

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, February 10, 2021
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
Tyler Tripp, Bicycle and Pedestrian Coordinator

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.**

Hamilton moved to approve the January 13, 2021 minutes with minor corrections. The motion was seconded by Wigfall 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 front yard setback to 23.9 feet; and to exceed the maximum lot coverage from 35 percent to 37 percent on property located at **2047 Stephen Ct**, in the R-2, Two Family Residential District (*Applicant/Owner: Paul Dickinson/Karen Hummel; file no: 21-017*)

Estabrook presented the staff report for item 2.1. City Administration recommends to APPROVE the to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to 23.9 feet; and to exceed the maximum lot coverage from 35 percent to 37 percent on property located at 2047 Stephen Ct, in the R-2, Two Family Residential District, subject to the following conditions:

1. The Exception shall pertain only to enlarging and enclosing a sunroom to not exceed 37 percent lot coverage.

2. The lower deck shall not further encroach upon the drainage easement.
3. The Exception to the front yard setback shall only apply to the garage as built.
4. The addition shall be maintained in good condition.

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

Fisher asked a clarifying question to determine that the lot was out of compliance prior to the sunroom expansion at no fault of the property owner, as well as to verify that the expansion of the sunroom would have marginal impacts on the existing nonconformities. Estabrook indicated that that is how staff would also describe the situation.

Chua asked to clarify that there were three designs that were provided for the potential expansion and that the one being presented was the design that would encroach the most. Estabrook confirmed that this was the case.

Hardy opened the public hearing and comment from the applicant.

Karen Hummel indicated that she was satisfied with how the application was presented and offered to answer any questions. The members of the board had no questions.

Hardy closed the public hearing and called for board discussion.

Wigfall presented that, as the existing noncompliance is of no fault of the current property owner, and the additional desired encroachment is not extreme and would not affect the character of the community, she was in favor of allowing an exception. Other board members agreed with Wigfall's comment.

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

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 2047 STEPHEN CT:

Standards for Exceptions (Sec. 14-605)

Present land use: Two family residence

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

Other than the exception request, the subject site complies with all applicable regulations. Existing noncompliance with regulations is of no fault of the current property owner. The front yard setback was likely impacted by the cul-de-sac. Though the existing deck and the proposed sunroom slightly encroach on a drainage easement, Public Works has determined that it does not impede with the function or ability to access the easement.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

Granting the exception request would have no anticipated impact on adjacent properties.

The property is not out of character from the rest of the community and granting the exception would not make it out of character.

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

The exception would have no anticipated adverse impacts on public health, safety, morals, order, convenience, prosperity, or general welfare due to the marginal impact of the proposed changes and the existing conditions likely having been affected by the addition of a cul-de-sac.

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 conditions by which the property is bound by was created by the original subdivision in 1999 resulting in the lot's odd configuration and setback limitations.
- (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 was not aware of the two conditions that would require an exception until they surveyed the lot in 2019 for the proposed project.
- (3) **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 that would remove the encroachment on the front yard setback. The property could only achieve compliance with the lot coverage standard by removing both decks, upper and lower, one of which was originally constructed with the structure.
- (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 exception would not result in a relative gain or loss to the health, safety, or general welfare of the Community.

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 **2704 Brookville Drive**, in the R-1, Single-Family Residential District. (Applicant/Owner: Justin Klima; file no: 21-018)

Estabrook presented the staff report for item 2.2. City Administration recommends to DENY the Exception request at 2704 Brookville to exceed the maximum driveway width by seven (7) feet; And, to reduce the front yard area minimum landscaped open requirement from 75% to 61.8%.

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

Both Fisher and Hamilton asked for clarification on the allowed width of the driveway and the total lot coverage. Estabrook explained that the property owner has the right to widen the driveway to 24ft, but, if they should exceed that width, the front yard 75% landscaped open space requirement would apply.

Hardy asked to clarify that the new paved area was all that was making this property noncompliant and that the old driveway was not an issue. Estabrook confirmed that this was the case.

Hamilton asked if the concrete on the side yard would be considered part of the front yard. Estabrook indicated that it is not considered part of the front yard and is not a compliance issue and that the property owner would not be required to remove this section of their expansion should the request be denied.

Hamilton asked if the basketball hoop itself was in compliance. Beagle indicated that the basketball hoop would likely not be considered an accessory structure and therefore would not be seen as noncompliant.

Hardy opened the public hearing and comment from the applicant.

Applicant Miranda Russel provided that several other properties in the area had driveway expansions similar to the one on their property and inquired whether the others had been approved. Russel stated that she was unaware that the expansion of the driveway would be an issue and that the covenants did not describe the limitations now being addressed. Russel stated they own two large pickup trucks which are parked in the driveway. Russel stated that when guests park in the driveway behind the trucks, they hang slightly out of the driveway causing safety issues. She also stated that when parking in the street it creates visibility issues for the nearby pedestrian crossing, or, if parked far enough back as to not create those visibility issues, blocks the mailbox. She stated that the expansion was also to add a basketball goal for her children. Russel stated that she had received no complaints and that her neighbors stated that they wish they could also expand their driveway. Russel stated that the expansion of the driveway was also draining additional water from their property and preventing cracking in their concrete. Russel also inquired whether if the expansion were removed, they could use the grass adjacent to the driveway as an additional parking spot. Russel offered to answer any questions.

