osage, said that while she does not live in the neighborhood, she was there to speak from the perspective of her role as president of the Manhattan/Riley County Historic Preservation Alliance. The organization's concern was the precedent setting of the taking a nonconformity and "making it more nonconforming and calling it conforming."

Tim de Noble, 1900 Sunset Lane, said he supports the project, which he also stated through an email sent in advance to City staff for the Board to review. He said the renderings supplied by BBN show the proposal would mask the activities of the alley when people drive by the properties.

Steve Saroff, 1906 Leavenworth, says he lives in a historic home and his biggest concern for the subject site is to make sure it is an owner-occupied home.

Bob Simpson, 1920 Poyntz, said he appreciated the applicants' desire to invest in the home at 210 N. Evergreen Avenue.

Phyllis Pease, 1905 Leavenworth, said she has known the Grier family for many years and considered them good stewards of the neighborhood when they lived at the property in the past. She considered the proposed addition to the home "does justice to the water tower." She added it is statelier and gives "a nice bookend" to nearby historic homes. She said she was concerned the previous proposal for the home in 2015 was intrusive to the Landmark Water Tower. She believed the applicants' family background in construction ensures they will take care of the property.

Jan Borst, 1918 Humboldt, shared some background on previous homeowners of the subject site. She said this time around, the request has a close proximity to City-recognized park land and the potentially historically designated Landmark Water Tower. She said the Board must remember the application will last forever and if the applicants had to sell the home, there is potential of "four unrelated renters in this property." She said there are some parking issues along Humboldt Street. She said she does not remember, from her time as a Board of Zoning Appeals board member, an application trying to gain community support. She did not see how community support would influence the Board's decision. She asked the Board to go through the standards one-by-one to help the neighborhood understand how the application is being evaluated. She noted the Board of Zoning Appeals makes the final decision and the only appeal process is through judicial review. She believed older neighborhoods in Manhattan were about to be put under pressure and possible future requests would come from property owners who are going to want "bigger and better in neighborhoods that were never meant to support that type of growth."

Hardy closed the public hearing.

Hamilton asked Kutz for clarification on Section 8, Part 302 of the Manhattan Zoning Regulations and if it required any additional protections from the standards of Exceptions. Kutz said improvements on nonconforming lots require Board of Zoning Appeals approval using the standards laid out in the zoning regulations, similar to applications in the past.

Danner asked Kutz to show images displaying the proposed garage and its relationship to the east property line of the subject site.

Hamilton asked if the proposed shed shown on the site plans is a part of the request. Kutz said it is not an Exception request for this meeting. Hamilton clarified that the shed would require a separate accessory use setback reduction. Kutz confirmed.

The Board elected to discuss the Variance requests first.

Hamilton said the staff report addresses all of the Board's concerns about Variance requests. She said the property was compliant when it was platted.

Hamilton asked if the Variance makes the lot conforming. Kutz said the Variance makes it conforming for purpose of a clear title.

Hamilton made a motion to approve a VARIANCE to allow for the reduction of the minimum required lot area from 10,000 square feet to approximately 7,028 square feet; and for a reduction of the minimum required lot depth from 100 feet to forty-one (41) feet, all for an existing lot located within an R, Single-Family Residential District located at 210 N Evergreen Ave with the following conditions of approval:

1. All applicable permits shall be obtained.

Danner seconded the motion, which passed 3 – 0.

Danner said she was not considering the public input that specifically related to the owner-occupied status to the proposal or other emotional reasons. She said the renderings from BBN demonstrated the proposed addition would not overtake the Landmark Water Tower. She also noted the neighborhood support. She also said it was good the historic environs law was gone because it put a burden on neighboring properties and only protected the historic site and not the neighborhood. Her only concern was the one-foot Exception on the east side of the property, but the adjacent property owner supporting it made a difference.

Hardy said he could support the Exception requests. He appreciated the work of City staff and the applicants' work on communicating with the neighbors. He reiterated the comments made by the Borsts as being important to consider as well. He said the purpose of Exceptions, Variances and Conditional Uses is to allow people to appeal what is stated in the zoning code. He said if an application meets the specific standards, then he can support the item. He said this application does meet the standards stated in the Manhattan Zoning Regulations for Exceptions. He said the Board looks at each application for its specific set of facts and circumstances. He said previous applications were more extensive, but the applicants made changes to the application that were suitable to the neighborhood. He agreed with the

community input that said the proposed addition supports the Landmark Water Tower and does not take over the neighborhood.

