

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, December 13, 2017
7:00 PM

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

MEMBERS ABSENT: Brandi Nelson

STAFF PRESENT: Carol Davidson, Senior Planner; Doug May, Planner

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

Danner moved to approve the November 8, 2017 minutes which was seconded by Wigfall and passed with a vote of 4 – 0.

CONSIDER A REQUEST FOR A 180-DAY EXTENSION OF APPROVED EXCEPTIONS 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 OF AN EXISTING SINGLE-FAMILY RESIDENCE LOCATED WITHIN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 210 N. EVERGREEN AVENUE. THE EXCEPTIONS WERE APPROVED BY THE BOARD IN JULY 2017. (APPLICANT: EVAN AND ANDREA GRIER; OWNER: TPU INVESTMENTS, LLC)

FILE NO. EXC-17-055

Hamilton moved to approve the request, which was seconded by Wigfall 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 REQUIRED SIDE YARD SETBACK FROM EIGHT (8) FEET TO THREE (3) FEET FOR AN EXISTING HOME LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT,

LOCATED AT 1820 GRAND VISTA. (APPLICANT: LARRY THIERER, THIERER CONSTRUCTION; OWNER: KAREN ICE)

FILE NO. EXC-17-096

May presented the staff report, which recommended approval with one condition of approval.

Hamilton asked if the plan that was submitted for the property and the building permit was all in compliance. May replied yes. Hamilton asked if the placement of the home was adjusted when the homes basement and foundation was constructed. May replied that the foundation was poured in the incorrect place. Hamilton then asked if the foundation that was pour was bigger than shown in the plans and building permit. May replied no. Hamilton asked if the size of the structure was as approved. May responded yes. Hamilton asked how the issue was discovered. May replied that it was discovered by a code inspector. Hamilton asked if the error was discovered earlier would they have had to come before the board to continue construction. May replied yes, in this situation an exception would be brought to the board or if caught earlier would have delayed construction until it was resolved. Hamilton said that discovering the error after construction makes the rational decision of the board more apparent.

Hardy opened the public hearing.

Larry Thierer, developer, said the original plans submitted for building permit were correct but when pouring a basement the hole dug is typically five to six feet bigger than the anticipated basement for construction. The reference lines marking the foundation location within the hole were moved within the dug hole causing the basement to be poured incorrectly. The issue was not discovered until the home was nearly complete while creating landscaping plans. This issue would have been brought to the board sooner if it had been discovered earlier.

Robert Debruyn, neighbor, commented that he counts on board to protect his property and expressed concern with granting variances to the regulations. Debruyn owns 187 acres behind 1820 Grand Vista and is concerned about lack of a water provision. He commented that there are many problems with new developments in the area that are being granted variances and his fence was torn down twice by the developer. Debruyn is concerned that the variances will cause the development to look unattractive. He stated that a developer shouldn't be able to construct then ask for a variance. The developer or owner should face consequences of the error.

Thierer commented that he had no knowledge of the water provision on the site. If that was a requirement for the property then it needs to be discussed with the code or zoning department.

Debruyn commented that he was just asking what happened to the water provision that was earlier discussed.

Hardy clarified that the only issue under discussion is the exception for a reduction of a side yard setback and is not considering any other issues.

Hardy closed the public hearing.

Danner commented that a fine for errors would be nice to fund city projects but what the board decides is the matter of the existing home and supports the exception.

Hamilton stated that a mistake was made and it was admitted but the board can make it alright for the property owner so that the property owner doesn't have a problem going forward. Since it's been clarified that the property has not been expanded, but rather an inadvertent location error, a widespread problem does not seem to be apparent. The board must trust the developers are working in good faith and it's the first time Mr. Thierer has been before the board in a long time with this kind of request. Hamilton believes it was not Mr. Thierer's intention to make the error. The concern of the impact that the property has Mr. Debruyne's property will need to be discussed with other city officials because the board is not tasked with those issues. Hamilton stated that the application meets the needs for an exception and she supports it.

