

MINUTES
MANHATTAN BOARD OF ZONING APPEALS

City Commission Room, City Hall
1101 Poyntz Avenue

Wednesday, May 13, 2020

7:00 p.m.

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

MEMBERS ABSENT: None

STAFF PRESENT: Barry Beagle, Senior Planner; Chad Bunger, Assistant Director of Community Development; John Adam, Senior Planner

Hardy called the meeting to order at 7:02 p.m.

Staff called roll and a quorum was established.

1.1 **CONSIDER THE MINUTES OF THE March 11, 2020, BOARD OF ZONING APPEALS MEETING.**

Hamilton moved to approve the March 11, 2020 minutes. The motion was seconded by Wigfall and approved; 5-0.

- 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 the renovation of a legally nonconforming three-unit dwelling in an R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay at **1000 Leavenworth Street**. (*Applicant/Owner: BIDDLELIL, LLC; file no.: EXC-19-079*)
CONTINUED FROM DECEMBER 11, 2019 BZA MEETING

Wigfall moved to remove this item from the table and conduct the public hearing. The motion was seconded by Hamilton and approved; 5-0.

Bunger provided a summary of the staff report for the Conditional Use.

The Board asked clarification questions about the required off-street parking space that would apply if the use was established today and the condition of the basement area. ,
Bunger provided the answers to the questions, which the three-unit dwelling with a total seven bedrooms would require a minimum of nine spaces if established under the current regulations. The basement unit is in a habitable condition, however the mechanical areas outside of the dwelling area is unfinished, and not planned to be remodeled.

Hardy opened the floor for public comment:

Tyler Holloman, Frontier Property Management and the applicant's representative, made himself available for questions. He had no comments.

With no further public comment, Hardy closed the public hearing and opened for Board discussion:

Hardy, Hamilton, Wigfall and Chua expressed that they could support of the Conditional Use and the staff's findings. Fisher had concerns about the parking issues and questioned the continual use of the legally nonconforming use. Hardy expressed the need to rely on City Staff's determination on this matter.

With no further public comment, Hardy closed the public hearing.

Hardy closed the Board discussion.

Roll call vote was taken; motion was approved with conditions by a vote of 5-0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE CONDITIONAL USE AT 1000 LEAVENWORTH STREET:

PRESENT USE: Single Family Residence

Modifying Nonconforming Uses Utilizing a Conditional Use Application

The size of the zoning lot is not increased from that which currently exists: The 53-foot by 150-foot lot will remain the same size and configuration.

The current existing use does not have a significantly adverse impact upon either the surrounding neighborhood or the public health, safety or general welfare, and the proposed modifications, additions and deletions will not worsen such impact: The existing structure was built in 1920 prior to Zoning Regulations being established in Manhattan in 1926. According to the research for the Opinion of Legal Nonconforming Use case, the three-family dwelling was established in 1959 and has remained in that general arrangement since its establishment.

The subject lot and surrounding properties are located within an R-1/TNO District. This area was downzoned from R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay. The surrounding area consists of a mix of single family, two-family and multiple-family dwellings. The existing structure and use are within character of the surrounding neighborhood.

In reviewing property maintenance files, the previous owner had a number of violations from 2000 to 2019 for interior safety and maintenance issues for the three-unit dwelling and not addressing trash or inappropriate furniture in the yard. The trash issues appear to be related to the particular tenants and management of the property, and not a function of the use being a three-family dwelling. Hopefully, these issues are resolved with the current owners.

The site has a paved parking area that can provide parking for three vehicles, although not in a configuration that would be approved if the current Zoning Regulations would be applied and enforced. The Zoning Regulations in effect at the time the three-family residential use was established required only one parking space for each dwelling, and did not specify minimum parking space sized. In reviewing Google Maps Street View from 2007 – 2019, the area does not appear to have an on street parking congestion issue that the three-family dwelling has historically exacerbated.

As described above, the applicant is not proposing to change the number of dwelling units or bedroom count within the structure. The improvements are described as cosmetic in nature and appears to improve the internal access and usability of the dwellings. The proposed changes to the legally nonconforming three-family dwelling **does not** have a significantly adverse impact on the public health, safety, or general welfare and are unlikely to change or worsen any conditions within the surrounding R-1/TNO neighborhood.

The current existing use does have such a significantly adverse impact and granting of the proposed modifications, additions and deletions will be more likely to reduce or eliminate such impact than a denial of such proposal: The current existing use **does not** have a significantly adverse impact on adjacent or surrounding properties that a denial of the request would reduce.

The proposed conditional use complies with all applicable provisions of these regulations, except for those existing conditions that are legally nonconforming;

As previously described, the building was constructed in 1920, prior to Zoning Regulations being adopted in the City. This makes the structure's encroachments into the current front yard setback and west side yard setback requirement legally nonconforming. Also, as previously described, the number and configuration of off-street parking is legally nonconforming.

Other than these uses, the site complies with applicable regulations.

The existing use continues in a substantially similar form, or in a form that is altered only to make it more modern or efficient. The existing use will remain as a three-family dwelling with one bedroom in the basement unit and three bedrooms in first floor and second floor units. The proposed changes are largely cosmetic and to upgrade HVAC and plumbing systems. As the applicant has stated "Some minor separation framing will also

occur to properly separate the 3 units and bring egress to code. No major exterior changes are proposed.”

The proposed minor alterations are to make the units a more habitable place to live by bringing the interior to modern and more efficient standards.

Note: Items 2.2-2.4 were presented together

2.2 A **PUBLIC HEARING** to consider a **CONDITIONAL USE** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a Group Day Care Center to provide service for up to 75 pre-school aged children in an R-1, Single-Family Residential District at **4801 Anderson Avenue**. (*Applicant/Owner: St. Luke’s Evangelical Lutheran Church, Brad Brunkow; file no. CUP-20-016*)

Bunger presented the summary staff for the Conditional Use for the proposed group day care.

The Board asked for clarifying questions for the Conditional Use. Fisher asked why the site was island annexed and would our regulations and processes apply if the site was not in the City. Bunger responded that it was his understanding that the site was annexed because the church wanted City utilities and fire protection from the Manhattan Fire Department.

Hardy opened the floor for public comments:

Mark Hatesohl, church member and application representative, provided information about the Group Day Care at the site and was available for questions.

Clint Hibbs, BG Consultant and architect for the project, provided clarifying information about the site being annexed into the City.

With no further public comment, Hardy closed the public hearing for board discussion.

The Board discussed the findings of the staff report for the Conditional Use for the Group Day Care.

Roll call vote was taken; conditional use was approved with conditions by a vote of 5–0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE CONDITIONAL USE AT 4801 ANDERSON AVENUE:

Present use: Church under construction

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The site, building under construction, and site plan associated with the building permit meets all minimum requirements for the use within the current zoning district.

The applicant and their sign contractor have submitted applications to the Board of Zoning Appeals for a freestanding sign to be located near Anderson Avenue. The applications include a Conditional Use to allow for an electronic changeable copy sign, Exception for the sign's overall height, and a Variance for the sign of the proposed sign. These items will be brought to the Board in May. It was decided to present these items independently of each other since these two requests are not directly related, and that the Church is trying to secure the license for the group daycare from the State promptly.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

1. NORTH: The property immediately to the north of the site, across Anderson Avenue, is zoned County Residential Planned Unit Development. This development is for large lot, single-family homes.
2. SOUTH, EAST & WEST: The surrounding properties to the south, east, and west are zoned County, AG, Agricultural District. The land consists of row crops and ranch land. The agricultural land also includes tree and plant stock associated with Blueville Nursery, which has its operations and retail store to the east. Large lot, rural single-family residential homes exist in the surrounding areas.

Relatively speaking, the site has few immediate neighbors. The church site and group daycare are over 500 feet from the nearest home. The nearest business, Blueville Nursery, is nearly 0.5 miles to the east. Light and noise from the site will not impact adjacent properties.

Compared to when the site was agricultural land, the amount of traffic generated from the group daycare, especially during peak travel hours (e.g. 7:30 am – 8:30 am and 5:00 pm – 6:00 pm) will be considerably larger. However, the traffic generated from the site in relationship to the surrounding area and the amount of traffic already on Anderson Avenue should not adversely impact the area or the public traveling along Anderson Avenue.

Finding: No adverse effects are expected on adjacent properties. Although the proposed use is more intensive than when the land was vacant, the use should be compatible with the surrounding properties.

