



MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, April 10, 2019
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Sara Fisher; La Barbara Wigfall

MEMBERS ABSENT: Connie Hamilton, Vice-Chairperson; Angie Danner

STAFF PRESENT: Barry Beagle, Senior Planner; Shauna Laauwe, Planner II

Staff called roll and a quorum was established.

CONSIDER THE MINUTES OF THE MARCH 20, 2019, BOARD OF ZONING APPEALS MEETING.

Fisher commented that on Page 9 on the minutes; her comment should be revised to say “conforming” rather than “confirming”.

Wigfall moved to approve the March 20, 2019 meeting minutes as revised, which was seconded by Fisher, and passed with a vote of 3 – 0.

APPROVE A 180 DAY EXTENSION FOR APPROVED EXCEPTIONS TO ALLOW FOR A REDUCTION OF THE FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO ZERO (0) FEET FOR A PROPOSED PRIVACY FENCE ADJACENT TO AN UNDEVELOPED SIXTY (60) FOOT PUBLIC RIGHT-OF-WAY; AND AN EXCEPTION TO ALLOW FOR PARKING IN THE FRONT YARD SETBACK WITHIN A PROPOSED PARKING LOT ABUTTING AN UNDEVELOPED SIXTY (60) FOOT PUBLIC RIGHT-OF-WAY FOR A PROPERTY WITHIN A C-1, RESTRICTED BUSINESS DISTRICTED LOCATED AT 1133 COLLEGE AVENUE.

Laauwe commented that this is the third extension for the property but there is no limitation to the number of extensions an applicant may request.

Hardy said the project was held up due to details with the tenant and this should be the last extension based upon a letter from the applicant.

Hardy called to question the motion to approve the 180 extension for the property located at 1133 College Avenue.

Roll call vote was taken; motion passed 3 – 0.

A PUBLIC HEARING TO CONSIDER EXCEPTIONS UNDER THE TERMS OF THE

**MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS,
TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED EIGHT (8) FOOT
SIDE-YARD SETBACKS AND A REDUCTION IN THE MINIMUM REQUIRED
TWENTY-FIVE (25) FOOT FRONT YARD SETBACKS FOR THE EXISTING
STRUCTURES LOCATED ON PROPERTIES WITHIN AN R-1, SINGLE-FAMILY
RESIDENTIAL DISTRICT, LOCATED AT 3203-3204 STATE STREET.
(APPLICANT/OWNER: EILEEN WOOD TRUST, THE TRUST COMPANY, TRUSTEE)**

FILE NO. EXC-19-028

Laauwe presented the staff report for the exceptions at 3203-3204 State Street. The staff report recommended approval of the Exception requests with one condition of approval.

Wigfall asked Laauwe if the property agreement for the shared driveway would have to be resigned with every purchase of the property or it would remain with the lots. Laauwe said it will go with the lots.

Hardy opened the public hearing.

Doug Wiley, 3505 Church Hill Way, said he is with the Trust Company and is in the process of settling Mr. Wood's affairs. She building that duplex in 1953 and later built the other home. This is a remaining issue to get this estate settled. Staff presented all the fact but her offer to answer any questions from the board.

There were no questions.

Hardy closed the public hearing.

Fisher said she is curious how something like this comes to exist but she has no concerns about this request.

Wigfall appreciates cleaning up properties that have issues. She has no problem with the request.

Hardy agreed; he has no problems and can easily support the request.

Hardy called to question the motion to approve the EXCEPTIONS for 3202 State Street to allow for a 2 foot reduction in the minimum required 8 foot west side yard setback and a 3.01 foot reduction in the minimum required 8 foot east side yard setback, and a 2.75 foot reduction in the minimum required 25 foot front yard setback; and for the approval of the Exceptions for 3204 State Street to allow a 1.75 foot reduction in the minimum required 8 foot east side yard setback and a 2.05 foot reduction in the minimum required 25 foot front yard setback for the existing structures are located within an R-1, Single-Family Residential District, with the following condition:

1. The chain link fencing located within the minimum required twenty-five (25) foot front yard setback shall be removed.

Roll call vote was taken; motion passed 3 – 0.

