

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, November 18, 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 OCTOBER 14, 2020, BOARD OF ZONING APPEALS MEETING.**

Wigfall moved to approve the October 14, 2020 minutes with minor corrections. The motion was seconded by Hamilton and approved; 5–0.

2.1 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 three (3) 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.: 20-046*) *This case is being reheard due to a procedural error.*

Estabrook presented the staff report for item 2.1. City Administration recommends to APPROVE the Exception to exceed the maximum height requirement of thirty-five (35) feet by three (3) 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.

Hamilton confirmed there had been no change in the observations made by staff since the Board previously heard a case on the property the month prior. Staff confirmed

Hardy opened the floor for comment from the applicant.

TJ Vilkanskas, Back-9 Development, spoke as the builder of the proposed property.

Staff read received public comment into the record.

Hardy closed the public hearing and called for board discussion.

Hamilton stated since the facts of the case had not changed she was able to support the application. Hardy and Chua 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 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 feature's 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 is 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.
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2.2 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to exceed the maximum driveway width for a front-loaded two-car attached garage; and to reduce the landscape open space requirement in the front yard area for a property located at [404 Brookway Drive](#), in the R-1, Single-Family Residential District. (*Applicant/Owner: Ryan Sturgeon; file no: 20-047*)

Estabrook presented the staff report for item 2.2. City Administration recommends to DENY the request to exceed the maximum driveway width for a front-loaded two-car attached garage; and to reduce the landscape open space requirement in the front yard area for a property located at [404 Brookway Drive](#), in the R-1, Single-Family Residential District.

7:24 Chair, Harry Hardy, left the meeting.

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

Chua ask for clarification the applicant would be able to expand the driveway by 3' without an Exception to the landscaped open space requirement. Staff confirmed.

7:25 Chair, Harry Hardy, returned to the meeting.

Hardy opened the public hearing and called for comment from the applicant.

The applicant shared that Brookway Drive allows parking on one side of street and the allowed 3' expansion of the driveway is not wide enough for 3 cars.

Chua asked for the applicant to clarify the property has a two-car garage and two driveway spots where vehicles could be parked. The applicant clarified that the garage is not used for vehicles.

Wigfall asked staff to clarify how much space would remain between the proposed driveway expansion and property line. Staff clarified the proposal is to pave up to property line with no remaining space.

Mark Brodzinski, 320 Brookway, shared with the Board their concerns of a large recreational vehicle being parked in the space requested. Brodzinski mentioned the impact it could have property values and how each of the lots in the subdivision are comparable in dimension.

The applicant stated it is not the intent to park a large recreational vehicle, nor do they believe the proposal would lower property values.

Hardy closed the public hearing and called for board discussion.

Fisher asked staff if they knew of how long ago the property owner acquired the property, staff was not aware. Fisher inquired how far along the project was before Risk Reduction issued a stop work order. Staff clarified that the forms to pour the concrete had been laid and the curb cut was complete.

Hamilton asked for clarification if concrete pavers within the front yard would qualify as landscaping. Staff clarified that would not be allowed by regulations.

Hamilton stated if it were an isolated location that would not prompt a snowball effect then considering the request may be different. Hamilton noted the property and neighborhood was designed for each property to have 2 spaces available in the garage and 2 spaces in the driveway. Hamilton commented that while there are other properties in the neighborhood which have implemented similar expansions, she was not in support of the application. Hardy concurred.

Hardy stated disapproval for the request based on the layout and character of the neighborhood. Hardy identified the property does facilitate the parking of four vehicles and that the applicant chooses to not utilize the space as such. Chua and Wigfall concurred.

Wigfall stated there was not a regulatory hardship for the request, rather the applicant created the hardship within the property.

Chua stated there would interest from other property owners to pursue a similar request, as the applicant had also indicated. This would be a condition, if repeated, that would change the character of the neighborhood. Hamilton concurred.

Fisher stated the degree of loss of landscaped open space was too severe given the applicant could still expand the driveway by 3'.

Wigfall stated the lack of a buffer between the proposed pavement and the property line was also a determining factor.

