

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, December 12, 2007
7:00 PM

MEMBERS PRESENT: Harry Hardy; Calvin Emig; Joe Aistrup; and La Barbara J. Wigfall

MEMBERS ABSENT: Connie Hamilton

STAFF PRESENT: Chad Bunger, Planner

Harry Hardy conducted the meeting in the absence of Connie Hamilton.

CONSIDER THE MINUTES

Aistrup moved to approve the November 14, 2007 minutes which was seconded by Emig and passed with a vote of 4-0.

CONTINUE a PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction in the minimum twenty-five (25) foot front yard setback to six (6) feet along South Juliette Avenue for off-street parking related to a proposed automotive parts store. The subject site is located at the northwest corner of the intersection of South Juliette Avenue and Fort Riley Boulevard and is zoned LM-SC, Light Manufacturing-Service Commercial District (Applicant: Dial Realty, Owner: Powell Brothers – Gary Duncy and Premier Commercial Property, Inc).

Emig made a motion to remove the item from the table and continue the public hearing. Wigfall seconded the motion, which passed 4-0.

Bunger provided the staff report recommending approval with three (3) conditions.

Emig wanted to clarify that the Exception request is for the eastern property line. Bunger confirmed this and would make sure that it was clearly stated that way in the staff report.

Hardy opened the public hearing.

Spencer Lombardo, Dial Realty, was available to answer any question.

Wigfall asked about the landscaping areas associated with the development. Lombardo stated that because of the limited size of the property, only the minimum landscape requirements of the zoning regulations were provided. Lombardo showed the site plan that detailed the landscape areas along South Juliette Avenue and Fort Riley Boulevard. A small landscape island is also provided in front of the building.

Robert Caniff, property owner associated with this project, spoke in support of the request.

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

Emig asked where the required minimum twenty-five foot setback is located in relation to the proposed six foot setback. Bunger showed the setbacks on the site plan. Bunger also described the distance between the proposed setback and the curb line. Due to the wider than normal South Juliette Avenue public right-of-way, any cars in the involved parking spaces will be approximately thirty-five feet from the street.

Emig stated that he could support the request because it improves the existing vacant site and helps the South Redevelopment project move forward.

Aistrup stated he could support the project because it is consistent with the commercial areas along Fort Riley Boulevard.

Hardy stated he could support the application based on the attempt to minimize the affects on adjacent properties by increasing off-street parking.

Wigfall gave her support of the request because the project will provide more handicap accessible parking for the development.

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

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject property currently complies with all applicable regulations except for what the Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property and properties to the east, south and west are located within the LM-SC, Light Manufacturing – Service Commercial District. The adjacent property to the east is developed as a multi-unit commercial center with a variety of commercial businesses located within one structure. AutoZone Auto Parts, Affordable Transportation used car sales and NAPA Auto Parts are developments located to the immediate south of the subject property across Fort Riley Boulevard. Properties to the north are residential developments that are zoned R-2/TNO,

Two-Family Residential District with Traditional Neighborhood Overlay.

The adjacent R-2/TNO properties to the north will likely be the most effected by the proposed commercial development. The properties are developed as single-family and two-family dwelling units. Any time a lot is developed to a commercial use, an increase in lighting, traffic, and noise is expected. The proposed use as a retail store is permitted in the LM-SC District, however, other uses permitted in the district, such as light manufacturing, warehousing and industrial uses may have more of an adverse affect on adjacent properties. Three of the residential developments to the north of the subject site use the alley (El Paso Lane) for vehicular access and parking. The proposed commercial development is required to have 34 off-street parking spaces based on 1 parking stall per 250 square feet of floor area. The proposed site plan has thirty-seven (37) parking stalls shown that meet all setback regulations. The Exception request to allow seven (7) off-street parking within the required minimum twenty-five (25) foot front yard setback would increase the number of parking stall provided to 44. Forty-four (44) off-street parking spaces should be adequate to alleviate any parking issues with the subject property and adjacent residential developments. It is not perceived that a reduction in the front yard setback along South Juliette Avenue to allow seven (7) additional parking spaces will have an adverse effect on adjacent properties.

Because the proposed addition will occur within 500 feet of a registered historical site (Hulse-Daughters house), the project was reviewed by the State Historical Preservation Officer (SHPO) “The SHPO has determined that the proposed project will not encroach upon, damage, or destroy any listed historic property or its environs” (please see attached letter).