DOMINATION BY USE OVER NEIGHBORING PROPERTIES: The church under construction is permitted within the R-1, Single-Family Residential District. The need for the Conditional Use is related to the desire to establish a group daycare center within the

church. The group daycare will utilize the classrooms designed for the church.

The group daycare center will employ 15 – 20 childcare providers and have room for up to 75 children from newborns to pre-kindergarten age. According to the application materials, the hours of the center will be Monday – Friday, 7:00 am – 5:30 pm.

1. **Location, nature, and height of physical improvements:** The church will be approximately 285 feet from the property line along Anderson Avenue and considerably lower in grade than compared to Anderson Avenue or the properties to the north. At its tallest point, the church building will be thirty-five feet tall. The church and the site plan have been approved through the building permit process.
2. **Landscaping and screening:** The site plan shows lawn areas around the building and tree plantings in and around the parking lot area. No specific ornamental plants are shown, as the site plan was part of the building permit application. Other than the landscaping requirement for the parking lot, which the plan meets, there are no landscaping requirements for a group daycare center.

A group daycare center does not have specific screening requirements. Additionally, because the site is so far removed from any other residential or non-residential developments, requiring specific screening to reduce impacts on adjacent properties is not necessary.

The site plan shows an area to the west of the building intended as a playground area for the church and group daycare center. Although this area will most likely to be required to be fenced for the children's safety by the State licensing agency for the group daycare center, City Administration is recommending a condition of approval to ensure that the fencing is installed. The recommended condition of approval is: "A fence, of adequate height, must be installed around the outdoor play area to keep children safe by not leaving the play area."

Finding: The surrounding area is mostly agricultural land or large lot, single-family homes in a rural setting. The church is a permitted use within the residential district. The proposed use will be physically incorporated into the building and will not physically dominate over neighboring properties.

ADEQUATE PROVISION OF PARKING AND LOADING: The existing site has 70 off-street parking spaces. The layout and the minimum number of parking spaces were established with the building permit for the church. The group daycare center requires at least one space for each employee and one space for every five children attending the center. At a minimum, 35 parking spaces are required for the group day care center with 75 children and up to 20 employees.

The entrance to the group daycare center is to the south of the building. The site plan shows 31 spaces in this general area. Typically, parents are required to park and enter the group daycare center to drop off or pick up their children. The site plan shows a well laid out parking lot to accommodate the needs of the parents and employees.

Finding: Adequate off-street parking and loading are provided on the site for the group daycare center.

ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES: The subject property naturally drains to the south towards Wildcat Creek. The development continues to collect and drain stormwater runoff from the building and parking lot to the south toward the creek. The site is outside of any mapped high-risk floodplain and no specific floodplain regulations apply.

New utilities have been extended to the site to serve the use

Finding: Adequate provisions for drainage and utilities have been provided.

ADEQUATE PROVISION OF ACCESS: The subject property gains access from Anderson Avenue from a new driveway. The amount of traffic generated from the group daycare should not overwhelm this rural section of Anderson Avenue. Although the times for the peak trip generation from the use will coincide with morning and evening commuter traffic into and out of Manhattan, the number of vehicles into the traffic stream should not cause traffic congestion or an unsafe roadway. Vehicular access is adequate for the site and use.

Because the site is on the extreme western edge of the City, no specific bicycle and pedestrian infrastructure currently exist in this area. The site has adequate pedestrian access within the parking lot.

Finding: Adequate provisions for vehicle access is provided. Because the site is located along a rural section of the roadway and so far away from other pedestrian or bicycle facilities, no access for these modes of transportation is provided, other than internal to the side

2.3 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 an Electronic Changeable Copy Sign for a church on property in the R-1, Single-Family Residential District at **4801 Anderson Avenue**. (*Applicant: Thomas Sign Service, Susan Zoeller; Owner: St. Luke's Evangelical Lutheran Church, Brad Brunkow; file no.: CUP-20-020*)

Bunger presented the summary staff report for the Conditional Use for the proposed sign.

Hardy opened the floor for public comments:

Mark Hatesohl and Brad Brunkow, church members and application representatives, provided information on the requests for the proposed sign. Brunkow explained that needed for a larger sign.

Chua asked about the purpose of the proposed sign for the Church and who they intended as their audience. Hatesohl provided information about the sign's intent and mission of the Church. Chua expressed concerned that the proposed sign may be out of character for the rural setting of the church and limited population to the west that would drive by the Church. Hatesohl addressed the concern.

Wigfall asked if that Church plans to use similar messages on the new sign as they are currently displayed at the current sent. Brunkow explained that the sign will be used in a similar manner than what is occurring today at its current site.

With no further public comment, Hardy closed the public hearing for board discussion.

Chua expressed his concern that a larger pylon sign would be out of character with the rural setting surrounding the site. Wigfall mentioned that the distance of the sign from the roadway helps mitigate any issues with the size of the sign.

Roll call vote was taken; conditional use was approved with conditions by a vote of 5–0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE CONDITIONAL USE AT 4801 ANDERSON AVENUE:

THE PROPOSED CONDITIONAL USE COMPLIES WITH ALL APPLICABLE REGULATIONS OF THESE REGULATIONS, INCLUDING LOT SIZE REQUIREMENTS, BULK REGULATIONS, USE LIMITATIONS, AND PERFORMANCE STANDARDS: The subject property complies with all applicable regulations, other than the concurrent Variance application requesting an increase in the maximum square footage of the proposed pylon sign and the electronic changeable copy sign.

The church is also seeking a Conditional Use to establish as group daycare open to the public at the church site.

THE PROPOSED CONDITIONAL USE WILL NOT CAUSE SUBSTANTIAL INJURY TO THE VALUE OF OTHER PROPERTY IN THE NEIGHBORHOOD IN WHICH IT IS TO BE LOCATED:

NORTH: The property immediately to the north of the side, across Anderson Avenue, is

zoned County Residential Planned Unit Development. This development is for large lot, single-family homes.

SOUTH, EAST & WEST: The surrounding properties to the south, east, and west are zoned County, AG, Agricultural District. The land consists of row crops and ranch land. The agricultural land also includes tree and plant stock associated with Blueville Nursery, which has its operations and retail store to the east. Large lot, rural single-family residential homes exist in the surrounding areas.

Finding: Minimal impact on the adjacent properties by allowing the electronic changeable copy sign is expected. The electronic sign should not adversely impact the rural residential properties north since they are separated by both distance, which is over 300 feet to the nearest home, and grade change. The closest home is over 30 feet above the grade where the sign will be located. The proposed church sign will be the only electronic changeable copy sign in the surrounding area.

THE LOCATION AND SIZE OF THE CONDITIONAL USE, THE NATURE AND INTENSITY OF THE OPERATION INVOLVED IN OR CONDUCTED IN CONNECTION WITH IT, AND THE LOCATION OF THE SITE WITH RESPECT TO STREETS GIVING ACCESS TO IT ARE SUCH THAT THE CONDITIONAL USE WILL NOT DOMINATE THE IMMEDIATE NEIGHBORHOOD SO AS TO PREVENT DEVELOPMENT AND USE OF NEIGHBORING PROPERTY IN ACCORDANCE WITH THE APPLICABLE ZONING DISTRICT REGULATIONS. IN DETERMINING WHETHER THE CONDITIONAL USE WILL SO DOMINATE THE IMMEDIATE NEIGHBORHOOD, CONSIDERATION SHALL BE GIVEN TO: In general, the proposed electronic changeable copy sign use will not dominate over neighboring properties. The surrounding properties are either undeveloped agricultural land or a large lot, rural residential properties on the outskirts of the City limits. As stated before, the sign will be over 300 feet away from the homes and over 30 feet lower than the elevation of the homes.

THE LOCATION, NATURE AND HEIGHT OF BUILDINGS, STRUCTURE, WALLS AND FENCES ON THE SITE: The location of the sign will be 15 feet from the front property line along Anderson Avenue, which is a rural section of roadway. The sign will be nearly 60 feet from the edge of the roadway.

The height of the sign will be approximately nine feet. The sign can be placed on a foundation so that the overall sign height will not be more than 15 feet tall. The location of the sign is approximately five to six feet below the surface of the roadway.

Also, Section 6-110(C)1-5 of the Zoning Regulations specifically includes additional regulations for Electronic Changeable Copy Signs that are provided to limit impacts on adjacent properties and the traveling public. These specific sign type regulations are:

- (C) Electronic Changeable Copy Sign.

