

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, October 11, 2017
7:00 PM

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

MEMBERS ABSENT: Harry Hardy, Chairperson

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

CONSIDER THE MINUTES OF THE SEPTEMBER 13, 2017, BOARD OF ZONING APPEALS MEETING.

Wigfall moved to approve the September 13, 2017 minutes which was seconded by Danner and passed with a vote of 4 – 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 MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY-ONE (21) FEET FOR A PROPOSED ADDITION TO AN EXISTING DWELLING UNIT ON A CORNER LOT LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 3424 DICKENS AVENUE. (APPLICANT/OWNER: EUGENE RUSSELL)

FILE NO. EXC-17-083

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

Hamilton opened the public hearing.

Eugene Russell, 3424 Dickens, stepped to the podium for questions from the Board. Hamilton asked if the tree nearest the proposed addition would remain on the site. Russell said he would try to save it if he could, but he believed there were plenty of other trees around the home. He said there are about eight trees in the yard along Denholm Drive.

Hamilton closed the public hearing.

Nelson said the application seems fine to her.

Danner said there is potential of putting the addition to the north side of the home, as stated in the staff report, but considering the layout of the house, she could support the request.

Hamilton said she was generally willing to support the request because of the large lot size. She said while large lot sizes should offer more space to place an addition within the setbacks, this was an established home with a fixed orientation and it makes sense. She also said the intrusion was minimal. She asked to modify the findings stated in the staff report by removing the sentence about permeability as a result of windows on the addition. She did not believe that was a good enough reason to grant an Exception. She also asked the findings to be modified by removing the phrase, “to meet the wants of the applicant.”

Wigfall said she hoped the applicant could preserve the tree closest to the proposed addition as much as possible. Hamilton endorsed Wigfall’s statement.

Danner made a motion to approve an EXCEPTION to allow for a reduction of the minimum front yard setback from twenty-five (25) feet to twenty-one (21) feet for a proposed addition to an existing dwelling unit on a corner lot located within the R, Single-Family Residential District located at 3424 Dickens Avenue, with the following conditions of approval:

1. The proposed addition is limited to the size shown in the site plan submitted with the application.
2. 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 3424 Dickens:

PRESENT USE: Detached single-family residence

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The site is currently compliant with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The reduction of the minimum front yard setback would have minimal effect on adjacent properties. The encroachment is between three and four feet closer to Denholm Drive than the order of the properties to the north, but it would be minimally noticeable to adjacent properties due to the large lot sizes. In addition, there are mature trees within the public right-of-way that limit the impact of the minimal encroachment on adjacent properties to the west.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The impact of the Exception request on the public health, safety, morals, order, convenience, prosperity and general welfare is minimal. The proposed addition is outside of any easements and does not impede vision clearance triangles. The only easement on the property shown on the final plat is an eight (8)-foot utility easement adjacent to the east property line. The addition is on the opposite side of the subject site.

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

The subject site itself does not feature any unique qualities; it is a larger rectangular lot (about 20,145 square feet) within a single-family residential neighborhood. Within reason, the addition to the home could be placed on the north side of the house in the rear yard. However, when considering the existing layout of the home, the proposed location of the addition is reasonable. Most of the addition – about eight feet – is within the minimum required setback. The additional four feet is to ensure the addition meets the wants of the applicants. The presence of existing trees along Denholm Drive also softens the impact of the encroachment. Considering the addition would not be noticeable to the passerby and denying the request does not result in either a public gain or loss, strict application of the regulations would be unreasonable in this case.

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 MINIMUM FRONT YARD SETBACK FROM FIFTEEN (15) FEET TO TWO (2) FEET FOR AN EXISTING RAMP THAT IS NO TALLER THAN THIRTY (30) INCHES FROM THE GROUND; AN EXCEPTION TO ALLOW FOR A REDUCTION OF THE MINIMUM SIDE YARD SETBACK FROM EIGHT (8) FEET TO FOUR (4) FEET ON BOTH THE EAST AND WEST SIDE OF THE EXISTING DWELLING UNIT; AN EXCEPTION TO ALLOW FOR AN INCREASE IN THE MAXIMUM ALLOWED LOT COVERAGE FROM THIRTY (30) PERCENT TO THIRTY-TWO (32) PERCENT FOR AN EXISTING HOUSE; AN EXCEPTION TO ALLOW FOR A REDUCTION OF THE REAR YARD SETBACK FROM TEN (10) FEET TO ZERO (0) FEET AND SIDE YARD SETBACK FROM THREE (3) FEET TO ZERO (0) FEET FOR AN EXISTING DETACHED GARAGE ABUTTING AN ALLEY, ALL LOCATED IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT WITH TRADITIONAL NEIGHBORHOOD OVERLAY, LOCATED AT 607 HOUSTON STREET. (APPLICANT/OWNER: CATHERINE FUNG)

