

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, October 14, 2020
7:00 p.m.

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

MEMBERS ABSENT: None

STAFF PRESENT: Barry Beagle, Senior Planner | Current Planning
John Adam, Senior Planner | Long-range Planning
Samantha Estabrook, Resiliency Planner

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 September 9, 2020, BOARD OF ZONING APPEALS MEETING.**

Wigfall moved to approve the September 9, 2020 minutes with minor corrections. The motion was seconded by Hamilton and approved; 5–0.

2.1 A REQUEST to consider an extension to the **180-DAY PERIOD OF VALIDITY** in accordance with Secs. 14-608 and 707 of the Manhattan Zoning Regulations with respect to [Lodging/Boarding House, 711/715 Humboldt Avenue \(CUP-19-064 & EXC-19-065\)](#)

Hardy called the question. Roll call vote was taken. Motion carried 5-0.

2.2 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the height to exceed the maximum height requirement of thirty-five (35) feet by one and a half (1.5) feet for a proposed residence located at [2500 Heartland Drive](#), in the R, Single-Family Residential District (*Applicant/Owner: Anderson Knight Architects — Michael and Karen Pestinger: file no.: 20-041*)

Estabrook presented the staff report for item 2.2. City Administration recommends to APPROVE the Exception to exceed the maximum height requirement of thirty-five (35) feet by one and a half (1.5) feet for a proposed residence located at [2500 Heartland Drive](#), in the R, Single-Family Residential District, with the following conditions:

1. The Exception shall only apply to the proposed tower feature of the structure as described in the application and staff report.
2. The Exception shall be subject to compliance with the site plan as submitted by the applicant.

Hardy opened the floor to the Board to ask questions of staff. There were no questions.

Hardy opened the floor for comment from the applicant. The applicant did not provide any testimony.

Hardy closed the public hearing and called for board discussion.

Hamilton noted the request is a condition that is a choice for the applicant to pursue. Hamilton also stated that due to the elevation of the lot the tower would not dominate. The portion of the structure exceeding the height requirement is not the primary roof line.

Hardy commented that he is familiar with the site and the tower feature would not be intrusive as it is positioned toward the rear of the structure.

Wigfall noted that the chimney and other element were similar in height which provides balance. In addition, since the tower element is not placed at the highest point of site and at the rear of the structure then she has no objection to the request.

Hamilton and Hardy clarified that the chimney and other feature do not exceed to the height requirement.

Hardy called the question. Roll call vote was taken. Motion carried 5-0 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 2500 HEARTLAND DRIVE:

Present land use: Vacant lot

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than the Exception request, the subject site complies with all applicable regulations.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** As previously stated, the subject property is a large estate lot that it generally in character with the neighboring properties. The proposed tower feature would be situated on a back corner of the house which fronts upon Colbert Hills golf course. Within the Grand Mere Unit 1-6 subdivisions, the subject property is one of the properties with the lowest elevations. From the vantage point of Heartland Drive, the visual discrepancy in height is anticipated to be negligible due to the variance in elevation and recessed nature of the features placement.
3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** In granting this exception it would be anticipated to have minimal to no adverse impact on the public health, safety, morals, order, convenience, prosperity, or

general welfare of the community.

4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** Unique architectural styles and features are generally accepted and anticipated on estate lots. The intent of the bulk regulations are to ensure compatible massing and neighborhood character. The applicant expressed attempts at designing the tower to a lower height, however was unsuccessful without the tower height interfering with the primary roof line. While a height increase for the whole structure may encroach upon the character of the neighborhood or adjacent properties, the placement, scale, and nature of the architectural tower feature upon the subject property would seem to create a negligible impact.

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 the reduction of the minimum required twenty-five (25) foot front yard setback to nine (9) feet for an existing fence located at 2303 College Avenue, in the R-1, Single-Family Residential District. *(Applicant/Owner: James and Erica Garman; file no: 20-042)*

Estabrook presented the staff report for item 2.3. City Administration recommends to APPROVE the to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to nine (9) feet for an existing fence located at 2303 College Avenue, in the R-1, Single-Family Residential District, with the following conditions:

1. The Exception shall only apply to the fence as described in the application and staff report.
2. The fence shall be maintained in good condition.

Hardy opened the floor to the Board to ask questions of staff.

Hamilton clarified that the staff report incorrectly describes the rear to front yard distinction. Beagle confirmed that regardless of the access and orientation of the house and where access is granted that the exception was for the front yard setback. Hamilton stated she is in support of the request due to the adjacent properties fence placement and felt it would odd for the subject property to have a fence set back at 25 feet. Hardy concurred. Hamilton and Hardy requested the rationale within the staff report be changed to reflect

Wigfall asked about the material and opaqueness of the proposed fence. Estabrook indicated the applicant would be able to provide more information of the proposed materials and character of the fence.