1. Electronic Changeable Copy Signs shall be limited to letters and/or numbers only. The background of the Electronic Changeable Copy Signs shall be black and the letters/numbers shall be colored.
2. Location. Electronic Changeable Copy Signs shall be located on a principal building wall or be part of a Monument or Pylon Sign. If the Electronic Changeable Copy Sign is part of a Monument or Pylon Sign, the Electronic Changeable Copy portion shall be part of the continuous display surface of the sign.
3. Duration of Message and Transitions. The message display on an Electronic Changeable Copy Sign shall remain static for a period of not less than sixty (60) seconds. The transition from one (1) message to the next shall be direct and immediate, without any special effects including but not limited to, dissolving, fading, scrolling, starbursts and wiping, which shall be prohibited.
4. Image Characteristics. Electronic Changeable Copy Signs shall have a pitch of not greater than twenty (20) millimeters between each pixel.
5. Luminance. Between sunrise and sunset the maximum luminance shall be five thousand (5,000) nits and between sunset and sunrise the maximum luminance shall be five hundred (500) nits. All signs with a digital display having illumination by means other than natural light must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's brightness to comply with this requirement.

THE NATURE AND EXTENT OF LANDSCAPING AND SCREENING ON THE SITE: No landscaping or screening is required for the sign.

Finding: The use will not dominate over neighboring properties, as there are relatively few developed properties in the immediate area. As previously discussed, the closed developed, residential properties are adequately separated by both distance and grade change.

OFF-STREET PARKING AND LOADING AREAS WILL BE PROVIDED IN ACCORDANCE WITH THE STANDARDS SET FORTH IN ARTICLE VII OF THESE REGULATIONS, AND SUCH AREAS WILL BE SCREENED FROM ADJOINING RESIDENTIAL USES AND LOCATED SO AS TO PROTECT SUCH RESIDENTIAL USES FROM ANY INJURIOUS EFFECT. The church has adequate parking and loading for the use. The proposed electronic changeable copy sign has no bearing on the parking of the subject property.

ADEQUATE UTILITY, DRAINAGE, AND OTHER SUCH NECESSARY FACILITIES HAVE BEEN OR WILL BE PROVIDED: The subject property has adequate drainage and existing public utilities.

ADEQUATE ACCESS ROADS OR ENTRANCE AND EXIT DRIVES WILL BE PROVIDED AND SHALL BE SO DESIGNED TO PREVENT TRAFFIC HAZARDS AND TO MINIMIZE TRAFFIC CONGESTION IN PUBLIC STREETS AND ALLEYS: Access to the church site is via Anderson Avenue, a two-lane rural section of roadway with open ditches. The speed limit is 55 miles per hour in this section of the road. As discussed, the sign location will be nearly 60 feet from the edge of the roadway. The proposed electronic changeable copy sign should not adversely impact the traveling public.

The site has adequate access. The proposed electronic changeable copy sign will not adversely impact the access point or the traveling public. The use of limitations for this specific sign is designed to mitigate these impacts by controlling the way and amount the electronic sign changes messages, the display of the message, including color and lack of graphics.

2.4 A **PUBLIC HEARING** to consider a **VARIANCE** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to increase the maximum allowable sign area for an Electronic Changeable Copy Sign from 16 square feet to approximately 28 square feet for a church on property in the R-1, Single-Family Residential District at **4801 Anderson Avenue**. (*Applicant: Thomas Sign Company, Susan Zoeller; Owner: St. Luke's Evangelical Lutheran Church, Brad Brunkow; file no. VAR-20-021*)

Bunger presented the summary staff for the Variance for the proposed sign.

The Board asked clarifying questions about the request. Hardy asked how the proposed sign size compared to the sign of the pylon sign for the church near the Blue Hills Shopping Center. Bunger thought that the signs were comparable in size.

Hardy opened the floor for public comments:

With no further public comment, Hardy closed the public hearing for board discussion.

Roll call vote was taken; variance was approved with conditions by a vote of 5–0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE VARIANCE FOR THE TOTAL SIGN AREA AND SIGN AREA OF AN ELECTRONIC CHANGEABLE COPY SIGN AT 4801 ANDERSON AVENUE:

Present use: Church under construction

STANDARDS FOR A VARIANCE

THE VARIANCE REQUESTED ARISES FROM SUCH CONDITION WHICH IS UNIQUE TO THE PROPERTY IN QUESTION AND WHICH IS NOT ORDINARILY FOUND IN THE SAME ZONING DISTRICT, AND IS NOT CREATED BY AN ACTION OR ACTIONS OF THE PROPERTY OWNER OR THE APPLICANT: The site is a large platted lot on the west side of the City. The site is considered an “island annex” as it was brought into the City in 2019 and rezoned to R-1, Single-Family Residential District when the site was not adjacent to the City limits. The site is approximate 0.33 miles from the western board of the City limits. To date, the City limits have not been extended to the west to meet the site. Construction of the church started in 2019.

Because the site was islanded annexed into the City, the surrounding area is generally rural in nature, with the adjacent properties being used for agriculture production. There are rural, large estate lots to the north and northwest of the site. The closest home to the sign is approximately 300 feet away.

The site gains access off of Anderson Avenue, a paved county road with a rural road cross-section, including open ditches. The proposed pylon sign will be perpendicular to the roadway so it is viewable by the public traveling on Anderson Avenue. The speed limit for this section of Anderson Avenue is 55 miles per hour. The United States Sign Council produced the “Sign Legibility Rules of Thumb - <https://amsigns.com/wp-content/uploads/2017/07/USSCSignLegiRulesThumb.pdf>. The document provides several ways to calculate the design and size of an on-premise sign to have it viewable by motorists. Generally speaking, the document states that the fast the speed limit of a section of road is, the larger the sign should be. A quick reference chart (found on page 13) notes that this sign should be larger than 200 square feet to be functional. The total sign area of the proposed pylon sign is 63 square feet. The electronic changeable copy sign portion of the pylon sign will be approximately 31.50 square feet.

Finding: There appear to be unique conditions related to the site and the need for a proposed pylon sign. As described, the site is an island annexed area approximately 0.33 miles from the western limits of the City. The immediate area surrounding the site is undeveloped, agricultural uses, with rural, large lot residential homes to the north of the site. The limited sign size requirements were designed with the idea that the institutional use (e.g. church) would be in an urban or suburban setting where large signs, including electronic changeable copy signs, would be out of character and negatively impact neighboring homes. The regulations were not designed to address signs for uses in a more rural setting.

Additionally, the sign regulations for institutional uses in a residential district were not designed for sites along higher speed roadways, such as Anderson Avenue, with a speed limit of 55 miles per hour. The higher roadway speeds necessitate the need for larger signs to have the message viewable and effective.

Although these are unique conditions, it should be noted that the applicants created

these conditions through the annexation and zoning process to bring the church site into the City. This fact can be mitigated with the knowledge that the site is on the extreme western edge of the City of Manhattan growth area, as shown on the Future Land Use of the Comprehensive Plan (see attached). Because of the desire to limit urban impacts on the training mission of Fort Riley Army base and to preserve agricultural area, the Comprehensive Plan dissuades growth to the west of this site, thus greatly limiting the residential development potential in the area, which a large pylon sign or electronic changeable copy sign could negatively impact.

THE GRANTING OF THE VARIANCE WILL NOT ADVERSELY AFFECT THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS:

1. NORTH: The property immediately to the north of the site, across Anderson Avenue, is zoned County Residential Planned Unit Development. This development is for large lot, single-family homes.
2. SOUTH, EAST & WEST: The surrounding properties to the south, east, and west are zoned County, AG, Agricultural District. The land consists of row crops and ranch land. The agricultural land also includes tree and plant stock associated with Blueville Nursery, which has its operations and retail store to the east. Large lot, rural single-family residential homes exist in the surrounding areas.

The surrounding properties are undeveloped agricultural lands. To the north of the site, across Anderson Avenue, are rural, large lot homes. These homes are separated by both distance and grade. The closest home is over 300 feet from the site and over 30 feet higher in elevation than the location from the sign. Other homes in the area are further away from the site and/or higher in elevation.

Finding: Minimal impact to the adjacent properties by installing a 31.50 square foot electronic changeable copy sign and the 63 square foot pylon sign is expected. The electronic sign or pylon sign that is larger than permitted will not impact the adjacent agricultural land. The sign size should not adversely impact the rural residential properties to the north of the site because these homes are separated by both distance and grade change. The proposed church sign will be the only electronic changeable copy sign in the surrounding area, which may be out of character with the surrounding area.

