

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, August 9, 2017**  
**7:00 PM**

MEMBERS PRESENT: Harry Hardy, Chairperson; LaBarbara James Wigfall; and Brandi Nelson

MEMBERS ABSENT: Connie Hamilton, Vice Chairperson; Angie Danner

STAFF PRESENT: John Adam, Senior Planner; Carol Davidson, Senior Planner; Chris Kutz, Planner; and Annapurna Singh, Planning Intern

**CONSIDER THE MINUTES OF THE JULY 12, 2017, BOARD OF ZONING APPEALS MEETING.**

Nelson moved to approve the July 12, 2017 minutes which was seconded by Wigfall and passed with a vote of 3 – 0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION OF AN APPROVED EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK TO ALLOW FOR A PROPOSED GARAGE ADDITION ONTO AN EXISTING DETACHED GARAGE FROM SIXTY (60) FEET TO TWENTY-FIVE (25) FEET ALONG WESTWOOD ROAD FOR A PROPOSED DETACHED GARAGE ASSOCIATED WITH AN EXISTING HOME LOCATED WITHIN AN R, SINGLE FAMILY RESIDENTIAL DISTRICT, LOCATED AT 221 WESTWOOD RD. (APPLICANT/OWNER: TREVOR BARRY)**

Nelson moved to approve the request which was seconded by Wigfall 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 A REDUCTION OF THE FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO NINE (9) FEET FOR AN EXISTING FENCE ASSOCIATED WITH A SINGLE-FAMILY RESIDENCE ON A CORNER LOT LOCATED WITHIN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 3701 DEAKON DRIVE. (APPLICANT/OWNER: BRIAN CAMPBELL)**

**FILE NO. EXC-17-066**

Kutz presented the staff report, which recommended approval for the Exception with three (3) conditions of approval.

Wigfall asked if the Exception would carry with the fence and if there was a change in home ownership and any change was made to the fence, would the new homeowner have to re-apply for the Exception. Kutz confirmed this, stating any changes to the fence, regardless of the owner, would have to gain a new Exception. This is captured in the conditions of approval for the Exception.

Nelson asked if the fence obstructed any views from the nearby intersection. Kutz said no, the fence is outside any vision clearance triangles.

Hardy opened the public hearing.

The applicant, Kelsey Campbell, was in attendance but elected not to speak.

Hardy closed the public hearing.

Wigfall said it was unfortunate the applicant received wrong information and built the fence in the setback.

Hardy said the Board has typically been strict on fences, but in this case, the applicant tried to work with the City before building the fence and went further than what was believed to be the proper setback. This showed good faith in trying to comply. He said he could support the Exception request.

Wigfall made a motion to approve an EXCEPTION to allow for a reduction of the front yard setback from twenty-five (25) feet to nine (9) feet for an existing fence associated with a single-family residence on a corner lot located within the R-2, Two-Family Residential District, located at 3701 Deakon Drive with the following conditions of approval:

1. The Exception shall be limited to the existing fence as shown in the application and existing on the subject site.
2. The fence shall be maintained in good condition.
3. All applicable permits shall be obtained.

Nelson seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the EXCEPTION at 3701 Deakon Drive:

**PRESENT USE:** Single-family detached dwelling

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site meets all other applicable bulk regulations except for the Exception requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The fence should have minimal adverse effects on adjacent properties. One property, across Londondery Drive at 2124 Londondery, faces the Deakon and Londerdery intersection as well as the house on the subject site. However, the fence is set back from the west property line adjacent to Deakon by approximately fifty-five (55) feet. This allows the home at 2124 Londondery Drive not to

directly face the nonconforming fence.

Although the fence on the subject site is built out of conformance with the regulations, it shall remain that any future fences held to the required setback. This fence shall not be a precedent for an adjacent property.

**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 would be minimal. The fence does lie within a ten (10) foot utility easement as shown in the Western Hills, Unit 13 Final Plat. However, fences are permitted, but not encouraged, to be built in the utility easement based on what is constructed within the easement. If any access to the easement is required, replacement of the fence is at the expense of the property owner.

There is an eight (8)-inch sewer line that runs on the east side of the eastern property line, in between the sidewalk and Londondery Drive. The fence would not impede direct access to the sewer line within the right-of-way.