Hamilton said she endorses her fellow Board members' comments. She said she could support the requests with some reservation considering the proposals could have been scaled back a little more to make the requests less extensive. She appreciated Schaub's comments saying the second story of the proposed addition was to look more like a half-story as opposed to a "full, block" second story. She said the look of that second story was helpful to supporting the proposed addition. She agreed with Pease's comments that the impact of the proposal was going to be more positive than negative to the Landmark Water Tower and neighborhood. She understands J. Borst's comments as well, and while she has similar concerns, the standards for the Exceptions were met with these requests. She said the City created Exceptions in the zoning code to make some requests less difficult to obtain compared to Variances. She appreciated all of the comments that were made during the public hearing.

Danner made a motion to approve an EXCEPTION for an increase of the maximum lot coverage of thirty (30) percent to thirty-nine (39) percent; the reduction of the front yard setback from twenty-five (25) feet to zero (0) feet, the west side yard setback from eight (8) feet to five (5) feet, the east side yard setback from eight (8) feet to one (1) foot, and the rear yard setback from twenty-five (25) feet to nine (9) feet for the renovation and expansion of an existing house located in an R, Single-Family Residential District located at 210 N Evergreen Ave with the following conditions of approval:

1. All Exceptions shall be limited to the proposed renovation and addition to the existing house as shown in the site plans and renderings submitted with the application.
2. Concurrent Variances for lot size and lot depth shall be approved by the Board.
3. All applicable permits shall be obtained.

Hamilton seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the VARIANCES at 210 N. Evergreen Avenue:

PRESENT USE: Single-family detached dwelling

CONDITIONS UNIQUE TO THE PROPERTY: The subject site was platted in 1909 – which is 17 years before zoning was put into effect in Manhattan and about 34 years before the home on the site was built. In 1926, when zoning was first instituted in Manhattan, the minimum lot area for single-family homes was 4,500 square feet. In 1941, when the City updated its zoning regulations, the minimum lot area for single-family homes in the "A" 1st Dwelling District was increased to 5,000 square feet. Considering the home was built around 1943, according to the Riley County Appraiser's Office, the lot on which it sits met the minimum lot area requirements at the time. However, the lot – and entire zoning regulations in Manhattan – went through a major rewrite in 1969 that increased the minimum lot area for lots in R, Single-Family Residential District to 10,000 square feet. The conditions of the lot now are unique because it was platted before its existing zoning regulations took effect and has maintained its present zoning regulations since the R, Single-Family Residential District was created.

PROBABLE EFFECT ON ADJACENT PROPERTIES: There should be no adverse impacts on adjacent properties by approving the Variance request. The property was platted as part of the Sunset Addition by Sam Kimble on October 19, 1909 and met the minimum requirements when the home on the site was built for lot area around 1943. Conditions of the lot area and lot depth have not changed over the last 74 years; therefore, adjacent properties would not experience any new conditions as it pertains to the lot area and depth.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: Strict application of the regulations is unfeasible and would incite unnecessary hardship on the property owners and public. For the property to comply with the R, Single-Family Residential District's regulations, it would have to acquire a substantial piece of land, of which can be done by acquiring the public right-of-way to the south and southwest of the site or purchasing adjacent properties. The applicants are not seeking right-of-way acquisition and public vacation of the land, and the acquiring of adjacent land is an unnecessary hardship on the property owners as well as adjacent property owners.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There will be no effects on public health, safety, morals, order, convenience, prosperity or general welfare by approving the Variance requests. The lot area and depth are not changing as part of the application. It is only requested to help move forward with a proposed renovation and addition to the existing home on the site. Approving the Variance allows the applicants and property owners to obtain a clear title. The public will not experience any new conditions that could affect the public health, safety or general welfare.

RELATIONSHIP TO INTENT OF REGULATIONS: Granting the Variance would not be opposed to the general spirit of the regulations because it is a legally nonconforming use within its existing zoning district (R, Single-Family Residential). The applicant is not creating the need for the Variance; they are dealing with a lot that has existed for more than 100 years that does not meet the current regulations. The intent of the lot area and depth regulations is to maintain the level of density stated in the specific zoning district. However, the subject site is not altering any current conditions that have been in place for more than 100 years. Therefore, the granting of the Variance would not change the intent of the regulations, as the current density will be maintained.