THE STRICT APPLICATION OF THE PROVISIONS OF THESE REGULATIONS FROM WHICH A VARIANCE IS REQUESTED WILL CONSTITUTE UNNECESSARY HARDSHIP UPON THE PROPERTY OWNER REPRESENTED IN THE APPLICATION: The site is a large 28-acre lot with the church entrance off of Anderson Avenue in a rural setting. The site was annexed and rezoned to R-1, Single-Family Residential District in 2019, as an “island” not contiguous with the City limits.

The applicant states that “the max speed of 55 mph and the distance the sign will set back from the road, that the current codes allowing only a 16 sq. footage EMC allowance along with the 40 sq. footage allowed overall structure would not suffice to reach the public driving along Anderson Ave.”

The higher road speeds would necessitate the larger sign for legibility per United States Sign Council Sign Legibility Rules of Thumb <https://amsigns.com/wp-content/uploads/2017/07/USSCSignLegiRulesThumb.pdf>.

Although not stated in the application documents, presumable the need for the sign is to announce services and activities of the church and church members and to attract new members to the congregation.

Finding: The 28-acre site is in a rural setting, with undeveloped agricultural land adjacent to it. It gains access from Anderson Avenue, a rural roadway with a speed limit of 55 miles per hour in this area. The need for a larger sign, both for the pylon sign and the incorporated electronic changeable copy sign is generally justified because of the high traffic speeds and roadway characteristics in the area.

Although not directly stated in the application, it appears that the pylon and electronic signs are intended to advertise the church, its services, and community events. Although it is unknown what the hardship to the church would be if the larger than permitted signs were not allowed, or if other forms of advertising the church were utilized instead of the proposed sign, other religious institutions use these sign types to advertise activities and services.

THE VARIANCE DESIRED WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The location of the sign will be 15 feet from the front property line along Anderson Avenue, which is a rural section of roadway. The sign will be nearly 60 feet from the edge of the roadway.

The height of the sign will be approximately nine feet. The sign can be placed on a foundation so that the overall sign height will not be more than 15 feet tall. The location of the sign is approximately five to six feet below the surface of the roadway.

In addition, Section 6-110(C)1-5 of the Zoning Regulations specifically includes additional regulations for Electronic Changeable Copy Signs:

(C) Electronic Changeable Copy Sign.

- (1) Electronic Changeable Copy Signs shall be limited to letters and/or numbers only. The background of the Electronic Changeable Copy Signs shall be black and the letters/numbers shall be colored.

- (2) Location. Electronic Changeable Copy Signs shall be located on a principal building wall or be part of a Monument or Pylon Sign. If the Electronic Changeable Copy Sign is part of a Monument or Pylon Sign, the Electronic Changeable Copy portion shall be part of the continuous display surface of the sign.
- (3) Duration of Message and Transitions. The message display on an Electronic Changeable Copy Sign shall remain static for a period of not less than sixty (60) seconds. The transition from one (1) message to the next shall be direct and immediate, without any special effects including but not limited to, dissolving, fading, scrolling, starbursts and wiping, which shall be prohibited.
- (4) Image Characteristics. Electronic Changeable Copy Signs shall have a pitch of not greater than twenty (20) millimeters between each pixel.
- (5) Luminance. Between sunrise and sunset the maximum luminance shall be five thousand (5,000) nits and between sunset and sunrise the maximum luminance shall be five hundred (500) nits. All signs with a digital display having illumination by means other than natural light must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's brightness to comply with this requirement.

Finding: The proposed size of the pylon and electronic changeable copy signs should not adversely impact the public health, safety and general welfare. The sign will be adequately setback from the roadway and is sized to provide appropriate readability for the area. The use limitations of 6-110(C) are designed to characteristics of the electronic changeable copy sign to minimize impacts on adjacent properties and the public.

GRANTING THE VARIANCE DESIRED WILL NOT BE OPPOSED TO THE GENERAL SPIRIT AND INTENT OF THESE REGULATIONS: The intent of the Sign Regulations within residential districts is to limit the size and illumination characteristics so that residential properties are not negatively impacted.

Finding: The proposed increase in sign area should not adversely impact neighboring residential properties since there are few residential neighbors in the immediate area that would see the sign.

2.5 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Regulations of the City of Manhattan, Kansas to allow a reduction of the required front yard setback from 25 feet to 22 feet on Lee Street, and an additional required front yard setback from 25 feet to 15 feet on Hunting Avenue to

accommodate a proposed building addition in the R, Single-Family Residential District at **2000 Hunting Avenue**. (*Applicant/Owner: Nicholas Grande, Jr. & Nicole Evans; file no.: EXC-20-015*)

Hardy opened the floor for public comments: Nicole Evans, 2000 Hunting Avenue, said she hoped the Board would approve the request.

With no further public comment, Hardy closed the public hearing for board discussion. Hamilton said the staff report did not really cover findings for the setback along Hunting Avenue, so she offered some for the record.

Roll call vote was taken; exception was approved with conditions by a vote of 5–0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 2000 HUNTING AVENUE:

Present use: Single Family Residence

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property was built in 1951 and was zoned as District “A”. The zoning language for front yard setbacks at time of construction specified that building setbacks be twenty-five percent of the depth of the lot, but need not exceed twenty-five feet. While the standards existed at the time of construction, staff find no documents explaining why the south and east eaves of the house encroach into the setback. The structure does adhere to all other side yard and rear yard setbacks.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property is part of the original Harris Addition. This area consists of older housing stock, Lee Elementary school, the Acacia and Phi Kappa Theta Fraternities, and some large apartment complexes. The project itself will not encroach north upon any neighboring property, nor is it expected to uproot any trees. The applicant specifically wishes to retain the existing trees for shade. The remodel will provide additional space to the applicant and their family, while improving the exterior view of the home. The addition to the house is intended to blend in with the original home. Additional phases of the project will further improve the appearance of the property by construction of a new deck and landscaping. Overall, the proposed remodel and building addition will help to improve the look of the property while preserving the original character of the area.

The existing encroachment along Hunting Avenue will not be affected by the addition. Its encroachment is a long-standing situation that has not had an adverse effect on adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Exception would permit the applicant to continue their remodel and building addition. No adverse impact on the public health, safety,

morals, order, convenience, prosperity, or general welfare is expected in conjunction with this request.

The existing encroachment along Hunting Avenue will not be affected by the addition. Its encroachment is a long-standing situation that has not had an adverse effect on public health, safety, or general welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The proposed exception is to provide additional space for their family and improve the value and appearance of their home. The building addition is on the north side of the property where the applicant has excess open space. While future legislation may not be used as a determining factor, with the adoption of the UDO, city staff intend on measuring setbacks from the property line to the base of the building instead of from the overhang. If that measurement methodology was currently in practice, this case would not have to go before the Board.

The existing encroachment along Hunting Avenue will not be affected by the addition. The only recourse to granting the exception is to require compliance, which would involve moving or demolishing the house. Given the non-effect on other properties and the general welfare, strict application would be unreasonable.

City staff find the strict application of the regulations to be unreasonable and unnecessary when all facts and circumstances are considered.

2.7 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 required front yard setback from 14 feet to 5 feet on Pierre Street to accommodate an existing carport; and, to allow for a reduction of the required front yard setback from 14 feet to 0 feet to install a fence along Pierre Street for property in the R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay at **222 S Manhattan Avenue**. (*Applicant: Anthony Shehan; Owner: Patricia Shehan; file no. EXC-20-017*)

Beagle presented the staff report regarding this item and concluded by indicating City Administrations recommendation to APPROVE the Exception request to reduce the front yard setback on Pierre Street from 14-feet to 5-feet with respect to an existing carport; and, to reduce the front yard setback on Pierre Street from 14-feet to 0-feet to install a fence for property at 222 S Manhattan Avenue, subject to the following conditions:

1. The proposed Exception shall be subject to compliance with the Application and Site Plans included as part of the applicant's request.
2. The proposed Exception shall be restricted to the existing 19-foot by 20-foot carport in its present location.

