

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
Virtual Zoom Meeting
Wednesday, August 11, 2021
7:00 p.m.

MEMBERS PRESENT: Ansley Chua; Sara Fisher; Connie Hamilton; La Barbara Wigfall, Vice-Chair

MEMBERS ABSENT: Harry Hardy, Chairperson

STAFF PRESENT: Barry Beagle, Senior Planner | Current Planning
John Adam, Senior Planner | Long Range
Samantha Estabrook, Resiliency Planner
Tyler Tripp, Bicycle and Pedestrian Coordinator

Wigfall 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 JULY 14, 2020, BOARD OF ZONING APPEALS MEETING.**

Hamilton moved to approve the July 14, 2021 minutes. The motion was seconded by Chua and approved; 4–0–0.

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 a reduction of the minimum required 75% landscaped open space to 64% and the 120' frontage required in order to install a circle drive concept on property located at 4429 Kauffman Drive in the R, Single Family Residential District (*Applicant/Owner: Anderson Knight Architects on behalf of Zane and Tracie Burke; file no: 21-056*)

Estabrook presented the staff report. The distance between the proposed primary structure and the property line is limited by grade changes and the need for a retaining wall. Because of the limited size of the front yard, the proposed circle drive would lead to a reduction of the front yard landscaped open space to 64%. Since the property is on a cul-de-sac, the available frontage is 89'.

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 75% landscaped open space to 64% and the 120' frontage required in order to install a circle drive concept on property located at 4429 Kauffman Drive.

Wigfall opened the floor to the Board to ask questions.

Hamilton asked if there was significant difference between this and another case that was denied around a year ago. Beagle explained that topography is a limiting factor in this case. Estabrook further stated that this is one of only three properties in the subdivision that does not have the required 120' frontage required for a circular drive.

Hamilton asked for clarification of what makes a circular drive. Estabrook clarified that the main distinguishing feature is the presence of two curb cuts. Wigfall asked if there is a minimum distance between the curb cuts and Estabrook clarified that there is not.

Wigfall inquired about how much frontage the property had. Estabrook stated that there is 89' of frontage.

Wigfall opened the public hearing and comment from the applicant.

Architect Tracy Anderson, 2505 Anderson Ave #201, clarified that the driveways would be around 10' wide and the landscaped section would be 12' wide. Anderson offered to answer any questions.

Chua asked about the logistics of pushing the primary structure back a few extra feet in order to meet the landscaped open space requirement. Anderson stated that there would be issues with the retaining walls overlapping with the utility easement behind the structure. Additionally, the basement would have to be built substantially taller.

Hamilton inquired about the purpose of the circle drive. Anderson stated that it was primarily an aesthetic choice.

Wigfall called for board discussion.

Hamilton expressed concerns about allowing an exception to the minimum frontage requirement. Hamilton requested additional detail in future staff reports based on the fact that the report for this item did not include the amount of frontage present or other details/dimensions of the drive and greenspace. Hamilton stated the belief that just because the property exists on a cul-de-sac does not mean that the owners necessarily need or should be permitted a circle drive. Fisher and Chua also expressed that the frontage requirement was the larger issue needing to be addressed.

Wigfall expressed that she understands how the circle drive could be good for internal traffic flow but stated that there are other options for controlling flow in such a way.

Estabrook clarified that the 75% landscaped open space requirement only applies to individuals exceeding a driveway width of 24' and circle drives.

Chua asked if there was a difference between a circular drive and a drive having only one curb cut that turns into a circular drive on the property. Through discussion it was determined that the driveway would have to be no more than 24' wide until reaching the 25' front yard setback.

Chua and Fisher both expressed that they believed that the outcome would be more desirable if the exception was accepted.

Wigfall called the question for item 2.1. Roll call vote was taken. Motion failed 2-2-0, Hamilton and Wigfall voting to deny based on failure to meet standard 3 in the Standards for Exceptions.

THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 4429 KAUFFMAN DRIVE:

Standards for Exceptions (Sec. 14-605)

1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property which is proposed is otherwise in compliance with all applicable regulations other than those for which an exception is being sought.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The proposed addition would not have any foreseen negative effects on adjacent properties. The lots within the subdivision are large estate lots with significant frontage along Kauffman Drive, with the exception by Lot 6 and Lot 7 which both also have large drainage easements. The proposed circle drive concept would be as conservative and designed in the center of the frontage as to make the drive functional and not be a nuisance to neighboring property owners.

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

It was determined by the board that allowing this exception would set a precedent of allowing similar exceptions and would not be in the spirit of the regulations as they exist.