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

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 404 BROOKWAY DRIVE:

Present land use: Single family residence

- 1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject property is part of the established Brookfield Additions, specifically Unit 5 which was platted in 2005 and developed in 2006. The existing residence conforms to the lot size requirements and bulk regulations of the R-1 District other than the front yard landscape open space requirement.
- 2. PROBABLE EFFECT ON ADJACENT PROPERTIES:** To satisfy this standard, the Board needs to determine that this request will not cause a substantial adverse effect on neighboring property. With parking permitted on only one side of the street, the applicant contends the exception will enhance nearby property by providing additional space for on-street parking, create a safer living environment, assist with drainage during rainfall between the subject property and the eastern adjacent property.

The principal impact on neighboring residential property associated with allowing driveways which exceed the requirement is the visual impact of replacing landscaped open space with pavement. In this particular request, an additional and perhaps of equal consideration is the impact of the eastern adjacent property as the applicant would be paving and parking vehicles up to the shared property line without visual screening or a

landscape buffer. It is understood there are parking limitation for on-street parking along Brookway Drive as only the South side of the approximately 22-foot roadway may be legally parked. However, each residence along Brookway Drive has a front-loaded two-car attached garage with a shared driveway apron to meet curb return requirements set forth by Public Works. As constructed, each residence has the opportunity to accommodate up to four (4) vehicles on their property, two (2) in the garage and two (2) in the driveway.

The subject property and surrounding neighborhood are within what is commonly referred to as the 500-year mapped floodplain, Zone X, in other words the property has a 0.2% annual chance of flooding. While there are not any floodplain-specific regulations which limit the impervious surface, or enhance landscaped open area requirement, a rational nexus exists between maintaining pervious surfaces in mapped floodplains for the purposes of increasing infiltration, decreasing run-off and therefore decreasing the risk of urban inundation.

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

GENERAL WELFARE: The subject property exhibits no uniqueness that would justify the exception request for this property and exclude all or any other Brookfield Unit 5, which could lead to the filling of the landscaped open space between each of the shared driveway aprons. The concern is that this request, if granted, will not be isolated to the subject property and could compel others to do the same leading to an erosion of the traditional front yard landscape and contribute to increased stormwater runoff along Brookway Drive.

4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY

WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The Zoning Regulations establish various requirements and provisions designed to achieve community goals and objective, thus, are to be applied uniformly across all property throughout the community. In this case, the Off-Street Parking Regulations permits the residence with a front-loaded, two-car attached garage to have a 24-foot driveway width, of which currently the subject property has a 21-foot driveway width. This arrangement allows the applicant, in theory, the ability to park up to 4 vehicles on the site without encroaching upon the public right-of way.

If the intent is to accommodate 4 vehicles on site and not on the street which can be parked on one side, the existing driveway and garage accommodate this objective. The applicant's proposal to exceed the allowed width by seven (7) feet, an increase of ten (10) total feet which extends the pavement to the eastern property line, with a proposed depth of 49-feet to accommodate 2 additional vehicles on site does not present the facts nor circumstances necessary to call into question the reasonability of the Off-Street Parking Regulations.

- (1) **Whether or not conditions of the property requiring the exception were created by the applicant with prior knowledge and disregard of applicable regulations;** There are no unique or otherwise extraneous conditions of the property which would require the exception in order for the property to perform within the intent of applicable regulations. The property owner was issued a violation from Risk Reduction for the illegal curb cut in September of 2020 after being denied the administrative request for the curb cut in 2018. It is not known if during the review process of the curb cut the applicant was also informed of the applicable zoning regulations for the driveway expansion which would have been subsequent to the curb cut. Irregardless of the curb cut, the applicant had the intent to pour concrete into the forms when cited by Risk Reduction.
- (2) **Whether or not the applicant acquired the property with knowledge of the conditions which require the exception and whether or not the consideration for the acquisition took into account such conditions;** The applicant purchased the lot with knowledge that the lot has space for four (4) vehicles to be parked on-site and the adjacent roadway, Brookway Drive may only be parked on one (1) side.
- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations:** The applicant may extend their current driveway by three (3) feet to achieve a 24-foot wide driveway and maintain compliance with these regulations.
- (4) **Whether or not a granting of the exception will result in a relative gain to the health, safety, and general welfare of the Community:** Granting the exceptions would result in a precedence being set for the Brookfield Addition, which consists of relatively uniform lots. Increasing the impervious area of this lot through granting the exception would not result in a gain to the health, safety or general welfare of the Community.

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 eight (8) foot side yard setback to four (4) feet for a proposed improvement to an existing porch and basement egress access on property located at [814 Osage Street](#), in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay (TNO).
(Applicant/Owner: Marianne Korten; file no: 20-048)

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, but recused herself from considering the item.