3. The carport shall be maintained in good condition and remain anchored to the ground.
4. The proposed Exception shall be restricted to the installation of a 5-foot tall aluminum fence as represented on the applicant's drawing and in the location proposed on the applicant's site plan.
5. The slats between fence posts shall be so spaced to allow for visibility through the fence as represented in the applicant's drawing.
6. The proposed fence shall remain in good condition.
7. Should the carport or proposed fence be removed based on voluntary action of the property owner and not replaced, the Exception shall become null and void without further action of the Board.

Hardy opened the floor for public comments. With no public comment offered, Hardy closed the public hearing for board discussion.

Hamilton asked if the carport was considered accessory because it was not attached to the house. Beagle replied that because of its size it is treated as an accessory structure under the Zoning Regulations and would be subject to the dimensional standards contained in the Regulations. He did confirm that it is not connected to the house.

Hamilton also asked that because it is attached to the ground, does that makes it an accessory use as opposed to a tent going up in the back yard? Beagle said that because it is an accessory structure and meets the minimum size requirement to be permitted, it is expected to be anchored to the ground. Hamilton asked who made it an accessory structure. Is it because he is anchoring it to the ground or the City is making him anchor it to the ground? Beagle said it is an accessory structure by virtue of its size, and because of its size, it has to be a permitted structure that means it would have to be anchored to the ground.

Chua asked if the Board has to approved both of the Exception requests or whether they could approved one and not another? Beagle said that the Board can split them as two (2) separate actions.

Fisher asked Beagle to clarify if the structure was there and then cited for not having a building permit. Beagle responded in the affirmative. Fisher then asked how long the carport was there. Beagle indicated that the carport has been on the property since 2018. Risk Reduction cited the applicant in 2018 but it has taken this long for an application to be filed to come to the Board.

Hamilton asked if Risk Reduction caught the carport on their own or if it was as a result of a complaint. Beagle indicated that he believed that it was caught by Risk Reduction themselves who happen to be in the area. Hardy indicated that would

have been his guess given the number of neighbors that signed a statement of support for the request.

Hardy then opened the public hearing and called for public comment. With no public comment offered, Hardy closed the public hearing and called for Board comment.

Hamilton had hope to hear from the applicant but hoped staff could answer her questions. She has some misgivings about this decorative aluminum fence as the drawing doesn't give her anything specific in mind. Hamilton said she does not understand from the drawing whether those are all slats drawn close together with a very small space in between or whether they are thin bars with a lot of space in between. Hamilton does not see the fence as low as 84 inches is a 7-foot tall distance that may include the footing in the ground and then a 6-foot tall fence, but she does not see a 6-foot tall fence as low. It is referred to as a 5-foot tall fence but she does not see that. Has a lot of concern about building it as proposed, because she does not know what is proposed at all?

Hamilton also said she is having trouble with the staff report's rationale or approach to compare this as unique to the properties on Pierre Street as opposed to it is a corner lot and it does not look unique than a bunch of other corner lots. She indicated corner lots have a lot more restrictions to deal with and this is asking us to waive those restrictions on the second front yard with the fence. The applicant has done a great job with his yard and probably has a good reason to protect it, but Hamilton indicated the Board just turned down a fence at a property line where they were trying to protect children in their back yard. She said she does not understand how this suddenly becomes more unique and special as a corner lot. The site has a problem that the other people on the north side of Pierre Street have about having to access off Pierre instead of an alley, but that's exactly the same problem the properties on the south side have that is right across the street from this property. She said they also have driveways and no access to an alley. Hamilton said it seems to her that the argument is that the existing detached garage is not enough, whether it is used as a garage or not, and the applicant wants to bring their parking out closer to the street. She said there is nothing that says he couldn't move toward the backyard to expand his garage and felt there are options here that weren't explored because this is where the applicant wanted to go.

Hamilton concluded by saying she is having problems with both requests. She said she could understand moving the fence off the sidewalk some distance to possibly to match up with the carport if approved. She said she is reminded of an open wrought iron fence at Leavenworth and 14th Street where the owner wanted to have protection from trespassing and they proposed and the Board approved a very open wrought iron fence that you can see into their backyard. It included some substantial very nice bush plantings along the sidewalk to soften the fence which the

Board thought was neighborhood friendly and a way to accommodate a fence that is appropriate for the neighborhood.

Wigfall said one of her concerns with the carport is its color and material that makes it more distractive as a projection out in front of the house. She felt it is a distractive element that projects into the front yard. Wigfall said she was also having difficulty with the fence because of its location and uncertainty of its appearance. She said she really doesn't know what it looks like and imagined that it looked like a wrought iron fence. Wigfall said she saw the shrub on the neighbor's property and thought the attempt was to create a height that is equal to that. She questioned why not use a shrub line without putting up a fence, but understood a fence is a quick and immediate way for a person that is less expensive in the long run, but with as much work as the applicant has done in their yard, she thought some kind of low shrub or something that is more natural would have worked. She also felt that there could have been some other alternatives to both of the issues than what was proposed. Chua said that from his perspective, he had more of an issue with the carport just because it is uncharacteristic of the neighborhood. It juts out. It's kind of jarring. He also agrees with the concerns about the fence, that it may not fit the profile of the neighborhood.

Hardy said that he has a problem with supporting any of the exception requests. He feels the carport just sticks out. He gets the fact that it is a corner lot, but sees some options that were not explored here. He felt that we looked at some of the other potentials that work with what you have. Hardy also did not support the fence as proposed and that it should be moved off the sidewalk. He cannot support either of these exceptions.

Hamilton said that when the Board has dealt with corner lots they looked at the site to make sure there is not anything like a highway or lots of traffic. She said corner lots are corner lots, and if you treat one this way, then corner lots in general need to be treated fairly in the like. She said that you are going to say that you want to keep people out of your yard, any corner lot could say this is my back yard and I want a fence on it. Hamilton did not think the Board has ever gone there in the past. Wigfall said the fences location right on a public sidewalk concerns her because nothing else jutted out that far. She said it looks foreign to the front yard of the rest of the street. With respect to the carport, she expressed concern about the materiality of it, the distance it is outward in the front yard. She said it just looks foreign to the rest of the neighborhood.

Roll call vote was taken; exception was DENIED by a vote of 0-5.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 222 S MANHATTAN AVENUE:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property is platted as a single lot in Ward 5 with 50-feet of lot width on S Manhattan Avenue and 150-feet of lot depth on Pierre Street for a total parcel size of 7,500 square feet. A one and one-half story single-family dwelling constructed in 1927 presently occupies the property. 400 square foot detached garage, also constructed in 1927, is located immediately west of the house and accessible from Pierre Street. In 1977, a Variance was requested to reduce the front yard setback requirement from 25-feet to 19-feet on S Manhattan Avenue to construct a covered front porch. The Variance sought included the reduction of front yard setback on Pierre Street from 25-feet to 16-feet consistent with the dwellings current setback. The Variance was granted by action of the Board of Zoning Appeals on January 12, 1977. In 1985, the current owner sought a Variance through the Manhattan Housing Advisory and Appeals Board to reduce the minimum ceiling height and bedroom window size for emergency egress to convert the basement into an apartment unit. The Board acted to approve the Variance on April 10, 1985, and a building permit was subsequently approved allowing for the basement conversion. At the time of conversion, the subject property and surrounding area was zoned the R-2, Two-Family Residential District, which permitted the conversion of the single-family dwelling into two (2) apartment units. In 2003, the neighborhood was reclassified by the City of Manhattan to its present classification of R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay. Although a formal determination has not been requested for this property, it is assumed that the property is a legal non-conforming use based on its prior zoning that permitted two-family occupancy. Risk Reduction was asked to confirm the present status of the property. They indicate the property is registered with the Rental Registration Program, but only for one (1) unit. It is unclear at this point whether the dwelling still supports two (2) dwelling units or if the interior has been reconstituted as a single-family dwelling. The subject property appears to be in compliance with the applicable regulations of the R-1/TNO District, except for the existing carport, based on the Variance granted in 1977 as to front yard setbacks, and the presumed legal non-conforming status of the home as a two-unit dwelling.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property is part of an older, established low density residential neighborhood located two (2) blocks south of City Park. The neighborhood is considered stable and comprised of older housing stock, the majority of which are retained as single-family dwellings with a few having been converted into apartment units of not more than two (2) units. The block face of Pierre Street, including the subject property, consists of homes dating as far back as 1887 with the most recent dwelling constructed in 1947. Typical of core area neighborhoods, homes along Pierre Street display a range of setbacks. The block face of Pierre Street, including the subject property, have homes that range in setback from approximately seven (7) feet to 54-feet. Homes fronting the north side of Pierre Street have setbacks ranging from approximately 16-feet (subject property) to 24-feet. Except for the subject property, all properties fronting the north side of the block maintain rear alley access with no driveways coming directly off of Pierre Street. As a corner lot without alley access, the

subject property maintains access on Pierre Street.