The Board made the following findings of fact for the EXCEPTIONS at 3203-3204 State Street:

PRESENT USE: Two-Family and Single-Family dwelling units

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property is in compliance in regards to lot size, rear yard setbacks and the west side yard setback of 3204 State Street. The two properties each have a chain-link fence within the front yard setback. The nonconforming fences appear to have been in place for some time and were not specified in the request. City Administration recommends that a condition of approval include the removal of the fencing located in the minimum required 25 foot front yard setback.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

- a. NORTH, WEST, SOUTH: The subject property and the adjacent properties to the north, west, and south are located within an R-1, Single-Family Residential District. The area is comprised of mostly single and two-family homes. All of the homes on State Street were constructed in the 1950s or 1960s, except for the single-family home built directly across the street at 3201 State Street that was built in 1975.
- b. EAST: The adjacent property to the east of 3202 State Street is zoned C-2, Neighborhood Shopping District and owned by the City of Manhattan. The previous fire station is now utilized as an equipment facility for the water department. Further to the east, is a Planned Unit Development that is developed as a commercial shopping center that features Genesis Gym and the new car museum.

Staff Finding: The existing structures have been in their configurations without any recorded issues to neighboring properties for over 56 years, with the duplex being built before the area was annexed into the City. No adverse impacts to the adjacent properties by the granting of the Exceptions is expected.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The structures have been located in the same configuration and placement since they were constructed in 1953 and 1963, respectfully with no adverse effect. All utility companies and the City have agreed to the vacation of the right-of-way that made up the previously platted cul-de-sac bulb that never came to fruition.

Staff Finding: No adverse impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare is expected.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of these regulations are unreasonable, and unnecessary when all facts and

circumstances are considered. The strict application of the regulations would require the demolition of portions of the existing structures that have been in place for over 56 years. The only necessity for the requested Exceptions is to facilitate the sale of the properties after the original owner passed away.

Staff Finding: The strict application of the regulations is unreasonable and unnecessary 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 AN INDOOR ENTERTAINMENT USE ON A PROPERTY IN A C-6, HEAVY COMMERCIAL DISTRICT, LOCATED AT 925 ENOCH LANE. (APPLICANT: AXE TO GRIND, LLC/OWNER: DAVID DREILING)

FILE NO. CUP-19-029

Laauwe presented the staff report for the conditional use request, which recommended approval with three conditions of approval.

Fisher commented that figures in the application and the staff report were different. She asked if this is an issue that the Code Department will have to resolve. Laauwe said yes; the property owner opened a new building permit for a tenant and began making renovations and the two did not match so it has been a fluid situation. The applicant does not want more than 99 occupants but building code goes by the use, not by a self-imposed occupancy, which is why there is a discrepancy in the occupancy.

Fisher asked if one of the conditions of approval is to limit the occupancy to 99 people. Laauwe said yes; she spoke with the Building Official and he thinks there is ways to reduce the occupancy by adding storage or bathroom space. There is the large area where people can stand so there may be some flexibility. During peak hours there is plenty of parking; it is during the day that there is concerns.

Fisher asked if they are suggesting they change the plan to match the occupancy. Laauwe replied yes.

Hardy opened the public hearing.

Nate Miley, 13482 Turkey Trail, explained the occupancy rate previously discussed. The occupancy load for this use is lower than what the building could handle. It is backwards of what building officials are used to because they typically deal with people pushing the limit rather than trying to lower it. Building officials use square footage to determine the occupancy but they would like to post a maximum occupancy of 99 people. If we post it, by policy of their company, they have to follow it or they could get sued. The bar will be beer only and there will be a strict policy on three beers maximum. This is not a bar first; the intent is not to be a local pup but to provide an event and teambuilding space. It has been an up and coming sport and there has been zero accidents since this activity has come to the U.S. three years ago. There is

currently 650 venues in the U.S.; gaining about 25 venues per week. There is a change in the site plan that was made last week to relocate the check-in county to ensure there is a light of sight to the door and provide a safety zone for the axe throwing lanes.

Wigfall asked where landscaping will be used on the site. Miley said the existing landscaping is the grass area and the planter area in front of the building. He would like to add some landscaping such as seasonal flowers in front to make it look better and add some trees in the grass area.

Fisher asked if they typically situate these facilities in heavy industrial locations. Miley said they are all over. In some cities they are in warehouse areas or in Aggieville type areas. They are really all over the place. They were considering another site as well but preferred the mix of uses in this area. They knew they would have some challenges requesting a conditional use but the use fits this site the best.

Wigfall asked if customers are trained. Miley replied yes; the guest are trained and must sign a waiver to participate.

Wigfall asked if they provide the axes. Miley said yes; there are no outside axes allowed.

Fisher asked what an hour cost. Miley said an hour is \$25 and \$40 for two hours. It is usually a group activity, with a maximum of six people per lane.

Hardy said he appreciates their willingness to work with city staff on this application and the explanation of the request. When he first read the report, he had no idea what it was and was concerned about throwing axes and serving alcohol but he appreciates the three beer limit. It is all about liability so he appreciates the practicality of the request.

