

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, June 9, 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
Ben Chmiel, Planner II | 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 May 12, 2021 minutes. The motion was seconded by Wigfall and approved; 5-0.

2.1 A PUBLIC HEARING to consider a **VARIANCE** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a total of 6 on-premise wall signs on property located at 205 S 4th Street in the C-4, Central Business District (*Applicant/Owner: Schurle Signs on behalf of Icon Investments; file no: 21-042*)

Estabrook presented the staff report for item 2.1. City Administration recommends to approve the Variance request at 2616 Eureka Terrace to allow for a total of 6 on-premise wall signs, subject to the following conditions:

1. The variance shall pertain only to the sign package as described in the application materials and staff report.
2. All applicable permits shall be obtained.

Hardy opened the floor to the Board to ask questions.

Hardy opened the public hearing and comment from the applicant.

Hardy called for board discussion.

Hamilton indicated support based on the proposed signage being in character with the surrounding developments.

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.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE VARIANCE AT 205 S 4TH STREET:

Standards for a Variance (Sec. 14-504)

- 1. THE VARIANCE REQUESTED ARISES FROM SUCH CONDITION WHICH IS UNIQUE TO THE PROPERTY IN QUESTION AND WHICH IS NOT ORDINARILY FOUND IN THE SAME ZONING DISTRICT, AND IS NOT CREATED BY AN ACTION OR ACTIONS OF THE PROPERTY OWNER OR THE APPLICANT:**

The property is a large commercial center originally designed and occupied by a singular tenant which made the multiple clearly demarcated entrances and directory signs a nonissue. While the size of the property is not completely unique within its zoning district, it is one of the few structures that was originally designed for one tenant and must be retrofit in order to support a market where tenants require smaller square footages. The sign package requested reflects the unusual tension of re-use of a historic and previously single-occupancy structure.

- 2. THE GRANTING OF THE VARIANCE WILL NOT ADVERSELY AFFECT THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS:**

The number of properties which face the Sears Center are limited and the property directly to the North, on the Houston Street façade is limited to 2 tenants that may have a view of the 4 wall signs. From the distance of which these signs would be viewed by these properties, they would likely be visually read as two signs, as each set is well designed to be compact and consistent in character. The illumination proposed to be inset of the building identified sign would be cast downward toward the directory sign creating little to no risk of adverse effect.

- 3. THE STRICT APPLICATION OF THE PROVISION OF THESE REGULATIONS FROM WHICH A VARIANCE IS REQUESTED WILL CONSTITUTE UNNECESSARY HARDSHIP UPON THE PROPERTY OWNER REPRESENTED IN THE APPLICATION:**

There do exist alternatives which would allow the property to abide by the sign regulations utilizing only two signs on the Houston Street façade. However, due to the size of the structure and the desire of the applicant to create ease of use for the prospective patrons, the division of the signs by upper level and lower level is reasonable. The design proposed by

the applicant keeps the addition of the building identification signs in congruence and in relative character with the building directory sign and doubles as illumination. Therefore, an unnecessary hardship is present for a structure within the C-4, Central Business District, with a façade length of 150' to be limited to two wall signs with particular regard to the reasonable sign design as submitted by the applicant.

4. THE VARIANCE DESIRED WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

The request does not pose an adverse effect to the public health or safety of structure given the sizes of the signage, the distance of the proposed placement from any intersections, and the reasonable illumination requested. The proposal only serves to benefit the order, convenience, prosperity, and general welfare of the property owner, the future tenants, potential patrons, and the public by providing clear, concise direction to location of suites which do not have the opportunity to have their own exterior entrance on the historic Sears Center.

