



**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, August 14, 2019**  
**7:00 PM**

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton, Vice-Chair; Angie Danner; Sara Fisher; La Barbara Wigfall

MEMBERS ABSENT:

STAFF PRESENT: Shauna Laauwe, Planner II; Barry Beagle, Senior Planner, Dre'VeL Taylor, Planning Intern, Zachary Rossow, Planning Intern

Hardy called the meeting to order at 7:00 p.m.

Staff called roll and a quorum was established.

1.1 **CONSIDER THE MINUTES OF THE July 10, 2019, BOARD OF ZONING APPEALS MEETING.**

Hamilton motioned to approve the July 10, 2019 minutes with corrections.

**The motion was seconded and approved with corrections; 5-0-0**

**Items 2.1 and 2.2 were presented together**

2.1 **A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW A DRIVE-IN RESTAURANT IN A C-2, NEIGHBORHOOD SHOPPING DISTRICT LOCATED AT 1104 SCENIC LANDING. (APPLICANT/ OWNER: SCENIC CROSSING, LLC; FILE NO. CUP 19-046).**

Laauwe presented the staff report for the CONDITIONAL USE at 1104 Scenic Landing.

City Staff recommended approval of the CONDITIONAL USE to allow a restaurant with drive-in on a property in a C-2, Neighborhood Shopping District, located at 1104 Scenic Landing, with the following conditions:

1. The restaurant with drive-in shall be constructed as shown on the site plan and described in the application documents.
2. Daily hours of operation shall begin no earlier than 6am and close no later than 10:45pm.

3. The landscaping requirements found in Section 7-102(2)(E)(2) of the Zoning Regulations shall be applied to include at least seven (7) trees that are 2 ½ caliper be planted, maintained and replaced
4. Supplementary landscaping shall be planted to include more than the required trees and sod.
5. The structure shall be constructed to be no more than thirty (30) feet in height and include a pitched asphalt shingle roof, with walls made of brick, stone and siding that is consistent with the provided Scenic Crossing Addition covenants
6. All applicable permits be obtained.

Fisher asked how the parking requirements proposed would be in relation to those of the Unified Development Ordinance. Laauwe said the Unified Development Ordinance is not complete but the requirements are generally more relaxed than the current standards.

**Roll call vote was taken; motion passed 5 – 0 – 0 with modifications to condition 3 of the staff report to include trees to be maintained and replaced to remain in compliance.**

The Board made the following findings of fact for the CONDITIONAL USE at 4133 Scenic Crossing:

**Present Use:** Vacant lot

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject property and proposed development are in compliance with all applicable regulations regarding bulk regulations such as lot size and minimum required setbacks. However, the sign contractor is seeking a concurrent sign variance to allow more than one (1) wall sign per façade of a building in the C-2 District.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The subject property and all adjacent properties are located within the C-2 District and part of the greater Scenic Crossing Addition subdivision that is mostly undeveloped. The adjacent properties to the north and east are among the lots currently undeveloped. The property directly to the west, across Scenic Landing is the recently developed Shop Quik convenience store with fuel pumps. In addition, the nearby lot to the northwest, across Scenic Landing, was granted a Conditional Use Permit for a car wash during the July 10, 2019 Board of Zoning Appeals hearing. A line of R-2, Two-Family Residential lots are located to the north along Scenic Crossing, however the drive-in portion of the use will be buffered by the restaurant itself and the adjacent to-be-developed C-2 lot to the north.

While not enforceable by the City of Manhattan, the development will also be required to adhere to the filed development restrictive covenants of Scenic Crossing Addition that gives additional architecture requirements for building materials, roof pitch and other items above

and beyond the City's Code and Zoning Regulations. These covenants will help insure that the structure will not dominate the adjacent properties that must adhere to the same restrictions.

**DOMINATION BY USE OVER NEIGHBORING PROPERTIES:** The applicant states that the drive-in restaurant will have a maximum of fifteen (15) employees on any given shift that work both the restaurant and fresh market uses of the store. The proposed drive-in restaurant will be opened from 6:00am to 10:45pm daily.