Wigfall agreed with Hamilton. She said with development in the fringes there can be conflict between rural owners and more urban owners and developers but those things are not worked out with the Board of Zoning Appeals. Little things do happen during construction but Wigfall does wish the error would have been discovered sooner. In this instance, Wigfall does not have an issue with the approval of this exception.

Hardy commented that exceptions, variances, and conditional uses are in the zoning ordinance and that's why the board exists. If the intention was to not have exceptions, variances, or conditional uses, then the board wouldn't exist and Thierer would have to tear up his foundation. Since they do exist and the check of this process is the standards of exceptions, variances, and conditional uses must be met. In this case, based on what has been presented, the standards seem to have been met and he supports the exception.

Wigfall made a motion to approve an EXCEPTION to allow for a reduction of the minimum side yard setback from eight (8) feet to three (3) feet for an existing home at 1820 Grand Vista located in the R, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall be limited to the existing home as shown in the application.

Danner seconded the motion, which passed 4 – 0.

The Board made the following findings of fact for the EXCEPTION at 1820 Grand Vista:

PRESENT USE: Detached single-family dwelling unit

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property complies with all applicable regulations except for the requested Exception.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The encroachment will have a minimal adverse impact on adjacent properties. The most affected property will be the one to

the west (1619 Grand Vista Lane), but the applicant communicated to the current property owner and received their approval of the request. Although the current adjacent property owner gave approval, the effect on any future property owners will be offset by the presence of the topography at the subject site and adjacent property. This feature, as well as a retaining wall at the subject site, limit any future expansion of the house and further encroachment onto each other.

To the south, the large tract of land is zoned I-5, Business Park District. However, the subject site is separated from this area due to slope and elevation change. This results in no effect from the Exception request relating to this property.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: There will be minimal adverse effects on public health, safety, and general welfare by approving the Exception. The existing home is outside of any easements and vision clearance triangles.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: Due to the home having already been constructed, strict application of these regulations would force the removal of the existing home and requiring it to be rebuilt within the proper setback. Considering the home to the west is also already built and hardship placed on the property owners, this new construction process could alter the subject site and adjacent property owner. The strict application in this case is also unreasonable due to no public gain or loss as well as the topography limiting the effect on side yards and buildings. The Exception would have little adverse impact on neighbors or the greater community.

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 REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TEN (10) FEET FOR A DETACHED GARAGE AT THE RILEY COUNTY POLICE DEPARTMENT LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 1001 S. SETH CHILD ROAD. (APPLICANT: BRUCE MCMILLAN, AIA ARCHITECTS; OWNER: RILEY COUNTY)

FILE NO. EXC-17-099

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

Hardy opened the public hearing.

Garric Baker, Project Manager, thanked the board for considering the exception and noted the dimension change for the garage from thirty-four (34) feet eight (8) inches to thirty-six (36) feet.

Hardy closed the public hearing.

Hamilton applauded the placement of the garage considering the setbacks. Hamilton said that the exception was reasonable and supports it. She asked that the application included the change the garage dimensions. May said he would make the change.

Danner said the proposed garage is in the most ideal spot.

Hamilton made a motion to approve an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a reduction of the minimum required front yard setback from twenty-five (25) feet to ten (10) feet for a detached garage at the Riley County Police Department located in the R, Single-Family Residential District, located at 1001 S. Seth Child Road with the following conditions of approval:

1. The Exception shall be limited to the proposed garage as shown in the revised application.
2. All applicable permits shall be obtained.

Danner seconded the motion, which passed 4 – 0.

The Board made the following findings of fact for the EXCEPTION at 1001 S. Seth Child Road:

PRESENT USE: Riley County Police Department headquarters

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property complies with all applicable regulations except for the requested Exception. The proposed location is outside the Wildcat Creek floodplain to the west.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The encroachment will have a minimal adverse impact on adjacent properties. The proposed garage will abut the property line that is along a wide public right-of-way that contains Fort Riley Boulevard, which limits the encroachment on any properties to the south. Also, there is no access platted along the south property line, meaning this area of the property acts more like a rear or side yard in nature. The setback encroachment is minimal considering how the site is used and location to adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The Exception will not adversely affect the public health, safety, or general welfare because it is outside any vision clearance triangles and easements. The proposed garage is in between, and does not impede, three different easements: a 10-foot utility easement along the south property line; a 16-foot drainage easement in the middle of the south parking area; and a curved drainage easement along the western property line.

