

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, January 13, 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: Chad Bunger, Assistant Director for Community Development
Barry Beagle, Senior Planner | Current 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 DECEMBER 9, 2020, BOARD OF ZONING APPEALS MEETING.**

Wigfall moved to approve the December 9, 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 reduction of the minimum required twenty-five (25) foot rear yard setback to thirteen (13) feet for a proposed enclosed deck on property located at **225 Highland Ridge Drive**, in the R-1, Single-Family Residential District. (*Applicant/Owner: Cheryl Greathouse; file no: 21-004*)

Estabrook presented the staff report for item 2.1. City Administration recommends to APPROVE the EXCEPTION to allow for the reduction of the minimum required twenty-five (25) foot rear yard setback to thirteen (13) feet for a proposed enclosed deck on property located at 225 Highland Ridge Drive, subject to the following conditions:

1. The exception request shall pertain only to the enclosed deck as described within the application materials.
2. The structure shall be maintained in good condition as an enclosed deck.

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

Hamilton inquired about the open deck's impact on the rear yard setback. Staff clarified that the open deck would not impact the rear yard setback since it not tied back into the primary structure nor is it enclosed.

Hardy and Hamilton asked for clarification regarding the lot coverage due to the drawing. Staff verified the scaling within the drawing was off, but the property remained compliant in lot coverage.

Hamilton, Hardy, and Chua commented on the differentiation between a housing addition and an enclosed deck within the staff report.

Hardy opened the public hearing and comment from the applicant.

The applicant, Cheryl Greathouse, and the contractor, Jacob Smith, spoke in favor of the application.

Hamilton asked the applicant if they had more perspective on neighbors who may be considering doing a similar project. The applicant stated many of the neighboring lots were slightly bigger with more space in the rear yard, and less of a grade change between the rear properties.

Hardy closed the public hearing and called for board discussion.

Fisher and Wigfall asked for clarification if the addition would be structurally attached to the residence. Staff clarified that while the addition would be structurally attached, the proposal meets the standards of an enclosed deck, not a room addition due to the exterior door which leads to the enclosed deck.

Hamilton asked for clarification that if it was not attached to the house it would be considered an accessory structure. Staff affirmed.

Chau mentioned concern for the structure being so close to the rear yard setback. Hardy concurred and cited the change in grade as a reason for being able to support the application on its own merits.

Hamilton noted she wished the intrusion wasn't so strong, but that the applicant had been using the space in the same fashion as a deck just without the enclosure. Hamilton cited the grade change as a compelling reason for approval.

Chau, Hamilton, and Hardy all identified the second condition, "the structure must be maintained in good condition as an enclosed deck." Chau and Hamilton clarified that any alterations would require the proposal return to the Board for consideration.

Hamilton clarified that there were no public comments received. Staff confirmed.

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 225 HIGHLAND RIDGE DRIVE:

Present land use: Single family residence

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property was built in 2006 as part of the Highland Meadows Unit 3 Subdivision, a subdivision which hosts rather uniform lots for the single family dwelling lots. Aside from the exception being sought the subject property conforms to all setback lot dimension, lot coverage, maximum height, and all other applicable regulations for the R-1, Single Family Residential District. Construction of the enclosed deck would maintain the required 8' side yard setbacks and the property would still be in compliance with the 35% lot coverage maximum.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject property is comparable to all immediately adjacent properties in terms of size, lot coverage, and setbacks of the primary residence. Some lots within the subdivision have a greater rear yard due to the radial nature of Highland Ridge Drive. The property which would experience the greatest probable effect is the neighbor to the west, in which the rear yard abuts, 304 Highland Pointe. A fence is located on the perimeter of the subject property and the neighboring property has a retaining wall due to a rather significant grade change that occurs in the rear yard of the two properties. The neighboring property, 304 Highland Pointe, has a two-level deck on the rear of their structure which complies with Zoning Regulations. The applicant seeks this exception in part to create more privacy due to the two-level nature of the neighboring deck, however their primary residence sits 25' from the setback which is why an Exception is being sought.

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

While there would be minimal to no impact on the health, morals, convenience, or propensity on the neighborhood and community from the Exception being granted, there could be impact on the order and general welfare of the subdivision if the request is not isolated or the structure addition is utilized for other than its intended purpose as an enclosed deck. The applicant contends the enclosure of the deck would increase the degree of privacy for the subject property, however evaluation must also be given to the impact on privacy, order, and general welfare to the directly adjacent property along the rear lot line. Given the significant change in elevation between the two properties the proposal may be fitting to remedy the privacy concern of the property owner, however an encroachment of 12' into a rear yard setback is significant for a proposed enclosed structure.

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 applicant was informed of the encroachment when applying for a building permit to rebuild and

enclose an existing deck.