1. **Location, nature, and height of physical improvements:** The proposed 6,310 square foot structure has an east-west orientation on the southern portion of the lot. Due to the curvature of Anderson Avenue along the south property line, the structure has a varying front yard setback along the Anderson Avenue frontage of approximately 48 feet 6 inches on the southwest corner to 85 feet 6 inches on the southeast corner. The subject lot also has a west front yard setback along the Scenic Landing of 59 feet 5 inches. The structure has a north side yard setback of approximately 91 feet and an east side yard setback of 47 feet 6 inches.

The proposed two-window drive-in would be located on the south façade, closest to Anderson Avenue, with the main restaurant entrance located on the north side of the building. Other entrances include doorways on the southeast and northeast corners of the structure. The site plan also depicts an approximate 784 square foot outdoor eating area that wraps around the northwest corner of the structure that could accommodate up to nine (9), 4-person tables.

The applicant states that the exterior materials and architecture of the drive-in restaurant will be consistent with the neighboring Shop Quik and Stone Creek development that are located directly to the west and south of the proposed site. The development has restrictive covenants from Scenic Crossing Addition that require architectural standards such as a pitched roof and the use of stone or brick. The applicant anticipates the use of stone or brick, and siding material for structure walls and asphalt shingles for the roof. Elevation drawings submitted with the sign variance request show that the restaurant will have a maximum height of 29 feet 4 inches at the greatest point of the pitched roof features, but a general ceiling elevation of 22 feet.

**LANDSCAPING AND SCREENING:**

The applicant has not provided a landscaping plan other than the application stating that it will meet City of Manhattan requirements. The site plan only proposes grass/sod to be utilized. For the provided site plan, the Zoning Regulations would require that at least seven (7) trees of two and one half (2 ½) caliper in size be provided for the approximate 35,000 square feet of parking and driveway area. The regulations also require landscaped open space within the perimeter of the parking area or areas in the minimum of 5 percent of the paved area used for parking including driveways. In addition, landscaping shall be located that no parking space is more than 70 feet from a portion of the landscaped open space.

Except for screening of the dumpster located in the southeast corner of the property, sight

obscuring fencing is not proposed nor required by the zoning regulations.

**ADEQUATE PROVISION OF PARKING AND LOADING:**

The Zoning Regulations, per Section 7-103(B)(11), require establishments providing for the sale and consumption of food and/or beverages, and refreshments to provide at least one (1) parking spaces for each three (3) customers based upon the maximum design occupancy. In addition, there shall be one (1) parking space for each employee as related to the work shift when the maximum number of employees are present. The Building Code Department has estimated that the maximum occupancy of the restaurant to be 119 people and the applicant has stated that a maximum of 15 employees will be on any given shift. The site plan shows a total of 56 parking spaces to include 35 along the north portion of the site, 11 along the east property line and 10 angled parking space along the southeast property line.

- Building Occupancy:  $119 / 3 = 40$  Parking Stalls
- Employee: 15 Employees Per Shift x 1 = 15 Parking Spaces
  - Total Required: 55
  - Total Provided: 56

Please note that the outdoor patio seating area (up to 36 patrons) is not demonstrated in these numbers as the seating will not be covered and only available a limited amount of time during the year.

**ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:**

The subject property has adequate drainage and existing public utilities that have been reviewed and approved by the Public Works Department.

**ADEQUATE PROVISION OF ACCESS:**

For visual reference, please refer to Figure 3 below. Access to the site is provided via Scenic Landing to the west and by a future private travel easement to the east that will gain access from Scenic Crossing. Until the development of the abutting lot to the east, patrons will enter the site via Scenic Landing that is accessed by Anderson Avenue to the south and Scenic Crossing to the north. When entering the site from the west, patrons will either make their way south to the drive-in queuing lanes or to the east where most of the parking is located. The site plan does provide an 18 foot in width driveway circulation “escape lane” to the south of the drive-in queuing that allows vehicles to exit the queue or access the 10 parking spaces along the southeast property line. When the future travel easement is completed and access is provided from the east, traffic will also funnel to the west and south for parking and to the west part of the lot to enter the drive-in queue.