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

Considering the proposed garage is outside any easements, has little impact on adjacent properties, has a minimal adverse effect on the adjacent public right-of-way, and has limitations on its placement due to topography and existing layout, the strict application of the regulations is unnecessary with this Exception request.

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 THE ESTABLISHMENT OF A BED AND BREAKFAST HOME LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 115 N. EVERGREEN AVENUE. (APPLICANT/OWNER: MICHAEL AND YUAN HUA MCDERMOTT)

FILE NO. CUP-17-095

May presented the staff report, which recommended approval with four conditions of approval.

Hamilton asked May if he approached the city to mark N. Evergreen Avenue with signage as a one-way street as it is no longer marked. May said he would inform the Public Works Department of this concern.

Hardy opened the public hearing.

Mike McDermott, property owner, 115 N. Evergreen Avenue, commented that the one-way street is an issue and people travel down it incorrectly frequently. There is a one-way street sign present but it is very small and illegible. Eight properties are within 200 feet of the site and during two public meetings six property owners attended along with other individuals in the neighborhood. Two concerns were raised at the meetings, which May addressed, otherwise there was support for the project. McDermott's goal is to have a modest bed and breakfast and use it as a social venture to get acquainted with people traveling to Manhattan. Prior to buying the property there was need for a garage, which is currently being constructed. This will be additional parking to what is currently expressed in the application.

Hamilton commented that she noticed the construction and associated it with the bed and breakfast. She said there is another construction project that will impact Evergreen Avenue and it is jarring to see park land used for construction trucks.

McDermott replied the sooner the construction trucks are gone from the park land, the better.

Hannah Kendall, neighbor, stated concern of safety within the residential neighborhood and across from a school with strangers coming to and from the bed and breakfast frequently. The AirBnB page that advertises the unit has been active since the summer and has had more activity than previously described by McDermott. Kendall is concerned with the property value of the neighborhood with a public accommodation nearby. There was a lack of transparency of this process such as not sharing a map of the property, not providing a notice of square footage expansion with a garage, and the poor visibility of the neighborhood meeting sign. The bed and breakfast advertisement states two bedrooms while the conditional use application asks for

approval for a one bedroom bed and breakfast. Kendall is also concerned with liberties McDermott might take with approval from the board based upon his actions thus far.

Hardy closed the public hearing.

Hamilton commented that she felt this application was an easy fit to the neighborhood but also what Kendall shared caused concern as the information may not be accurate. The applicant stated the bed and breakfast would be used six (6) to seven (7) times a year but that's already been exceeded without a permit. This puts weight to Kendall's concern of strangers in the neighborhood. There was a recent bed and breakfast established on 14th street, where far more children were involved, and there were similar concerns with the use in a family neighborhood. It's not the boards call to decide if a bed and breakfast belongs in a residential neighborhood. There has been no indication that the bed and breakfast on 14th street has caused issues or noticeable problems. The application does not cause concerned if it's a one bedroom with modest usage, six (6) to seven (7) times per year.

Danner asked staff if AirBnB were not regulated but bed and breakfasts are. May said that was true. She asked if the applicant was restricted to what is in the application. Hardy commented that was included as one of the conditions. Danner asked if two bedrooms would be allowed. May replied that it would only include what was in the application, including being one bedroom. Hamilton commented on the enforcement of this application. Hardy responded that it is enforced if it becomes noticeable and individuals complain, then the city would take enforcement action.

Danner stated that she is not concerned that the bed and breakfast will affect property values in the neighborhood and supports the proposal.

Wigfall commented that the site is screened very well. The bed and breakfast won't have a sign, is not in a commercial area, and the owner will be present on the site so she is not concerned about the use. She understands the concern from the neighborhood but the board is not responsible for allowing a bed and breakfast in residential areas and has no problem with the use.

