

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
City Commission Room, City Hall, 1101 Poyntz Avenue  
**Wednesday, October 13, 2021**  
7:00 p.m.

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

MEMBERS ABSENT: None

STAFF PRESENT: Barry Beagle, Senior Planner | Current Planning  
John Adam, Senior Planner | Long-range Planning

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 SEPTEMBER 14, 2021, BOARD OF ZONING APPEALS MEETING.**

**Hamilton moved to approve the September 14, 2021 minutes. The motion was seconded by Wigfall and approved; 5–0–0.**

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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 front yard setback from 60' to 7' for a proposed accessory structure and from 25' to 19.5' for an existing residential structure on property located at 1010 Karla Lane in the R, Single Family Residential District (*Applicant/Owner: Gabrielle Thompson and Oliver Weaver; file no: 21-067*)

Prior to staff presentation, board member Hamilton indicated that she will be abstaining on this matter and stepped down from the board. Beagle presented the staff report. The proposed project for which a request is being requested is to add a carport with metal roof to shield tenants' vehicle from potential storm damage. The subject property, built in 1952, is at the northern terminus of Karla Lane. At the time of construction, the property was built 20' from the front property line rather than the 25' minimum required at the time. It is suspected that this occurred due to challenges relating to a natural drainageway, but no BZA action was taken at the time. The applicant is seeking exceptions for both the setback of the proposed carport and the existing residential structure.

City Administration recommends to APPROVE the Exception to reduce the minimum front yard setback requirement from 25-feet to 20-feet with respect to the existing single-family dwelling; and, to reduce the accessory building front yard setback requirement from 60-feet to 7-feet to construct a freestanding carport on property located at 1010 Karla Lane, subject to the following conditions:

1. The Exception to reduce the front yard setback requirement from 25-feet to 20-feet shall only be with respect to the existing house as shown on the accompanying site plan.
2. The Exception to reduce the front yard setback requirement from 60-feet to 7-feet shall only be with respect to construction of a 12-foot by 20-foot open-sided carport as shown on the accompanying site plat. The carport shall be constructed as shown on the accompanying building plan and shall remain open sided.
3. That applicant shall obtain a building permit to construct the proposed carport.

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

Hardy opened the public hearing and called for comment from the applicant.

Applicant Gabrielle Thompson, 1009 Karla Lane, stated that she still needs to sign the affidavit indicating that the sign giving notice of the hearing was up for the required amount of time. She expressed that the intent is to protect the property of the tenants. She stated her belief that this would increase the value and aesthetics of the property. She offered to answer any questions.

Hardy called for board discussion.

Wigfall expressed that she believes that the application meets the standards and reduces a hardship. She believes that there are not reasonable alternatives given the topography and the presence of easements on the property.

Chua stated that he believes that a carport is not a natural addition to the house and expressed concerns about how close the carport would be to the property line. He stated that he believes this changes the character of the area.

Hardy stated that he did not have an issue with the application and agreed that topography would be a major limiting factor in finding any alternatives. He also stated that he believes it would not be too visually intrusive since it will be open-sided.

Fisher stated that, though she is not normally a fan of carports, she approves of the request. She appreciates that the project is tenant driven. She stated that she agrees that it will change the character of the property but is less concerned since the carport will be open-sided and since it will be easier to take down if necessary.

Fisher and Wigfall suggested trying to make the appearance of the carport match the existing structure.

**Hardy called the question for item 2.1. Roll call vote was taken. Motion passed 3-1-1, Chua voting to deny and Hamilton abstaining.**

**THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 1010 KARLA LANE:**

**Standards for Exceptions (Sec. 14-605)**

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject property is compliant with all applicable regulations except for the setback of the existing house. The house is non-compliant as to front yard setback which is why the current owner is seeking an Exception.

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

Despite the question concerning the setback of the house, its present location has not created a condition incompatible with neighboring property for the past 69 years. The proposed carport is not anticipated to create a substantial adverse impact to neighboring residential property. The property's location at the end of Karla Lane, the change of elevation along the roadway, and extent of existing vegetation are anticipated to minimize the impact of the proposed carport on neighboring residential property.