5. GRANTING THE VARIANCE DESIRED WILL NOT BE OPPOSED TO THE GENERAL SPIRIT AND INTENT OF THESE REGULATIONS:

The Variance requested remains in-line with the general spirit and intent of these regulations. All other aspects of the signs remain in compliance with applicable regulation, including the illumination of signs, the height, and the area of allowable signage. The C-4 District for which the property is located is permitted to have up to 20% of the first-floor associated façade be utilized for signage, but no more for 200sqft. The Variance request for the Houston Street façade which would include 4 walls signs has an approximate first floor façade area of 1,500sqft, and while 200sqft is the maximum allowable size regardless, 300sqft is equivalent to 20% of the first-floor façade area. The intent of the regulations is to ensure character, clarity, and safety are maintained throughout all signage in relationship to the structure and neighborhood therein. The Variance requested would not exceed 64sqft on the Houston Street façade and would remain in two visual blocks flanking each side of the entrance. The proposal upholds the spirit of these regulations by providing a well-designed signage package with serves the public interest, while not be domineering of the façade or the character adjacent properties.

2.2 A PUBLIC HEARING to consider a **CONDITIONAL USE PERMIT under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for modification of a non-conforming structure on property located at 207 N 14th Street in the R-1, Single Family Residential District with Traditional Neighborhood Overlay (TNO) (Applicant/Owner: Eric Carter; file no: 21-043)**

Chmiel presented the staff report for item 2.2. This included a brief history of the property and how it has been used. The applicant is hoping to reduce the number of dwelling units on the

property from seven (7) to three (3) and rehabilitate the property. City Administration recommends to APPROVE the conditional use permit to allow for the renovation and remodel of a legally nonconforming six-unit dwelling and detached accessory dwelling, subject to the following conditions:

1. All applicable permits shall be obtained.
2. The renovations shall be consistent with the plans and application documents.
3. An amendment to the Conditional Use Permit shall be required for any future expansions or additions to the structure.
4. Exceptions for parking surfacing requirements and number of parking spaces required are approved by the Board of Zoning Appeals.

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 rear and side yard setback; And to allow for a reduction of the minimum required parking spaces; And to allow for alternative surfacing materials for a parking lot on property located at 207 N 14th Street in the R-1, Single Family Residential District with Traditional Neighborhood Overlay (TNO) (*Applicant/Owner: Eric Carter; file no: 21-044*)

Chmiel presented the staff report for item 2.3. City Administration recommends to APPROVE the EXCEPTIONS 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 two (2) feet for the garage; the reduction of the minimum required eight (8) foot side yard setback to two (2) feet for the garage and five (5) feet for the principal home's portico; the reduction of the required minimum nine (9) off-street parking spaces to seven (7); and to allow parking surfaces to be composed of compacted gravel instead of pavement, subject to the following conditions:

1. All necessary permits shall be obtained.
2. Any gravel-surfaced parking space abutting landscaped open space in the front yard must be curbed in a manner that clearly delineates parking area from landscaping. Such curb shall be raised a minimum of six inches as to prevent gravel material from spilling into the front yard and to prevent encroachment of parking area past the front façade plane of the house.
3. Automobiles are not permitted to park in the area located between the front lot line and a parallel line drawn through the eastern-most façade plane of the house so long as there are more than two dwellings on the property.

4. The area labeled “future driveway” between the front lot line and a parallel line drawn through the eastern-most façade plane of the house on the submitted site plan must be established and maintained as landscaped open space so long as there are more than two dwellings on the property.
5. The Exceptions shall only apply to the items as described within the staff report.

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

Fisher asked for clarification about the number of bedrooms and the number of parking spots. Chmiel clarified that one bedroom was being removed and explained that parking would be reduced from nine (9) spaces to seven (7) spaces.

Hardy opened the public hearing and comment from the applicant.

Applicant Eric Carter described some of the intended improvements for the property as well as explaining the intent to provide an affordable housing option with needed amenities.

Hardy called for board discussion.

Board members had positive comments regarding the reduction of the level of nonconformity of the use and the preservation and improvement of the property.

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

Hardy called the question for item 2.3. Roll call vote was taken. Motion carried 5-0-0 with five conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE CONDITIONAL USE AT 207 N 14TH STREET:

Standards for modifying nonconforming uses utilizing a conditional use application:

1. THE SIZE OF THE ZONING LOT IS NOT INCREASED FROM THAT WHICH CURRENTLY EXIST:

The 75-foot by 150-foot zoning lot will remain the same size and configuration.