The Board made the following findings of fact for the EXCEPTIONS at 210 N. Evergreen Avenue:

PRESENT USE: Single-family detached dwelling

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Due to the unique configuration of the lot, the subject site is nonconforming to four applicable regulations for the R, Single-Family Residential District – most of which were in compliance with the zoning regulations at the time of the home's construction in the 1940s but have since become

nonconforming due to updates to the zoning ordinance. The existing house encroaches into the minimum front yard setback of twenty-five (25) feet by seventeen (17) feet, making it eight (8) feet from the front property line along N. Evergreen Avenue. The existing house also contains an existing carport that encroaches into the minimum side yard setback on the east side of the property by four (4) feet, making it four (4) feet from the east property line. In addition, the lot area and depth do not meet the minimum requirements for a lot in the R, Single-Family Residential District. In this zoning district, minimum lot areas are 10,000 square feet while the minimum lot depths are 100 feet. The subject site is currently 7,028 square feet in lot area and forty-one (41) feet in lot depth. Concurrent Variances to bring the lot area and depth into conformance are a part of this application, but all of these instances of non-compliance are considered legally nonconforming because they have not changed since the home was built in the 1940s. The application for the Exception and Variance requests are to allow the nonconforming lot to be improved upon and obtain clear title. All other applicable regulations meet the standards.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The adverse effects on adjacent properties by approving the Exception requests would be minimal. The proposed renovations and additions to the existing home are investments by the property owners and applicants to make it an improved owner-occupied house within a historic area of the city that fits the existing style of the home as well as the character of the neighborhood.

When evaluating the uses of the neighboring properties within the same zoning district (R, Single-Family Residential), there are three single-family homes. One is the Sexton's House, owned by the City of Manhattan. Another, to the north of the subject site across the alley at 1931 Leavenworth Street, is also a nonconforming lot (8,901 square foot lot area). This home was built in 1940 (Riley County Appraiser's Office), but was replatted into Sunset Addition, Unit Two in September 1995. The replat also dedicated a fifteen (15)-foot wide public right-of-way for the alley connection to Leavenworth Street to the northwest of the subject site. Finally, the third home is on a large lot (49,222 square feet) to the south of Denison Circle and in between N. Evergreen Avenue and Sunset Avenue.

There are single-family homes to the east of the subject site that are within the R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay. This means these sites have reduced lot coverages compared to a R-1, Single-Family Residential District as the TNO, Traditional Neighborhood Overlay lowers the maximum lot coverage from thirty-five (35) percent to thirty (30) percent. This lot coverage is the same as the maximum lot coverage allowed in the R, Single-Family Residential District.

One of the properties that is within the R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay and adjacent to the subject site is the property to the east at 1928 Humboldt Street. The effect of the Exception requests will be a mix of positive and negative for this property. By constructing the garage in the rear yard, the subject site will remove the existing shed that is located on the northeast corner of the property. This shed removal improves the safety of people entering and exiting the detached garage of 1928 Humboldt. The proposed garage at the subject site will be set back nine (9) feet from the rear property line, which is roughly in alignment with the garage on the property to the east. While

there will be a safety improvement for the neighboring site, there will also be some impact on the buffer between the two properties due to the encroachment into the side yard setback by seven (7) feet. All of this encroachment is caused by the proposed garage, which is located in the northeast portion of the subject site and next to the neighboring property's detached garage. During City administration review, the Code Services department expressed that the wall of the proposed garage must be fire-rated due to its proximity to the property line. The building permit process will ensure this is followed through to help maintain safety for all properties in the event of an emergency.

In addition to the zoning districts and land uses, the adjacent properties also feature several historic sites. The aforementioned Sexton's House (1922 Leavenworth Street) is listed on the Manhattan Register of Historic Places. Meanwhile, the Landmark Water Tower, which is being considered for historic listing and sits on dedicated park land, is to the west. The proposed addition on the subject site will extend towards the water tower and park land, but it will not cause a detrimental effect to those that use this public space.

Despite the presence of historic properties near the subject site, there is no historic environs law in place that would affect the application. The Kansas Preservation Statute was amended in 2013 to repeal the 500-foot environs provision. Meanwhile, a local environs provision in the city of Manhattan does not exist. Therefore, a historic review of the home renovations and additions is not required, but consideration of the sites and the impact of the requests are as important as evaluating the effects on neighboring residential properties.