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

The proposed Exception with respect to the house and carport are not anticipated to have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

**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; House Exception.** With regard to the house, the applicant did not create the condition of the house's setback from Karla Lane. The applicant is seeking to remedy the house's nonconformity as to front yard setback by the proposed Exception. The house was originally built in non-compliance to the front yard setback requirement and has existed in this condition for the past 69 years. The steeply sloping terrain and natural drainageway that cuts diagonally across the back of the property may have contributed to the house being pushed forward on the lot when constructed in 1952. Meeting the setback requirements today would be unnecessary and unreasonable.
- Carport Exception.** The applicant did not create conditions resulting in their request to reduce the front yard setback with respect to the proposed carport. For all practical purposes, there is not the opportunity to create additional covered parking beyond the existing single-car garage without an exception to reduce a required setback. It may be possible to construct an addition to the south side of the house to create a

double car garage but not without an exception to the side yard setback. This will be problematic, however, given the side yard is where the site drainage between the applicant's property and the property to the south collects. The construction of the carport in the side yard would present the same challenge as to site drainage.

- (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; House Exception.** The applicants was not aware until seeking application for an Exception for the carport that the house encroached 5 feet into the front yard setback. Carport Exception. As stated in their application, the applicants did not anticipate a need for additional covered parking when acquiring the property 17 years ago.
  - (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations; House Exception.** There are no reasonable alternatives to bring the house into compliance with the front yard setback requirement. Carport Exception. The only possible alternative to create additional covered parking would be to construct an addition to the south side of the house to create a double-car garage or to construct the carport. The house is setback approximately 12 feet from the south property line which may or may not be sufficient to construct a double-car addition or to accommodate the proposed carport. An exception would still be required to reduce the 8 foot side yard setback requirement to accommodate either an addition to the house or construction of the proposed carport. A complicating condition is that the couth side yard collects stormwater runoff from the subject property and the neighboring lot to the south and funnels it to the rear yard. This condition would present challenges for accommodating either a garage addition or the construction of the carport.
  - (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; House Exception.** There are no reasonable alternatives to bring the house into compliance with the front yard setback requirement. The house in its present location was not a deterrent to the improvement of the other residential properties on Karla Lane that were built in the 1950's. There would be no relative gain to public health, safety or welfare by denying this request. Carport Exception. The visual impact of building the proposed carport within 7 feet of the front property line will likely be limited to those residential properties fronting on Karla Lane. Given the drop in elevation along the roadway extending north of Timberlane Drive and the extent of existing vegetation, these factors along with the open sided design of the carport are anticipated to have a nominal impact on neighboring residential property on Karla Lane.
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- 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 front yard setback from 25' to 0 feet on S 15th Street and from 25' to 12' on Pierre Street for a proposed parking lot on property located at 1401 Houston Street in the R-1, Single Family Residential District with TNO, Traditional Neighborhood Overlay (*Applicant: Clint Hibbs of BG Consultants; Owner: USD 383; file no: 21-069*)

Board member Hamilton rejoined the board. Beagle presented the staff report. Theodore Roosevelt Elementary School is proposing to add a new 30-stall parking lot to meet current parking demands and City standards. The purpose of the setback exception is to keep the new parking lot in line with the existing lot and to conserve playground space. The lot will include a 3 foot tall screen fence to shield the lot from adjacent residential properties to the west and south. Two trees will be lost on the school ground and will be replaced with two new street trees on S 15<sup>th</sup> Street.

It is the recommendation of staff to APPROVE the Exception to reduce the front yard setback requirement from 25 feet to 0 feet on S 15th Street, and from 25 feet to 12 feet on Pierre Street to accommodate construction of an expanded surface parking lot for Theodore Roosevelt Elementary School, subject to the following conditions:

1. The Exception shall only apply to the surface parking lot described in the application and staff report.
2. The surface parking lot shall be designed and constructed as shown on the submitted site plan.
3. The three (3) foot tall screen fence shall be installed with the completion of the surface parking lot as shown on the site plan.
4. The two (2) street trees as approved by the City Forester and shown on the site plan shall be planted along S 15th Street within four (4) months of completion of the parking lot.
5. The screen fence shall be maintained in good condition and replaced as necessary to maintain an appropriate buffer to opposing residential property.

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

Fisher asked for clarification about what the screen fence would entail. Beagle stated that it is not specified on the site plan but that in conversations with the consultant he was told that it would likely be like the fence at Woodrow Wilson Elementary School. It would not be possible to see through the fence.

Chua asked if there would be any drainage concerns as a result of the loss of greenspace. Beagle stated that the project was looked at by Public Works staff and he had not heard of any concerns with the project.

Hamilton asked for clarification regarding the extension of the parking lot lane a few feet past the last stall. Beagle explained that the purpose of that is to allow for easier back and turn movement for the end stalls. Fisher asked if there would be any new curb cuts as a result of the project. Beagle stated that the new lot would use existing curb cuts.