The queuing length for the main outside lane is approximately 280 feet, with a shorter merging queue lane of 60 feet, with own order window, accommodating up to three (3) vehicles. The proposed queue lengths provide enough stacking for approximately sixteen (16) vehicles at one time, before they would spill into the abutting travel easement area along the north property line. The City Engineer has reviewed the proposed traffic access plan and found it to

be satisfactory.

**2.2 A PUBLIC HEARING TO CONSIDER A VARIANCE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW MORE THAN ONE (1) WALL SIGN PER FAÇADE FOR A PROPOSED DRIVE-IN RESTAURANT IN A C-2, NEIGHBORHOOD SHOPPING DISTRICT LOCATED AT 1104 SCENIC LANDING. (APPLICANT: BRAUM'S ICE CREAM & DAIRY STORE /OWNER: SCENIC CROSSING, LLC; FILE NO. EXC- 19-051)**

Laauwe presented the staff report for the variance at 1104 Scenic Landing.

City Staff recommended denial of the variance to allow more than one (1) wall sign per façade for a propped drive-in restaurant in a C-2, Neighborhood Shopping District, located at 1104 Scenic Landing.

**PUBLIC COMMENTS:**

Hardy opened the floor for public comments:

Rich Seidler, 3214 Kimball Avenue, said he is present to represent the applicant. Mr. Seidler wanted to remind the Board that there are strict restrictive covenants that are in place to ensure high quality architecture. He said he hopes the Board could come to some form of compromise on the sign package variance brought before them. Hamilton asked if the restrictive covenants covered signage. Mr. Seidler said they must be reviewed and must be in compliance with City sign ordinances. Hamilton asked if the covenants covered landscaping requirements. Seidler said they do have strict requirements on landscaping that goes beyond those the City requires, which is one of the reasons they did not provide a full site plan.

Richard Hammon, Coffelt Sign Company, said he realized that the variance they are seeking was extreme in relation to the amount of signs but said signs only amounted to a quarter of the allowed sign coverage per façade. He said the signage package used is one that Braum's as a company has had great success with in many locations. Hammon said that according to signage regulations, they could have a sign that is 80ft x 10ft, or they could have signage that is balanced across the entirety of the building. Hammon said the glass panel is a mural and is not typically viewed as a sign but as a mural. He said the name Braum's could be taken off if the Board desired.

Helen Pzaone, architect for Braum's, said this sign package for all new stores and stores being remodeled in approximately 300 locations. She wanted to know if it was possible to continue the dialogue to find some kind of middle ground between the two signs that City Staff were recommended and the proposed sign package. Laauwe commented to clarify a point made by Mr. Hammon. He mentioned the sign regulations allowed them to potentially place an 80 x 10ft sign if they so desired. Laauwe clarified that the regulations say that in no case shall any sign exceed 200 sq. ft. in area. Therefore, the applicant could

not have an 800 sq. ft. sign. Wigfall asked Pzaone whether they would have a landscape plan for the city to review in the future. She said yes, they absolutely would. She said if it had been a site plan approval meeting they would have had that on hand. Fisher asked Laauwe if they allowed two signs per façade if those signs could be 200 sq. ft. each or total. Laauwe said it is total. Pzaone went through the presentation to show the Board how the building would look with only two signs. Hammon apologized for misspeaking about his 800 sq. ft. remark. Hamilton asked if the mural would be considered signage if the lettering were removed. Laauwe read the regulation definition of what constitutes a sign and said the Board could decide. Wigfall asked about the pylon sign and its duplication to the signage on the building. If the pylon is close to the building, and the signs are duplicated on both surfaces, how do they find them communicating something different? Hammon said that one gets you interested, the other finishes the job. Due to location, sometimes signs can get missed. Wigfall asked due to the proximity is one method of communication better than the other? Hardy agreed that having five signs in the front and back are too much since having a pylon sign is what will draw people. Pzaone said that this is Braum's standard sign package. Hardy said that is not a compelling argument. Hammon said that it is a very large building and this is a way to make it more attractive. Beagle clarified that this is a variance and not an exception and must meet the standards for a variance.

