

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, October 10, 2007
7:00 PM

MEMBERS PRESENT: Connie Hamilton, Chairperson; La Barbara J. Wigfall; and, Harry Hardy.

MEMBERS ABSENT: Calvin Emig

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Chad Bunger, Planner

CONSIDER THE MINUTES

Hamilton asked the Board to consider corrections to the Minutes of the September 12, 2007 Board of Zoning Appeals meeting. Her proposed corrections included:

- Changes to the Findings of Fact for the Tatarax Drive Exception Request to reflect her understanding of the hardship
- Changes to Page 14 of the Minutes to reflect that the intention of the regulations was not damaged by Taco Hut's proposed request, and to more narrowly tailor the language so that it can't be applied more broadly than the Board intends.

Hardy motioned to approve the September 12, 2007 Minutes as modified by Hamilton.

Wigfall seconded the motion, which passed with a vote of 3-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback along Fort Riley Boulevard for an existing building in the C-1, Restricted Business District. No addition or expansion is proposed and the Exception is to allow for clear title of the property. The property is located at 2040 Fort Riley Boulevard (Applicant/Owner: Steve Springer).

Chad Bunger provided the Staff Report recommending approval with one (1) condition.

Hamilton asked about the condition "The front-yard exception shall be limited to that which is shown in the Applicant's site plan," to confirm that there was no proposed change to the property in question.

Chad Bunger confirmed this.

Hamilton asked if an Exception was a better administrative remedy for the applicant than receiving an opinion of legal non-conforming use.

Chad Bunger explained that in the given situation, an exception would obtain the same result in less time, and with a lower burden placed on the applicant.

Hamilton opened the public hearing.

With no comments from the public, Hamilton closed the public hearing.

Hardy stated he could support the request.

The Board made the following Findings of Fact for the Exception:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property currently complies with all applicable requirements of these regulations, other than the one for which the Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal impacts on adjacent properties are expected. The two-story stone structure has been located within the front yard setback since 1965, when the construction of Fort Riley Boulevard took a portion of the subject site. The building is approximately six (6) to eight (8) feet above the grade of Fort Riley Boulevard and is separated from the sidewalk by a concrete retaining wall and landscaped areas. The property is heavily landscaped to reduce the negative visual effects of the setback encroachment. Properties to the south of the subject side are separate by the four-lane boulevard. Properties to north and east are screened by heavily wooded areas. Properties to west of the subject site are separated by a seventeen (17) foot concrete drainage channel and Westwood Road, a two lane, collector road way.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No adverse impacts on the public are anticipated. No vision triangle or public easements are encroached upon. The public has not been impacted by the encroachments, which have been part of the established neighborhood for more than 40 years.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: It would be unreasonable to require the applicant to remove the existing structure from the front yard setback encroachment. The creation of Fort Riley Boulevard and its Public Right-of-Way in 1965 caused the structure to encroach approximately eight (8) feet into the front yard setback. The setback regulations are intended to provide for open yards in front and along the sides of homes. A landscaped front yard is provided and the site is adequately separated from the traffic along Fort Riley Boulevard. Without the Exception for the existing

two-story, stone structure, the applicant cannot have clear and marketable title to Lot 1. When all facts and circumstances are considered, it is unreasonable to strictly apply the regulations for this situation.

Hardy moved that the Board grant an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback along Fort Riley Boulevard for an existing building in the C-1 Restricted Business District for the property located at 2040 Fort Riley Boulevard with the following conditions:

1. The front yard reduction shall be limited to the existing two-story structure according to the applicant's site plan.

La Barbara Wigfall seconded motion, which passed 3-0.

A PUBLIC HEARING to consider a request for a VARIANCE to allow an existing gravel driveway to remain unpaved in the R-1, Single Family Residential District. The property is located at 2517 Dipper Lane (Applicant/Owner: Shannon Wilson).

Chad Bunger provided the Staff Report recommending approval with one (1) condition.

Hamilton asked whether the city plans to pave Dipper Lane in the future.