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Exception should not adversely affect the public’s health, safety, morals, order, convenience, prosperity, or general welfare. The location of the seven (7) off-street parking spaces should not affect vision clearance for traffic traveling along South Juliette Avenue or encroach on any utility easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the regulations would require the applicant to provide the off-street parking stalls outside of the minimum twenty-five (25) foot front yard setback or eliminate the parking spaces from the proposed site plan. Because of the residential developments adjacent to the subject property, providing an adequate number of off-street parking spaces should be a priority to minimize the negative impacts on those residential dwelling units. The applicant feels that providing forty-four (44) parking spaces will meet the peak demand for parking. Furthermore, the commercial development to the east has been allowed to provide parking spaces within the required minimum twenty-five (25) foot front yard setback through a Board of Zoning Appeals case in 2003. Because of similar developments in the area and the need to minimize adverse affects on adjacent properties, it would be unreasonable and unnecessary to require the strict application of the regulations when all facts and circumstances are considered.

Emig moved that the Board grant an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to six (6) feet along South Juliette Avenue for off-street parking spaces associated with the proposed automotive parts store located on the northwest corner of South Juliette Avenue and Fort Riley Boulevard in the LM-SC, Light Manufacturing-Service Commercial District, based on the staff's report with the following conditions:

1. The Exception shall be limited to the proposed addition as outlined in the application documents and shown on the applicant's site plan.
2. A building permit shall be obtained.
3. The proposed landscaping shall be maintained in good condition.

Wigfall seconded the motion, which passed 4-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot rear yard setback and a reduction of the minimum eight (8) foot side yard setback for a proposed house. The subject site is located at 408 Highland Ridge Drive and is zoned R-1, Single-Family Residential District (Applicant/Owner: Ken and Bonita Balken)

Bunger provided the staff report recommending approval with three (3) conditions.

Emig asked if the subject lot and proposed house meet the minimum lot area and maximum lot coverage regulations for the zoning district. Bunger stated that the lot does meet the minimum lot area of 6,500 square feet for the R-1, Single-Family Residential District. Bunger also stated that the proposed house does not exceed the maximum 35% lot coverage which is required in the R-1 District. Emig asked if that could be clearly stated in the staff report. Bunger said that he will adjust the staff report to address that concern.

Hardy opened the public hearing.

Bunger stated that the applicants were not able to attend the meeting due to the weather, but a representative was available to answer any questions.

Alma Wilson, 429 Haventon Drive, asked what the value of the house will be and if the request would decrease the value of the house or adjacent properties. Bunger stated that the proposed house will not be out of character for the neighborhood and that the Exceptions

should not decrease property values in the area.

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

Emig stated he could support the request because of the irregular shaped lot and nonconforming lot depth.

Wigfall stated her support because of the minimal impacts of the Exception requests.

Hardy stated his support for the Exception request by improving a nonconforming lot with minimal impacts on adjacent properties.

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

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The Manhattan Zoning Regulations define lot depth as “the distance between the midpoints of the front lot line and the rear lot line.” The R-1, Single-Family Residential District lot size requirements call for a minimum lot depth of one-hundred (100) feet. Due to the irregular shape of the lot, the subject property has a lot depth of ninety-three (93) feet, which has been nonconforming to minimum lot depth since it was platted in 2005. The subject property does however comply with the minimum lot area and the other bulk regulations for the zoning district, including maximum lot coverage. The R-1, Single-Family Zoning District requires a maximum lot coverage of thirty-five (35%) percent. The proposed house will have a footprint of approximately 1950 square feet, or a lot coverage of twenty-six (26%) percent. The subject property currently complies with all applicable regulations other than the aforementioned noncompliance and the ones for which the Exceptions are being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject property, 408 Highland Ridge Drive, is a vacant lot located in the R-1, Single Family Residential District with surrounding properties being a mix of vacant lots and single-family homes. The proposed home’s building footprint, size, and lot coverage is in character with the rest of the surrounding area. The proposed encroachments located along the western and northern property lines are not foreseen to be out of character with the rest of the neighborhood. The approval to reduce the minimum rear and side yard setbacks for the proposed house is not anticipated to have an adverse impact on surrounding properties.

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

The proposed residential structure will not encroach into the ten (10) foot utility easements located along the west, southeast and east property lines. The location of the two requested setback reductions will not affect the adjacent rights-of-way or vision clearance triangles. The proposed Exceptions are not anticipated to have an adverse effect on the public’s health, safety, or general welfare.