Hardy closed the public hearing.

Fisher said after the Starbucks hearing, that she has been paying extra attention to signage on buildings and agrees that it looks like clutter when they have lots of signs. Danner agreed that she does not want to drive by and see clutter. She said should would not support the variance. Hamilton said while the pylon sign is there, she is not inclined to support the variance. She mentioned there are more ways to make a building look appealing other than loading it up with signs. She was also surprised that there has been this push for new development to blend in with the character of the Stone Creek area, but this sign package is very out of character with that. Wigfall wanted to note that when it comes to large buildings, it is hard to make them appealing, but there are more ways than sticking on signs. She was not convinced the sign package adds anything new that the pylon sign does not already cover. Hardy wanted to know whether anyone had any issue with the conditional use. Wigfall said it would be nice to have a landscape plan. Hardy and Hamilton agreed it would be nice to have one on file.

**Roll call vote was taken; motion to approve the variance based upon the staff report was disapproved 0 – 5 – 0.**

The Board made the following findings of fact for the VARIANCE at 1104 Scenic Landing:

**Present Use:** Vacant lot

**CONDITIONS UNIQUE TO THE PROPERTY:** Anderson Avenue, that abuts the subject property to the south, has a large varying public right-of-way that creates a large buffer area to the property line in addition to the standard twenty-five (25) foot front yard setback for the structure and parking area. The right-of-way on the southwest corner of the subject site, at the intersection of Anderson Avenue and Scenic Landing, is approximately thirty (30) feet greater than a typical section of Anderson Avenue. The applicant states that the right-of-way and required setback pushes the building a considerable distance from the driving surface of Anderson Avenue. The applicant states that at such distance, a single sign per façade could possibly be missed, thus not allowing proper brand recognition and business identification.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject property and adjacent properties are located within a C-2, Neighborhood Shopping District. The adjacent properties to the north and east are currently undeveloped. To the west, across Scenic Landing, is the newly developed Shop Quik convenience store with fuel pumps. Directly to the south, across Anderson Avenue is the Stone Creek Family Physicians medical group. To the southwest, across Anderson Avenue, is a Planned Unit Development developed as the Stonecreek Business Center that consists of five (5) structures used as professional medical offices. The nearest residential district served by the C-2 District is a developing R-2, Two-Family District to the north, that is situated south of Scenic Crossing. In addition, further north and east, across Scenic Crossing, is a developing R-1, Single-Family Residential District. Homes are currently being built in both of these areas. In a broad stroke, the C-2 District for the Scenic Crossing Addition development, also serves a R, Single-Family Residential District, Wyndham Heights subdivision, to the north and the residential districts that are located to the south along Scenic Drive to the K-18 intersection.

The signage at the adjacent Shop Quik consists of a pylon sign, one wall sign on the south (front) façade and permitted gas canopy and pump signage. The signage for the professional medical offices to the south consists of only a monument sign at the driveway ingress/egress at Anderson Avenue. The buildings for the Stone Creek Family Physicians medical group, that is within the C-2 District, are not visible from Anderson Avenue due to a drop in topography and dense trees. The medical offices located in the PUD also do not have separate signage along the back side of the structures visible from Anderson Avenue.

The applicant states the signs requested are of a size, design, material and color so as to only compliment the building, and therefore create no ill effect to the public good. The applicant also states that the proposed signs are internally illuminated and have decorated plex faces that will diffuse the lighting.

In addition to the wall signage, the applicant also plans to erect a 30 foot in height pylon sign on the southwest corner of the lot (indicated by a diamond on the site plan). The pylon sign will be constructed out of a brick component to match the restaurant and will advertise the Braum's ice cream cone, hamburgers, breakfast, fresh market, and include a digital LED board. The proposed pylon sign will meet the sign regulations for the C-2 District and the digital sign

will have to adhere to the additional restrictions laid out in the zoning regulations for digital signs.

**UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** The strict application of these regulations allows one wall sign per façade, for a total of four (4) wall signs. Including all four (4) facades of the structure, the applicant is proposing a total of twelve (12) wall signs in addition to a pylon sign. The applicant states that the store would be the first Braum's in the general area and that there will be many potential customers who would not be familiar with the store, especially in a college town with people from around the country and international students. The applicant states that the additional signage would help to properly identify the unique ice cream, restaurant, and fresh market business to the general public.

The subject property does have a unique large public right-of-way and motorists that travel along Anderson Avenue from the west to east will negotiate a curve in the road immediately before the subject property is visible. The proposed pylon sign, however should help mitigate the right-of-way distance and adequately educate the public of the offerings of the business

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Some adverse effects to the public health, safety, morals, order, convenience, prosperity, or general welfare may be expected as a result of the additional wall signage. Having up to (5) wall signs on one façade is out of order and character with the surrounding C-2 uses. Given that the pylon sign located on the southwest corner of the lot also serves to identify the restaurant to the public, the additional three and four signs on the north and south elevations, respectfully may be excessive and cause visual clutter.

**RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the Sign Regulations regarding the number of wall signage in the C-2, Neighborhood Shopping District is to reduce visual clutter by an abundance of signs, especially for businesses located near residential areas. The applicant is proposing to place additional wall signage on three of the four facades and placing a total of twelve (12) signs when a total of four (4) is permitted. However, the proposed wall signage has minimal square footage and only covers 6.5 to 6.9 percent of each façade. As mentioned before, the C-2 District does allow wall signage to be up to 30 percent of the surface area of the façade to which they are attached, but not to exceed 200 square feet in area. The applicant could provide a single larger sign on each façade.

The additional wall signs may cause overall visual clutter to the public traveling on Anderson Avenue, and south down Kimball Avenue. Given the pylon sign that indicates the sale of hamburgers, the fresh market and has a digital board sign that can intermittently advertise other wares, the additional signage seems to be redundant and unnecessary.



2.3 **A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR MORE THAN ONE CURB CUT PER LOT AND A DRIVEWAY GREATER THAN 10 FEET IN WIDTH FOR A PROPOSED CIRCULAR DRIVEWAY FOR A RESIDENTIAL PROPERTY IN A R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TRADITIONAL NEIGHBORHOOD OVERLAY LOCATED AT 1900 SUNSET LANE. (APPLICANT/OWNER: TIMOTHY EDWIN AND CLAIRE ANNE DE NOBLE; FILE NO. EXC-19-053)**

Rossow presented the staff report.

City Staff recommended approval of an exception to allow for more than one curb cut per lot and a driveway greater than 10 feet in width for a proposed circular driveway for a residential property in a R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay located at 1900 Sunset Lane with the following conditions:

1. All applicable permits shall be obtained.
2. Built to application documents and site plan.

Fisher asked if Rossow could draw where the driveway would be built. Rossow showed the Board where the exact location of the driveway would be.

Hardy opened the floor to public comment:

Tim de Noble, 1900 Sunset Lane, mentioned they never liked to enter the house from Delaware Street and nearly didn't purchase it. He said they aren't getting any younger and it is nicer to have on-site parking. They do live in a nice neighborhood and neighbors often allow visitors to park on the property. They would continue to extend this courtesy.

Hamilton said while she leans towards preserving the TNO, she does not view this as a detriment to it. She said this property would easily allow for the circular drive if the TNO restrictions were not in place. While he has alternative options, she said she does not feel that this will hurt the TNO and the property has enough land to maintain the required open space. Fisher said she agreed and the lot is unusual. Danner said she thinks it is fine and wishes there were other alternatives but this is probably the most appealing. Hardy agreed this does not overly impact the TNO.