The fence does not obstruct any vision clearance triangles or cause adverse impacts on public right-of-ways. The closest point of the fence is about fifty-five (55) feet from the corner of the property nearest to the intersection of Deakon Drive and Londondery Drive. Meanwhile, the fence is nine (9) feet from the sidewalk. While this is below the required minimum setback, it does allow a buffer more than the height of the fence between the fence and pedestrians using the sidewalk.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the regulation would force the applicant to reconstruct the fence so that it meets the minimum front yard setback along Londondery Drive. This means the fence would have to be moved sixteen (16) feet towards the house from its current layout, meeting the minimum setback of twenty-five (25) feet from the property line. The result of this would ensure the home is compliant with the regulations.

The necessity of holding the applicant to the strict application should also consider the existence of a utility easement along the eastern property line. The existing fence lies within this easement by about one (1) foot. Placing fences in some utility easements is permissible, as is the case with this subject site, but the applicant should be aware all responsibility to replace the fence if it is removed for purposes within the easement is that of the property owner.

Strict application, though, of the minimum required front yard setback is unnecessary in this case. According to the application, the applicant and contractor had a miscommunication with a City official. To fault the property owner would also require placing some sort of responsibility on the City. It is unfortunate the applicant received inaccurate information and constructed the fence in what he believed to be good faith. The applicant also constructed the fence one (1) foot beyond what he believed to be the minimum required front yard setback. This helps show there was no ill intent by the applicant to violate the zoning regulations. Therefore, strict application

is unreasonable when all facts and circumstances are considered.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR A PROPOSED DOG DAY CARE AND BOARDING WITHIN AN EXISTING BUILDING LOCATED IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT, LOCATED AT 530 MCCALL ROAD. (APPLICANT: BEN MOORE; OWNER: FRED BORCK)**

**FILE NO. CUP-17-067**

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR OFF-STREET PARKING IN THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK FOR EXISTING PARKING STALLS SERVING AN EXISTING BUILDING LOCATED IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT, LOCATED AT 530 MCCALL ROAD. (APPLICANT: BEN MOORE; OWNER: FRED BORCK)**

**FILE NO. CUP-17-067**

Kutz presented the staff report for the Conditional Use with recommendation of approval and five (5) conditions of approval as well as the Exception with recommendation of approval and three (3) conditions of approval.

Wigfall asked if there were any other issues with the angled parking on the north side of the existing building and if the assumption was traffic would flow from these spaces to Enoch Lane. Kutz said the City's Public Works department requested two spaces from the original site plan be removed, which was done by the applicant, and it was comfortable with the location of the other spaces.

Hardy opened the public hearing.

Ben Moore, applicant, made himself available to any questions from the Board. Wigfall asked if the retail spaces next to the proposed dog day care would support or complement the Conditional Use. She also asked if there were any steps taken to limit noise from the dog day care into the retail shops. Moore said complementary retail would be the intent, but that is not specifically spelled out to help make sure the property owner has enough flexibility to find tenants. As for limiting noise, Moore said they are looking into a block wall system or double-stud wall to mitigate impacts on potential retail.

Hardy closed the public hearing.

Wigfall said the Board has seen dog day care applications before, but this application was different because it was a better location and a good use of the property.

Hardy agreed and added the applicants have done a good job of making good use of the building. He also said the application is not adding any parking to go against the regulations but making use of what is there and validating it.

Wigfall made a motion to approve the **CONDITIONAL USE** to allow for a proposed dog day care and boarding within an existing building located in the C-5, Highway Service Commercial District, located at 530 McCall Road with the following conditions of approval:

1. All state and local licenses shall be obtained and maintained.
2. The Conditional Use shall be limited to the proposed dog day care use as outlined in the site plan and application documents.
3. All applicable permits shall be obtained.
4. The kennel facility shall be maintained in good condition and operated as proposed in the application.
5. The concurrent Exception to allow parking in the front yard setback shall be approved.

Nelson seconded the motion, which passed 3 – 0.

Wigfall made a motion to approve the **EXCEPTION** to allow for off-street parking in the minimum required twenty-five (25) foot front yard setback for existing parking stalls serving an existing building located in the C-5, Highway Service Commercial District, located at 530 McCall Road with the following conditions of approval:

1. The concurrent Conditional Use shall be approved.
2. All applicable permits shall be obtained.
3. All parking areas and required landscaped open space shall be maintained in good condition.