FILE NO. EXC-17-085

Singh presented the staff report, which recommended approval with two (2) conditions of approval and a modification to the side yard setback requests related to the existing home.

Nelson asked why the ramp was constructed within the setback. Kutz said City staff understood it as the applicant not knowing the setback requirement for ramps.

Kutz also requested the Board modify the Exception request for the side yard setback on the east side of the property. While it was advertised as a reduction from eight feet to four feet, the adjacent property owner to the east notified City staff that measurement was incorrect. It was determined the actual setback of the existing house along the east property line was seven feet. Nelson asked if the east side was the location of the modification. Kutz confirmed.

Hamilton opened the public hearing.

Catherine Fung, 607 Houston, stepped to the podium, but the Board did not have any questions.

Hamilton closed the public hearing.

Hamilton said the staff report was a little unclear on the timeline of when the ramp received approval from City staff. She read it as the Historic Resources Board and City staff approved the ramp before its construction.

Nelson said she sees no problems with the Exceptions for the existing house and garage. Hamilton agreed, saying that is consistent with decisions made by the Board in the past.

Nelson said knowing the background of the ramp, she can support the Exception for it as well. She said it is there, not bothering anyone, and the applicants need it.

Hamilton said this application made her ponder about the topic of accessibility ramps. She said Manhattan will receive more of these requests, and the new zoning regulations may address this. However, she found other cities have addressed this type of request in their zoning ordinance by allowing them to be built, but the ramps are removed once they are no longer needed. She said the ramp is “nicely designed” and “well-constructed,” but it is intruding upon the order along the street. She said she can support the Exception request as long as it is removed after the need for it is no longer. Kutz said he can add that as a condition of approval. Hamilton also asked Kutz to add a condition of approval stating the ramp shall be maintained in good condition.

Hamilton asked for the findings stated in the staff report to be modified. She wanted the word “no” to be changed to “minimal” in the standard relating to probable effect on adjacent properties. She said there is an adverse impact on the order of the setbacks on the block.

Nelson made a motion to approve an EXCEPTION to allow for a reduction of the minimum front yard setback from fifteen (15) feet to two (2) feet for an existing ramp no taller than thirty (30) inches from the ground; an EXCEPTION to allow for a reduction of the minimum side yard setback from eight (8) feet to four (4) feet on the west side of the existing dwelling unit and from eight (8) feet to seven feet (7) feet on the east side; an EXCEPTION to allow for an increase in the maximum allowed lot coverage from thirty (30) percent to thirty-two (32) percent for an existing house; an EXCEPTION to allow for a reduction of the rear yard setback from ten (10) feet to zero (0) feet and side yard setback from three (3) feet to zero (0) feet for an existing detached garage abutting an alley, all located in the R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay located at 607 Houston Street, with the following conditions of approval, as modified by the Board:

1. The Exceptions are limited to the existing house, detached garage, and ramp.
2. The ramp shall remain on the site as long as it is needed by the property owner(s) and be removed once it is no longer needed by the property owner(s).
3. The ramp shall be maintained in good condition.
4. All applicable permits shall be obtained.

Danner seconded the motion, which passed 4 – 0.