**Roll call vote was taken; motion passed 4 – 0 – 1 with the three conditions. Wigfall abstained due to conflict of interest.**

The Board made the following findings of fact for the EXCEPTION at 1900 Sunset Lane:

**Present Use:** Single-Family Residential

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

In April 2004, the Board of Zoning Appeals **approved** an exception for the subject property to allow a reduction of the minimum rear yard setback of 25' to 8' (west side) for a proposed addition to the existing house.

The subject property is legally conforming to all other aspects required within an R-1 single-family district with a TNO. The subject property has over 264' of frontage along Sunset Lane, which is well beyond the required 120' and will maintain at least 75% of the available front yard as landscaped open space .

**PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The subject property, adjacent properties, and surrounding areas are located within an R-1/TNO, Single Family Residential District with Traditional Neighborhood Overlay. The majority of the subject property is heavily wooded on the north, east, and southern sides and it is at a higher elevation than North Delaware Avenue. Three of the neighboring properties along Sunset Lane have existing driveways wider than ten feet and, or parking stalls. The neighboring properties between Sunset Lane and Leavenworth Street have on-street parking and driveway parking options.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:**

The proposed driveway curb cut and driveway width expansion exceptions will not encroach on any utility easements and will not require removal of any old stonewalls. It will likely improve safety, convenience, and order by alleviating the need to shuttle guests and will reduce pedestrian foot traffic along Sunset Lane. The proposed driveway extension will meet the required 75% portion of landscaped yard requirement for circular driveways. Sunset Lane is only 15' wide making it hazardous for vehicles to back into. With dense vegetation, old stonewalls and thru traffic, a circular drive would mitigate hazards and provide relief to the residence and guests. The property owner will likely remove a minimal number of trees during construction of the circular drive. There will be no removal of old stonewalls or any significant items. The proposed circular drive will not require removal of a curb, as there is no existing concrete curb along Sunset Lane.

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

The TNO District is **intended to conserve the traditional character** of the older neighborhoods through Compatibility Standards. The Compatibility Standards require that new infill residential buildings, and additions or modifications to existing residential buildings, incorporate basic design and site layout elements characteristic of homes in the traditional neighborhoods. The TNO is used in conjunction with an underlying residential district.

The strict application of these regulations is unreasonable or unnecessary when all facts and circumstances are considered. The requested circular drive will be a reasonable width of less than 15'. The second curb cut will only be visible to residents that live along Sunset Lane. It is unreasonable to request that the property owner and guests park 500 or more feet away. Most properties except the subject property within the same R-1/TNO overlays have on-street parking available. If the TNO had not extended this, far, a circular driveway would have been permitted. A second curb cut will have minimal impact along Sunset Lane and allow viewing of the traditional front portion of the subject property.

2.4 **A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW A REDUCTION IN THE MINIMUM REQUIRED SIGN SETBACK OF FIFTEEN (15) FEET FROM ANY PROPERTY LINE FOR A PROPOSED PYLON SIGN TO BE LOCATED ALONG THE NORTH PROPERTY LINE. THE SUBJECT PROPERTY IS AN INSTITUTIONAL USE (CHURCH) IN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT LOCATED AT 3031 KIMBALL AVENUE. (APPLICANT/OWNER: MANHATTAN 1ST CHURCH OF THE NAZARENE; FILE NO. EXC-19-054)**

Laauwe presented the staff report.

City Staff recommended approval to allow a reduction in the minimum required sign setback of fifteen feet to zero feet at 3031 Kimball Avenue with the following conditions:

1. That the pylon sign be located and constructed as shown on the submitted application site plan.
2. That all applicable permits shall be obtained.

Hardy opened the floor to public comment: there was none

Fisher asked if the applicant requested the City pay for the BZA application. Laauwe said no.