Nelson seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the CONDITIONAL USE at 530 McCall Road:

**PRESENT USE:** Vacant retail building

#### **STANDARDS FOR A CONDITIONAL USE**

**A. Compliance with all applicable regulations:** The proposed Conditional Use complies with applicable regulations of the C-5, Highway Service Commercial District relative to setbacks, building height, and screening. However, portions of the off-street parking spaces (29 total) are within the twenty-five (25) foot front yard setback along McCall Road. These parking spaces existed with the prior use of the building and are proposed to remain. A concurrent Exception is being requested with the Conditional Use application for this nonconformity. All other applicable regulations are compliant.

**B. Probable effect on adjacent properties:** The subject site and adjacent property to the east are zoned C-5, Highway Service Commercial District. The adjacent property to the west and

south is zoned I-2, Industrial Park District. There are also properties within 200 feet of the subject site that are zoned C-6, Heavy Commercial District and C-5, Highway Service Commercial District. The properties to the north across McCall Road are zoned PUD, Planned Unit Development. With the mix of zoning districts, the various uses around the subject site include retail stores, restaurants, a car dealership, textile business, warehousing, and a dog day care. The last use, a dog day care, is the same business that will occupy the subject site.

As required for Conditional Use applications, a neighborhood meeting was held on June 15 at the Manhattan Public Library to discuss the project with property owners within 200 feet of the subject site. Only the applicants attended the meeting. Therefore, no concerns were raised by neighboring properties during the application process.

Adjacent properties will experience an increase in noise and noxious smells at the subject site due to the dog day care. However, the site is adjacent to McCall Road, which features noise produced by consistent flow of motor vehicle traffic. Also, the current business is located seventy (70) feet to the south. This means some adjacent properties already experience smells emanating from the dog day care use. The Conditional Use will not create conditions not already experienced by some adjacent properties. The area is also commercial and industrial in nature as each land use creates its own smells and noise that do not disrupt residential neighborhoods.

While most of the dog day care activities will take place inside the building, there will be noise produced from the outdoor play area. The eight (8) foot tall fence will ensure dogs and neighboring properties have adequate screening. Times will vary for the dogs to be in the play area.

To protect the Conditional Use and adjacent properties, kennels must obtain proper licensing through the City and state. The Kansas Department of Agriculture Animal Facility Inspection (AFI) program licenses pet animal businesses to “ensure the health, safety and welfare of pet animals in Kansas in accordance with the Kansas Pet Animal Act,” which is stated on the program’s website. The inspection and licensing process is done on an annual basis as all licenses expire on September 30 each year. The Kansas Pet Animal Act, which was last revised in October 2013, holds licensed businesses to standards that ensure safe environments for pets. The current business at 925 Enoch Lane is registered as a “Boarding and Training Kennel,” per the Licensed Animal Facilities list on the Kansas Department of Agriculture website. The licensing of the business helps ensure the facility provides adequate temperate controls, ventilation, lighting, and space. A condition of approval to this Conditional Use application is to make sure the business obtains and maintains the proper local and state licenses.

The City of Manhattan also requires kennels to obtain a license from the City, per the Code of Ordinances, Section 6-42 (Ordinance No. 4481). The Code of Ordinances also spells out specific facility standards to ensure conditions are safe for dogs as well as employees and neighboring properties. Based on proper licensing and specific standards needing to be met as well as the nature of the area, adverse effects on adjacent properties will be limited.

**C. Domination by use over neighboring properties:**

- 1. Location, nature, and height of physical improvements:** The Conditional Use project will renovate 7,822 square feet of the existing building's interior as well as other features on the subject site to meet the needs of the dog day care business. The existing outdoor storage facility and fencing on the west side of the property will be removed and replaced by a reconfigured parking area. On the east side of the property, all parking spaces except for one (1) ADA space will be removed and a new fenced outdoor dog play area will be constructed. The outdoor play area will be surfaced with turf and extend thirty (30) feet from the eastern edge of the building. The total fenced in area will be approximately 2,142 square feet, but it will be sectioned off into four (4) areas based on dog size. The height of the fencing for the area is proposed to be eight (8) feet, which would require a fence permit since it exceeds the seven (7) foot threshold.