Wigfall expressed some concern about the internal circulation of the lots given how few outlets are present. Beagle stated that the choice to put both lots in line was made to improve internal circulation.

Hamilton asked if the street trees were in a location that they would need to be maintained by the City. Beagle stated that they would be located in the right of way and that they would be maintained by the City. Hamilton asked if there had been any discussion about putting a tree along Pierre Street. Beagle stated that this had not been discussed.

Hardy opened the public hearing and called for comment from the applicant.

Project Consultant Clint Hibbs spoke on behalf of USD 383. He gave additional context about the landscaping decisions, drainage, and the internal circulation of the property. He gave a further explanation of the screening fence and stated that there would also be a chain-link fence between the parking lot and the playground for security purposes. He stated that much of the playground equipment where the parking lot will be located would be relocated elsewhere on the property. Hibbs offered to answer any questions.

With no further public comment, Hardy closed the public hearing and called for board discussion.

Fisher stated that she can understand the need for additional parking, and though she is disappointed that there will be some loss of playground space, she does not see better alternatives available. She expressed some concern about the visual impact the lot will have.

Hardy stated that he does not have concerns with the application and appreciates the amount of work the consultant has done with City staff.

Hamilton stated that she believes that the project was well thought out. She shares a sadness for the loss of playground space but believes that this is the best option available. With the loss of two trees, Hamilton recommended trying to make the playground space as comfortable as it is currently.

Wigfall agreed that she generally dislikes the loss of the trees but understands that the school must utilize the limited property that it has available. She commended the efforts made to preserve as much playground open space as possible.

**Hardy called the question for item 2.2. Roll call vote was taken. Motion passed 5-0-0.**

**THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 1401 HOUSTON STREET:**

**Standards for Exceptions (Sec. 14-605)**

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

Theodore Roosevelt Elementary School is a permitted use in the R-1/TNO District. The property is in compliance with all applicable requirements of the Zoning Regulations other than the Exceptions being request.

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

With the addition of the screen fence along S 15th Street and Pierre Street to the extent of the expanded parking lot will soften the appearance of the parking lot from neighboring residential property across the street. As a result, the proposed parking lot is not seen as having an adverse impact on neighboring residential property. The proposed parking lot does not change access that will continue to be limited to the existing access drives on S 15th Street and Houston Street.

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

The proposed Exception will accommodate a need for expanded off-street parking with minimal disruption to remaining open space and playground area on the school grounds. With the proposed screen fence and planting of street trees along S 15th Street, the proposed parking lot is not anticipated to have detrimental effect on neighboring residential 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;** Theodore Roosevelt Elementary School has occupied the site since 1923 and has undergone three (3) major expansions since that time. Among other issues, the school district is attempting to address a deficiency with respect to off-street parking at the school. Changes in school enrollment over the years has put increasing pressure on many of the schools within the district to provide adequate parking. To address the need with respect to Roosevelt Elementary, the applicant proposes to expand on-site parking with another 30 parking spaces. The proposed Exception is seen as a response to that need.
- (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 condition of inadequate on-site parking has been growing over time and is reason for the subject request. The setback

reduction along S 15th Street will permit the expanded parking lot to match up with the existing 20-stall parking lot to the north that has long existed on the property. Granting the setback reduction will also minimize the loss of remaining playground area and greenspace behind the school.

- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** It is certainly possible to build the expanded parking subject to the front yard setback requirements on S 15th Street and Pierre Street. As referenced above, building the expanded parking lot subject to the 25 foot front yard setback requirement along S 15th Street and Pierre Street would result in an even greater loss of remaining playground area and greenspace. As a result, there are no reasonable alternatives by which to accommodate expanded parking on-site with minimal loss of playground area and greenspace without reducing or eliminating a required setback.
- (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;** The school district is faced with a growing concern about available on-site parking. Left unattended, the surrounding public streets will have to continue to absorb the additional parking demand created by the school. The additional 30 spaces provided by the expanded parking lot will bring the school much closer to meeting its off-street parking requirement. The proposed Exception would allow for the expanded parking lot while minimizing the additional loss of playground area and greenspace. The school district proposes to install a three (3) foot high screen fence along the extent of the parking lot on S 15th Street and Pierre Street. This will not only soften the appearance of the parking lot but knock down headlights from shining into opposing residential properties. Considering the foregoing, the proposed Exception to reduce the required setback will result in a relative gain to the public health, safety and general welfare of the immediate community.