Fisher asked for clarification if the fence is existing or proposed. Estabrook clarified that the posts of the fence are existing and the applicant had been cited a stop work order by Risk Reduction.

Hamilton commented on the brevity of the staff report and requested more information be reflected within the staff report rather than cited to within the application. Wigfall and Hardy concurred.

Hardy opened the floor for comment from the applicant. The applicant commented that the front to rear yard discussion was not in the application. The applicant clarified that the fence is not a privacy fence and will be 52 inches at the highest point.

Hardy clarified that the fence will be transparent. The application described the wiring that would be used.

Wigfall clarified that there will be plant material around the posts and the applicant agreed.

Hardy closed the public hearing and called for board discussion.

Hamilton asked for the findings of fact for to altered to remove mention of the rear or front yard distinction, where the property gains access, and the orientation of the house. Hardy concurred. Hardy cited the collector designation of College Avenue and safety as being rationale to support the request. Wigfall mentioned she appreciate the softening of the posts by the addition of landscaping. Chua stated he has no objection to the request.

Hardy called the question. Roll call vote was taken. Motion carried 5-0 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 2303 COLLEGE AVENUE:

Present land use: Single family residence

- 1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than the Exception request, the subject site complies with all applicable regulations.
- 2. PROBABLE EFFECT ON ADJACENT PROPERTIES:** The proposed fence is not anticipated to have an effect on adjacent properties. The application is requesting to construct a fence which is in line with the neighboring properties and responding to the collector nature of College Avenue. The PUD to the south was able to construct a fence within the required setback due to the nature of Planned Unit Development. Properties to the north within Stonegate Estates Unit 3, and further north the Kellstrom Park subdivisions have been able to legally construct fences.
- 3. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal to no adverse effects on the general health, safety or welfare of the public are anticipated. Construction of the fence would not negatively impact lines of sight or access to the sidewalk along College Avenue. The proposed fence would be comparable in character with the surrounding properties and be in-line with,

and in some cases more recessed than, adjacent fence placements.

- 4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The applicant desires to construct a fence along a major collector road, College Avenue, while maintaining a 9 foot setback from the property line which will be in line with neighboring properties. Considering the circumstances of the property, strict application of these regulations may be unreasonable.

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 for the reduction of the minimum required fourteen (14) foot front yard setback to zero (0) feet for a proposed fence located at 731 Osage Street, in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay (TNO). (*Applicant/Owner: Lindsay and Kaitlin Knauer; file no: 20-043*)

Fisher commented for the record that she lives in the neighborhood but does not feel it rises to the level of a conflict of interest.

Estabrook presented the staff report for item 2.4. City Administration recommends to APPROVE to allow for the reduction of the minimum required fourteen (14) foot front yard setback to zero (0) feet for a proposed fence located at 731 Osage Street, in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay (TNO), with the following conditions:

1. The Exception shall only apply to the fence as described in the application and staff report.
2. The fence shall be maintained in good condition.

Hardy opened the floor to the Board to ask questions of staff.

Hamilton asked for clarification about if there is a relationship between the height of a structure and its relationship to if it considered an encroachment upon the setback. Beagle clarified that there is no threshold for the height of a structure to meet setback requirements.

Hamilton asked for clarification on why the setback request was for fourteen feet instead of the twenty five feet. Fisher clarified that it was a TNO corner lot.

Fisher commented that if the subject property were to abide by the setback for the fence then it would begin inward of the primary structure and be out of character with the adjacent property.

Fisher asked if there is a height limitation for fences. Estabrook clarified that any height greater than 6 feet requires a permit from Risk Reduction.

Wigfall commented that a fence of this nature would be a concern if it were obstructing views. Hamilton concurred and stated she believes the subject property is unique because there are no homes on this block which front 8th Street.

Fisher commented the proposed fence would make the street more symmetrical. Hardy agreed.

Hamilton commented she would prefer the fence not be so solid. Wigfall agreed.

Chau asked for affirmation that this is a common characteristic of homes in this neighborhood. Hamilton affirmed. Fisher mentioned the relationship to owner occupied structures and the presence of fences in the neighborhood.

Hardy opened the floor for comment from the applicant.

Wigfall thanked the applicant for providing a thorough application with examples from the neighborhood. Hardy concurred

Hardy closed the public hearing and called for board discussion.

Hamilton stated support for the application and asked for the rationale of Standard 4 to be narrowed to the conditions of the subject property and specific request. Wigfall and Fisher concurred.

Hardy asked for staff to correct the staff report for congruence of the fourteen foot setback requirement due to the TNO Overlay.