In addition to the interior and parking area renovations, the building will undergo several exterior modifications as well. The applicants will remove the existing awnings on the building, and new metal siding will be installed on the west, north and part of the east façade. Meanwhile, a new metal awning will be placed over the entryway into the dog day care business. Seven (7) windows will be added to serve the dog day care with three (3) being installed on the north side of the building, three (3) looking into the outdoor play areas, and one (1) on the east side near the northeast corner of the building. A new door will be installed near the new window on the northeast corner, which will provide fire department access to the building's sprinkler system. There will also be five (5) doors constructed to access the outdoor play area.

While signs and other decorative features are shown in the application documents, the location, size, and type of signs have not been approved through the proper sign permit process at the time of the Conditional Use application. The application also showed a wall sign extending beyond the height of the building on the north side, which is not permitted with sign standards in the C-5, Highway Service Commercial District. The applicant was notified this depiction was not compliant. The applicant, in a follow-up email to City Staff (*see packet*), said the intent of showing the sign on the original elevations was to, "convey a 260 square foot maximum sign. The sign will be completed and submitted as a sign permit." A revised version of the site plans were submitted by the applicant on July 24.

On the southeast side of the building, a new sidewalk will be constructed to provide access to the rear of the building and southeast corner of the subject site. The sidewalk leads to an existing door on the south side of the building. It measures five (5) feet in width and is outside the eight (8) foot utility easement.

The applicant has also stated there will be ADA improvements to the site, including parking and restrooms. The site features four (4) ADA parking spaces, with two (2) on the west side of the building, one (1) on the north, and one (1) on the east.

None of the improvements to the building will increase the height or floor area of the existing conditions. The outdoor play area will extend farther east, but it is set back

about sixty-one (61) to sixty-two (62) feet from the east property line and right-of-way along Enoch Lane.

- 2. Landscaping and screening:** The site features about 47,000 square feet of paved parking area, which would require at least nine (9) trees of at least two and one half (2.5) caliper in size within each 5,000 square feet, per the Manhattan Zoning Regulations (7-102(E)(2)). Currently the site features two (2) trees of this size. The original site plan submitted with the application did not indicate the proper amount of tree coverage on the site. After comments supplied by City Staff, the applicant resubmitted a site plan designating where the required trees would be planted.

Off-street parking area screening is not provided on the site. Since it is not adjacent to any residential properties, it is not required to provide sight obscuring screening at least six (6) feet in height around its parking area.

The outdoor play area on the east side of the building is proposed to have an eight (8) foot tall fencing with vinyl screening. The applicant will have to obtain a proper permit for this fencing due to its height being over seven (7) feet. The site plans show fabric shades overhanging portions of the area, which follows the City Ordinance requirement of sufficient shade provided in outdoor facilities (Section 6-43 (c) of Code of Ordinances).

**D. Adequate provision of parking and loading:** The Manhattan Zoning Regulations (Article VII) do not specifically define off-street parking requirements for a dog day care use. In previous cases for similar uses, City Administration has applied the “Group day care centers and nursery schools” off-street parking requirement (7-103(C)(4)). However, as part of this Conditional Use application, City staff researched other municipalities’ off-street parking requirements for dog day cares. It was determined a parking requirement of one (1) space for every eight (8) kennels was a reasonable standard (*see separate memo*). This would be combined with one (1) parking space for number of employees, as related to the work shift when the maximum number of employees are present. For this Conditional Use, this would mean a total of sixteen (16) off-street parking spaces shall be provided for the dog day care use.

#### **Off-Street Parking – Dog Day Care**

<b>Detail</b>	<b>Standard</b>	<b>Parking Spaces</b>
64 Kennels	1 space for each 8 kennels	8
8 employees during work shift	1 space for each employee	8
	<b>Total parking spaces required</b>	<b>16</b>
	<b>Total parking spaces supplied</b>	<b>63</b>

The remainder of the building is set for retail use, with the area for this use measuring 10,228 square feet. Using the off-street parking standards for retail (7-103(B)(5)), this portion of the building would require forty-one (41) off-street parking spaces, before accounting for deductions in hallways, storage, bathrooms, etc. Combined with the dog day care off-street parking requirements, the subject site features adequate off-street parking spaces for the Conditional Use and potential retail uses. The site plan indicates sixty-three (63) off-street



parking spaces, meaning it has six (6) more off-street parking spaces than required or recommended by the Manhattan Zoning Regulations and City staff. The excess parking would allow for flexibility in any changes to the potential use of the remainder of the building as well as any development that could take place on southwest corner of the subject site.