Estabrook presented the staff report for item 2.3. City Administration recommends to APPROVE to allow for the reduction of the minimum required eight (8) foot side yard setback to four (4) feet for a proposed improvement to an existing porch and basement egress access on property located at [814 Osage Street](#), in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay (TNO), with the following conditions:

1. The exception request shall pertain only to the enclosure of the deck and exterior stair as described in the application materials.
2. The improvements shall be maintained in good condition.

Hardy opened the floor to the Board to ask questions of staff. The Board had no questions.

Hardy opened the floor for the public hearing and comment from the applicant.

The applicant was present and provided an overview of the proposal.

Hardy closed the public hearing and called for board discussion.

Hamilton stated the request seems modest, appropriate and nonobtrusive. Hardy concurred.

Hardy stated support for the application as it did not further encroach and aligns with the TNO.

Wigfall stated it responds to functional need without impacting the character of the structure. Hamilton concurred.

Hardy called the question. Roll call vote was taken. Motion carried 4-0-1 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 814 OSAGE STREET:

Present land use: Single family residence

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject property was built in 1920, predating the adoption of Zoning Regulations in the City of Manhattan which occurred in 1926. The existing deck was constructed on the back side of the house in 1992. The applicant reports they and their neighbor to the west thought the shared property line was marked with an existing fence which sits approximately eight (8) feet from the residence. However, upon a survey the applicant discovered the residence was constructed four (4) feet from the western property line, meaning the residence and existing deck encroach upon the eight (8) foot side yard setback

by four (4) feet. The condition would be considered grandfathered as it pre-dates the adoption of zoning by the City of Manhattan. Aside from the exception being sought the subject property conforms with all other setback requirements. The subject property also complies with all lot dimension, lot coverage, maximum height, and all other applicable regulations for the R-1, Single Family Residential District with TNO, Traditional Neighborhood Overlay.

2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The location, and therefore encroachment upon the western side yard setback, is an existing condition of the residence for 100 years and the deck for approximately 28 years. The property directly to the west, closest to the existing residence and deck, would be most impacted by a modification to the deck. Considering the proposed modification is enclosing and installing insect screening to an existing deck, which would not further encroaching upon the setback, it would be anticipated to have minimal effects on adjacent properties.
3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed modification does not further encroach upon the setback, nor does it encroach upon any easements. The improvement would not be visible from the street.
4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The residence was constructed before the Manhattan Zoning Regulations were adopted and setbacks established.
 - (5) **Whether or not conditions of the property requiring the exception were created by the applicant with prior knowledge and disregard of applicable regulations;** The subsequent deck was built to be flush with the primary structure without knowledge of the residence's encroachment into the setback.
 - (6) **Whether or not the applicant acquired the property with knowledge of the conditions which require the exception and whether or not the consideration for the acquisition considered such conditions;** The applicant was unaware of the residence and deck's encroachment upon the setback as there was an established fence approximately eight (8) feet from the residence that was presumed to be the property line.
 - (7) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations:** There

exists no reasonable alternative for the property to come in compliance with the side yard setback, and is considered grandfathered. Disapproving the modification of enclosing the deck, which is flush with the western façade and does not increase the degree of encroachment, would not bring the existing deck into compliance.

- (8) **Whether or not a granting of the exception will result in a relative gain to the health, safety, and general welfare of the Community:** Granting the exception request is not anticipated to negatively impact the health safety, or general welfare of the community. Generally, this improvement upon the property is a relative gain the neighborhood.

2.4 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, to allow for the reduction of the minimum required eight (8) foot side yard setback to zero (0) feet for the replacement of an existing garage on property located at [1738 Fairchild Avenue](#), in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay (TNO). (*Applicant/Owner: Fox Home Innovations, LLC – Jim and Monika Munce; file no: 20-049*)

Estabrook presented the staff report for item 2.4.

City Administration recommends to APPROVE to allow for the reduction of the minimum required eight (8) foot side yard setback to zero (0) feet for the replacement of an existing garage on property located at [1738 Fairchild Avenue](#), in the R-1, Single-Family Residential District with Traditional Neighborhood Overlay (TNO), with the following conditions:

3. The exception request shall pertain only to the single-car, detached garage as described in the application materials.
4. No portion of accessory structure, including the roof eave and any gutters, may encroach upon neighboring property.
5. Gutters and downspouts are installed to divert runoff away from the neighboring property to the East
6. The accessory structure shall be maintained in good condition.

