

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, July 14, 2021
7:00 p.m.

MEMBERS PRESENT: Sara Fisher; Connie Hamilton; Ansley Chua

MEMBERS ABSENT: Harry Hardy, Chairperson; La Barbara Wigfall, Vice-Chair

STAFF PRESENT: Barry Beagle, Senior Planner | Current Planning
Samantha Estabrook, Resiliency Planner

Hamilton called the meeting to order at 7:01 p.m.
Staff called roll and a quorum was established.

1.1 **CONSIDER THE MINUTES OF THE JUNE 9, 2020, BOARD OF ZONING APPEALS MEETING.**

Fisher moved to approve the June 9, 2021 minutes with minor corrections. The motion was seconded by Chua and approved; 3-0.

2.1 A REQUEST to consider an extension to the **180-DAY PERIOD OF VALIDITY** in accordance with Secs. 14-608 and 707 of the Manhattan Zoning Regulations with respect to 1104 Scenic Landing/Braum's (*CUP-19-046*)

Hamilton asked if the applicant had previously failed to obtain an extension. Estabrook confirmed that this was the case.

Chua moved to extend the 180-day period of validity for the property located at 1104 Scenic Landing. Motion carried 3-0-0.

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 a reduction of the minimum required 25' front yard setback to 0' for a proposed fence on property located at 2124 Fox Meadows in the R-1, Single Family Residential District (*Applicant/Owner: Patricia Cassinelli and Roseann Grob; file no: 21-053*)

Estabrook presented the staff report for item 2.2. The applicant would like to build a fence on the side of their property leading to the property line at the front of the lot. Between the

property line and the 25' setback, the fence shall be 3 feet in height and it shall taper to 6 feet past the setback. City Administration recommends to APPROVE the EXCEPTION to allow for a reduction of the 25' front yard setback to 0' to allow for the addition of a fence on the west property line, 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.

Hamilton opened the floor to the Board to ask questions.

Hamilton asked for clarification about the location of the neighbor's fence. Applicant Patricia Cassinelli clarified that the fence on the east side of the neighbor's property had been removed.

Hamilton opened the public hearing and comment from the applicant.

Hamilton asked Applicant Patricia Cassinelli whether the fence was existing. Cassinelli clarified that the fence is not existing and would be a joint project with their neighbor.

Fisher asked for clarification about how the setback would affect the location of the fence. Estabrook clarified that the fence would end about ten feet from the front of the garage if the setback was maintained.

Chua stated that he was satisfied with the request as it is marginal and in character with the rest of the neighborhood. Hamilton and Fisher also provided support for this project.

Hamilton called the question for item 2.2. Roll call vote was taken. Motion carried 3-0-0 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION AT 2124 FOX MEADOWS:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property is currently in compliance with all applicable bulk regulations within the R-1, Single Family Residential District, and other applicable regulations.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The proposal would not have an adverse effect on adjacent properties for multiple reasons. The property is located at the end of a cul-de-sac which limits how frequently the adjacent right-of-way is trafficked. In addition, the applicant has proposed a design which would taper the fence in height in order to not create a wall-like effect in the traditional front yard for the neighbor directly to the west. The fence would begin to taper up to 6' at the face of the

garage, well beyond the 25' front yard setback. The neighboring property to the west currently has 3' fence which abuts the adjoining property line and violates the 25' front yard setback and encroaches upon the right-of-way without ever seeking an Exception. The proposed fence would not be permitted to encroach upon the right-of-way even if an Exception is granted for encroachment upon the front yard setback. Staff included information regarding the neighboring property which is not in compliance only to underscore that the potential for adverse effect by granting this Exception is nil.

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

Due to the reasonable 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.

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 need for an Exception for the proposed project is not due to a disregard of the regulations.
- (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;** The applicant seeks to make a modest improvement to their lot while still fulfilling the intent of the regulations to preserve a traditional front yard.
- (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, and general welfare of the Community.

2.3 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 reduction of the minimum

required 100' lot depth to 89' on property located at 3025 Amherst Avenue in the R, Single Family Residential District (*Applicant/Owner: Aaron Dyck of BBN Architects on behalf of BBB Incorporated file no: 21-054*)

2.4 A PUBLIC HEARING to consider an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a reduction of the minimum required 25' rear yard setback to 10' on property located at 3025 Amherst Avenue in the R, Single Family Residential District (*Applicant/Owner: Aaron Dyck of BBN Architects on behalf of BBB Incorporated file no: 21-055*)

Estabrook presented the staff reports for items 2.3 and 2.4. The lot is irregularly shaped and therefore has a lot depth (as measured from the center of the property) of 89' rather than the 100' minimum. The applicant is seeking a variance for the lot depth requirement and an exception to the rear yard setback requirement for portions of the building and a terraced garden.

City Administration recommends to APPROVE the VARIANCE under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a reduction of the minimum required 100' lot depth to 89' on property located at 3025 Amherst Avenue.