The southwest corner of the subject site does not show any plans for its development at this time. The area features a grade change in the pavement, so the applicant has proposed to install parking bumpers to section it off from the remainder of the parking areas. This would help maintain safe conditions for vehicles accessing the drive aisles in between the parking stalls.

In addition, City Administration requested the removal of the two (2) angled parking spaces near the northwest corner of the building shown on the original site plan submitted with the application (parking stalls 1 and 2). The purpose of this request was to ensure safe conditions for ingress and egress onto McCall Road using the existing driveway. The applicant followed this request and removed these spaces, which is shown in the revised site plan.

**E. Adequate provision of drainage, and other public utilities:** All utilities to the Conditional Use will connect to the existing sanitary sewer and water lines along McCall Road. The electrical service will be “upgraded to service the new building use from the existing electrical pole on the south,” which was stated in the application.

No changes will be made to the site to affect pre-development drainage standards. The site will add an outdoor play area, but this area would have a turf surface placed over the asphalt. The outdoor play area will also feature pools, which will require new drains installed by the contractor. This portion of the site is sloped towards a drainage ditch on the west side of Enoch Lane.

A utility easement runs closely to the south property line. It starts two-and-a-half (2.5) feet from the south property line and goes north for eight (8) feet. Going from east to west, the utility easement extends 235 feet from the east property line. The existing building and proposed new sidewalk is on the north side of the utility easement. Since there are no proposed changes to the building’s structure or layout, the Conditional Use will not interfere with this utility easement.

In addition, there are two (2) storm inlets to the north of the subject site on the south side of McCall Road. No developments on the site will affect or alter these inlets.

**F. Adequate provision of access:** The subject site features two access points for vehicular traffic: one off McCall Road and the other off Enoch Lane. The applicants are not proposing any new curb cuts to the subject site, and the current access is adequate for the Conditional Use and future retail use on the subject site.

Traffic is anticipated to be a little more scheduled compared to the previous use of the site (home and supply store) due to pick-up and drop-off times based on dog owners’ work schedules. However, the location of the parking and flow of access would help mitigate potential stacking of vehicles along McCall Road or Enoch Lane.

The subject site does feature an outdoor sprinkler connection for fire prevention on the northeast side of the building. The applicants will retain direct access to this connection for the Manhattan Fire Department and create a door for maintenance to occur on the interior part of the system.

The Board made the following findings of fact for the EXCEPTION at 530 McCall Road:

**PRESENT USE:** Vacant retail building

### **STANDARDS FOR AN EXCEPTION**

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site complies with all applicable regulations of the C-5, Highway Service Commercial District except for the Exception requested through the application. The use, a dog day care, is a Conditional Use in the zoning district and is a concurrent action to this request.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** No adverse effects on adjacent properties are anticipated by the Exception request. The off-street parking is located adjacent to McCall Road right-of-way. Grass areas and access aisles buffer the parking from the sidewalk and McCall Road. The site's existing parking within the front yard setback is not changing as part of the Conditional Use request, so no new effects will be created for adjacent 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 from approving the Exception request. The off-street parking does not block access to the site from McCall Road for pedestrians or vehicles nor does it obstruct any vision clearance triangles. The layout and design of the twelve (12) parking stalls on the north side of the building encourages a flow of traffic away from McCall Road and to the access driveway to Enoch Lane. This would help decrease queuing of vehicles at the driveway off McCall Road. The redirection of traffic would also not flow towards adjacent properties. The driving aisles between the property line and parking stalls meets Manhattan's City Engineer standards for both the spaces on the northwest corner and north side of the building.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** Strict application of the minimum required front yard setback would prohibit the Conditional Use and site to include twenty-nine (29) off-street parking spaces as configured. This would reduce the off-street parking to thirty-four (34) spaces. For the proposed Conditional Use (16 required spaces) and the remaining anticipated retail space (10,228 square feet, 41 required spaces), this would not allow the site to meet its minimum off-street parking requirement.