Figure 3: Year Built & Front Yard Setbacks

The applicant is seeking two (2) Exceptions to the front yard setback requirement on Pierre Street. The first is with respect to an existing carport installed in 2018. The 19-foot by 20-foot carport consists of a metal frame anchored to the ground and a green and white tarpaulin roof with open sides. The carport was installed directly in front of the double-car detached garage that is setback approximately 25-feet from the front property line on Pierre Street. The resulting carport setback is approximately five (5) feet from the front property line. Sec. 5-103(B)(1) of the Zoning Regulations permits accessory buildings on corner lots to be setback from the side street (Pierre) a distance not less than that required for the principal structure. In the TNO District, as presently zoned, residential buildings shall maintain a front yard setback not less than 14-feet and no more than 25-feet. The proposed Exception would reduce the front yard setback for the carport from 14-feet to five (5) feet, a nine (9) foot reduction.

The applicant currently has the benefit of a double-car detached garage with additional on-site parking in front of the garage in the driveway. There is not a lack of parking, or covered parking that is currently available to the applicant. It appears other options could have been explored to provide additional parking or covered parking in the yard behind the house without encroaching on the front yard setback.

Considering the carport itself, there is the question of its appearance that is out of character with the neighborhood in which located. The color of the material is more distracting as it projects into the front yard. Unlike the established setbacks on Pierre Street, the carport abruptly juts out toward the street. The carport's materiality and

location does not fit the profile of the neighborhood and expected to have a substantially adverse impact on nearby residential property in the long run.

The second Exception is to eliminate the front yard setback on Pierre Street to erect a five (5) foot tall aluminum fence west of the driveway to the west property line. The Board expressed uncertainty as to the actual appearance of the fence as it is unclear from the drawing provided by the applicant. Based on the drawing, it is difficult to understand exactly what the fence will look like. Without the applicant present to address the proposal, the Board was left to guess whether the drawing, for example, showed the slats drawn close together with very small space in between, or if they are thin bars with lots of space in between. There was also uncertainty as to the actual height of the fence from what was represented in the drawing.

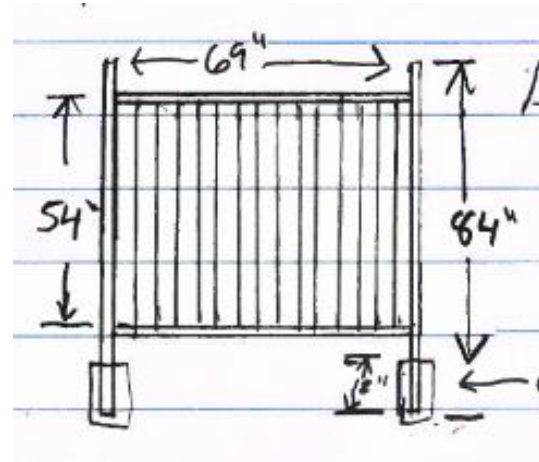


Figure 4: Fence Detail

The Board acknowledges the work the applicant has done in making landscape improvements to their yard and their desire to protect it from trespass. The fact that the property is a corner lot with two front yard setbacks does not grant it any more allowances relative to front yard setbacks than any other lot. Outside of the appearance of the fence is the desire to push it out to the sidewalk. Placing the fence at the front property line will again be uncharacteristic of the neighborhood and the established setbacks along Pierre Street. Pushed this far forward, the installation of landscaping in front of the fence would help soften its appearance. Landscaping itself, would be more compatible with neighborhood than running a fence along the sidewalk. Again, placing the fence along the front property line would be out of character with the neighborhood and adverse to neighboring residential property.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Granting the requested Exceptions would result in improvements that are uncharacteristic of neighboring residential property along Pierre Street. The public health, safety, morals, order, convenience, prosperity, or general welfare is protected when there is equal and consistent application of the regulations unless an extraordinary circumstance can be shown. For both the carport and proposed fence, there has been no compelling reason demonstrated by the applicant to set aside the respective front yard setback requirements. The Exceptions, as requested, would certainly be convenient for the applicant to the disadvantage of their neighbors. The neighbors would not equally benefit from a relaxed front yard setback. Recognizing the applicant's interest to provide additional covered parking, and, to protect their rear yard from trespass, does not mean these could not be accomplished by other means. It has

not been demonstrated that the carport or an expanded garage could not be built in their rear yard without encroaching into the front yard on Pierre Street. Instead of placing the fence up along the alley, why would it not be possible to push the fence back into the property, or use shrubs or some other landscaping to provide definition to their rear yard? These options should be pursued first before seeking to reduce a regulatory requirement that otherwise applies equally to all property.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: Unless shown otherwise, the applicant appears to have options by which to provide additional covered parking on-site without encroaching into the front yard setback; and, to minimize or eliminate encroachment of the fence into the front yard with a greater setback or with the planting of shrubs or some other form of landscaping to provide protection for the applicant's rear yard. Considering there are options to be explored, the strict application of the regulations is not considered unreasonable or unnecessary when all facts are considered in this case.

2.8 A **PUBLIC HEARING** to consider a **CONDITIONAL USE** under the terms of the Manhattan Zoning Regulations of the City of Manhattan, Kansas, to allow a drive-thru restaurant (Pizza Hut) for property in the C-2, Neighborhood Shopping District at **3268 Kimball Avenue**. (*Applicant: MJC Huts, LLC, Greg Shelton; Owner: Jeanne Ann Phelps; file no. CUP-20-019*)

Hardy opened the floor for public comments.

Greg Shelton, 8100 East 21st Street, Wichita, Kansas, said he agreed with the staff report and conditions and hoped that the Board would approve the conditional use permit.

With no further public comment, Hardy closed the public hearing for board discussion. There was little discussion aside from a general consensus that the use and design were appropriate.

Roll call vote was taken; conditional use was approved with conditions by a vote of 5–0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 3268 KIMBALL AVENUE:

Present use: Neighborhood shopping center

A. The proposed conditional use complies with all applicable provisions of these regulations, including lot size requirements, bulk regulations, use limitations, and performance standards

The shopping center meets all requirements for the C-2 zoning district in terms of lot

size, bulk, and use limitations. The introduction of a new structure will not alter that compliance. Signs will be confined to the building walls and meet regulatory standards. There will be no new lighting; the developer will reset two existing parking lot lamps. The proposed use can be found to be in compliance with these regulations.

B. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located

The restaurant will be an auto-oriented use in a shopping center designed for the automobile, so it will not be anything out of the ordinary. The use will not produce fumes, pollutants, or offensive odors or noises, it will not produce offensive or debilitating glare, and it will not have unsightly outdoor storage. It can be found that the proposed restaurant will not injure the value of other property in the neighborhood.

C. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:

- 1. The location, nature and height of buildings, structures, walls and fences on the site**
- 2. The nature and extent of landscaping and screening on the site.**

The proposed structure is about 1,290 square feet and a single story. It will be located in the middle of a parking lot in a shopping center that was established decades ago. As a call-ahead drive-through it would not have the same queuing character as, for example, a fast food type; it would not be at all likely to impact on-street traffic. It will have foundation landscaping but no additional perimeter landscaping is proposed since it is not near the edge of the shopping center. No fencing is proposed other than the enclosure for the dumpster on the northwest end of the restaurant.

Given its small size, its situation within an existing shopping center fronting on a busy arterial street, and the type of drive-through it will be, it is reasonable to find that neither this structure nor its operations could prevent the use or redevelopment of neighboring property.

D. Off-street parking and loading areas will be provided in accordance with the standards set forth in Article VII of these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect

The number of parking spaces will be adequate. The shopping center currently has a surplus of 42 spaces. The restaurant will displace 26 spaces, which would not be a problem except that the new restaurant adds building area that figures into the parking need calculation, which is 5.5 spaces per 1,000 square feet for shopping centers [7-103 (B)(4)]. With the planned restriping of Candlewood Center, including new spaces in the area where a carwash used to be, the amount of parking provided will exceed the requirement by 33 stalls.