While not a requirement for Exceptions or Variances, the applicants held a neighborhood meeting on June 26, 2017 to discuss the proposed renovation and expansion to the house. The applicants elected to hold this meeting due to the historic nature of the neighborhood and previous applications by the current property owners to expand the property and construct an addition to the home (the property owners submitted an application to the Board of Zoning Appeals in 2015, but withdrew it before the hearing). The applicants mailed a meeting notice to properties within 200 feet of the subject site as well as invited members of the Landmark Water Tower Neighborhood Association. One of the applicants (Andrea Grier) also invited meeting attendees at the Historic Resources Board meeting on June 26, 2017 as the proposal was presented by community member Mel Borst during the general public comment portion. Nineteen (19) people attended the neighborhood meeting, and the applicants, along with Patrick Schaub of BBN Architects, answered questions by the attendees. Concerns of the neighbors included if the applicants were acquiring additional property as part of the application (no); the height of the addition (21 feet, 26 feet for a new chimney); materials used on the addition (not finalized but the intent is to match the existing materials on the home); existing trees on the site (undergoing review but intent is to keep as many as possible); and if the home will be owner occupied (yes). In addition to the voluntary neighborhood meeting, City administration received emails from several neighbors as it related to this application. The meeting report and correspondence are included in the packet of materials presented to the Board.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The effects on the public health, safety, morals, order, convenience, prosperity or general welfare will be minimal in adverse nature.

Impacts of noise, increased traffic, obstruction of views along the right-of-way, or drainage impacts are negligible or nonexistent. The proposed addition is also outside any public easements and vision clearance triangles.

Among the building renovations and additions, the site will relocate its existing sidewalk along N. Evergreen Avenue about ten (10) feet to the northwest to access the new part of the home. The new sidewalk will be placed on the northwest side of the front yard's existing tree, which will remain on the site as it is in the public right-of-way. As a recommendation from City administration, the new sidewalk is proposed to be six (6) feet wide, as that is the City standard width for back-of-curb sidewalks. The landing would be perpendicular to the curb and be a six (6)-by-six (6) foot landing to help accommodate any future sidewalks installed by the City along N. Evergreen Avenue. To be consistent with the landing, the rest of the sidewalk would be six (6) feet wide as it approaches the home. The applicants have agreed to this recommendation.

Another effect experienced by the general public would be the home is proposed to be located closer to the right-of-way along N. Evergreen Avenue. However, considering the location of the existing home being eight (8) feet from the property line, the general public is not anticipated to experience a general disorder to the closer proximity. The face of the building addition will be similar in proximity to the right-of-way compared to the existing home, thus the general public will not experience a difference in building face setback. There will be a difference in setback experienced due to the front steps reducing the front yard setback to zero (0) feet, but the width of the right-of-way (60 feet) as well as the slope and elevation of the front yard creates a buffer between the home and street. The encroachment will not affect the line-of-sight down the street.

The minimal effects anticipated will be on the morals and order as the proposals will change the order of the home in its relationship to the historic Landmark Water Tower. It will also challenge the ability to preserve the status quo of a neighborhood in close proximity to a historic site and structure. However, the proposed addition will maintain the stylings of the existing home and still maintain open space between the property line and water tower park land.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: Strict application of the regulations limit reasonable additions to the existing house when considering all facts and circumstances. The irregular shape of the lot limits a possible expansion of the house in any direction while its size constricts its potential relative to other lots in the R, Single-Family Residential District. If this were a typical R, Single-Family Residential District lot with a minimum lot area of 10,000 square feet, then it would be capable of being built out to 3,000 square feet of lot coverage. However, the subject site is unique in its lot area relative to the zoning district – it is missing nearly 30 percent of land it is afforded in the R, Single-Family Residential District. This is not to say all lots in R, Single-Family Residential District should be built to at least 3,000 square feet in lot coverage. It is mentioned to demonstrate the uniqueness of the subject site in terms of lot size.

To stay within the maximum lot coverage of 30 percent, the applicants' alternative to their proposed addition is to build a new part to the home up to 647 square feet in lot coverage. However, if the applicant were to stay within the required setbacks, the buildable area only

allows for 432 square feet of improvement. The tradeoff becomes only building within the required setbacks or building up to the maximum lot coverage. However, building up to the lot coverage would require Exception requests for setback reductions. If a renovation maintained the setback requirements, it could require home additions that deface the current home or require an entirely new construction of the home. The result is complex and creates alternatives that are as challenging as the ones proposed.

The other alternative to the proposed addition is the no-build option. As one of the standards for Exceptions states (Standard D - 1), *“Whether or not the applicant acquired the property with knowledge of the conditions which require the exception and whether or not the consideration for the acquisition took into account such conditions.”* In other words, this standard for an Exception is “buyer beware.” The property owner purchased the subject site and home knowing the unique shape of the lot. It has been zoned R, Single-Family Residential District since 1969, meaning it has been held to the thirty (30) percent lot coverage since that time.