The Board made the following findings of fact for the EXCEPTIONS at 607 Houston:

PRESENT USE: Detached single-family residence

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The existing home and detached garage encroach into setbacks, but these conditions have existed since the home was constructed in 1920 (source: Riley County Appraiser's Office) and predate current zoning regulations. The lot coverage violation also appears to have existed before current zoning regulations. Therefore, these conditions are legal nonconformities. The purpose of these Exception requests, which were discovered by City Administration during the application review, is to clear the title of the property. The Exception request for the ramp is also to clear the existing feature of its nonconformity. All other conditions at the subject site are compliant.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The effect of the existing nonconformities, legal and otherwise, would be minimal in nature for adjacent properties. The house was bought by the applicant in September 1978 and no new structures have been added to the site. Since the existing structures have been at the site for a significant amount of time and cause no current adverse effects, it would be expected that the lot coverage and side and rear yard setback encroachments will maintain their current negligible impact. There should be no adverse impact of the ramp on adjacent properties as it is aesthetically designed and maintained in good condition.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There should be minimal adverse impact of the ramp, house or detached garage on public health, safety, morals, order, convenience, prosperity or general welfare. The structures and ramp do not lie within any easements and do not obscure any vision clearance triangles.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the regulations on the existing home and detached garage for the setback encroachments and lot coverage overages are unreasonable. To bring the property into compliance, it would require demolition of the garage and dramatic changes to the home's footprint. The home and detached garage were also built in 1920 and zoning regulations on the property have been altered over the years since original construction. Considering these circumstances, it would be unnecessary and unreasonable to force strict application. As for the ramp, the regulations would also force the removal of the ramp. However, the ramp serves the need for accessibility for the homeowners.

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 TEN (10) FEET FOR AN EXISTING FENCE ASSOCIATED WITH A HOME LOCATED WITHIN AN R, SINGLE-FAMILY

RESIDENTIAL DISTRICT, LOCATED AT 3820 SILVERLEAF DRIVE.
(APPLICANT/OWNER: BILLY CHANDLER)

FILE NO. EXC-17-080

May presented the staff report, which recommended approval with two (2) conditions of approval.

Hamilton asked if the retaining wall needed an Exception for encroaching into the front yard setback. May said retaining walls do not require an Exception in such a case if the wall is a part of the home or needed to build the home. Hamilton asked if the Board usually looks at Exception requests for items with that type of landscaping effect. May said no, not usually.

Hamilton opened the public hearing.

Billy Chandler, 3820 Silverleaf Drive, stepped to the podium to answer questions. Hamilton asked if Chandler considered putting the fence behind the retaining wall. Chandler said he originally considered it, but he wanted to create some privacy for the patio door on the side of the house.

Hamilton closed the public hearing.

Wigfall said she hopes the consultants working on the Unified Development Ordinance (UDO) are able to solve some of the problems the Board has consistently seen when it comes to two front yards. She said rather than requiring property owners to receive Exceptions, she would like to see the zoning regulations solve the problem.

Danner said the Board has approved many similar requests.

Hamilton said she is the most reluctant to support the request because the fence stands out despite it being well made. She said in that neighborhood, it “screams intrusion.” She said in comparison, the see-through metal fence across the street was not as noticeable as applicant’s fence.

Hamilton said after reading the staff report, she did not understand why an Exception for the same type of request could not be applied to any other property. She said she could not feel comfortable with supporting the fence because of the use of the right-of-way and sidewalk widths as part of the calculation for a buffer.

Danner said the fence was improvement from the retaining wall sticking out. Hamilton said that helps.

Wigfall said the applicant could soften the look of the fence with landscaping.

Hamilton said she has a problem with the staff report saying no property has an impeded view. She said while this was correct, the neighbors along Firethorn Drive have a slightly impeded

view. She asked City staff to modify the findings so that the curve of Firethorn Drive affects the sight line of the fence encroaching into the order of homes and other setbacks.

Danner said in the future, she would like more photos of neighborhoods around subject sites including the in City staff's presentation.

Nelson said she did not believe the fence stuck out.

Wigfall said she would not be as bothered by the fence if it were shorter than six feet. She also said vegetation could help the look of the fence, but it would not be the entire solution.

Danner made a motion to approve an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the front yard setback from twenty-five (25) feet to ten (10) feet for an existing wooden privacy fence at an existing house located within an R, Single-Family Residential District, with the following conditions of approval:

1. The fence shall be maintained in good condition.
2. The Exception shall only apply to the exiting wooden privacy fence described in this staff report.

Nelson seconded the motion, which passed 2 – 1 – 1. Hamilton voted against the request because the order of a newly emerging neighborhood like this should be as close to within the zoning regulations and future Exceptions should be more warranted than this request. She said it does not meet the standards of strict application being unreasonable or unnecessary; effects on public safety; and probable effect on adjacent properties. Wigfall abstained from the vote.