E. Adequate utility, drainage, and other such necessary facilities have been or will be provided

The addition of a relatively small building will not change the drainage situation in the parking lot because it will be supplanting what is already impervious surface. Utilities and other facilities are adequate to handle another structure.

F. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys

Until the new access point onto Kimball Avenue is built, the shopping center and this proposed drive-through will continue to use the access point on Candlewood Drive. It is unlikely that there will be queuing problems since this type of drive-through would have a higher rate of throughput than a fast food or coffee drive-through. But even if there is some spill-out queuing, it would be confined to the shopping center parking lot and would not impact traffic.

2.9 A PUBLIC HEARING to consider an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow an increase in maximum driveway width from 10 feet to 17 feet for property in the R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay at 403 S Juliette Avenue. (Applicant/Owner: Richard and Tanya Bachamp; file no.: EXC-20-022)

Beagle presented the staff report for this case and stated City Administration recommends to APPROVE the Exception to increase the driveway width from 10-feet to 17-feet for property at 403 S Juliette Avenue, subject to the following conditions:

1. The proposed Exception shall be subject to compliance with the Application and Site Plans included as part of the applicant's request.
2. The proposed Exception shall be restricted to a maximum driveway width of 17-feet in its present location.

With no questions from the Board, Hardy called for comments from the applicant.

Tonya Bachamp, property owner, said she was present to answer any questions of the Board.

With no questions from the Board and no additional public testimony, Hardy closed the public hearing and called for Board comment.

Hamilton said she could support this request. She felt the TNO District is a strong consideration, but the staff report did a good job of explaining why it's really not violating the spirit of the TNO District in this location.

Hardy said he concurs.

Roll call vote was taken; exception was approved with conditions by a vote of 5–0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 403 S JULIETTE AVENUE:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property comports with the minimum lot size requirement of the R-M District. Existing improvements appear to conform to the bulk regulations of the R-M/TNO District, however, it is difficult to assess the side yard setback of the house with respect to the south property line. To be compliant with the side yard setback requirement of the R-M/TNO District the house would need to setback at least eight (8) feet from the south property line. In addition, the detached garage may be compliant with the three (3) foot side yard setback requirement along the south and east property lines, but again, it is difficult to determine without an actual site survey. If non-compliant, they may very well be legally non-conforming the date of initial construction. In 1980, a Variance to the side yard setback was granted to permit construction of a greenhouse, provided, its use was limited to a greenhouse. There is no evidence of a greenhouse on the property today.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property is part of an older established residential neighborhood located two (2) blocks north of Fort Riley Boulevard. Most homes in this area consists of original housing stock dating back to the early 1900's, many of which continue to be occupied as single-family dwellings. Typical of core area neighborhoods, the area is built on a grid system with the long axis of blocks oriented east/west with a mid-block alley. Most properties back onto the alley that provides the principal means of access and on-site parking. As a corner lot without alley access, the subject property maintains access on Colorado Street. All other homes on the same block face of Colorado Street maintain rear alley access except for the home on the opposite end of the block at 601 Colorado Street that also maintains access on Colorado Street.

For property in the TNO District, driveways in a front yard shall be single-wide and no greater than 10-feet in width. The property is presently served by a double-car detached garage that sets back approximately 25-feet from Colorado Street. The applicant seeks

an Exception to increase the width of their driveway to 17-feet to enable vehicle turning movements in to and out of the property within the width of the driveway. The property is located across from the open space of Colorado Park with the Municipal Court complex to the northeast. The property is also located opposite to Manhattan Catholic School to the northwest. Within the immediate context of this area, the seven (7) foot increase in driveway width is not anticipated to conflict with the traditional character of the neighborhood or surrounding residential property. In support of their request, the applicant has submitted an Adjacent Property Owner or Resident Statement signed by six (6) area property owners/residents that do not object to the applicant's proposal.



EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The question is whether the effect of granting the requested Exception is so extraordinary as to compromise the public health, safety, morals, order, convenience, prosperity, or general welfare. In this case, staff believes the applicant's request to increase their driveway width by seven (7) feet is reasonable and will not be contrary to the neighborhood, nor conflict with neighboring property. The subject property is not opposed by residential property to the north, but by a park and a school. The added width of the driveway will make accessing the applicant's property more manageable without creating unsightly ruts. Accordingly, staff believes the proposed Exception will not adversely effect the public health, safety, morals, order, convenience, prosperity, or general welfare.

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

property is part of an area zoned the Traditional Neighborhood Overlay District (TNO). The district sets standards intended to conserve the traditional character of older core area neighborhoods. One such standard governs the location, design and width of driveways and curb cuts. It is the preference of the TNO District that properties that are reasonably accessible from an alley take access from the alley as opposed to establishing a new driveway from the street. For properties lacking alley access, driveways from the street are permitted provided that in the front yard they shall be no greater than 10-feet in width. There are no such dimensional standards governing the width of access openings on an alley. Based on traditional driveway widths in older core area neighborhoods, it is understandable how a maximum driveway width of 10-feet was set.

In the subject case, the applicant maintains a double-car garage that is limited to a 10-foot wide driveway for access. The driveway has proved problematic over time based on the size of today's vehicles negotiating turns in to and out of the property without causing ruts in the yard. The applicant contends the addition of seven (7) feet to the width of the drive will be sufficient to maneuver without driving off the edge of driveway. While part of an older established residential neighborhood, the subject property is located across from the open space of Colorado Park to the north and the Manhattan Catholic School across the intersection to the northwest. The added width of the driveway will not have an adverse impact on either of these properties, and because of this land use relationship will have a nominal impact on neighboring residential property. Under the circumstances, the strict application of the regulations relative to the width of the driveway appears unreasonable or unnecessary when all facts and circumstances are considered.

2.10 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-thru teller window for a bank in the C-4, Central Business District at **221 N. 4th Street**. (*Applicant: BBN Architects, Daniel Crouch; Owner: United Bank & Trust, Donna Scheele; file no.: CUP-20- 024*)

Barry Beagle presented the Conditional Use Permit for the property located at 221 N. 4th Street. City Administration recommends to APPROVE the request for a Conditional Use to allow a bank with drive-thru teller/ATM service on property located at 221 N. 4th Street in the C-4, Central Business District, subject to the following conditions:

1. The drive-thru teller/ATM lane and passing lane shall be striped as shown on the Site Plan (A100). Striping shall be properly maintained to clearly distinguish between the drive-thru and passing lanes.
2. The proposed improvements to the building façade shall be completed as shown on the Elevation drawing (A200) prior to the functional operation of the bank and drive-thru teller/ATM lane.
3. The location of the pneumatic teller tube and ATM shall be as shown on the Site Plan (A100) and Elevation drawing (A201).

4. A directional sign posted by the City of Manhattan restricting turning movement for cars departing the alley at N. 4th Street to right-turn only.
5. Exterior lighting fixtures shall be shaded so that no direct lighting is cast upon adjacent property and no glare is visible to any traffic on any public street.

Hamilton asked Beagle if there are not going to be four (4) spaces for on-street parking because it is going to be reduced down to two(2)? Beagle said that with this proposal, two (2) of those spaces will go away.

Hamilton also asked for clarification that there was going to be a walk-in entrance off of N 4th Street? Beagle responded in the affirmative. She then said that the two (2) parking space in front of the building are really the only places to park for that walk-in entrance. Beagle explained that the two (2) spaces are for the general public to use and are not reserved for the bank or any of the tenants within the building. He said there is the availability of the public parking lot across the street to the east.

Hamilton asked if any of the on-street parking spaces have to be handicap accessible. Beagle said those spaces were not identified as being converted to handicap spaces. She also asked whether the exterior renovations would take care of the two (2) private parking signs along the alley. Beagle said he could not immediately address that signage. Hamilton said the signs were place by a former occupant that identified two (2) parking spaces in the alley she wanted to make sure those parking signs are going away.

Wigfall asked if the right-turn restriction from the alley onto N 4th Street is a condition of approval. It was acknowledged that it is addressed in the staff report.

Fisher asked where this property is relative to the limits of the downtown historic district. Bunger responded that the downtown historic district stops at Humboldt Street, one block south of the site. Fisher was curious since the building is a 1940's mid-century modern building and that it would have triggered something if it was in the historic district.

Hardy then called for comments from the applicant.

Daniel Crouch with BBN Architects spoke on behalf of United Bank and Trust, the owner. With respect to the parking signs in the alley, they will be taken down and they do not intend to use them as parking spots. With regard to parking out front, they will go down to two (2) spaces but it is in the public right-of-way and is public parking spaces. Crouch said there are two (2) handicap parking spaces provided on the back side of the building in the parking lot.