Chad Bunger stated that to his knowledge, the city had no plans to pave Dipper Lane in the near future.

Hamilton asked whether the applicant would have to pave her driveway if the city were to pave Dipper Lane. Chad explained that the owners of the subject property would not have to pave their driveway unless it was put in as a condition of approval for the Exception.

Hardy said that it was his understanding that the applicant had actually provided the gravel material to the end of Dipper Lane so that the street would then reach her property. He asked if this understanding was correct.

Chad Bunger affirmed that the applicant had provided this material through an agreement with the City's Engineering department that he would provide the material and construction if the city paid for the maintenance.

Hamilton asked about the twenty-four (24) foot width of the driveway, as this is wider than normal.

Chad Bunger explained that the regulation for driveway width is that it cannot exceed twenty-five (25) percent of the front yard of a property, and that the applicant's driveway satisfied this requirement. Hamilton asked if the matter of the driveway's width and this regulation could be included in the staff report.

Hamilton asked if there was a reason that the city staff had not included in its recommendation a condition for the driveway to be paved if the street was paved.

Chad Bunger explained that such a condition had been discussed, and the consensus was reached that Dipper Lane was likely to never be paved, and that if it was at some point in the future, it would be difficult for the city to enforce this condition.

Hardy agreed.

Hamilton opened the public hearing.

Applicant Megan Wilson explained that if Dipper Lane was to be paved in the future, she would pave the driveway.

Hamilton asked if Wilson would object to the addition of the condition to pave the driveway should Dipper Lane ever be paved.

Wilson said that she would not object to that condition.

With no further questions or comments, Hamilton closed the public hearing.

The Board made the following Findings of Fact for the Variance:

CONDITIONS UNIQUE TO THE PROPERTY:

The subject property was platted in 1951 and has remained vacant until the recent construction of the house on the site. The subject site fronts to the north on Dipper Lane, which is an existing gravel street. Dipper Lane was previously graveled to the eastern edge of the property, resulting in approximately one hundred (100) feet of new street that needed to be constructed to provide the applicant access to the subject property. Typically, the City constructs the roadway and bills the property owner. However, since Dipper Lane is gravel and ends in front of the subject property, the City allowed the property owner to hire and pay for the construction of the added gravel roadway, which stops at a point parallel to the western edge of the existing driveway. From this point, Dipper Lane becomes a cul-de-sac, creating a connection to the existing driveway and a turn around area for the general public. There is an approximate twenty-six (26) foot circular green space island in the middle of the cul-de-sac. Once the gravel roadway was completed, the City accepted the maintenance responsibilities. The connection of the gravel driveway to an existing gravel street is a unique condition to the subject property.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Areas surrounding the property include open yards to the north and northwest, commercial businesses to the northeast, and similar residential lots to the east, south, and west. Currently there are three (3) unpaved roads in the Star-Vue Shopping Center subdivision. These unpaved roads abut residential lots that have unpaved driveways. Due to presence of the unpaved roads and the other unpaved driveways, no adverse affects are anticipated on adjacent properties by granting of the Variance.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The strict application of the regulations would require the property owner to pave a driveway that abutted a graveled, Dipper Lane, which connects to another gravel street, Galaxy Drive. There are also other residential lots within the same subdivision that have unpaved driveways as well. Requiring the property owner to pave the portion of the existing driveway for which the Variance is being requested would be an unnecessary hardship based on the unique conditions of the property and street.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Variance to allow the existing driveway to remain unpaved is not anticipated to adversely affect the health, safety, or general welfare of the neighborhood or community at large. The City Engineer Staff has reviewed and conducted a site visit of the property and found the construction and design of the site to be acceptable. Because Dipper Lane comes to a dead end in front of the property and no other lots have curb cuts or access points to this portion of the street, no inconvenience is foreseen for the surrounding property owners or the general public.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the regulations is to require the paving of “parking areas, parking spaces, travelways, driveways” to guarantee a high quality linkage between new construction and the public right-of-way. Even though the existing gravel driveway is new construction, the roadway to which it connects is gravel and a unique condition of the public right-of-way. The existing gravel driveway provides an equivalent link to the Dipper Lane, which is the intent of the regulations. When all of the circumstances regarding the paving of the driveway are considered, the intent of the regulations is met without requiring the driveway to be paved.