The Board made the following findings of fact for the EXCEPTION at 3820 Silverleaf Drive:

PRESENT USE: Single family house

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Apart from the existing fence for which this Exception request is for, the subject property is compliant with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The existing fence has not had any known adverse impacts on adjacent properties since it was installed. The fence is entirely within lot lines of the subject site and the fence does not encroach on any utility easements or any vision clearance triangle requirements. The fence does not impede the view from adjacent properties. The property located across Firethorn drive faces the fence, and the exception request would not have an impact on this.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The property is zoned R-1, Single Family Residential District, as are all adjacent properties. The neighborhood is almost entirely single

family homes. The existing fence has not had any effects on public health, safety, morals, order, convenience, prosperity, or general welfare, and is not anticipated to in the future. The fence is intended to provide privacy and security for the applicants' back yard.

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

The fence does not encroach on any utility easements or vision clearance triangle requirements and there have been no known adverse impacts since the fence was installed. The fence is currently set back from the north property line by 10 feet. However, the fence is set back from the curb along Firethorn Drive by approximately 25 feet, and set back from the public sidewalk by 10 feet, which allows for some space between the fence and the sidewalk. So, while the fence may encroach on the front yard setback, the large amount of right-of-way creates a similar effect as the required 25 foot setback intended.

Additionally, no properties have their view impeded by the fence, and the only property to have a direct view of the fence would have a direct view of it regardless of the setback. Considering all these facts and circumstances, the strict application of the zoning regulations seems unreasonable in this instance.

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 FRONT YARD AREA ALONG SARBER LANE AND POYNTZ AVENUE FRONTAGE ROAD; AND AN EXCEPTION TO ALLOW FOR A REDUCTION IN THE FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWENTY-ONE (21) FEET FOR A PROPOSED BUILDING OVERHANG LOCATED WITHIN C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT, LOCATED AT 325 E. POYNTZ AVENUE. (APPLICANT: CHIP CORCORAN, RENAISSANCE INFRASTRUCTURE CONSULTING; OWNER: SPIRIT MASTER FUNDING VIII, LLC)

FILE NO. EXC-17-084

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

Nelson asked Kutz to show the photo of the parking lot to the northeast of the subject site. She said the frontage road curves, so this has a different effect than what is requested through the application. Kutz showed an aerial photo that shows the curve of the frontage road being more to the northeast.

Danner asked for clarification on where the building overhang would be located. Kutz demonstrated the location using the aerial photo.

Nelson asked if the parking count listed in the staff report included the 11 spots that are within the front yard area and requiring the Exception. Kutz said yes, the 120 spots shown on the site plan and stated in the staff report include the 11 spaces in the front yard area. Nelson asked if

the applicants are required to have 117 parking spaces, why does the site have 120 spaces. Kutz stated the 11 spaces were meant to help meet the minimum requirement, and if they were taken away, the site would be at 109 spaces, which is below the minimum required for the two uses on the two lots.

Hamilton asked while there may not be any requirements for screening of the parking lot due to the zoning district, are there any landscaping requirements for the parking. Kutz said yes, there are separate regulations for surface parking lots that state the requirements for landscaping.

Hamilton asked if there is any landscape requirement along Sarber Lane and frontage road. Kutz said no, not for the C-5 zoning district. Hamilton said there are attempts by other nearby properties to make the commercial area look attractive with landscaping. She did not think there would be any room for landscaping based on the layout of the parking and driveways.

Nelson said the parking along the frontage road seems like a safety issue. Hamilton said it is close to the frontage road, not US-24. Hamilton said the property to the northeast has parking generally that close to the frontage road. Nelson asked if there was a ditch in between the parking and the frontage road at the adjacent property to the northeast. Kutz said he was not sure.

Hamilton reflected on other commercial areas around town that have made a good effort to include landscaping to help with the aesthetics, and she felt this site was overlooking landscaping as an asset. She said she regrets, though, that the Board could not do anything about that. Kutz mentioned there were some limitations to landscaped area due to the drainage ditch alongside Sarber Lane. He then discussed some areas within the parking that could be landscaped, but noted Hamilton's concern the applicants are packing the site with parking and two restaurants.

Davidson noted the applicants have submitted a landscaping plan for the site as part of the building permit process. Hamilton said she would expect that to be the case.