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

Hardy clarified that the alteration from 8' to 3' regarding the regulations applicable did not impact the ability to hear the case. Staff confirmed, because the nature of the request to encroach upon the setback to the property line remained the same.

Hardy opened the public hearing and requested the applicant to speak.

Chris Fox, applicant on behalf of the property owners, provided an overview of the need for the request.

Hamilton asked if the existing tree would be impacted. Fox confirmed the tree would likely be removed due to root damage.

Chua inquired what the issues would be present if the structure was shifted to the west. Fox indicated that it would not be possible for a vehicle to back-out of the drive.

Hamilton clarified the applicant would like to preserve the existing driveway as much as possible. Fox confirmed.

Wigfall inquired about the maintenance plan for the gutters and east wall since it would be placed on the property line. Fox explained it will be difficult, yet feasible.

Hamilton asked how the gutters are designed. Fox stated they are eliminating the gutter connection from the house and installing down spouts on the garage.

Staff read the received public comments into the record.

Hardy closed the public hearing and called for board discussion.

Hardy stated support for the application due to the existing encroachment and dilapidated nature of the structure.

Wigfall stated it appears the application is attempting to resolve existing issues and that replacement of the dilapidated structure is good for property values.

Chua stated that trying to move the structure further west than the property line would be detrimental to access the structure and the property. Hardy concurred and noted that the placement aligns with the existing driveway.

Hamilton stated support for the application, but had concern about runoff as the neighbors to the east had identified. Hamilton suggested an additional condition which would require the downspouts to be installed to divert runoff away from the eastward neighboring property. Hardy and Wigfall concurred.

Hamilton stated there will have to be cooperation between the neighbors to maintain the backside of the fence and the applicant's accessory structure, but noted that the encroachment onto the neighboring property is the existing condition and would be eliminated.

Fisher concurred.

A fourth condition was word-smithed, Condition 3.

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

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 1738 FAIRCHILD AVENUE:

Present land use: Single family residence

- 1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject property was built in 1930, therefore subject to the Zoning regulations of 1926 which permitted the construction of accessory structures to have a zero (0) foot setback from the property line. The condition to which resulted in the roof eave encroaching upon to the neighboring property is unknown, however is surveyed as the current condition. Aside from the exception being sought the subject property conforms with all other setback requirements. The subject property also complies with all lot dimension, lot coverage, maximum height, and all other applicable regulations for the R-1, Single Family Residential District with TNO, Traditional Neighborhood Overlay.

- 2. PROBABLE EFFECT ON ADJACENT PROPERTIES:** The location, and therefore encroachment upon the eastern side yard setback, is an existing condition of the accessory structure for the better part of 90 years. The property directly to the east, of which the current accessory structure encroaches upon, would be most impacted by the reconstruction of the detached garage. Considering the proposed reconstruction would correct the encroachment upon the neighboring eastward property, it would be anticipated to have a net positive effect on adjacent properties.

- 3. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The existing garage is grandfathered relative to side yard setback and encroaches on the neighbor's property by virtue of the roof overhang. The proposed garage will reduce the encroachment by pulling back the roof overhang to the property line.

- 4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:**
 - 1. Whether or not conditions of the property requiring the exception were created by the applicant with prior knowledge and disregard of applicable regulations;** The existing accessory structure was constructed in 1930 and not a condition created by the applicant.

 - 2. Whether or not the applicant acquired the property with knowledge of the conditions which require the exception and whether or not the consideration for the acquisition considered such conditions;** The applicant does not seem to

have been aware of the accessory structure encroachment upon the neighboring property before a survey of the property was complete.

3. **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations:** The placement of the accessory structure and driveway along the property line with a zero (0) foot setback is a common trait along Fairchild Avenue, as it was permitted during the establishment of the neighborhood. In order to maintain access to the accessory structure from the current driveway, there is not a reasonable alternative that would allow the property to meet the strict application of these regulations. Requiring the garage to observe the side yard setback requirement would result in the garage encroaching on the applicant's house.
4. **Whether or not a granting of the exception will result in a relative gain to the health, safety, and general welfare of the Community:** Reconstruction of the depilated garage would not only serve the owners of the subject property, but also of the property owners to the east of which the current accessory structure encroaches upon.

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, January 13, 2020

Respectfully submitted by, Samantha K. Estabrook, Resiliency Planner

Edits