Hamilton and Hardy indicated that they cannot recall approving similar expansions and that the other properties that Russel provided may also not be in compliance.

Hardy inquired if there was a difference in the regulation of concrete and the regulation of pavers such as gravel. Bunger explained that gravel would also not be permitted and that there are also regulations against parking in non-paved areas in the front yard.

Wigfall inquired whether pavers with gaps for vegetation would be considered as coverage of the required open space. Bunger indicated that the vegetated gaps would be removed from the calculation of lot coverage, but the covered area would still be considered, and that this method would likely not work to the extent of making the property compliant.

Hardy closed the public hearing and asked for written comments.

Cecil Stout of 205 Brookstone Dr. provided a brief written comment in support of the exception.

Hardy called for board discussion.

Fisher asked Hamilton if the images submitted of other properties with driveway expansions were also mostly likely not in compliance. Hamilton stated that she does not recall approving any driveway expansions in this area. Hardy confirmed that he also does not recall allowing exceptions to driveway width in this area.

Fisher asked how this property was identified over other similar properties. Estabrook stated that City Risk Reduction is the group that identifies zoning violations. Estabrook also stated that depending on lot conditions, certain properties may not be in violation if they expanded their driveways. Additionally, other properties that were cited may have chosen to comply and remove their expansions without taking a request to the Board of Zoning Appeals. Beagle also presented that many violations are found by Risk Reduction through citizen complaints.

Hamilton stated that she was not in support of approving the exception since this case lacks uniqueness compared to similar instances that have been rejected in the past. There is substantial uniformity to this area that the property in question is not conforming to with the expansion of the driveway. Hamilton stated that by allowing this exception, it would create a precedent that could decrease the uniformity and decrease the value of this area. Hamilton also offered that it may be worthwhile for the City to provide some additional information that could potentially be provided by realtors when a home is purchased notifying the new owner of zoning limitations.

Wigfall presented that she understood and valued the statement of Russel indicating the need for safety for her children. Wigfall still stated that other factors still put her in support of denying the request.

Chua also stated that he sympathized with Russel but agreed that adjustments should only be made in the allowances of zoning codes for the area. He was also concerned that allowing this exception would create an unwelcome precedent.

Fisher also commented on the lack of uniqueness of the case and the precedent that would be set by allowing the exception.

Hardy stated that he also sympathized with Russel but also agreed with staff's recommendation to deny the request.

Hardy entertained a comment from Miranda Russel.

Russel asked if she should report other properties that have had their driveways widened. She reiterated the visibility and safety issues caused by parking in the street and indicated that she has called the police in the past because people were speeding on the road. Russel indicated her frustration that her property was identified, and others were not. She stated that she would provide photos and file complaints against other properties she believes to be out of compliance.

Hardy deferred to staff to answer Russel's questions. Bunger stated that the photos that were submitted by Russel will be forwarded to Risk Reduction so that they may investigate properties that they may currently be unaware of. Bunger also stated that using pavers to expand the driveway would likely not allow for enough landscaped open space to fall within zoning regulations but that the City would be willing to help provide guidance in this issue.

Russel stated that she knew a landscape architect that told her that the addition helped with draining water away from her property. She stated that she believed that the addition increased curb appeal. Russel also stated that there was nothing in the covenants that conveyed the limitations. Bunger stated that covenants are private agreements which often differ from city zoning regulations. Russel stated that parking in the street effectively turns the road into a one-way street.

Hardy called for any additional board discussion.

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

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE REJECTION AT 2704 BROOKVILLE DRIVE:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

Other than the exception request, the subject site complies with all applicable regulations. The exception being requested is for existing conditions.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The board determined that granting the exception would have a negative affect on adjacent properties due to concerns about drainage, particularly as the property is in a 0.2% annual chance floodplain, and it would damage the uniformity and character with neighboring properties. There was also concern about setting a precedent for altering driveways that would damage the uniformity and character of the area as a whole.

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

The property does not exhibit uniqueness that would justify making the exception. Additionally, this exception would likely not be isolated if it were to have been allowed. If others were to start reducing landscaped open space on their properties, it would likely increase stormwater runoff and erosion.

- 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 objectives, 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 by right could have extended their existing driveway by 3' to achieve a total of 24', in order to accommodate parking a larger truck which does not fit within the garage.

- (5) **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 develop within the intent of applicable regulations.
 - (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 purchased the lot with knowledge that the lot has space for four (4) vehicles to be parked on-site and the adjacent roadway, Brookville Drive may only be parked on one (1) side.
 - (7) **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.
 - (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 exceptions would result in a precedent being set for the Brookfield Addition, which consists of relatively uniform lots, aside from those on the Brookville Circle cul-de-sac. 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.
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Hardy adjourned the meeting at 8:13pm

NEXT MEETING: Wednesday, March 10, 2020

Respectfully submitted by Tyler W. Tripp, Bicycle and Pedestrian Coordinator