Hardy commented that the use is limited to what is in the application documents including no signs, adults only, no pets, and no employees. It is a small scale operation in combination with a low density, screened location, so he supports the application with the stated conditions.

Wigfall made a motion to approve a CONDITIONAL USE under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the establishment of a Bed and Breakfast Home located in the R, Single-Family Residential District, located at 115 N. Evergreen Avenue with the following conditions of approval:

1. The Conditional Use shall apply to the Bed and Breakfast Home as outlined in the application documents.

2. If the applicant sells the property or ownership of the property changes from the current property owners listed in the application, the Bed and Breakfast Home will cease and any new owner must reapply for the Conditional Use for a Bed and Breakfast Home prior to operation.
3. The applicants/owners shall reside in the home located at 115 N. Evergreen Avenue.
4. All applicable permits and licenses must be obtained.

Danner seconded the motion, which passed 4 – 0.

The Board made the following findings of fact for the CONDITIONAL USE at 115 N. Evergreen Avenue:

PRESENT USE: Detached single-family dwelling unit

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site meets all applicable regulations. By the definition provided in the Manhattan Zoning Regulations, a Bed and Breakfast Home is a “private, owner occupied, single-family residential dwelling containing no more than three (3) guest rooms of sleeping accommodations, none containing cooking facilities, providing accommodations and meals limited to transient overnight guests.” The proposed Conditional Use, with its one guest bedroom and bathroom, meets this definition and other requirements. It will also be required to follow the two use limitations stated in Section 4-102(E)(2) of the Manhattan Zoning Regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The probable effect on adjacent properties is expected to be minimal in adverse nature. The site does not abut any residential properties as it is separated by public right-of-ways to the west, south, and east as well as parkland to the north. Also factoring in the topography, tree-lined screening, and limited scope of operations, the minimal nature of the Conditional Use further supports this probable effect on residential properties across the rights-of-way.

The applicants held a pair of neighborhood meetings at the subject site on October 8 and 9. As with all Conditional Use applications, the neighborhood meeting is required to be held by the applicants. The two concerns raised during the meeting related to N. Evergreen Avenue being a one-way street and the Bed and Breakfast use transferring to future property owners. The applicants told the neighbors, “We are very conscious of the need for that warning (of a one-way street along N. Evergreen Avenue) and always ensure that all our visiting friends and relatives know that they must turn left when exiting the property,” as stated in the application. As for the transfer of the Conditional Use, the applicants told attendees the Bed and Breakfast would cease operation “if/when [they] eventually move.” A condition of approval was added to the City’s recommendation to ensure this was followed in the future.

Additionally, three attendees to the meeting provided their support of the Conditional Use via documentation. These forms, created by the applicants, have been included in the packet to the Board.

DOMINATION BY USE OVER NEIGHBORING PROPERTIES:

Location, nature, and height of physical improvements: The applicants are not proposing any physical improvements to the subject site or home for the Conditional Use. The Bed and Breakfast will be limited to an existing bedroom and bathroom inside the dwelling unit.

Landscaping and screening: The subject site features heavy line of trees around the entire property, which screens the home and proposed Bed and Breakfast use from adjacent properties and passers-by. No new landscaping or screening is proposed for the Conditional Use. Current landscaping is adequate. The topography of the subject site also provides additional separation along Poyntz and Sunset Avenues.

ADEQUATE PROVISION OF PARKING AND LOADING: The Bed and Breakfast Home use is limited to one bedroom, and the site currently features adequate area for parking and loading around the home. The parking is located on an unpaved area to the north of the existing home.

ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES: No changes to the site are proposed for the Bed and Breakfast Home use. Therefore, adequate provisions of drainage and other public utilities will be maintained from its current conditions.

ADEQUATE PROVISION OF ACCESS: The subject site features one driveway onto the one-way street of N. Evergreen Avenue. The use of a Bed and Breakfast Home is expected to have little impact on the current access point to the subject site. Access to the home will be maintained through the front door.

Hardy adjourned the meeting at 7:58 p.m.

Respectfully submitted by,
Lesley Frohberg, Planning Intern