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2.3 A PUBLIC HEARING to consider an **EXCEPTION** under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to reduce the front yard landscaped open space requirement from 75% to 65% to exceed the maximum driveway width on property located at 2201 Hillview Drive in the R-1, Single Family Residential District (*Applicant/Owner: Alycia and Matthew Swanson; file no: 21-070*)

Beagle presented the staff report. The current driveway is buckling as a result of St. Christopher Circle slowly sliding downhill into Hillview Drive and applying pressure on the applicant's driveway. The applicant would like to replace the current driveway apron with a new one and slightly increase the throat width of the driveway by 2 feet to 4 feet to allow for easier access to the parking pad on the side of the property. The driveway is currently 36' wide and the front yard landscaped open space is 65%, making the current driveway noncompliant. This is, however, a

condition that existed prior to the applicant's acquisition of the property. The expansion of the throat of the driveway would not increase the driveways overall width or significantly change the extent of landscaped open space.

It is the recommendation of staff to APPROVE the Exception to reduce the front yard landscaped open space requirement from 75% to 65% with respect to the existing 36-foot-wide driveway, subject to the following conditions:

1. The Exception shall only apply to the existing 36 foot wide driveway and surface parking pad on the side of the house with a two (2) foot to four (4) increase in width at the throat of the driveway as shown on the applicant's site plan.
2. No other portion of the front yard area projecting beyond the front plane of the house shall be converted from landscaped open space to an impermeable (hard) surface.

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

Chua asked if the expansion would allow three cars to park side by side in the throat of the driveway. Beagle explained that this would not reasonably be possible. Beagle also clarified that the applicant is exploring the possibility of converting the current parking pad into a third car garage space. Beagle stated that this would make the existing driveway compliant with current zoning regulations.

Fisher asked if this intervention would prevent the driveway from buckling again in the future. Beagle stated that the applicant has had conversations with Public Works staff and would be more likely to be able to answer that question.

Chua asked if the applicant would be able to replace the current driveway without approval from the BZA. Beagle confirmed that this was the case and that the request pertains only to the expansion of the throat width.

Hardy opened the public hearing and called for comment from the applicant.

Applicant Alycia Swanson, 2201 Hillview Drive, offered to answer any questions.

Hardy asked if this repair would prevent the driveway from buckling in the future. Swanson stated that it would not stop the need for future repairs as a result of St. Christopher Circle sliding downhill and applying pressure against their driveway. She stated that extra expansion joints will be installed to prolong the need for another repair.

Fisher asked if nearby properties were having the same issue. Swanson stated that the other driveways in the vicinity are flat.

With no further public comment, Hardy closed the public hearing and called for board discussion.

Chua stated that he did not have an issue with the request but is slightly concerned about the need for continuous repair in the future. Other members of the Board agreed on that point.

Hamilton stated that there are already many wide driveways in the neighborhood and that this exception would not put the property out of character with the rest of the neighborhood.

**Hardy called the question for item 2.3. Roll call vote was taken. Motion passed 5-0-0.**

**THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 2201 HILLVIEW DRIVE:**

**Standards for Exceptions (Sec. 14-605)**

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject property is compliant with all applicable regulations other than the exception to the landscaped open space requirement sought by the applicant.

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The proposed Exception recognizes a pre-existing condition before the applicant's purchased the property. The existing driveway is being damaged by the pressure applied against it by the lateral movement of St. Christopher Cir. and Hillview Dr. In replacing the existing driveway, the applicant wishes to increase the throat width of the driveway from two (2) to four (4) feet to provide for easier access to the surface parking pad on the south side of the house. The overall width of the driveway will remain at 36 feet. The slight increase in driveway width at the throat of the driveway is not anticipated to have any greater impact on neighboring residential property than the existing driveway.

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

The proposed exception will recognize a pre-existing condition created by a previous property owner, allow for the replacement of the driveway to remove an existing safety hazard, and improve accessibility to the surface parking pad on the side of the house without negatively impacting sight views by neighboring residential property.

**4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:**

Considering the applicant did not create the over width condition of the existing driveway and that by its improvement it is not anticipated to have any greater impact on neighboring residential property than the driveway as it exists today; the strict application of the regulations, in this case, is unreasonable and unnecessary when all facts and circumstances are considered.