Wigfall asked for clarification about circulation of vehicles within the parking lot, in particular entering from Sarber Lane and driving down the aisle towards the entrance of the subject's site drive-thru line. She also asked who would be parking in the five spaces in the front yard area nearest the frontage road. Kutz said the City's Traffic Engineer has looked at the site plan. Davidson said the aisle between the two restaurants is two lanes, and it has adequate spacing. She also added the Traffic Engineer has reviewed the site plan.

Wigfall said it would have been nice to see the landscaping plan because some plantings may affect visibility close to the driveways.

Hamilton opened the public hearing.

Kelsey Fitzpatrick, applicant, and Luaron McCormack, Raising Cane's representative, stepped to the podium. McCormack showed the landscaping plan for the area around Raising Cane's. She also said the five parking spaces nearest the frontage road would be for customers.

Nelson asked about the circulation of the drive-thru lane. McCormack clarified and showed the bailout area for the drive-thru to help circulation.

Hamilton closed the public hearing.

Nelson asked Wigfall for her opinion about the landscaping on the site. Wigfall said she was feeling better about the site after hearing about the landscaping plan. She said she still has some concern about circulation within and outside the site.

Nelson asked if the Board could approve the parking in the front yard area along Sarber Lane but not along the Poyntz Avenue frontage road. Hamilton said yes, and the applicants would have to apply for an Exception for a reduction in the minimum parking required. Nelson asked if the Board could give the applicants that Exception right now or if they would have to apply for it. Hamilton said it would have to be a separate application so that the request can be advertised.

Wigfall said, if the five spaces were denied, one of the other issues would be where would the two missing spaces that are required to meet the minimum requirement be located. Danner said she did not believe that problem could be solved, and Wigfall agreed.

Nelson expressed her concern with circulation and congestion.

Wigfall said she assumed the City's Traffic Engineer analyzed the site. She reiterated her concern for the creation of another Exception request if the five parking spaces were denied.

Hamilton said it was legitimate to raise questions about circulation, but the Board was looking at an Exception for parking in the front yard area. She said if the Board can look at that Exception request and say it causes a safety problem, then it seems like it is a matter for the City engineers. She said she has seen the Board approve some requests that turn out to be traffic nightmares, and she did not want this one to be one of those cases. She anticipated, though, that this would be the case.

Nelson asked if that concern was relevant to the Exception requests. Hamilton clarified the concerns needed to be related to the standards for an Exception, and the one standard she is hearing being talked about is safety.

Wigfall said it may not be ideal, but the site does gain some amenities in vegetation and benefits to water runoff.

Hamilton asked which applicant would have to make the request for the reduction of minimum parking. Danner stated what was said in the staff report. Kutz attempted to answer the question

but ended by stating when computing shared parking on the site, it ends up being a combination of all of the parking within the two sites.

Hamilton said the Board was veering off into issues that are addressed by different City staff. She wanted the Board to focus on the standards for the parking in the front yard area.

Danner said she was okay with both areas of front yard parking. Wigfall also said she does not have a problem with the requests.

Danner made a motion to approve an EXCEPTION to allow for off-street parking in the front yard area along Sarber Lane and Poyntz Avenue frontage road; and an EXCEPTION to allow for a reduction in the front yard setback from 25 feet to 21 feet for a proposed building overhang located within the C-5, Highway Service Commercial District located at 325 E Poyntz Avenue, with the following conditions of approval:

1. Exception for off-street parking is limited to how it is proposed in the submitted application.
2. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed 4 – 0.

The Board made the following findings of fact for the EXCEPTIONS at 325 E. Poyntz Ave:

PRESENT USE: Undeveloped lot; surface parking lot for previous use on adjacent lot

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Based on the proposed site plan, the subject site meets all other applicable bulk regulations except for the Exceptions requested. The parking lot configuration also meets the City Engineer standards for parking stall sizing and drive aisle width for 90-degree and angled parking.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The off-street parking is not expected to have an adverse effect on adjacent properties. While the parking is not screened with landscaping – which is not required – it is set back from the property line by eight feet along Sarber Lane and 10 feet against the frontage road. There is also a drainage ditch in the public right-of-way along the northeast property line, which provides a buffer from Sarber Lane. The parking also faces another large parking lot across Sarber Lane and a highway along the frontage road, meaning adjacent properties will not be impacted by the parking encroachment. Buffers and proposed setback distance, coupled with adjacent parking lots, create a minimal adverse effect.