Hardy closed the public hearing.

Fisher said she does not have any objections.

Hardy said he appreciates their willingness to work with staff. They are wanting to succeed but make it manageable. He is not concerned about the parking.

Laauwe commented that the board needs to consider if they would like to keep or strike the condition of approval.

Hardy and Wigfall said they like the condition.

Wigfall said she appreciates that this structure gets a new use. They are places with potential uses that are sitting dormant and this new recreation will be a good use for the building.

Hardy called to question the motion to approve the CONDITIONAL USE request under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow an indoor entertainment use on a property in a C-6, Heavy Commercial District, located at 925 Enoch

Lane, with the following conditions:

1. Interior and exterior renovations shall be as described in the application and site plan documents.
2. All applicable permits shall be obtained.
3. Maximum building occupancy shall be no more than 99 persons.

Roll call vote was taken; motion passed 3 – 0.

The Board made the following findings of fact for the CONDITIONAL USE at 925 Enoch Lane:

PRESENT USE: Vacant structure

STANDARDS FOR A CONDITIONAL USE

A. Compliance with all applicable regulations: The subject site complies with all applicable regulations regarding lot size, minimum setbacks and lot coverage.

B. Probable effect on adjacent properties: The subject site is the only C-6, Heavy Commercial District property in the immediate area. The adjacent properties to the north, east and south are located within a C-5, Highway Service Commercial District, with the adjacent property to the west located within an I-2, Industrial Park District.

a. **NORTH, EAST, & SOUTH:**

The adjacent properties to the north, east, and south are located within a C-5, Highway Service Commercial District. The property to the north is developed as Woof's pet boarding and kennel and an animal hospital that received a conditional use in August 2017 for the dog day care and boarding, and in February 2018 for the addition of an animal hospital. The adjacent property to the east, across Enoch Lane, is developed as the Jon Murdock Chevrolet/Cadillac dealership, while the adjacent property to the south is developed as United Rentals, an equipment and tool rental business.



The adjacent property to the east, across Enoch Lane, is developed as the Jon Murdock Chevrolet/Cadillac dealership, while the adjacent property to the south is developed as United Rentals, an equipment and tool rental business.

b. **WEST:** The adjacent property to the west is located within an I-2, Industrial Park District and is developed as Champion Teamwear, formally known as GTM Sportswear. The site manufactures and sells retail items.

STAFF FINDING: No adverse effects are expected as the proposed use is less intense than

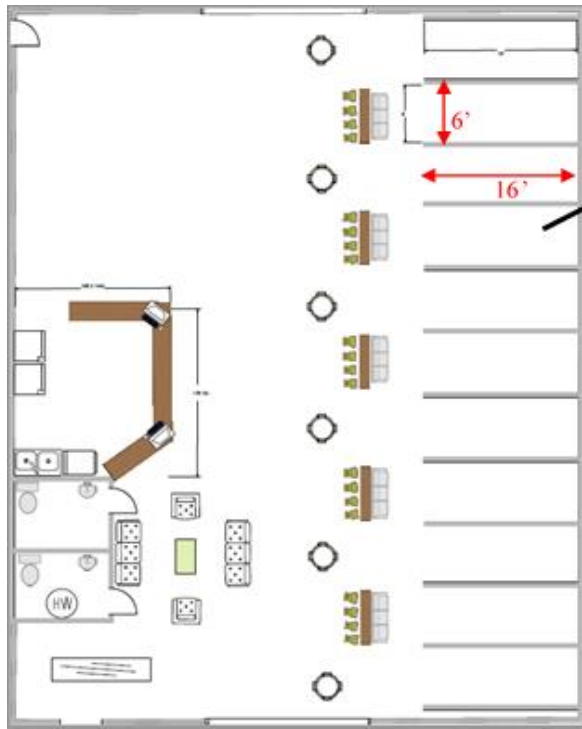
those permitted in the C-6 District and is comparable to the uses found in the adjacent and surrounding C-5 District properties.

C. Domination by use over neighboring properties: The applicant states that the use would be for both entertainment and competition events. The times of operation are shown in Table 1 below, however peak times for the conditional use are anticipated to be from 5:30pm-9pm, Monday thru Saturday. These projected peak times are after the business or peak hours of adjacent and neighboring businesses. Due to the limited number of axe-throwing lanes, the applicant states that similar venues see 70 percent of clientele pre-booked through reservations, with only 30 percent in walk-in sales. The C-6, Heavy Commercial District generally permits uses that are more noise producing and outdoor storage intensive than those found in the C-5 Highway Service Commercial District. The proposed entertainment use is more in character with the surrounding C-5 uses and domination over neighboring properties is unlikely.