Hamilton addressed that the Board would like the staff report changed to reflect the driveway width and regulation, and that she would like to see the condition added that the applicant pave the driveway should the street be paved.

Wigfall added that she would like to commend the applicant for taking the initiative to extend Dipper Lane and for working with city.

Hardy moved that the Board grant a VARIANCE for a gravel driveway to remain unpaved in the R-1 Single Family Residential District for the property located at 2517 Dipper Lane based upon the requested modifications to the staff report and with the following conditions:

- The driveway shall be constructed as shown in the site plan and application documents and maintained in good condition.
- If Dipper Lane ever shall become paved, the applicant will complete the pavement of their driveway.

Wigfall seconded motion, which passed 3-0.

Chairperson Hamilton moved to consider the two remaining items together.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum fifty (50) foot front yard setback along Carlson Street for a proposed addition to an existing building in the I-2, Industrial Park District. The property is located at 520 McCall Road (Applicant/Owner: Dave Dreiling).

A PUBLIC HEARING to consider a request for a VARIANCE to allow a reduction of the minimum twenty (20) foot landscape area along Carlson Street to zero (0) feet for an existing building and a proposed addition to the existing building in the I-2, Industrial Park District. The property is located at 520 McCall Road (Applicant/Owner: Dave Dreiling).

Chad Bunger provided the Staff Reports recommending approval of the EXCEPTION with three (3) conditions, and recommending approval of the VARIANCE with two (2) conditions.

Hamilton asked if what appeared to be a parking area in the aerial photographs encroached on the Right of Way.

Chad affirmed that the apparent parking area did encroach on the Right of Way, and that there is a six (6) foot utility easement in the location as well.

Hamilton then inquired as to whether the parking area's absence would allow for six (6) to ten (10) feet of Right of Way and green space.

Chad affirmed that it would, and that the parking area was unpaved and had a gravel surface. He explained that the actual parking lot was to the north of the area in question, and that the area seemed to function as inadvertent overflow parking.

Hamilton asked whether she was correct in understanding that the variance requirement addressed the twenty (20) foot landscaping requirement in both the existing building and proposed addition.

Bunger affirmed this to be correct.

Wigfall brought to attention the fact that the applicant's site plan showed lines on what appeared to be the front half of the gravel parking area, which would seem to indicate that it is in fact an intentional parking lot.

Chad said the spaces indicated on the site plan are in fact parking spaces located adjacent to the north-east façade of the building.

Hamilton opened the public hearing.

David Dreiling, applicant, said that he would happily answer any questions from the board.

Hamilton explained to Dreiling that it was important to follow the intentions of the City Zoning Requirements, and asked if he would be adverse to an approval condition that disallowed parking in the Right-of-Way and outside of marked parking spaces.

Dreiling inquired whether this condition would require him to landscape the public Right of Way.

Hamilton answered that she did not think the Board had the authority to make such a requirement of him, and asked the Board if their authority extended to disallowing parking in the Right of Way.

Hardy said that he thought it might be a Code Enforcement issue, since it is a public Right-of-Way.

Bunger said that he understood it to be a Code Enforcement issue.

Hardy expressed reluctance to include a condition of approval that was outside of the applicant's authority.

Bunger agreed.

Dreiling explained that he did not know if that condition was normal on his property, or if it just happened to occur on the day that the aerial photograph was taken. He said that normally, he and his employees park behind the building in an area that is not an actual parking lot. He said that with the ensuing construction on his business, they have had to find other area on the property to park.

Hamilton told Dreiling that she would appreciate a good-faith effort on his part to include as much green space as possible.

Hardy and Dreiling discussed Dreiling's property acquisition, which will allow Dreiling to expand his business. Dreiling explained that his business has experienced growth since its inception that has continuously outpaced his master plans. Dreiling discussed his future land use plans for the business.