The probable adverse effect of the awning encroachment will also be minimal. The awning extends into the minimum required setback by about three to four feet, which would be minimally noticeable by adjacent properties considering the surrounding uses. The scale of the land uses portrays an open feeling, and the awning keeps an open feeling from a pedestrian or vehicle passing by. This is also due to the building wall being set back 25 feet, allowing the uniform look of building facades set at the minimum required distance.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The impacts of the Exception requests on the public health, safety, morals, order, convenience, prosperity and general welfare would be minimal. The parking and awning are outside of any vision clearance triangles and utility easements. The parking adjacent to Sarber Lane abuts an eight-foot utility easement and is three feet from the five-foot pedestrian sidewalk easement. This sidewalk will connect to the existing sidewalk parallel to the frontage road. Meanwhile, the parking along the Poyntz Avenue frontage road abuts a 10-foot utility easement.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the regulations is unreasonable when all facts and circumstances are considered. The entire lot was redesigned with the new building and parking configuration, which means the parking was purposefully placed where it is proposed within the front yard area. However, the location of the parking is logical considering the abutting rights-of-way, buffers, drive-thru windows and aisles, and parking requirements as defined by the Manhattan Zoning regulations. The awning, meanwhile, is a minimal encroachment relative to its function and the actual building wall.

An alternative to the parking Exception request would be to remove the eleven (11) spaces from the front yard area, which would require the applicant to submit an Exception application to request a reduction of the required combined parking spaces on Lots 1 and 2 from 117 to 109. Considering this option still requires a Board of Zoning Appeals action, the current Exception request is reasonable to ensure adequate parking is available for customers and employees for the two lots. There is another option of removing the five spaces adjacent to the frontage road, but this would still require an Exception request to reduce the minimum required off-street parking.

A PUBLIC HEARING TO CONSIDER A VARIANCE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR MORE THAN ONE (1) PYLON SIGN PER ZONING LOT IN THE C-2, NEIGHBORHOOD SHOPPING DISTRICT, LOCATED AT 3230 KIMBALL AVENUE. THE PROPOSAL IS FOR A THIRTEEN (13)-FOOT TALL DIRECTIONAL SIGN SET BACK APPROXIMATELY EIGHTY-NINE (89) FEET FROM THE SOUTH PROPERTY LINE ALONG KIMBALL AVENUE. (APPLICANT: THOMAS SIGN SERVICE; OWNER: CM BRASS, LLC)

FILE NO. VAR-17-086

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

Wigfall asked about the distance between the bottom of the lowest panel and the ground and if that is enough space for visibility. Kutz said the City's Public Works looked at it and, after a conversation of if it was enough, it was approved.

Danner asked about the standard of unnecessary hardship. She said the site has been there since 1984, and what could have changed since that time to create a need for the directory sign that would help overcome this standard. Kutz said the purpose of the sign is to match with the color coordination taking place on the building signage and help any confusion for customers using the shopping center.

Nelson said there is more traffic at and near the site.

Hamilton asked why the applicants could not gain the benefit of the linear frontage along Seth Child Road to get another pylon sign by right. Kutz said a property owner cannot combine the street frontage from multiple streets to place more than one sign along a street. Hamilton asked which direction the directory sign would be facing. Kutz said it is facing southwest. Wigfall said it makes sense to not put it at the entrance.

Hamilton opened the public hearing.

Steve Lee, 121 N 8th Street, stepped to the podium as a representative of the property owners. Hamilton asked what was the “crying need” for the directory sign. Lee said there is one long building and to help separate the buildings, each building was assigned a color to help direct people. He said you cannot see the sign from Candlewood or Kimball.

Wigfall asked what information will be on the permitted sign. Lee said it would have the name of the shopping center and address numbers. He said the intent behind that was to not slow people down along Kimball Avenue.

Lee said the property owners have also taken down some lighting to help unify the feel and “bring it up to date.”

Hamilton closed the public hearing.

Hamilton said she shared Danner’s concern about the standard for unnecessary hardship. Hamilton said one of the things that has changed is the nature of businesses are changing. In the past, businesses were tenants for a longer period of time, but she felt shopping centers do not count on that anymore. She said to help make this shopping center viable, the property owners have do things to make businesses feel like they can succeed there. She said the alternative is to put the sign where it cannot be seen.