City Administration recommends to APPROVE an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a reduction of the minimum required 25' rear yard setback to 10' on property located at 3025 Amherst Avenue, subject to the following conditions:

1. The Exception shall pertain only to terraced garden structure shall be maintained in good condition.
2. The terraced garden structure shall be maintained in good condition.

Hamilton opened the floor to the Board to ask questions.

Fisher asked for clarification on what the terraced garden would entail. Estabrook encouraged Fisher to ask the applicant for a more detailed description.

Hamilton asked clarifying questions about how far into the setback the garden and structures were able to go. Estabrook stated that there is a 10-foot rear yard easement that the applicant could not build in.

Chua asked about the portions of the building and the pool that were in the setback. Estabrook clarified that the application includes the portions of the structure within the setback and stated that the pool would not be subject to the setback requirements.

Fisher asked whether the structure could be built upwards to not encroach on the setbacks. Fisher additionally asked whether the terraced garden was being added to address a topography issue on the site. Estabrook stated that the terraced garden does address elements of topography and the need for a retaining wall on the eastern side of the property. Staff found that the substandard nature of the lot would severely limit the design of the structure on the lot should both the rear and front yard setbacks be enforced.

Fisher asked if the previous structure encroached into the setbacks. Estabrook stated that the structure did encroach into both the front and rear yard setbacks.

Hamilton opened the public hearing and comment from the applicant.

Architect Patrick Schaub presented on behalf of BBN Architects, the applying organization. Schaub provided clarification on what the terrace garden would be as well as the structural elements that are affected by the setbacks. Schaub further clarified that adding an additional floor to the home would be expensive and would go against the owner's wishes to have a single-floor structure.

Hamilton called for board discussion.

Hamilton stated that she believed a variance was appropriate given the substandard nature of the lot. She also stated an appreciation for the attempt to maintain the front yard setback. Chua agreed that it was a small lot and that it is important to make development on the lot easier. Hamilton stated that encouraging development on the lot is a better option than letting the lot sit vacant.

Hamilton called the question for item 2.3. Roll call vote was taken. Motion carried 3-0-0.

Hamilton called the question for item 2.4. Roll call vote was taken. Motion carried 3-0-0 with two conditions of approval as recommended by staff.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE VARIANCE AT 3025 AMHERST AVENUE:

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 condition of a deficient lot depth is unique to the subject property. The fourth addition of the University Heights subdivision was filed in 1971 and the original structure constructed shortly thereafter. The subdivision and platting of this land would have been subject to the 1969 Zoning Regulations in which the minimum lot depth requirement was also 100'. Lot depth is measured from the midpoint of each lot, therefore the lot depth for the subject

property is 89'.

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

The property has maintained a substandard lot depth since platting in 1971 in which the original structure also had a substandard front and rear yard setback yet continued to contribute to the character of the neighborhood. Granting the variance so that a new residential structure is able to be constructed will not adversely affect the rights of adjacent property owners or residents.

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 not exist alternatives which would allow the property would be able to construct a residential structure on the lot should the Variance not be granted, even though one previously exist upon the lot. Denial of this request would constitute severe unnecessary hardship upon the property owner.

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 history of the site previously being occupied by a residential structure. The Variance would only serve to enable to land to be utilized as it was originally intended when platted in 1971 and contribute to the consistent fabric of the neighborhood for which it is located.

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

The Variance would support the general spirit and intent of the regulations. Lot depth generally is a function to ensure that there is enough buildable land within each lot while also being utilized to provide separation between adjacent properties. The subject property is not only unique due to its deficient lot depth, but also due to the topography of the site and neighboring sites which often require retaining walls. The irregular shape of the lot is an additional characteristic which impacts the ability for the lot depth requirement to be met.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 3025 AMHERST AVENUE:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property is currently in compliance with all applicable bulk regulations within the

R-1, Single Family Residential District, and other applicable regulations. There is a 10' utility easement which spans the rear lot line.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The proposal would not have an adverse effect on adjacent properties for due to the structural nature of the proposal and the varied topography between the subject site and the two lots which abut the property to the south. The 8' side yard setback along the western lot line would be maintained.

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

Due to the reasonable 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.

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 is seeking an Exception for a proposed project, and therefore not an existing built condition.
- (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 owner acquired the property with access to all readily available information regarding the size, dimensions, and topography of the lot. However, as design began the owner began to realize constraints with the suitability of the lot for the style of home proposed to be constructed.
- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** There may exist design alternatives that would enable a structure to be built upon the lot without encroaching upon the rear yard setback. However due the deficit in lot depth for which a Variance is also being sought, it may be unreasonable to limit the property to a structure with a maximum envelope of 41' in depth.
- (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, and general welfare of the Community due to the marginal nature of the structural encroachment.

Hamilton adjourned the meeting at 7:39pm

NEXT MEETING: **Wednesday, August 11, 2021**

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