Hamilton closed the public hearing.

Hamilton stated that she could support the exception request, and acknowledged the unique situation of the property regarding Carlson Drive. She voiced concern regarding the variance; she felt that the requirement for relationship to the intent of the regulations was perhaps tenuous. She explained that the Board has always tried to avoid using the existence of the separation provided by an adjacent property owner's Right-of-Way as justification to allow an

applicant to build to the edge of his or her property. She requested that the sentence in the staff report regarding this matter be stricken.

The Board made the following Findings of Fact for the EXCEPTION:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property currently does not have the required minimum twenty (20) feet of landscaped area on all sides abutting a street. The applicant has requested a Variance to correct the non-compliance and oversight.

The subject site has been granted a number of exceptions and variances since 2001. They include:

- March, 2001 - Exception to allow a reduction of the minimum fifty (50) foot front yard setback to forty-two (42) feet along Carlson Street to construct a 4,800 square foot office space addition to what is now the northwest corner of the existing structure.
- March, 2001 - Variances to allow a reduction of the minimum 100-foot lot depth for a proposed industrial subdivision lot and to allow a reduction of the minimum twenty (20) foot side yard setback to one foot for the existing off-street parking lot along Enoch Lane.
- April, 2003 - Exception to allow a reduction of the minimum fifty (50) foot front yard setback to forty-two (42) feet along Carlson Street to construct a 7,050 square foot wholesale manufacturing and accessory retail sale area on the south end of the existing building.
- February, 2004 - Exception to allow a reduction in the minimum required fifty (50) foot front yard setback along Carlson Street to eight (8) feet for a 7,000 square foot addition on the south end of the building,.
- February, 2005 - Exception to allow a reduction in the minimum required fifty (50) foot front yard setback along Carlson Street to eight (8) feet for a proposed 10,500 square foot addition to the south of the existing structure.
- April, 2006 - Exception to allow a reduction of the required minimum fifty (50) foot front yard setback along Carlson Street to six (6) feet for a proposed 19,245 square foot warehouse addition and loading bay to the south and west side of an existing structure.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal affects should be felt by adjacent property owners by granting the Exception. Properties to the north and west are zoned I-2, Industrial Park District, and produce similar types and intensity of uses. To the

west and south of the subject property are lots zoned C-5, Highway Service Commercial District and C-6, Heavy Commercial District. The C-5 district to the east of the subject property is Orschlen Farm and Home Supply business. To the south is the Hampton Inn hotel property. Any business activity on the subject site will occur on Carlson Street and away from the adjacent C-5 district properties. On-street parking has become congested along Carlson Street, but the proposed Exception request and expansion should not impact the number of vehicles parking on the street.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Easements along the existing property line between Lot 1, GTM Sportswear Addition, Unit Two and Lot 2, MAA AMBA Addition are being vacated with the Final Plat of GTM Sportswear Addition, Unit Three. The proposed building addition will not encroach on any utility easements or vision triangles. The proposal should not impact the parking situation along Carlson Street.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The subject property is a corner lot with frontages along McCall Road and Carlson Street, therefore it is considered to have two front yards. Any lot within the I-2, Industrial Park District, requires a minimum fifty (50) front yard setback when the structure is greater than 100 feet in width or which has lot coverage of greater than 20,000 square feet. The existing building is approximately 118 feet from the McCall Road property line. This restriction would limit the buildable area for the addition along Carlson Street. Furthermore, previous exceptions have been granted to allow the expanding building to be located within the fifty (50) foot setback along Carlson Street; as close as six (6) feet to the property line. Although a five (5) off-set is needed to keep the addition out of utility easements, the applicant wishes to maintain a similar façade line as the rest of the building. When all facts and circumstances are considered it would be unreasonable to require the applicant to construct the building addition fifty (50) feet from the property line when previous building expansions have been allowed to located within the front yard setback.