- (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;** at the time of acquisition, the applicant did not consider the condition.
- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations:** The residence at all points measures 25' from the rear yard setback. An enclosed deck is not a necessary element for activities to be able to occur within a rear yard, however may be a preferred element considering the change in elevation between adjacent properties makes the presence of the existing fence, which would typically grant a degree of privacy, minute.
- (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:** Construction of the enclosed deck will not result in a relative gain nor loss to the health, safety, and general welfare of the Community due to the unique nature of the grade change between the rear abutting property.

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 reduction of the minimum required front yard setback from twenty-five (25) feet to a maximum of twenty-three (23) feet along Givens Rd, from twenty-five (25) feet to a maximum of five (5) feet along the stem of Cherokee Cir, and from twenty-five (25) feet to maximum of zero (0) feet along the bulb of Cherokee Cir for a proposed fence on property located at 1412 Givens Rd, in the R-1, Single-Family Residential District. (*Applicant/Owner: Cody Crocker; file no: 21-006*)

Estabrook presented the staff report for item 2.2. City Administration recommends to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to a maximum of twenty-three (23) feet along Givens Rd, from twenty-five (25) feet to a maximum of five (5) feet along the stem of Cherokee Cir, and from twenty-five (25) feet to maximum of zero (0) feet along the bulb of Cherokee Cir for a proposed fence on property located at 1412 Givens Rd, in the R-1, Single-Family Residential District, subject to the following conditions:

1. The exception request shall pertain only to the fence as described in the application materials.

2. The fence shall be maintained in good condition.

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

Hamilton and Hardy asked for clarification regarding the proposed fence placement to the existing vegetation. Staff clarified that the goal was for the fence to encompass the vegetation, not for the vegetation to screen the fence placement.

Hamilton asked for the distance from the property line to rear curb. Staff provide 15' based on the applicant's submission.

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

The applicant, Cody Crocker, spoke in favor of the application and clarified vegetation location. Crocker stated they had reached out to the neighbors and gotten approval

Fisher and Hamilton asked for clarified on the existing chain link fence on the opposite side of the property and its location to the property line/neighbors.

Hamilton asked what the vegetation would be on the corner of the cul-de-sac. The applicant stated they would maintain the current bushes if they grow back properly.

Hamilton and Hardy asked for the style of the fence. The applicant indicated the fence would be a 6' wooden privacy fence with varied pickets.

Chua inquired if any of the trees would be taken out. The applicant, Crocker, stated that all the trees would be maintained within the fence line.

Hardy closed the public hearing and called for board discussion.

Hamilton stated support for the application due to the nature of the lot and the applicant's response to concerns. Hardy concurred and cited the nuanced nature of the lot when platted.

Hardy stated appreciation for the applicant reaching out and seeking agreeance from the neighborhood.

Wigfall commented there is a sufficient amount of vegetation to buffer it from the neighboring property.

Fisher inquired about the property line and relationship to the existing vegetation.

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

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR AN EXCEPTION AT 1412 GIVENS RD:

Standards for Exceptions (Sec. 14-605)

5. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property was built in 1965 and aside from the exception being sought the subject

property conforms to all setbacks, lot dimension, lot coverage, maximum height, and all other applicable regulations for the R-1, Single Family Residential District. The front façade of the residence maintains the twenty-five foot front yard setback.

6. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject property gains access from Givens Rd, however is impacted and shaped from Cherokee Circle. Out of all four of the properties at the intersection of Givens Road and Cherokee/Sioux Circle, the subject property is the only one significantly impacted by the bulb of a cul-de-sac. The neighboring lots are able to maintain a more traditional rear yard due to their orientation, configuration, and/or size. The subject property has two directly adjacent neighbors. The adjacent property to the north would see no effect from the installation of a fence. The probable effect on the adjacent property to the east would be minimal to none based on the highly vegetated nature of the lot which already provides a high degree of separation between the two residences. Considering the unique nature of the lot, the offset from the curb line to the property line, and the vegetated nature of the site, it would be anticipated to have no effect on adjacent properties.

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

Considering the location of the vegetation and density of the vegetation on the lot, there is no reasonable expectation that sight lines would be further impacted. Due to the low-traffic local roadway and the existing vegetation of the lot, there would be no anticipated adverse impact caused by granting the request.

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

- (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 conditions by which the property is bound by was created by the original subdivision in 1965 resulting in the lots odd configuration and setback limitations.
- (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;** Due to the marginal nature of the encroachment request, the placement of the accessory fence was likely not anticipated by the applicant at the time of acquisition.
- (7) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations:** There is not a reasonable alternative which would allow the property to meet the strict application of these regulations and construct a reasonable fenced enclosure on their property as there is no true rear yard.

- (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:** Placement of the fence would neither result in a relative gain or loss to the health, safety, and general welfare of the Community due to the existing vegetation on the lot and the degree to which the bulb of the Cherokee Circle cul-de-sac has on the rear property line.

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 7:58pm

NEXT MEETING: Wednesday, February 10, 2020

Respectfully submitted by, Samantha K. Estabrook, Resiliency Planner