Table 1

Days of Week	Hours of Operation
Monday – Thursday	11am – 10pm
Friday and Saturday	11am – 12am
Sunday	1pm – 8pm

- 1. Location, nature, and height of physical improvements:** The applicant proposes to renovate the existing 4500 square foot structure for use as an entertainment venue that will feature axe throwing within lanes, a bar area, and a seating area. The floorplan shows up to 11 axe throwing lanes that are 10 feet in height, 16 feet in length, and 6 feet in width. The inner walls can be removed to provide wider and fewer lanes. Every lane will have either have a barrel table with four chairs or a rectangular high table with seating for 7 people. The proposed bar area is 16 feet 3 ¼ inches width and 17 feet 7 inches in length. In addition, a sitting lounge area will be provided with couches and a table. As required by building code, two restrooms will be provided. For reference, see the site plan to the left and pictures below.



Axe Throwing Lanes



Barrel tables with stools



Lounge seating area



Bar area



- 2. Landscaping and screening:** Due to the property not abutting any residential properties, no screening is required per the zoning regulations. A small lawn area is located near the front entrance. The applicant states that modest landscaping and annual plantings will be added to enhance the property.

STAFF FINDING: Surrounding and adjacent uses are similar or more intense than the proposed use. The proposed use will not dominate over neighboring properties.

D. Adequate provision of parking and loading: The existing site has 25 dedicated off-street parking spaces located in the front, on the east side of the lot. In addition, the subject property shares off-street parking with Champion Teamwear that is adjacent to the west and located at 520 McCall Road. The applicant has a parking agreement with the adjacent property to share the off-street parking located behind the structure on the west side of the lot and a parking area adjacent to the north. The west parking area contains 73 off-street parking spaces, while the north lot contains 72 off-street parking spaces. These shared lots are primarily utilized as employee parking for the Champion Teamwear site that is opened Monday through Friday from 8am-6pm.

The Building Official has determined an occupancy of approximately 134 persons for the proposed entertainment use, however due to the nature of the use, the applicant proposes to set a limited occupancy of 99 persons. The parking regulations require that establishments providing for the sale and consumption of food and/or beverages, and refreshments provide at least one (1) parking space for each three (3) customers based upon the maximum design occupancy. In addition, one (1) parking space for each employee as related to work shift when the maximum number of employees are present is required. Though restaurant and food sales are not proposed, the venue will be providing beverages and refreshments. With a maximum design occupancy of 99 persons and stated 4 employees per shift, a total of 37 off-street parking spaces are required. Given the 25 off-street parking spaces located in front of the building for the sole use of the venue, a minimum of 12 parking spaces will need to be utilized from the

shared lots to the west and north. The Champion Teamwear facility closes at 6pm and the Axe-throwing venue anticipates peak hours being from 5:30-9pm. While conducting a site visit and taking pictures, I counted a total of 27 open parking spaces out of 145 in the shared lot areas. Given the peak hours of the proposed use is when the Teamwear site is closed, the subject property should be able to provide the required 37 off-street parking spaces.

E. Adequate provision of drainage, and other public utilities: The subject property has adequate drainage and existing public utilities.

F. Adequate provision of access: The subject property has adequate access via a driveway off Enoch Lane. A shared driveway that is part of the Champion Teamwear lot located at 520 McCall Road provides access to the rear parking area.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW OFF-STREET PARKING SPACES OPEN TO THE SKY TO BE LOCATED WITHIN THE REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK FOR A PROPERTY IN A C-2/AO, NEIGHBORHOOD SHOPPING DISTRICT WITH AIRPORT OVERLAY, LOCATED AT 5410 LEDGE STONE DRIVE. (APPLICANT: SCHWAB EATON/OWNER: STONE POINTE LAND COMPANY, LLC)

FILE NO. EXC-19-030

Laauwe presented the staff report for the exception request, which recommended approval with three conditions of approval.

Fisher asked if the site plan was showing the number of feet the parking spaces were encroaching the setback. Laauwe said yes.

Fisher asked if they encroach anywhere from 2-10 feet into the front yard setback. Laauwe replied yes.

Fisher clarified that not all of these parking spaces are in the front yard setback. Only 22 spaces are within the front yard. Laauwe said the property line curves with Ledge Strone Drive so spaces to the south are farther into the front yard than others. A parking space is usually 19 feet deep so only about half of the parking spaces are within the front yard. There are only 22 spaces that encroach the front yard.