Despite the “buyer beware” retort, strict application of these regulations on this particular lot would be unreasonable for a workable home expansion, which limits the current owner or any future buyer of the property. The front lot line’s curve creates a narrow buildable area – and already creates a legally nonconforming issue with the existing home since it lies within the front yard setback – and has done so for the last 48 years. If the house were to expand only within the allowed buildable area, the garage and home addition would not be practical. The proposed additions are the applicants’ attempt to balance practical renovations to the home, the existing style of the home, character of the neighborhood, and zoning regulations that are challenging to apply to this uniquely shaped lot.

When also considering the alternatives to what has been proposed by the applicants, it is best to understand the intent of maximum lot coverage and minimum yard setback regulations. The intent of the maximum lot coverage and minimum yard setback regulations are to:

- Ensure a permitted use has enough space to function on its zoning lot
- Provide sufficient open space for fresh air and sunlight to be able to enter the building
- Prevent excessive environmental degradation to a lack of pervious surface for stormwater drainage
- Make certain a minimum distance is maintained between neighboring properties

With the uses of the adjacent land being a wide right-of-way and public park spaces, the requested reductions in yard setbacks are not adverse in maintaining similar fresh air and sunlight conditions. As for the possible excessive environmental degradation of the pervious surface for stormwater, this lot is still under a typical lot coverage for a minimum-sized lot in the R, Single-Family Residential District (3,000 square feet of lot coverage on a 10,000 square foot lot). Also, some of the surface on which the proposed addition will be constructed is currently a concrete driveway and open-air patio – in other words, impervious surface. The additions will be built on top of the current hardscape and some of the permeable grass area. However, this portion of the permeable grass area being taken up by the home addition is not expected to create a drastic change in current conditions for managing stormwater on the site.

The minimum distance between neighboring properties on the east side of the subject site will

be decreased. However, the proposed setback reduction is for an attached garage that accesses the alley similar to how the current carport uses it. The attached garage is also a better alternative to than what is currently on the subject site: an accessory shed that is adjacent to the alley and northeast corner of the property. This shed currently impedes the view of cars exiting the detached garage on the property to the east. The applicants' proposal improves the visibility for the neighboring property, thus improving safety for both sites. The building permit, as stated earlier, will ensure fire safety requirements are met due to the close proximity of the structure to the east property line. Strict application of the regulations would not allow for the improvement in access safety for the subject site and neighboring properties.

Granting the Exceptions will not result in a significant gain to the health, safety, and general welfare of the community nor will it create substantial adverse effects. Also, there are limited reasonable alternatives that would allow the property to meet the strict application of the regulations.

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-FOUR (34) PERCENT FOR THE CONSTRUCTION OF A DETACHED BUILDING FOR HOME OCCUPATION USE OF AN UPHOLSTERY SHOP LOCATED WITHIN AN R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT WITH TRADITIONAL NEIGHBORHOOD OVERLAY, LOCATED AT 415 S. 15TH STREET (APPLICANT/OWNER: STEPHEN HART)

FILE NO. EXC-17-051

Kutz presented the staff report with recommendation of approval and five (5) conditions of approval.

Hamilton asked how the building was classified in the zoning regulations. May said the proposed building is defined as an accessory use and properties do not have a limit on the number of accessory uses. Hamilton asked if there is a point where the size of accessory uses becomes more than an accessory structure. May said as long as the structure is not attached to the principal structure and serves it.

Hamilton asked if an alternative to what is proposed could be adding on to the existing detached garage as opposed to constructing another building. Kutz confirmed this could be an alternative.

Hamilton said she would discuss with the Board possible modifications to the conditions of approval for the request that are still within the Board's purview of being related to the lot coverage. She said she would like more protection to ensure the fence, which acts as a screening mechanism, remains on the site.

Hardy opened the public hearing.

Stephen Hart, applicant, stepped to the podium to answer questions from the Board. Hamilton reiterated her point that she would like to ensure the fence remain on the site. Hart agreed, saying he wants the fence to remain as well. He wants to create some access along the northern edge of the fence, parallel to the driveway, to serve the proposed structure better, but that is his only change he has for the fence.

Hardy closed the public hearing.