**Roll call vote was taken; motion passed 5 – 0 – 0 with conditions.**

The Board made the following findings of fact for the EXCEPTION at 3031 Kimball Avenue:

**PRESENT USE:** Church

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject property is in compliance with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject property and the adjacent properties to the south, west and east are located within an R, Single-Family Residential District. Across Kimball Avenue is an R-3, Multi-family Residential District to the northwest,

and directly north, a PUD, Planned Unit Development that are both developed as apartment complexes. Due to the large amount of right-of-way that, at the property line, will place the proposed sign back approximately 75 feet from the curb of Kimball Avenue and the small nature of the sign being 40 square feet in area, no adverse impacts to adjacent properties is expected.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed signage is not located within any utility easements and though at the property line, will not have a sight vision triangle impediment due to being 75 feet from the roadway. The proposed signage will not dominate the residential area as the overall sign height is proposed to be nine (9) feet with a sign area of forty (40) square feet. The apartment complexes to the north, across Kimball Avenue, have similar signage.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The intent of the sign regulations to setback signs for institutional uses within a residential district a minimum of fifteen (15) feet from any property line, is to insure that the character of a residential neighborhood is maintained and that signage does not dominate the landscape. The strict application of these regulations are unreasonable, or unnecessary when all facts and circumstances are considered as the request is a result of the previous sign being removed to allow for safety improvements as part of the Kimball Avenue construction project. In addition, the right-of-way width of Kimball Avenue that creates a 75 foot buffer between the roadway and the north property line, is much greater than similar uses in residential districts encounter. If the applicant placed the pylon sign at the required setback, the sign would be at minimum 90 feet from the south curb of Kimball Avenue. The applicant could increase the height of the proposed twelve (12) foot pylon sign to the maximum allowed fifteen (15) feet, however an additional three (3) feet in height would likely not make much difference at the combined setback and right-of-way of 90 feet from the roadway.

2.5 **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 13 FT. REDUCTION OF THE MINIMUM REQUIRED 25 FT. FRONT YARD SETBACK ALONG THE WEST SIDE OF COLLEGE HEIGHTS CIRCLE FOR A PROPERTY IN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT LOCATED AT 755 COLLEGE HEIGHTS CIRCLE. (APPLICANT/OWNER: CAROLYN BALDWIN; FILE NO. EXC-19-052)**

Taylor presented the staff report.

City Staff recommended approval of the exception to allow for a thirteen foot reduction of the minimum required twenty-five foot front yard setback with the following conditions of approval:

1. The exception shall only be applied to the roof overhang as described in the application

- documents and the existing structure.
2. That all applicable permits be obtained.

**Roll call vote was taken; motion passed 5 – 0 – 0 with conditions.**

Hardy opened the floor to public comment: there was none.

The Board made the following findings of fact for the EXCEPTION at 755 College Heights Circle:

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The existing structure is nonconforming in terms of the minimum required twenty-five (25) foot front yard setback with a current approximate 14 ft. setback from the front property line. At least six other properties along College Heights Circle were built in violation of the twenty-five (25) foot setback. 1956 regulations required “Any building hereafter constructed shall provide for a front yard and the minimum depth of which shall be at least twenty (20) percent of the depth of the lot but the depth of such front yard need not be more than twenty-five (25) feet”. There is no record for exceptions or variances; staff find no explanation for the nonconformities in the neighborhood.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed roofing project will not encroach upon the neighbor’s property. The property is currently out of character with the rest of the neighborhood due to the lack of gables on the roof. Multiple properties along College Heights Circle are nonconforming to the twenty-five (25) foot front yard setback. The additional sixteen (16) inch addition to the structure will not be overly apparent nor out of place.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed gable extension will improve the appearance of the property and bring it into character with the rest of the neighborhood. From the public right-of-way, the gable extension will not cause a feeling of encroachment, unease, or dissatisfaction.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The majority of the neighborhood is currently non-compliant with current and former regulation. The intent behind extending the gables is to mitigate water damage to the siding of the structure. The strict application of these regulations to the proposed project would leave the property owner with few, if any, alternative options to protect the integrity of their property from the elements.

Hardy adjourned the meeting at 8:40 p.m.

NEXT MEETING: Wednesday, September 11, 2019  
Respectfully submitted by, Dre’Vel Taylor, Planning Intern