The Board made the following Findings of Fact for the VARIANCE:

CONDITIONS UNIQUE TO THE PROPERTY: When the site was originally developed, Carlson Street did not exist as a public street, rather it was a private driveway. At that time, the area in question was a side yard and did not require the twenty (20) foot landscape area. In 1995, the private drive was converted to a public street, Carlson Street, creating a grandfather condition on the property and the existing building. In 2001, the subject property was replatted and the building was expanded along its established façade to the south. The business and building has continued to expand to the south along the façade line. The requirement has been inadvertently overlooked during previous expansion and Board of Zoning Appeals request. The creation of the public street and inadvertently expanding a non-conforming building creates a unique condition on the subject site.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse affects should be felt by adjacent property owners by granting the Variance. Properties to the north and west are zoned I-2, Industrial Park District, and produce similar types and intensity of uses. To the west and south of the subject property are lots zoned C-5, Highway Service Commercial District and C-6, Heavy Commercial District. The C-5 district to the east of the subject property is Orschlen Farm and Home Supply business. To the south is the Hampton Inn hotel property. Any business activity on the subject site will occur along Carlson Street and away from the adjacent C-5 district properties. On-street parking has become congested along Carlson Street, but the proposed Variance request for the existing building and the addition should not impact the number of vehicles parking on the street.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: The strict application of the regulations would require the property owner to remove or reduce a portion of the existing building and remove existing parking to provide the twenty (20) foot landscape area, causing an unnecessary hardship. Likewise, requiring the property owner to redesign the proposed addition to provide the twenty (20) foot landscape area would create a hardship. The redesigned expansion would reduce the effective use of the building and be contrary to the building pattern on the property. Furthermore, requiring the landscaped area to be installed for the addition would be counter-productive, since over 530 feet of the building's façade along Carlson Street does not have the landscape area.

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

The proposed elimination of the twenty (20) foot landscape area along Carlson Street is not anticipated to adversely affect the health, safety, or general welfare of the neighborhood or community at large. The subject property's non-conformity has been present since at least 2001 with no public complaint. Granting the Variance will not improve nor worsen the on-street parking situation along Carlson Street.

RELATIONSHIP TO INTENT OF REGULATIONS:

The use limitation to provide a twenty (20) foot landscape area on all property lines that abuts a public street is intended to provide adequate separation between lots and public roads, while providing sufficient green space. Even though the required landscape space is not provided, there is adequate separation between properties. Although a 165 foot long portion of the building is only six (6) feet from the western property line, the remainder of the existing building and proposed expansion (520 feet) is located over thirty-five (35) feet from the property line. The proposed expansion will be twelve feet from the property line.

The existing building and proposed addition has limited separation from Carlson Street. Carlson Street is a cul-de-sac providing access to only five zoning lots and sees limited daily traffic from these abutting properties. As noted, 165 feet of the existing building is only six (6) feet from the western property line. However, 520 feet of the existing and proposed building façade along Carlson Street is at least thirty-five feet away from the property line.

When the property as a whole and the circumstances surrounding the landscape area is considered, the intent of the regulations is met without requiring a landscape area.

Hardy moved that the Board grant an EXCEPTION to allow a reduction of the minimum fifty (50) foot front yard setback along Carlson Street for a proposed addition to an existing building in the I-2, Industrial Park District for the property located at 520 McCall Road with the following three (3) conditions:

- The addition shall be constructed according to the application and site plan documents.
- All applicable permits shall be obtained
- Prior to issuance of a building permit, the Final Plat shall be filed.

Wigfall seconded motion, which passed with a vote of 3-0.

Hardy moved that the Board grant a VARIANCE to allow a reduction of the minimum twenty (20) foot landscape area along Carlson Street to zero (0) feet for an existing building and a proposed addition to the existing building in the I-2, Industrial Park District for the property located at 520 McCall Road with the following two (2) conditions:

- The Variance shall be limited to the Site Plan, as proposed.
- The Variance shall be subject to approval of the rezoning and Final Plat of the GTM Sportswear Addition, Unit Three

Wigfall seconded motion, which passed unanimously.

ADJOURNED

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