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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 front yard setback from 25' to 0' for a proposed fence on property located at 2508 Sunny Circle in the R, Single Family Residential District (*Applicant/Owner: Andrew and Alison Gerth; file no: 21-071*)

Beagle presented the staff report. The property is located along a cul-de-sac that, due to the angle of the bulb, creates an additional street frontage that would greatly limit the fencible area in the backyard. The proposed fence would be set back 0 feet from the property line along the cul-de-sac and would consist of a shadow box design. The existing deck on the north side of the house is noncompliant as to side yard setback but the deck preexists the current owners.

City Administration recommends to APPROVE the Exception to reduce the minimum front yard setback requirement from 25 feet to 0 feet to construct a fence on property located at 2508 Sunny Circle, subject to the following conditions:

1. The Exception shall only be for the construction of a four (4) foot tall wooden "shadow box style" fence as referenced in the application and staff report.
2. The proposed location of the fence shall be as shown on the site plan provided by the applicant.
3. The applicant shall construct the proposed fence within the 180-day period of validity of Sec. 14-608 of the Zoning Regulations.

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

Hamilton asked if it would be possible to postpone a decision on this application until the deck can also be included in the exception request. Beagle stated that he would defer to the applicant for their decision of whether they would like a decision now or would like to include the deck in the request at a later date. Hamilton expressed concern allowing the exception given that the property is not currently in compliance with all applicable regulations. Beagle stated that since the condition was not created by the current owners, it would be reasonable to allow leeway. Beagle stated that if the issue with the deck was caught earlier it would have been included in this application.

Hamilton asked for clarification regarding language referring to an overlap of the fence with the adjacent property. Beagle clarified that this was referring to a shared property line, not an intrusion into the adjacent property.

Hardy opened the public hearing and called for comment from the applicant.

Applicant Andrew Gerth, 2508 Sunny Circle, explained that the purpose of the fence is to protect their children while they are playing and to allow their dog to use the backyard without a leash. Gerth explained that they were not aware of the noncompliance of the deck when they purchased the property.

Hardy asked if Gerth would be interested in postponing the exception request until the deck could also be included. Gerth explained that he would prefer if a decision could be made about the fence at the current meeting so it could be put up shortly afterwards.

Hardy asked if the applicant had communicated the plans to their neighbors. Gerth stated that they had communicated with every homeowner on Sunny Circle and several on Sunnymead Road and heard only support for the fence.

Hamilton asked where the lot line exists relative to the existing trees and swing. Gerth stated that the trees and swing are within his property and that the fence would encompass that area.

With no further public comment, Hardy closed the public hearing and called for board discussion.

Fisher expressed concern with approving the exception given that the deck is not in compliance. Hamilton asked if a condition could be added requiring the approval of an exception for the deck. Beagle stated that he believes that the applicant will return for an exception for the side yard setback for the deck and does not feel that it is necessary to include that as a condition. Hamilton stated her belief that the condition must exist to address the unmet criteria relating to compliance with all applicable regulations.

Hamilton stated that she is disappointed in the loss of the openness of the greenspace between properties that would be caused by the addition of the fence, but that the fence that could be put up without an exception would cause the same issue. She stated that she does not have an issue granting the setback exception given that the cul-de-sac pushes into their property.

Hardy agreed that, due to the unique shape of the cul-de-sac, granting the exception seems reasonable.

Wigfall recommended to staff to include topography maps for similar requests so that it would be clearer how the fence might affect visibility from adjacent properties. She stated that she does not have any issues with granting the exception.

**Hardy called the question for item 2.4. Roll call vote was taken. Motion passed 5-0-0 with an additional condition that the applicant seek and obtain a setback exception for the deck.**

**THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 2508 SUNNY CIRCLE:**

**Standards for Exceptions (Sec. 14-605)**

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject property is compliant with all applicable requirements of the zoning regulations other than the location of the deck on the north side of the house and the Exception being requested.

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

The proposed Exception to reduce the required front yard setback from 25 feet to 0 feet along a portion of Sunny Circle to install a 4-foot wooden fence is not anticipated to create a condition adverse to neighboring residential property on Sunny Circle.