Hamilton said the number of buildings on the subject site concerned her, especially in an older residential area of town that is trying to be preserved, but the existing fence made a difference. She also noted the applicants' attentiveness as well as him being a responsible homeowner. She wanted to add a condition of approval to the request to ensure the fence will be maintained in good condition and allow for reasonable access to the proposed structure.

Hamilton made a motion to approve the Exception allow for the increase of the thirty (30) percent maximum lot coverage to approximately thirty-four (34) percent for the construction of a detached building for home occupation use of an upholstery shop located within an R-2/TNO, Two-Family Residential District with Traditional Neighborhood Overlay located at 415 S. 15th Street with the following conditions of approval, as modified by the Board:

1. The Exception shall be limited to the proposed building as outlined in the submitted application.
2. The structure shall be maintained in good condition.
3. All applicable permits shall be obtained.
4. The home occupation within the proposed building and on the property shall be held to all standards outlined in Article V, Part 3 ("Home Occupations") of the Manhattan Zoning Regulations, including but not limited to the Use Limitations in Section 5-303.
5. The existing driveway shall not be widened beyond its existing sixteen (16) feet in width, per the TNO, Traditional Neighborhood Overlay District outlined in the Manhattan Zoning Regulations (Section 4-111).
6. The existing fence shall be kept and maintained in good condition with reasonable access to the proposed detached structure.

Danner seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the EXCEPTION at 415 S. 15th Street:

PRESENT USE: Single-family detached dwelling

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The existing home is within the minimum front yard setback along S. 15th Street. However, it is considered legally nonconforming since the home was built in 1937 and not a part of the application. All other applicable regulations are met except for the Exceptions requested for increase in lot coverage due to the proposed building.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse effects on

adjacent properties are anticipated as part of this Exception request. There is expected to be an increase in traffic as it relates to loading and unloading items for the home occupation use, but as with all home occupations, no employees are allowed. The only person working on the subject site would be the homeowner. Therefore, the capacity to handle multiple items to reupholster is limited, which would in turn reduce the amount of traffic generated to and from the site.

The character of the neighborhood is a transition from commercial and industrial to two-family and single-family residential. To the south and southwest are the I-3, Light Industrial District and C-5, Highway Service Commercial District zoning districts. These sites and their land uses generate a certain level of traffic already experienced by the neighborhood. Also, the site is near Fort Riley Boulevard, which can become the main avenue of traffic direction to and from the subject site as it relates to the home occupation use.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The impacts of the Exception request on the public health, safety, morals, order, convenience, prosperity and general welfare are anticipated to be minimal. The proposed building is contained within a fenced-in yard area in between the existing house and detached garage, which means the use will be screened from the right-of-way and neighboring properties. The use of the proposed structure will also meet the home occupation standards outlined in the Manhattan Zoning Regulations. Pick-up and delivery of items as part of the home occupation will take place on the existing driveway on the northwest corner of the subject site.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the regulation would not allow for the construction of a building at the size proposed by the applicant. Currently, the house, detached garage and air conditioning unit – all considered structures as part of the Manhattan Zoning Regulations – combine for 1,964 square feet of lot coverage, or 26.2 percent of the total lot. This means the applicant could construct a building about 286 square feet to bring the maximum allowed lot coverage to the 30 percent standard as outlined in the TNO, Traditional Neighborhood Overlay. A 286 square foot building could have a variety of dimensions, but one with the width desired by the applicant – 22 feet – would only be able to have a depth of 13 feet. To put that depth into perspective, it is about half the depth of the existing detached garage.

As a comparison, the existing detached garage on the site measures about 806 square feet (31 feet by 26 feet). The proposed building is smaller in nature to the existing detached garage and would meet the needs of the applicant based on his intended use of the building as an upholstery shop.

Another alternative that follows the strict application of the regulations is a no-build option. This alternative would mean the applicant could not utilize his home for the home occupation use.

When all facts and circumstances are considered, the strict application of these regulations are unreasonable. Allowing the increase of the maximum lot coverage would inhibit the applicant

to make use of his property in an economic way that does not disrupt the overall character of the neighborhood. Commercial land uses exist to the southwest of the subject site, and the proposed use of an upholstery shop would strike a balance between a residential property that also serves as a home occupation near other commercial properties. The assurance of no motor vehicle maintenance on the site by the applicant as well as the existing screening provided by the fence limits the effects felt by neighboring residential properties. The increase in lot coverage is minimal from what is allowed through its applicable zoning regulations.

Hardy adjourned the meeting at 8:46 p.m.

Respectfully submitted by,
Chris Kutz, Planner