2. **a. THE CURRENT EXISTING USE DOES NOT HAVE A SIGNIFICANTLY ADVERSE IMPACT UPON EITHER THE SURROUNDING NEIGHBORHOOD OR THE PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, AND THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL NOT WORSEN SUCH IMPACT:** The existing property was developed in 1920 and records indicate that the property has continuously operated with 7 units since 1938. The subject lot and the adjacent properties to the west, south, and north across the alley are located within an R-1/TNO District, though many nonconforming multi-unit properties exist immediately adjacent 215 N. 14th across the alley (2 units), 1414 Humboldt Street to the west (2 units) and 1417 Leavenworth Street (12 units). The surrounding area consists of a mix of single

family, two-family, multi-family and a public park across the street. The existing structure and use are within character of the surrounding neighborhood and does not have a significantly adverse impact on the public health, safety, or general welfare. The reduction in the number of units is unlikely to worsen the impact of the use within the surrounding R-1/TNO neighborhood and will likely reduce its impact as its intensity is reduced.

b. THE CURRENT EXISTING USE DOES HAVE SUCH A SIGNIFICANTLY ADVERSE IMPACT AND GRANTING OF THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL BE MORE LIKELY TO REDUCE OR ELIMINATE SUCH IMPACT THAN A DENIAL OF SUCH PROPOSAL: The current existing use is a higher intensity use than most in the area, though there are many like it. Granting the modification would more likely reduce the impact of the property as it will reduce the intensity of the use while improving the quality of the property through repairs initiated by the modification, positively impacting the surrounding neighborhood.

3. THE PROPOSED CONDITIONAL USE COMPLIES WITH ALL APPLICABLE PROVISIONS OF THESE REGULATIONS, EXCEPT FOR THOSE EXISTING CONDITIONS THAT ARE LEGALLY NONCONFORMING:

The proposed conditional use is in out of compliance with some bulk regulations (specifically setbacks) and is currently and will be out of compliance with parking minimums and surfacing requirements once completed. The existing bulk conditions are legally non-conforming conditions as is the number of parking spaces and surfacing requirements. The applicant is seeking remediation of these issues through various exception requests.

4. THE EXISTING USE CONTINUES IN A SUBSTANTIALLY SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE IT MORE MODERN OR EFFICIENT:

The existing use will be reduced from a property with seven dwellings to a property with three dwellings, through rearrangement of the principal structure's interior. The property as a whole will be reduced from 10 bedrooms / 8.5 bathrooms to 8 bedrooms / 8 bathrooms. The opening up of the first floor and second floor of the main house will make the home more suitable for a large family, while the opening up of the basement apartments will result in a larger, but more livable space for a renter. Generally, all renovations will improve the quality and habitability of the property. There are virtually no exterior alterations, save for the restoration of the original, functional porch, which will put its character more in-line with other homes along the block face.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 207 N 14TH STREET:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The property is currently not in compliance with 4-103(D)(2)(b)(1), 4-103(D)(2)(c), 7-102(E)(3)(a), and 7-103(A)(3). The property is in compliance with all other applicable requirements. A conditional use for modification of a legal non-conforming use is sought concurrently with this application for the reduction in dwelling units from seven to three.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

Granting the exception for the setbacks would have no adverse effect on adjacent properties. The condition of the setbacks for the garage and portico have existed since 1920, just as long as many other similar odd conditions found in the area. Granting exception for the reduction in the number of parking spaces could have an impact on adjacent properties, as residents may have to park on the street along the park, should the parking lot fill up to capacity. It should be noted that the number of dwellings is being reduced to three from seven while the number of parking spaces is being reduced from ten to seven. Therefore, the reduction in the supply of spaces should at least be proportional to the reduction in demand once the use is changed, which should result in a net reduction of impact. Furthermore, the number of parking spaces supplied, and location of parking spaces (as described previously) are competing in terms of impact. Reducing the required number of parking spaces and the front yard being re-landscaped reduces the overall impact of the property's use more so than supplying the adequate number of spaces and perpetuating the visual impact of a parking lot in the front yard of the property.

