

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, May 12, 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: Barry Beagle, Senior Planner | Current Planning
John Adam, Senior Planner | Long Range
Samantha Estabrook, Resiliency Planner
Tyler Tripp, Bicycle and Pedestrian Coordinator/Planner Intern

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 April 14, 2021 minute. 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 0 feet on property located at 2616 Eureka Terrace to accommodate the construction of a screening fence in the I-3, Light Industrial District (*Applicant/Owner: BATA, LLC aka Larson Construction; file no: 21-036*)

Tripp presented the staff report for item 2.1. City Administration recommends to approve the exception request at 2616 Eureka Terrace to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to 0 feet, subject to the following conditions:

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

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 twenty-five (25) foot front yard setback to 0 feet on Lot 35 of the Eureka Addition #2 Subdivision to accommodate the construction of a screening fence in the C-6, Heavy Commercial District (*Applicant/Owner: BATA, LLC aka Larson Construction; file no: 21-038*)

Tripp presented the staff report for item 2.2. City Administration recommends to approve the exception request at Lot 35 of the Eureka Addition #2 Subdivision to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to 0 feet, subject to the following conditions:

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

Hardy opened the floor to the Board to ask questions.

Fisher asked clarifying questions about what was currently fenced and where new fences and gates would be installed. Tripp explained that only the southern portion of 2616 Eureka Terrace had existing fencing and clarified the locations of the proposed gates.

Fisher asked how the case was identified. Tripp explained that the applicant was notified of the need to screen storage when applying to change the zoning of Lot 35 of Eureka Addition from C-6 to I-3 and is applying for the exception in order to meet that requirement.

Hardy opened the public hearing and comment from the applicant.

Applicant Tammy Rogers, 2616 Eureka Terrace, clarified that the existing fence on the south side of the property was previously approved by the Board of Zoning Appeals when it was originally installed.

Hardy called for board discussion.

Wigfall stated that she appreciated that the applicant was seeking to change the zoning of the properties to match each other and indicated general support for the requests.

Hardy asked that the staff report be edited to reflect that the existing fence had been accepted by BZA in the past. Beagle stated that though the flaw does exist in the staff report, it would be more appropriate to include that additional information in the notice of the board's decision.

Hardy called the question for item 2.1. Roll call vote was taken. Motion carried 5-0-0 with two conditions of approval as recommended by staff.

Hardy called the question for item 2.2. Roll call vote was taken. Motion carried 5-0-0 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 2616 EUREKA TERRACE:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The property is currently not in compliance with Article 4-205(E)(2), which requires screening of six feet in height should there be outdoor storage at the property. The applicant is seeking to add the screening and is seeking exception for the setback of the screening. The subject property is in compliance with all applicable regulations other than those for which an exception is being sought.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

Adding screening is a requirement if outdoor storage is used. Since the adjacent properties are industrial uses (zoned I-2, I-3, C-6, and Penny's Concrete Industrial PUD), moving the screening fence to the property line will not have an adverse effect on said properties.

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

Due to the marginal nature of the request, there would be no anticipated adverse impact caused by granting the request. The subject property is in character and likeness with the surrounding properties. The addition of the fence in line with the existing fence aids in providing screening from outdoor storage. Reducing setback requirements will not have a significant effect in reducing accessibility or have a negative visual impact. The property does not abut any public intersections. Any access points on the property would still have approximately 25 feet between the fence and Eureka Terrace, allowing for sufficient sight distance for vehicles turning out of the property.

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 property owner was not aware of the requirement to include 6-foot screenings around any storage space until applying for a zoning change for the property located at Lot 35 of the Eureka Addition #2 Subdivision. The existing fencing was installed with approval of the Board of Zoning Appeals.

(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 screening requirement of the I-3 District, but this exception is intended to address the need for the screening.

- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** The proposed fence could be placed at the 25-foot setback and still give the property owner some enclosed space in order to meet the regulations. However, the proposed setback reduction would allow for the new fence to be in line with the existing fence, maximize the space available for storage, and limit unwanted passthrough traffic. The two properties to the east are surrounded by screenings that go to the property line on all sides but the front of the property. As such, screenings at the property line would not be out of character for the area and would shield storage space. Additionally, by reducing the visibility of storage on the property, the character of adjacent properties will be better preserved.
- (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. By shielding storage from view with adequate screening, there is a net benefit to the area.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT LOT 35 OF THE EUREKA ADDITION #2 SUBDIVISION:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The property is currently not in compliance with Article 4-205(E)(2), which requires screening of six feet in height should there be outdoor storage at the property. The possible rezoning to I-3 would also require screening. The applicant is seeking to add the screening and is seeking exception for the setback of the screening. The subject property is in compliance with all applicable regulations other than those for which an exception is being sought.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

Adding screening is a requirement if outdoor storage is used. Since the adjacent properties are industrial uses (zoned I-2, I-3, C-6, and Penny's Concrete Industrial PUD), moving the screening fence to the property line will not have an adverse effect on said properties.