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

The proposed Exception appears to be a reasonable compromise to allow the applicant's a safe and secured fenced enclosed portion of their yard. No negative impacts are anticipated as a result of the proposed setback reduction and, as a result, will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

**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;** Given the sweep of the cul-de-sac bulb to the north at the east end of Sunny Circle, it pinches down the width of the lot on the east side of the house. The change of angle of the cul-de-sac bulb essentially acts as another street frontage constraining the buildable area of the lot and the area available to erect a fence. The configuration of the lot was created by the plat of Frey Addition, Unit Two and not by action of the applicant. The applicant did not obtain ownership of the property until August of this year. As a result of observing the front yard setback on Sunnymead Road and Sunny Circle, the only remaining area to create a useable "rear" yard is to the east of the house. The applicant was unaware of the limitations of the zoning regulations as to fence setback at the time they acquired the property.
- (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's acquired the property in August of this year, but with no understanding that the requirements of the zoning regulations would limit their ability to create a fence enclosed rear yard area.
- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** The configuration of the property and location of the applicant's home, constrains the buildable area of the remainder of the property. To create the opportunity for a fence enclosed rear yard, the only available space is to the east of the applicant's home. The application of the front yard setback on Sunny Circle would result in an oddly shaped fence enclosed area that would be of little use or utility to the applicant. (See Fig. 3) The only practical way to achieve a reasonably sized and shaped fenced enclosed yard would be by reducing the required front yard setback.
- (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;** The proposed Exception would be neither a relative gain nor loss to the community. The reduced front yard setback will enable the applicant to create a reasonable fence enclosed yard without compromising the integrity of neighboring residential property on Sunny Circle.

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- 2.5 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 rear yard setback from 25' to 15' for a proposed addition on property located at 2808 St Matthew Circle in the R, Single Family Residential District (*Applicant/Owner: Stephen and Barbara Sollner; file no: 21-068*)

Beagle presented the staff report. The project for which the application is being sought is to add a four-seasons room to the rear of the property. The addition would replace an existing ground-level deck and would tie into the existing roofline of the house.

City Administration recommends to APPROVE the Exception to reduce the minimum rear yard setback requirement from 25 feet to 15 feet to construct a four seasons room addition to the back of the residence at 2808 St. Matthew Drive, subject to the following conditions:

1. The Exception shall only be for the four seasons room addition as referenced in the application and shown on the accompanying design plans submitted by Fox Home Innovations, LLC.
2. The applicant shall obtain a building permit to commence construction of the proposed addition within the 180 day period of validity of Sec. 14-608 of the Zoning Regulations.

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

Hardy opened the public hearing and called for comment from the applicant.

Consultant Chris Fox spoke on behalf of the applicant and offered to answer any questions.

With no questions of the board and no further public input, Hardy closed the public hearing and called for board discussion.

Chua expressed concerns with allowing an exception to replace the deck with a substantial structure. The concern he expressed is that this would reduce the meaning of the setback requirement if exceptions were to be repeatedly granted. Hardy pointed out that the purpose of the exception process is to make sure that there are not adverse impacts. Hamilton stated that she does not share Chua's concerns because of the uniqueness of the shape/orientation of the property and the privacy fences of adjacent properties which limit visual impact.

Fisher asked for clarification as to whether the existence of the privacy fences is important for the consideration of the request. The rest of the Board confirmed that the consideration would

be different if the fence did not exist. Chua agreed that the fence does make a difference in the request.

**Hardy called the question for item 2.5. Roll call vote was taken. Motion passed 5-0-0.**

**THE BOARD MADE THE FOLLOWING FINDINGS OF FACT FOR THE EXCEPTION 2808 ST MATTHEW CIRCLE:**

**Standards for Exceptions (Sec. 14-605)**

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject property is compliant with all applicable requirements of the zoning regulations other than the one for which an exception is being requested.

**2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

For all practical purposes, the proposed room addition will not be readily visible to nearby property. The addition will satisfy a need to provide additional living space without intruding on neighboring property. As a result, the proposed Exception to reduce the rear yard setback to accommodate the proposed addition will not have a substantial adverse effect on neighboring residential property.

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

With no negative impacts anticipated, the proposed Exception to the rear yard setback to accommodate the proposed addition will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

**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;** There are no conditions of the property that compel the granting of the requested Exception except to satisfy a need of the applicant to provide additional living space. The applicant is working with the property in its present configuration. As stated in their application, large costs would have to be incurred to rearrange the footprint of the home to allow the addition to be built. The proposed location offers the greatest opportunity to accommodate the proposed addition.

(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's acquired the property in 2011, but not with the intent to violate a setback to build an addition to the house.

- (3) **Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations;** As referenced, given the current configuration of the home, the proposed location at the rear of the house offers the greatest opportunity for the proposed addition without a major expense to rearrange the home.
  - (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;** The proposed Exception would be neither a relative gain nor loss to the community. The exception will permit an addition that will add value and living space to the existing home with no adverse effects relative to neighboring residential property.
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Hardy adjourned the meeting at 8:54pm

NEXT MEETING: Wednesday, November 10, 2021

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