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

The subject property's irregular shape and nonconforming lot depth limit the buildable space available on the lot. If the lot conformed to the minimum lot depth in the R-1, Single Family Residential District, the proposed home could be configured in a manner that didn't require the setback reductions. Due to the configuration of the lot this request seems reasonable within the regulations. When all facts and circumstances are considered, requiring strict application of the regulations for the proposed improvements is unnecessary and unreasonable.

Emig moved that the Board grant EXCEPTIONS for the property at 408 Highland Ridge Drive in the R-1, Single-Family Residential District to allow a reduction of the minimum twenty-five (25) foot rear yard setback to twenty-one (21) feet and a reduction of the minimum eight (8) foot side yard setback to seven (7) feet along the northern property line for the proposed house, based on the modified staff report, with the following conditions:

1. The Exception shall be limited to the proposed house as outlined in the application documents.
2. The proposed addition shall be maintained in good condition.
3. All applicable permits shall be obtained.

Aistrup seconded the motion, which passed 4-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a driveway to be greater than ten (10) feet in width for a proposed paved driveway and to allow a reduction of the minimum front yard setback for an existing fence. Both Exceptions are for a single-family dwelling unit. The subject site is located at 1011 Claflin Road and is zoned R-1, Single-Family Residential District with TNO, Traditional Neighborhood Overlay District (Applicant/Owner: Anthony and Mary Gorman).

Bunger provided the staff report recommending approval with five (5) conditions.

Hardy opened the public hearing.

Anthony Gorman, property owner and applicant, stated his desire for the proposed driveway so that he can park his family's vehicles on the new driveway and off of the congested street – Claflin Road.

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

Hardy stated he could support the request. He did have concerns in regards to the TNO regulations, but felt that the applicants only want to improve their existing driveway and not create any new conditions. The applicants are also willing to maintain the fence and correct the vision triangle issue. Hardy also wanted to commend the property owners for improving the older home.

Aistrup stated his support for the request based on the fact that parking along Claflin Road is congested and that the new concrete driveway will improve the property.

Emig stated he could support the Exception request based on reasons already mentioned. Emig said that the reality is the applicants could already park two vehicles on the driveway by parking on the sidewalk. Granting the Exception would improve the property and create a legal parking situation.

Wigfall expressed her appreciation for the applicant's work on improving the property and could support the Exception request.

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

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The existing fence encroaches into the ten (10) foot vision clearance triangle at the intersection of Claflin Road right-of-way and the private driveway. If a condition is made to remove the portion of the fence within the vision clearance triangle, the property will comply with all applicable requirements of these regulations, other than those for which an Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Request for New Driveway

The subject property and adjacent properties to the east, west and south are located in the R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay. These adjacent properties are a mixture of owner-occupied and rental, single-family detached homes. To the north of the subject property are owner-occupied homes located in the R, Single-Family Residential District.

The proposed design of the concrete driveway is similar in nature with the surrounding area. Two properties directly to the north of the subject property (1016 and 1020 Claflin Road) have driveways that are approximately seventeen (17) feet in width, which is wide enough to park two (2) vehicles. A rental property to the west of the subject site (1017 Claflin Road) has a "U" shaped driveway that also serves as off-street parking. At its widest point, this "U" shaped driveway is approximately sixty-five (65) feet wide. Other properties to the east and west of the subject property on 10th and 11th Street also have driveways of sufficient width to park two (2) vehicles (1329 and 1330 N 11th and 1322 N 10th). The Exception request for the proposed driveway is in character with the differing residential uses and driveway conditions surrounding the subject property and is not anticipated to adversely affect the surrounding

neighborhood.

Request for Existing Fence

Based on the appearance of the existing split rail fence, it was constructed several years ago. The presence of the split rail fence on the front property line has not caused any adverse affects for adjacent properties. The applicants are aware of the nonconforming placement of the fence and have verbally agreed to maintain the fence if the Exception is granted or remove the fence entirely if the Exception request is denied.

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

Request for New Driveway

The proposed driveway design will not encroach on existing easements or disrupt the public order in the area. Several properties near the subject site have driveways that exceed the maximum driveway width regulated by the Traditional Neighborhood Overlay District. The applicants' state in their application, that the proposed driveway would improve public safety by reducing the number of vehicles parked on Claflin Road. On-street parking on Claflin Road is restricted to permit parking only on the south side of the roadway. The granting of the Exception for the new driveway should not have an adverse effect on the public health, safety, morals, order, convenience, prosperity or general welfare.