Hardy called the question. Roll call vote was taken. Motion carried 5-0 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 2303 COLLEGE AVENUE:

Present land use: Single family residence

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than the Exception request, the subject site complies with all applicable regulations.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Osage and 8th Street are both local streets within the Ward Districts which host all modes of transportation often as the request of a fence along the property line of 8th Street would not be out of character with the neighborhood or directly adjacent properties. No direct effect of the construction of a fence would occur. The fence would be in line with the property located directly south which has a six (6) foot privacy fence along a portion of the property line and a three (3) foot slated fence for the remaining portion.
3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** It is anticipated granting the request would have minimal impact on the public health, safety, morals, order, convenience,

prosperity or general welfare. Lines of sight for vehicular and pedestrian traffic would be reasonably maintained. While access to the adjacent sidewalk would not be encroached upon, the placement would create a stark barrier for the passing pedestrian.

4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The condition of a fence or other privacy structure along the property line of a corner lot is not uncommon. The strict application of fourteen (14) foot setback may be deemed unreasonable when considering the conditions of the subject site and adjacent properties.

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 off-street parking to be placed in the required front yard located at [2715 Hobbs Drive](#) – Marlatt Elementary School, in the R, Single-Family Residential District. (*Applicant/Owner: BG Consultants – USD 383; file no: 20-044*)

Estabrook presented the staff report for item 2.5. City Administration recommends to APPROVE to allow for off-street parking to be placed in the required front yard located at [2715 Hobbs Drive](#) – Marlatt Elementary School, in the R, Single-Family Residential District, with the following conditions:

1. The Exception shall only apply to options within the site plan as submitted by the applicant with minor modifications.

Hardy opened the floor to the Board to ask questions of staff.

Wigfall asked for clarification to the number of stalls the subject site is currently deficient in parking and if the proposed application rectifies that deficiency. Estabrook commented that Option 1 would provide sixteen more stall while Option 2 would provide twenty-seven more stalls.

Hardy opened the floor for comment from the applicant. The applicant commented that the proposal would increase safety, increase the overall number of stalls, and reduce congestion in the neighborhood.

Wigfall asked if a traffic study was complete and if so, how did the results impact circulation. The applicant commented that there is often conflict between loading and parking uses and the proposal would reduce those conflicts.

Hardy closed the public hearing and called for board discussion.

Wigfall commented the proposal seems well designed to reduce vehicular and pedestrian conflicts. Hardy concurred.

Hardy called the question. Roll call vote was taken. Motion carried 5-0 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 2303 COLLEGE AVENUE:

Present land use: Primary school

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

Pursuant to Sec. 4-102(A)(5) of the Zoning Regulations, schools are a permitted use of the R, Single-Family Residential District. The school appears to comply with all applicable requirements of the Zoning Regulations including the minimum lot size requirements and bulk regulations of the R District except for off-street parking spaces available and the proposed expansion into the front yard setback. Other than the Exception request, the subject site complies with all applicable regulations.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

As noted, Marlatt Elementary is central to an established residential neighborhood and gains access from Hobbs Drive with an exit on Browning Avenue. The request seeks to alleviate congestion and parking pressure which currently occurs within the neighborhood partially due to the connected nature of the two loading/parking areas and lack of parking spaces. Vegetation currently exists to lessen the visual impact on the neighboring residential properties of the parking spaces along the Hobbs Drive and Browning Avenue. The applicant is proposing to provide a landscaped area in the front yard to aid in buffering the increase in parking along the adjacent rights-of-way. While the request will be a change of the existing condition, it is not anticipated to have a substantial adverse impact on the neighborhood.

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

Physical separation between the two functions of loading and parking is intended to increase safety on-site as well as alleviate congestion off site during peak hours. Marlatt Elementary is an integral feature of the neighborhood for 60 years now and improving the vehicular circulation and on-site parking capacity would serve to decrease any negative effects the subject property currently has on the neighborhood. Minimal to no adverse effects on the general health, safety or welfare of the public are anticipated.

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

The intent of not allowing off-street parking within the required front yard is generally to reduce the visual impact on neighboring properties. Since Marlatt Elementary School is deficient in on-site parking, neighboring properties often experience the impact of overflow parking. The exception request is an attempt to remedy neighborhood impact while providing a landscape buffer to minimize the visual impact of open-air parking occurring within the required front yard.

2.6 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 two-unit dwelling located at [928/930 Thurston Street](#), in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay. (*Applicant/Owner: Trevin Haug; file no: 20-045*)

Estabrook presented the staff report for item 2.6. City Administration recommends to APPROVE to allow the renovation of a legally nonconforming two-unit dwelling located at [928/930 Thurston Street](#), in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay, subject to the following conditions:

1. The renovations shall be consistent with the submitted site plan and application documents.
2. All applicable permits shall be obtained.
3. An amendment to the Conditional Use Permit shall be required for any future renovations or additions to the structure.