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

There are no anticipated adverse impacts caused by granting the request. The subject property is in character and likeness with the surrounding properties, and will be more so with the requested exceptions.

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 did not contribute to the property's current condition, but the applicant is attempting to improve the property's conditions. Though meeting current zoning regulations while doing so would be unreasonable.
- (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 purchased the property with the intent of rehabilitating it, but was unaware of the exceptions required for setbacks, parking, and parking surfacing.
- (3) **Whether or not there are reasonable alternatives which would allow**

the property to meet the strict application of these regulations; The applicant is not proposing to encroach further into the setbacks with any work. Setback exception requests are simply helping to “clean up the title”. It is possible to meet the minimum number of parking spaces required of the property once it was reduced to the three dwelling units, however it would be unreasonable to violate the front yard setback requirement of the TNO in order to meet the minimum parking standard. The parking surface could be paved to meet the surfacing requirement; however, the parking area appears to have been surfaced with gravel for a very long time and to perpetuate this condition would do no additional harm. In addition, the visual impact and incompatibility with the historic nature of the property the applicant desires to celebrate would result in a net increase in impact to adjacent properties.

- (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 allowing the applicant to rehabilitate the property and invest in the rejuvenation of this unique and historic property in Manhattan along a prominent block with high public visibility. The dwelling units would become more livable and comfortable for the enjoyment of the future residents of this property.

2.4 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to reduce the minimum required front yard setback from 25' to 0' to accommodate proposed screening for an existing parking lot on property located at 1919 Hunting Drive in the R, Single Family Residential District (*Applicant/Owner: Tim Engle on behalf of Phi Gamma Delta Fraternity; file no: 21-045*)

Tripp presented the staff report for item 2.4. City Administration recommends to approve the 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 setback for fencing to 0 feet on property located at 1919 Hunting Avenue:

1. The Exception shall pertain only to the proposed pillars and fencing, as described within the application materials and staff report.
2. All applicable permits shall be obtained.

Hardy opened the floor to the Board to ask questions.

Hamilton asked whether the parking lot was grandfathered in. Beagle explained that the parking lot would be seen as an existing condition. Hardy and Hamilton both indicated that they would like to see additional explanation on future staff reports.

Fisher and Chua both expressed uncertainty about whether the fence would actually keep people from cutting through the parking lot to avoid the intersection.

Hardy opened the public hearing and comment from the applicant.

Applicant Tim Engle explained the intent to vegetate and maintain the fence line. He also clarified that the parking lot existed prior to the property being purchased by Phi Gamma Delta.

Hardy called for board discussion.

Hamilton spoke in support of the beautification that this project would provide.

Wigfall spoke in favor of the beautification and the perception of privacy and the safety improvements that this project would provide.

Hardy called the question for item 2.4. 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 1919 HUNTING DRIVE:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property is in compliance with all applicable regulations other than those for which an exception is being sought. An additional exception would be required to locate the sign within 15 feet of the property line.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The proposed addition would have no foreseen negative affects on adjacent properties. The proposed fence, pillars, etc. do not abut adjacent properties. The addition of vegetation/landscaping will reduce any negative impacts of the fence and pillars. The fence and pillars are designed to be visually attractive. The fencing and landscaping will also reduce negative visual impacts caused by the parking lot on the property.

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

The addition of the fencing would encourage travelers to use the properly designated transportation corridors and would prevent people from skipping the intersection. This measure would have no foreseen negative effects and would improve the safety and comfort

of residents of the fraternity house.

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;** This application was proactive following an inquiry with the City as to whether the addition of the fencing would be possible.
- (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;** No, the applicant did not intend to make this improvement to the property at the time of purchase. As the applicant and residents of the property were able to observe their parking lot being used to skip the intersection, the proposed improvement became desirable to pursue.
- (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 to place the fencing and other amenities. To follow the setback requirement, the fraternity would have to place the fence in the middle of their parking lot.
- (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 loss to the health, safety, or general welfare of the Community. This would be an aesthetic improvement which would be a benefit to the community.