Crouch said the bank will function as a neighborhood downtown bank that will include a walk-up ATM inside the front vestibule of the bank. He said he knows of only one (1) other location downtown that has a walk-up ATM. A couple of the comments from their

neighborhood meeting was the need for more walk-up ATM machines downtown that are available after hours with a night deposit box. With respect to the pneumatic teller tube on the back side of the building, it will have a screen with it to give people a face-to-face contact with a teller. Crouch said this used to be a car dealership building some time ago and the building was designed with architectural elements of that period. He said they are carrying forward some of those design elements along the front side of the bank. Crouch said they were looking at doing some tax credits for historic improvements to the building but it is not part of the downtown historic district so that did not work.

Chua asked how many parking spaces on the back side of the building will be lost with this project. Crouch said around three (3) to four (4) spaces will be lost. He said a couple of those parking spaces are being turned into parallel parking spaces to allow for a pass-by lane to go around the drive-thru teller lane. Chua asked for confirmation of 10-15 employees associated with the bank and if it was higher than the current business that was there. Crouch said he is not sure how many people are employed by GoPowercat because they are not always there. He said that Bockers II has an event space up front and they host a number of functions. With respect to the bank, Crouch said there will be eight (8) office spaces along with a conference room with possibility of four (4) additional office spaces in the future. As the owner of the building, he said the bank will encourage the tenants to utilize the public parking lot across the street.

Donna Scheele, community bank president for Manhattan for United Bank and Trust, said they will probably start with six (6) to eight (8) employees and will have room for expansion and transition some of their operations to this bank at a later date. Their employees will park in the public parking lot and they have strongly encouraged their tenants to park there as well.

With no further public comment, Hardy closed the public hearing and called for Board discussion.

Hamilton said she thought this was a creative proposal for the building. She does not see the drive-thru teller function as aggravating any parking issues that may or may not exist in this area.

Hardy appreciated the bank's commitment to have their employees parking in the public parking lot across the street. He said the City addressed his only other concern with traffic flow by restricting turning movements onto N 4th Street from the alley to right-turn only.

Roll call vote was taken; conditional use was approved with conditions by a vote of 5–0.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE CONDITIONAL USE PERMIT AT 221 N. 4TH STREET:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The C-4 District, as presently zoned, is the primary commercial center of the community and is designed to provide for a broad range of retail shopping facilities, services, and cultural activities. The existing tenants of the building are compliant with uses permitted by the C-4 District. The renovation of an existing tenant space within the building for a branch bank is also a compliant use. The property is otherwise compliant with the minimum lot size requirements and bulk regulations of the C-4 District.

PROBABLE EFFECT ON ADJACENT PROPERTIES: At issue is whether the addition of a drive-thru teller/ATM lane in conjunction with the bank will cause a substantial injury to the value of other property in the neighborhood. The subject property is part of the downtown core area that shares the classification of C-4, Central Business District. Pursuant to the Comprehensive Plan, the central core district consists of a variety of civic, cultural, retail, commercial, business, professional offices, and financial institutions, and residential uses in a compact, vibrant setting. More immediately, the subject property is encompassed by the Riley County Senior Service Center to the north; the Strasser Village Apartment to the northeast; a multi-tenant office/service building to the south; a single-family dwelling converted to apartments to the west; and, a public parking lot in conjunction with the Manhattan Town Center to the east. Based on the surrounding land uses, the introduction of a drive-thru teller/ATM lane at this site is not anticipated to generate off-site impacts that would substantially injure the value of neighboring property. The parking lot behind the building has long existed including the customary flow of traffic through the parking lot between Leavenworth Street and the east-west alley along the south property line. The addition of a drive-thru lane as part of the parking lot is not anticipated to have a material impact on the use and function of neighboring property.

DOMINATION BY USE OVER NEIGHBORING PROPERTIES: The applicant indicates the branch bank is intended their customers and new customers in the downtown Manhattan area. Normal banking hours will be 7:30 AM to 6:00 PM, Monday – Friday, and 8:00 AM to 12:00 PM on Saturday. The bank will employ between 10 to 15 people at this location. The bank will operate independently from the other two (2) tenants within the building.

The principal question is whether the location, nature and intensity of the proposed drive-thru teller/ATM lane and its relation to streets giving access to it are such that its use will not dominate the immediate neighborhood or prevent the use or development of neighboring property.

- a) **The location, nature and height of physical improvement.** The proposed Conditional Use does not alter the current improvement of the property except for the addition of a pneumatic teller tube and ATM at the southwest (back) corner of the existing building. The bank will occupy the southern tenant space as viewed

from N. 4th Street and will include some new façade treatments. Proposed façade treatments include repainting the existing brick front; replacing the existing canopy over the doorway with a new canopy spanning the front of the bank façade; replacing of small side windows adjacent to the bank doorway with new canopy to ground storefront windows; backlit channel lettering above the canopy with the name of the bank; and, installing a new tower element to mimic the tower adjacent to the Bockers II entrance.

- b) **The nature and extent of landscaping and screening.** As noted, the proposed Conditional Use does not alter the physical improvement of the site. As it exists today, the site consists almost entirely of impervious surface between the existing building and paving associate with the parking lot and adjoining sidewalks/patio area in front of the building. There are three (3) street trees in sidewalk planters along N. 4th Street. An existing landscaped area in front of the building along N. 4th Street will remain. The subject property does abut a residential use to the west. A retaining wall separates the subject and residential property as the residential property sits at a higher elevation. The land use relationship between the subject property and adjoining residential property has long existed and it would be difficult to install screening along the common lot line without potentially losing some onsite parking stalls. No landscape or screening is required or proposed in conjunction with this proposal.

The proposed Conditional Use does not alter the location, nature, and height of existing improvements except for the addition of a pneumatic tube teller and ATM on the back side of the existing building. The function of the drive-thru teller/ATM should not have an adverse impact on or dominate the surrounding area.

ADEQUATE PROVISION OF OFF-STREET PARKING AND LOADING: It must be shown that off-street parking and loading areas will be provided in accordance with the standards set forth in Article VII of the Zoning Regulations, and such areas will be screened from adjoining residential uses and located to protect such residential uses from injurious effect. In accordance with Sec. 7-103(B)(1) of the Zoning Regulations, no accessory off-street parking facilities shall be required for any use in the C-4 District. The goal of the C-4 District is to maximize density of development in the downtown core. This is why property in the downtown core is permitted to develop at 100% lot coverage with parking provided through public parking facilities. There are 12 on-site parking spaces provided in the parking lot on the back side of the building. There also exists four (4) parallel parking spaces in front of the building on N. 4th Street that are available for anyone to use.

The applicant has indicated that bank staff and the tenant, Go Powercat.com, will park in the city/mall public parking lot to the east across N. 4th Street. Due to an existing lease arrangement, the other tenant, Bocker's II Catering, will have use of four (4) parking spaces for their delivery trucks and staff in the on-site parking lot. Guests

attending an event at Bocker's II will be expected to park in the city/mall public parking lot.

ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES: As currently improved, the subject property has adequate utility, drainage, and other such necessary facilities.

ADEQUATE PROVISION OF ACCESS: Public Works indicates that with over 100-feet of on-site stacking distance, there is no concern that cars stack in the drive-thru teller/ATM lane will back-up and impede traffic flow on Leavenworth Street. The applicant was asked by Public Works to perform a sight distance analysis (attached) for the intersection of the alley with N. 4th Street. Vehicles exiting the parking lot/drive-thru lane have the option of turning east or west on the alley along the south boundary of the site. Of particular concern was the effect of cars parked on N. 4th Street and how they may impact sight distance of cars wishing to turn north or south on N. 4th Street. Based on the results of the analysis, Public Works will post a sign restricting turning movements for cars departing the alley to right-turn only.

On-site traffic circulation is not anticipated to interfere with traffic flow on Leavenworth Street, and, with turning movements at the alley with N. 4th Street restricted to right-turn only will provide the safest option for motorists to safely enter the stream of traffic on N. 4th Street.

Hardy adjourned the meeting at 9:45 p.m.

NEXT MEETING: Wednesday, June 10, 2020

Respectfully submitted by Chad Bunger, Assistant Director, John Adam, Senior Planning – Long Range and Barry Beagle, Senior Planner – Current Planning