Relating to the twelve (12) parking spaces on the north side of the building, strict application of the regulations would either require the removal of the spaces or force a reconfiguration. The altering of the spaces would require the removal of a portion of the eleven (11) foot sidewalk to create more room for 90 degree parking. This type of parking requires less length – eighteen

(18) feet – compared to twenty-two (22) feet required for 60 degree parking as shown on the site plan. Forcing the strict application of the regulations for this existing parking is unreasonable when an adequate driving aisle space is provided behind the spaces. There is also a buffer between the sidewalk in the right-of-way parallel to McCall Road. The angled parking also serves a purpose of redirecting a flow of traffic towards the Enoch Lane driveway. If the parking spaces were to be 90 degrees, it gives drivers the option of utilizing the driveway onto McCall Road. The current configuration produces safer conditions and elimination of some stacking in the parking aisles.

As for the seventeen (17) spaces located in the northwest portion of the subject site, these would have to be moved back between one (1) and two (2) feet to meet the front yard setback regulation. However, the movement of the parking spaces would decrease the aisle width between parking stalls, which has a minimum requirement of twenty-six (26) feet for 90 degree parking per the configuration standards outlined by Manhattan’s City Engineer. To ensure proper drive aisle width, it is reasonable to allow for the existing parking in this portion to remain.

The current layout of the parking area best serves the nature of the Conditional Use business (picking up and dropping off dogs) as well as other uses in the C-5, Highway Service Commercial District zoning. The site also features an area in the southwest corner that is a grade change from the rest of the parking lot but targeted for future development. This restriction and potential use of the entire site encourages the current configuration as proposed by the applicant. Therefore, it is unreasonable for 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 A REDUCTION IN THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TEN (10) FEET FOR A FOUR-FOOT TALL, SEE-THROUGH STEEL FENCE ASSOCIATED WITH AN EXISTING SINGLE-FAMILY RESIDENCE ON A CORNER LOT LOCATED WITHIN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 3600 HAWTHORNE WOODS TERRACE. (APPLICANT/OWNER: MARK AND MARY LOCKE, TRUST)**  
**FILE NO. EXC-17-063**

Singh presented the staff report, which recommended approval for the Exception with three (3) conditions of approval.

Hardy opened the public hearing.

Mark Locke, applicant, stepped to the podium to take any questions from the Board. However, the Board did not have any questions.

Hardy closed the public hearing.

Wigfall said she appreciates the fence not being visible due to the height of the retaining wall and existing landscaping.

Hardy said the Board has a history of dealing with the fences, but with this application, the height of the retaining wall, the location of the fence, the shrubs hiding the fence from street view, and the see-through nature of the fence are some of the characteristics the Board typically desires. He commended the applicants for their efforts to lessen the impact of the Exception request.

Nelson made a motion to approve an EXCEPTION to allow for a reduction in the minimum front yard setback from twenty-five (25) feet to ten (10) feet for a four-foot tall, see-through steel fence associated with an existing single-family residence on a corner lot located within the R, Single-Family Residential District, located at 3600 Hawthorne Woods Terrace with the following conditions of approval:

1. The Exception shall be limited to the proposed fence.
2. The privacy fence shall be constructed as described in the application and shown in the renderings and maintained in good condition.
3. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the EXCEPTION at 3600 Hawthorne Woods Terrace:

**PRESENT USE:** Single-Family Detached Residence

**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:** There should be no adverse impacts of the proposed Exception on adjacent properties. The fence is a see-through metal fence and situated on an elevated yard above the sidewalk within the Churchill Street right-of-way. Therefore, it does not obscure the view of either the neighboring property owners or pedestrians walking through the neighborhood. A retaining wall also separates the fence and yard from Churchill Street. Due to the height of the yard and topography of the area, the fence does not interfere with the vision clearance triangle at the Churchill and Hawthorne Woods intersection. Landscaping near the south property line, such as coniferous bushes along the edge of the retaining wall, further decreases the fence's visibility from Churchill Street.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exception should not have any adverse effect on public health, safety, morals, order, convenience, prosperity or general welfare of the community. No impact will be felt by the public due to the fence's height, see-through nature, and placement on an elevated yard along Churchill Street. As for people at the subject site, their safety will be increased as the fence will prohibit access to the edge of the retaining wall.

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

The strict application of the regulations would force the fence to be placed fourteen (14) feet towards the house from where it is currently proposed. The alternative, though, does not result in a public gain or loss that is different from what was submitted with the Exception request. The fence being see-through and removed from public view while also serving safety purposes for the property owners seems to be reasonable in this case.

Hardy adjourned the meeting at 7:38 p.m.

Respectfully submitted by,  
Chris Kutz, Planner