Nelson said it is hard to know where things are in the shopping center, and this is a good thing.

Wigfall said based on the traffic flow and the ability to negotiate the turn, the sign needs to be a size that is able to be read. She said she appreciated Lee saying they looked at other places to put it, but none of them made sense.

Nelson made a motion to approve a VARIANCE to allow for more than one (1) pylon sign per zoning lot within in the C-2, Neighborhood Shopping District located at 3230 Kimball Avenue, with the following conditions of approval:

1. The Variance shall only apply to the proposed directional sign shown in the application materials.
2. The sign shall be maintained in good condition.
3. All applicable permits shall be maintained.

Wigfall seconded the motion, which passed 4 – 0.

The Board made the following findings of fact for the VARIANCE at 3230 Kimball Avenue:

PRESENT USE: Shopping center

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is a large polygon-shaped shopping center that abuts three public rights-of-way. It gains access from the adjacent streets on the southwest corner, however, a significant portion of the site is positioned away from the driveways. The buildings are configured such that the commercial businesses located to the north of the subject site do not feature prominent signage for vehicles and pedestrians entering from Kimball Avenue or Candlewood Drive. Also, the signage on the existing buildings due to the façade is limited in size. The need for the proposed directional sign is a function of the shopping center layout and internal vehicular traffic circulation.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The Variance would have little adverse impact on adjacent properties. The sign is a directional sign contained within the subject site and set back from the south property line by more than 80 feet. Due to the sign's location, it is screened from the neighboring residential properties to the west by the existing buildings and the overall layout of the site. The sign is also not illuminated, which offsets any light pollution effects on the adjacent properties. The mix of residential and public park land would not face a detrimental impact due to the proposed sign.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The sign is for directional purposes for people on the subject site – not to attract people from the right-of-way to the subject site. Strict application could cause confusion for people within the shopping center, which would cause a hardship upon the general public and property owners. The applicant is proposing the sign at its size because “the sign needs to be big enough that it can be legible for easy identification to customers,” as stated in the application.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There will be minimal effects on the public health, safety, morals, order, convenience, prosperity or general welfare due to the location of the proposed directional sign being placed on the site. The purpose of the sign is to direct internal traffic to the appropriate businesses. Improving directional signage on the subject site should positively impact the public by decreasing confusion of people trying to find the correct buildings. The placement of the sign is also outside of any vision clearance triangles while the height of the lowest panel allows vehicles to see underneath the sign area. This creates less of an adverse impact for the general public driving through the parking lot.

RELATIONSHIP TO INTENT OF REGULATIONS: The intent of the regulations is to

limit the number of signs a property owner can have for an entire shopping center and not dominate surrounding properties. In this case, the sign is to serve the people already moving about the property. It is set back from the public right-of-way to ensure it does not dominate adjacent property owners and residents while also not increasing the visual clutter of signs along Kimball Avenue. It seems the intents of the regulation are maintained.

The C-2 District allows the total surface area of all signs to be as large as one square foot for each one foot of linear street frontage which abuts the zoning lot, as long as each sign is no bigger than 200 square feet. The subject site has about 493 feet of street frontage along Kimball Avenue. The subject site currently has one monument sign with a limited sign area, but this sign is scheduled to be replaced by a larger pylon sign. Despite the change, and combined with the proposed directional sign, the total signage area along Kimball Avenue (238 square feet) is below than the maximum allowed (493 feet). Therefore, the intent of the regulation to limit size of signs is maintained as well.

By granting the Variance, the spirit and intent of the overall sign regulations will also be upheld. The Manhattan Zoning Regulations oversee the “location, size, placement and certain features and characteristics of signs” for six stated reasons in the ordinance:

1. To enable the public to locate goods, services, and facilities without difficulty or confusion;
2. To avoid traffic hazards, confusion between signs and traffic control devices, and traffic congestion;
3. To reduce visual clutter, distraction and obstruction along public streets and sidewalks;
4. To prevent hazards to life and property;
5. To protect property values; and,
6. To ensure the continued attractiveness of the city.

Measuring the application against these six reasons, the Variance request does not go against the spirit of the overall regulations.

Hamilton adjourned the meeting at 8:51 p.m.

Respectfully submitted by,
Chris Kutz, Planner