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

Due to the marginal nature of the request, there would be no anticipated adverse impact caused by granting the request. The subject property is in character and likeness with the surrounding properties. The addition of the fence in line with the existing fence aids in providing screening from outdoor storage. Reducing setback requirements will not have a significant effect in reducing accessibility or have a negative visual impact. The property does not abut any public intersections. Any access points on the property would still have approximately 25 feet between the fence and Eureka Terrace, allowing for sufficient sight distance for vehicles turning out of the property.

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 property owner was not aware of the requirement to include 6-foot screenings around any storage space until applying for a zoning change for the property located at Lot 35 of the Eureka Addition #2 Subdivision. The existing fencing was installed with approval of the Board of Zoning Appeals.
- (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 screening requirement of the C-6 District, but this exception is intended to address the need for the screening.
- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** The proposed fence could be placed at the 25-foot setback and still give the property owner enclosed space in order to meet the regulations. Other properties on the outer portion of Eureka Terrace follow the 25-foot setback and it would be slightly out of character to have a reduced setback for this property. However, the proposed setback reduction would maximize the space available for storage.
- (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. By shielding

storage from view with adequate screening, there is a net benefit to the area.

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 rear yard setback to 5 feet on property located at 1920 Humboldt Street in the R-1, Single Family Residential District (*Applicant/Owner: John Rice/Miriam Edelman; file no: 21-037*)

Estabrook presented the staff report for item 2.2. City Administration recommends to APPROVE the exception request at 1819 Erickson Street to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to 0 feet, subject to the following conditions:

1. The Exception shall pertain only to the breezeway as described within the application materials and staff report.
2. The addition shall be maintained in good condition as a breezeway.
3. All necessary permits shall be obtained.

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

Hardy opened the public hearing and comment from the applicant.

Estabrook read a public comment in favor of the addition of the breezeway and reaffirming that exception standards 1 and 2 are met with this project.

Consultant John Rice stated that he was satisfied with how the project was presented in the staff report.

Hardy called for board discussion.

Wigfall stated her appreciation for the design breezeway. She indicated that it did not look out of place with the other structures.

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

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 1920 HUMBOLDT STREET:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The property is currently not in compliance with Article 5-103(B)(3), which requires a 10' rear yard setback for an accessory structure which abuts an alley. The detached garage is situated 5.05' to 6.15' from the rear lot line. Constructed in 1944, the proximity of the accessory structure to alley would be grandfathered; However, due to the applicant's desire to connect the primary and accessory structure, an Exception to the 25' rear yard setback for primary structures is required. The eastern lot line is located 14' to 16' from the present primary and accessory structures which is in compliance with the side yard setbacks of 8' and 3', respectively.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The proposal would not have an adverse effect on adjacent properties, due to the existing location of the accessory structure, the maintenance of the accessory structure's use as a garage, and the proposed breezeway compliance to the side yard setback. As noted within the project description, this portion of Humboldt Street is extremely private with only two residences having vehicular access from the roadway. The remaining properties utilize N. Evergreen Avenue or the two alley ways which hug the subject property. The setback request for the subject property is for the northern lot line, which abuts the east-west alleyway, but the orientation of the garage facilitates access from the north-south alleyway. In total, there are 6 properties which utilized the east-west alleyway for access to their detached garages. Only 2 properties take access from the north-south alleyway, the subject property, and their directly adjacent neighbor to the east. Considering the request for the Exception is for a nonactive façade of the garage, or in other words a façade not equipped with a garage door where additional parking of vehicles may be expected, the potential for any adverse effect is nil.

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

Due to the marginal nature of the request, there would be no anticipated adverse impact caused by granting the request. The subject property is in character and likeness with the surrounding properties. The addition of the breezeway would be an improvement upon the lot and does not propose to further encroach upon the setbacks.

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;** Absent the desire to connect the primary and accessory structure, the accessory structure is still located less than the 10' from the rear lot line. The applicant did not contribute to this condition. When the applicant became aware that connecting the two structures with a breezeway would cause the entire structure to be evaluated as a primary structure, and therefore subject to a 25' rear

yard setback, they made application for this Exception.

- (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 did not acquire the property with the intent to complete the project being proposed.
- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** Maintaining the existing conditions of a detached garage and primary structure is a reasonable alternative. However, the applicant is not proposing to encroach upon the setback further. Constructing a breezeway would improve the use for the property owner, without altering the degree of encroachment of the garage to the property lines.
- (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 result in a relative gain to the health, safety, and general welfare of the Community by means of a well-designed, incharacter breezeway which increases the usability for the property owner. Otherwise, there is no relative gain or loss to the health, safety, and general welfare as a result of this proposal.

Hardy adjourned the meeting at 7:37pm

NEXT MEETING: Wednesday, June 9, 2020

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