Hardy opened the public hearing.

Greg Fief, Schwab Eaton, said there were some changes from the initial submittal but what they are requesting has not changed. A portion of the parking stalls extend into the setback by as much as 10 foot maximum. What they found after trying to grade the site is that it made more sense to have the driveway on the north side of the building because it is at a lower elevation and allowed for a less steep drive. They did eliminate some stalls next to the building to provide landscaping. Bruce McMillan is the architect and Schultz Construction is constructing the

building. They will have the building permit submitted soon and they have submitted an application to the FAA for the airport overlay. They do not anticipate any issues with the height of the building. To get the parking that is necessary they had to push the site a little closer to the road. There is over 4.5 acres but most of it is not developable. They would like to keep the trees on the site because they provide visual screening to the residences around the site. There are 48 parking stalls in front, which is enough to meet their needs.

Hardy closed the public hearing.

Fisher commented that this is a brand new development and she would like to set a precedent but it is only a matter of a few feet for a few parking spaces and she is okay with that.

Wigfall said thinking about the available land in and around Manhattan, being in this region, you are going to run into challenging topography. The issue is how the developers take advantage of that or do not, puts us in a place where they are considering these kinds of request. If we do not allow them, then we change the way we think about development in the community. The challenges are minimal but frequent. She has no problem with this request, she is just thinking in the future how we will deal with maximizing developable land.

Hardy agreed with Wigfall. He can support this request. The board has to look at each case with its facts. In this case, the topography and the ravine with natural buffer. He applauds the applicant for not removing the buffer and working with what they had. If the site had been more accommodating they probably would not be before the board.

Hardy called to question the motion to approve the EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow off-street parking spaces open to the sky to be located within the required twenty-five (25) foot front yard setback for a property in a C-2/AO, Neighborhood Shopping District with Airport Overlay located at 5410 Ledge Stone Drive, with the following conditions:

1. That the proposed structure and off-street parking area be constructed as shown on the application site plan.
2. That the parking area will conform to Section 7-102(E)(2) that lays out the design and landscaping requirements of parking lots.
3. That all applicable permits be obtain.

Roll call vote was taken; motion passed 3 – 0.

The Board made the following findings of fact for the EXCEPTION at 5410 Ledge Stone Drive:

PRESENT USE: Vacant Lot

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property is in compliance in regards to lot size, proposed setbacks, and lot coverage. The subject property and proposed development is in compliance with all applicable regulations, except for the sought exception request.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

- a. **WEST & SOUTH:** The subject property and the adjacent properties to the south and to the west, across Ledge Stone Drive, are located within a C-2/AO, Neighborhood Shopping District with Airport Overlay. The area is undeveloped, with the proposed office building being the first office/commercial use in the immediate area. The C-2 Neighborhood Shopping District is designed to provide a broad range of retail shopping facilities and services located to serve one or more residential areas.
- b. **NORTH:** The adjacent property to the north is a Planned Unit Development with Airport Overlay, developed as the Willow Ridge Apartments and to the northwest, the Birchwood Villas.
- c. **EAST:** The adjacent properties to the east are within an R/AO, Single-Family Residential District with Airport Overlay and are part of the developing Ledgestone Ridge neighborhood. At this time, few homes have been constructed. The existing ravine and hardwood trees act as natural barrier between the subject site and the residential properties to the east.

East: Ravine, homes in distance



East



West: Vacant C-2 property



North: Willow Ridge Apartments



South: Vacant, Miller Parkway to south



Staff Finding: Since the area is mostly undeveloped, it is hard to determine what, if any, adverse impacts to adjacent properties may occur. The applicant would be required to provide landscaping and screening for the parking area per the zoning regulations. The ravine and hardwood trees provide a buffer to the residential properties to the east. In addition, only a portion of each of the 22 parking spaces would encroach into the front yard setback. With required landscaping and the natural features of subject property, no adverse impacts to the adjacent properties by the granting of the Exception is expected.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed structure or other improvements will not encroach into any easements. The site plan was designed to limit the disturbance to the existing hardwood trees and ravine.

Staff Finding: No adverse impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare is expected.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of these regulations are unreasonable, and unnecessary when all facts and circumstances are considered. The topography of the subject site drops off dramatically on the east side towards the ravine. The natural features of the site make it prohibitive to shift the proposed development to the east to remove the off-street parking out of the required setback.

Staff Finding: The strict application of the regulations in unreasonable and unnecessary when all facts and circumstances are considered.

Hardy adjourned the meeting at 8:03 p.m.

Respectfully submitted by,
Lesley Frohberg, Urban Planning Intern