Hardy opened the floor to the Board to ask questions of staff.

Fisher asked to confirm the current structure is currently four bedrooms and two bathrooms. Estabrook clarified the current structure has 4 bedrooms and 4 bathrooms, and the application is requesting 6 bedrooms and 6 bathrooms, 3 per unit. Fisher further clarified that each unit could have 4 unrelated inhabitants, Hamilton confirmed; and therefore could have up to 8 vehicles.

Hamilton and Fisher asked for clarification for the proposed parking schema. Estabrook stated the applicant's intent to replace the existing parking pad and clarified that parking is not included as a stand-alone standard for Modifying a Nonconforming Use utilizing a Conditional Use Permit. Staff and the Board members had a discussion regarding the parking requirement, which resulted in staff initially citing 7 spaces as the requirement for the property.

Hamilton clarified that parking is a regulation which needs to be met in order for Standard 3, conformance with all applicable regulations, to be met. Hardy concurred.

Hardy opened the floor for comment from the applicant.

The applicant stated the proposal would increase safety, modernize the structure, and provide housing to students. The applicant stated that there would be at least one parking stall per bedroom. Beagle clarified that the parking standard for a two-family home is 2 stalls per unit which would make the minimum requirement for this structure 4 stalls. Chua asked for clarification that the standard would only require 4 parking stalls even though there are 6 bedrooms. Beagle confirmed. Hamilton asked for clarification if placement of the stalls would encroach upon the front yard setback along 10th Street. Beagle confirmed there would a setback requirement and it would be fulfilled.

Hardy commented he is not a comfortable approving the conditional use permit for modifying a non-conforming structure without seeing a full site plan and confirming by the application and within the staff report that parking and setback requirements are in fact met. Further discussion ensued regarding the number of parking stalls and setback requirement. Through discussion it was determined that in order to achieve one stall per bedroom, the Board's desire, the parking stalls would encroach upon the front yard setback to which the applicant would need to obtain an exception. Beagle confirmed so, and stated that according to the regulations the subject property is only required to provide 4 parking stalls. Hamilton clarified that in order to add additional stalls which encroach upon the front yard setback that the Conditional Use Permit would also need to be reviewed. Hardy concurred and Beagle indicated that was correct.

Chua clarified that the back porch was being deconstructed and not rebuilt as a part of the structure. The applicant confirmed that the back porch would be deconstructed and the area would be a concrete patio.

Wigfall asked for clarification regarding the trees on the lot. Fisher commented there were trees in photos, but it is unknown if they conflict with the proposed parking pad. The applicant clarified that there are trees along the east property line.

Hardy closed the public hearing and called for board discussion.

Fisher stated she is not in support of the application due to the increase in intensity within an R-1 zoning district, an increase in bedrooms and bathrooms, the assertion it is for 6 inhabitants but parking for 6 vehicles is not provided. Hamilton concurred.

Hamilton commented that the increase in density is significant, and previously the Board has approved Conditional Use Permits for Modifying a Nonconforming Use because it is strictly modernizing the structure to make it safer and there was no increase in density. Also, Hamilton commented the proximity of higher density zoning districts does not alter the single family residential district in which the subject property exists. Hamilton stated her preference for the structure remaining as 2 units with 2 bedrooms each. Hardy concurred.

Hardy commented that the Board has previously approved applications that strictly modernized without increasing the intensity of a use and that economic factors are not considered. Hardy stated he was not inclined to support the application.

Wigfall stated she appreciated the increased safety of splitting the structure to one unit per floor, rather than maintaining the current mirrored, split level units. Wigfall then concurred with comments from the previous two Board members and expressed her concern for the circulation of the site. She stated that while four parking stall may be the requirement, she would like a clear plan which delineates the parking with sensitivity to existing vegetation and respects the setback. Wigfall stated she was hesitant to support the application.

Chua commented that he shared the concerns of the fellow Board members and highlighted that the increase in intensity of the use was the greatest concern. Chua stated that a clear site plan which delineates the plan for parking would aid in considering the request.

Hardy called the question. Roll call vote was taken. Motion failed 0-5.

The board discussed the options of continuing virtual meetings or returning the in-person meeting in City Hall. The decision was made to continue having virtual meetings.

Hardy adjourned the meeting at 9:12 p.m.

NEXT MEETING: Wednesday, November 18, 2020

Respectfully submitted by, Samantha K. Estabrook, Resiliency Planner