Request for Existing Fence

The existing fence encroaches on the vision triangle between the private driveway and Claflin Road. The west end of the fence should be moved to comply with the City of Manhattan's ten (10) foot Vision Triangle regulations (Section 3-411(A –E)). If a condition is made to relocate the fence outside of the vision triangle, the granting of the Exceptions should not have an adverse effect on the public health, safety, morals, order, convenience, prosperity or general welfare.

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

Request for New Driveway

The existing gravel driveway, which is twelve (12) feet, six (6) inches wide and thirty-five (35) feet long, has been determined to be legally nonconforming improvement after the zoning district was changed from R-1, Single-Family Residential District to R-1/TNO, Single-Family Residential District with the Traditional Neighborhood Overlay District, in April, 2004. The gravel driveway abuts the existing three (3) foot wide concrete walkway. The applicants have discussed options with City Staff as to how to replace the existing driveway with concrete. The initial design was to improve the gravel driveway and replace the existing walkway with a new concrete surface, that incorporates the driveway and walkway and be approximately fifteen (15) feet, six (6) inches wide. City Administration cannot administratively approve the design because it would increase the degree of a legally non-conforming improvement.

The strict application of the regulations would require the new driveway to be either ten (10)

feet wide to meet the TNO driveway regulations and install an adequate landscaped area to create separation between the new driveway and existing walkway, or the applicants would be required to remove the existing sidewalk so that the legally non-conforming gravel driveway could be upgraded to a concrete surface without increasing its degree of nonconformity. The applicants feel that both of these options are unreasonable.

The subject lot is not consistent with a typical Ward lot, which the Traditional Neighborhood Overlay District was created to preserve. The subject lot is a double lot that consists of Lots 11 and 12 of the Bluemont Addition. The lot is 120 feet wide at the front property line and 204 feet in length. The typical Ward lot is 50 feet wide and 150 feet in length.

Claflin Road, west of 11th Street, is divided with half of the street in the Traditional Neighborhood Overlay District, while the other half is out of the district. The area north of Claflin Road is zoned R, Single-Family Residential, with no overlay district and has been in this zoning district since 1970. The area south of Claflin Road, including the subject property, was rezoned from R-1, Single-Family Residential District, to R-1/TNO, Single-Family Residential with the Traditional Neighborhood Overlay District, in April, 2004. Properties on the west side of 11th Street, to the west of the subject site, are zoned R-3/M-FRO, Multiple-Family Residential District with the Multi-Family Redevelopment Overlay District. Each of these zoning districts has differing driveway regulations. The R District to the north of the subject lot allows for a driveway that does not exceed twenty-four (24) feet in width and 960 square feet in area for residential structures containing no more than two (2) dwelling units (Section 7-102(C)(2)). The R-3/M-FRO district allows driveways with four (4) or fewer dwelling units to have a driveway no greater than twelve (12) feet in width (Section 4-112(F)(1)(a)(2)). The R-1/TNO regulations require driveways to be no greater than ten (10) feet in width (Section 4-111(F)(1)(a)(2)). The area's differing driveway conditions and mixture of zoning districts creates a unique condition when compared to the rest of the City. When all the facts and circumstances are considered, the strict application of this regulation is unreasonable and unnecessary pertaining to this property.

Request for Existing Fence

The split-rail fence is an existing condition to the subject property. The applicants purchased the property without prior knowledge of the nonconforming placement of the fence. The strict application of the regulations would require the applicants to relocate the fence behind the front façade of the house. The fence is decorative in nature and the applicants have stated they would like to maintain it in its general location. Requiring the fence to be moved to meet the strict application of the regulations is unreasonable when all facts and circumstances are considered.

Emig moved that the Board grant an Exception to allow a new driveway to exceed the maximum ten (10) feet width and be increased to fifteen (15) feet, nine (9) inches and to allow a reduction of the minimum front yard setback from fourteen (14) feet to zero (0) for an existing fence. Both Exceptions are for a single-family dwelling unit located in the R-1,

Single-Family Residential District with TNO, Traditional Neighborhood Overlay District at 1011 Claflin Avenue, with the following conditions.

1. The Exceptions shall be limited to the proposed driveway and split-rail fence.
2. The proposed driveway and split-rail fence shall be maintained in good condition
3. The applicant shall obtain all necessary building permits and shall comply with all applicable codes.
4. The proposed driveway shall be constructed as outlined in the application materials and site plans.
5. The split-rail fence shall be constructed outside of the ten (10) foot vision triangle along the front property line and proposed driveway.

Wigfall seconded the motion, which passed 4-0

ADJOURNED.

Respectfully Submitted,
Chad Bunger

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