2.5 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to reduce the minimum required front yard setback from fourteen (14) feet to 8 feet to accommodate an existing primary structure and proposed addition on property located at 731 Houston Street in the R-1, Single Family Residential District with Traditional Neighborhood Overlay (TNO) (*Applicant/Owner: Melissa and Robert Atchinson; file no: 21-047*)

Tripp presented the staff report for item 2.5. City Administration recommends to approve the 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 setback for fencing to 8 feet on property located at 731 Houston Street:

3. The Exception shall pertain only to the proposed addition/alteration as described within the application materials and staff report.
4. All applicable permits shall be obtained.

Hardy opened the floor to the Board to ask questions.

Hardy opened the public hearing and comment from the applicant.

Applicant Melissa Atchinson offered to answer any questions.

Hardy called for board discussion.

Hardy called the question for item 2.5. 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 731 HOUSTON STREET:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property is in compliance with all applicable regulations other than those for which an exception is being sought. The building was built in 1908 and is unable to follow front yard setback requirements on the west side of the property. The façade of the primary structure maintains an 8-foot setback from the road on this side, and the existing fence is on the property line. This addition would increase the total lot coverage of the property from 24.6% to 25.2%, complying with the 30% lot coverage maximum.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The proposed addition would have no foreseen negative effects on adjacent properties as the addition is primarily using the footprint of an existing structure. The existing patio is aging, and a new structure would likely be an aesthetic improvement. The property is in like character with other properties in the neighborhood and the fence would normally be considered in the back yard/side yard if not for the fact that it abuts South 8th Street.

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 a bathroom would have a positive impact on the residents of the building. The applicant received signatures of approval from all property owners/residents within 200 feet of their property.

4. 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 property, as originally built 113 years ago, does not comply with modern setback requirements at no fault of the present owner. An exception for the project is being required because the structure currently exists between the property line and the 14-foot 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 aware of the conditions and regulations surrounding the property at the time of purchasing it. The application for the bathroom/entryway is proactive and is a result of this knowledge.
- (7) Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** The existing building is 8 feet from the property line on the west side of the property. Substantial changes to the structure within the property line and the setback require exceptions. The proposal primarily uses the existing footprint of the structure, making the request very reasonable. Alternatives to add a bathroom would involve less efficient use of the interior of the structure. Removal of the existing fence would result in a loss of some level of privacy and setting it back further would result in a significant loss of backyard space.
- (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 would not result in a relative gain or loss to the health, safety, or general welfare of the Community. The structure is not out of character with the surrounding properties and the reduction of the setback would not make the property out of character. The current encroachment into the 14-foot setback is a result of traditionally narrow lots in this area. On most other properties in the area, the east and west sides of the property would be considered side yards and would not be subject to the 14-foot setback.

2.6 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas to reduce the minimum required side yard setback for a proposed detached garage on property located at 210 S Martin Luther King Jr Dr in the R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay (*Applicant/Owner: Jeff and Ann Chaffee; file no. 21-046*)

2.7 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas to reduce the minimum required side yard setback for a proposed detached garage on property located at 216 S Martin Luther King Jr Dr in the R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay (*Applicant/Owner: Laura Weiss-Cook and Kevin Cook; file no. 21-052*)

Estabrook presented the staff reports for items 2.6 and 2.7. The two cases were presented together due to the proposed project to create a shared garage structure between the two properties. City Administration recommends to approve the exception under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required side yard setback for an accessory structure from three (3) feet to zero (0) feet on property located at 210 S Martin Luther King Jr Drive, subject to the following conditions:

1. The Exception shall pertain only to the accessory structure, a detached garage, as described in the application materials and staff report.
2. The structure shall be in compliance with the rear yard setback for accessory structures of five (5) feet.
3. The accessory structure shall be maintained in good condition, including but not limited to the roof and attached stormwater run-off systems.
4. All necessary permits shall be obtained, and all Building Code standards shall be followed.