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 limiting conditions of the lot were not created by the applicant, and the project has not been built.
- (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 a full understanding of how

the significant grade changes and easements would impact the placement of the primary structure, therefore impacting the amount of front yard available to be landscaped open space.

- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** It was determined that having a standard driveway was a reasonable alternative to the circle drive and that it would not need an exception.
- (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 nor loss to the health, safety, or general welfare of the Community. The proposed residence and front yard treatment would remain in character and scale with the neighborhood.

2.2 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 sign setback from 15' to 9' 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: 21-060*)

Tripp presented the staff report. The property is a legal nonconforming fraternity. The proposed sign would be made of limestone and would face the intersection of Hunting Avenue and Sunset Avenue. The sign is part of a larger project to install a fence consisting of limestone pillars and iron bars. The project also includes improved landscaping. The fence has been previously approved.

City Administration recommends to APPROVE an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to reduce the minimum required sign setback from 15' to 9' on property located at 1919 Hunting Drive, subject to the following conditions:

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

Wigfall opened the floor to the Board to ask questions.

Wigfall asked if there was an existing sign identifying the property. Tripp stated that there was a sign in the median in the parking lot and offered that the applicant might be able to provide clarification about what they would be doing with that sign.

Wigfall opened the public hearing and comment from the applicant.

Applicant Tim Engle explained that the existing sign would be incorporated into the landscaping directly adjacent to the primary structure since it is traditionally used by visiting sorority members to write their letters on. Engle provided some additional history about the property and conveyed the fraternity's enthusiasm about the project.

Wigfall called for board discussion.

Wigfall called the question for item 2.2. Roll call vote was taken. Motion carried 4-0-0.

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. The fraternity house was originally built in 1956-1957 when the lots were zoned B – Second Dwelling House District. A rezoning in 1969 created the University Overlay District which lot 8 fell under but lots 9, 10, and 11 did not. This also rezoned lots 9, 10, and 11 to be in the R – Single Family Residential District. The parking lot, as built in 1956-1957, would have been allowed as an accessory use. Though fraternities are not a permitted use in the R District, the property is legally nonconforming, as is the parking lot. The fence was approved at the June 9, 2021 meeting.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The proposed addition would have no foreseen negative effects on adjacent properties. The sign will match the aesthetics of the previously approved fence. The overall project, including the fence shields the parking lot from view and includes landscaping. As such, the project can be seen as an overall aesthetic improvement for the community.

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

The addition of a sign at the proposed location will not have any significant affect on sight distance or any other public safety factors.

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 fencing and signage 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 fence became desirable to pursue and the accompanying sign was included in the plan as an extra design element.
 - (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 sign. To follow the existing setback requirements would put the sign behind the fence and inside of the 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. The project is an overall aesthetic improvement which would be a benefit to the community.
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3.1 Review of the Manhattan Development Code (MDC)

Adam presented the new use typology in the MDC. In addition to “permitted uses” and “conditional uses”, there will now be “limited uses” which will be allowed with certain regulations and limits and will not need approval by the Board of Zoning Appeals.

Hamilton asked for clarification on whether limited uses would have previously been conditional uses. Adam stated that limited uses include uses that may have previously been conditional or permitted. Hamilton asked which uses have changed. Adam stated that he had not generated a list of changes but could create such a list in a memo for the board’s review.

Hamilton asked Adam to quickly explain the changes to policies regarding nonconforming uses. Adam explained that there will be a new process for property owners to apply for legal nonconforming status. Furthermore, if more than fifty percent of the property’s value is destroyed it must conform to zoning regulations if rebuilt.

Adam presented the changes in regulation of the Traditional Neighborhood Overlay (TNO), now the Established Neighborhood Overlay (O-EN). First, the front yard setbacks would be changed

from the existing 14'-25' to the average of properties on the same block face \pm 7' and no closer than 12'. Fisher commended this change as a way to keep properties in character with surrounding properties. Adam explained that the new regulations accommodate for properties that have side yards that face the street and are therefore technically considered front yards. There will now be a reduction of the setback requirement for these instances to 8'. Finally, lot coverage standards would increase from 30% to 35%. Overall, these changes in regulation significantly increase the level of compliance. Hamilton and Chua expressed some concern that these new regulations were made to accommodate individuals that are not within the existing regulations. There was also some concern that individuals might push the limits of the new regulations and that the regulations might change again in the future to accommodate these extremes. Adam explained that properties would still be constrained by maximum lot coverage standards.

Wigfall adjourned the meeting at 8:50pm

NEXT MEETING: Wednesday, September 8, 2021

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