City Administration recommends to approve the exception under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required side yard setback for an accessory structure from three (3) feet to zero (0) feet on property located at 216 S Martin Luther King Jr Drive, subject to the following conditions:

1. The Exception shall pertain only to the accessory structure, a detached garage, as described in the application materials and staff report.

2. The structure shall be in compliance with the rear yard setback for accessory structures of five (5) feet.
3. The accessory structure shall be maintained in good condition, including but not limited to the roof and attached stormwater run-off systems.
4. All necessary permits shall be obtained, and all Building Code standards shall be followed.

Hardy opened the floor to the Board to ask questions.

Chua inquired about whether the maintenance agreement could be included as a condition of sale for future owners of the properties. Estabrook and Hardy stated that the City could not require that as a condition of sale.

Hardy opened the public hearing and comment from the applicant.

Applicants Ann Chaffee and Laura Weiss-Cook explained that the cars for both properties are parked where the garage would be located. They further explained that there is a maintenance agreement and that they would hope that future residents would continue to sign the maintenance agreement.

Hardy called for board discussion.

Wigfall spoke in support of this as a creative way to maintain a low number of access points onto a major street.

Chua expressed concerns about the inability to require that the maintenance contract be maintained for future owners. Other board members offered that communicating the need for an agreement would be important for the property owners if they were to sell their properties.

Hardy called the question for item 2.6. 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 2.7. 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 EXCEPTIONS AT 210 S MARTIN LUTHER KING JR DR AND 216 S MARTIN LUTHER KING JR DR:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The property is currently in compliance all applicable regulations within the R-1 and Traditional Neighborhood Overlay Districts. The driveway which spans both the subject property and the adjacent property which submitted this joint request is not great than 10'

in width, a regulation for driveways in the TNO District. There is an outdoor feature in the rear of the subject property which viewed from ariel imagery may appear as a structure, however it is a vertically porous pergola and therefore not subject to the rear or side setback regulations.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The only adjacent property for which an effect could be experienced is the adjacent property which is pursuing the same request in order to jointly build the structure. A more thorough review of how the property owner plans to mitigate any adverse effect can be found in the evaluation of Standard 3.

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

Accessory structures which encroach upon the 3' side yard setback often require a joint agreement between the adjacent property and the subject in order for them to be maintained in adequate condition. The proposal of a shared structure spanning property lines also raises a similar set of concerns. If this structure were to fall into disrepair due failure to be maintained by one or both of the property owners, it would have to potential to impact the general welfare of the one or both property owners and the immediate neighborhood. In an effort to ensure the structure is maintained in good condition, the subject property owners and the adjacent property owners have entered into a countersigned agreement which can be found in the application agreement materials. While the current property owners are not able to bind the discretion of further property owners to enter into a similar agreement, they have recommended to future prospective buyers to pursue a similar agreement. Therefore, based on the forethought and investment each property owner has demonstrated, staff finds there is limited to no anticipated adverse impact in reducing the side yard setback from 3' to 0' for the construction of a joint detached accessory 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 structures were built in 1921, generally in a time period with limited regard to covered parking options. The condition of not being able to maintain adequate vehicular access to the rear of the lot was not 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 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; There are limited to no reasonable alternatives which would allow the subject property owner and the adjacent property owner to each have a detached garage utilizing their existing shared drive way, as well as provide adequate draining and maintenance of the garage face which abuts the adjoining property. In order to maintain the ability to maneuver a vehicle to and from the rear of the lot, other alternatives would require a significant amount of pavement and encroachment upon each backyard space. There is no alley to the rear of the property which would serve as the common vehicular access point for Ward lots.

- (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 will not result in a relative gain or loss to the health, safety, and general welfare of the Community so long as the structure is adequately maintained by both property owners for which the joint structure would sit.

Hardy adjourned the meeting at 8:32pm

NEXT MEETING: Wednesday, July 14, 2021

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