

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, March 12, 2008
7:00 PM

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

MEMBERS ABSENT: None

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

CONSIDER THE MINUTES

Hamilton moved to approve the February 13, 2008 minutes which was seconded by Emig and passed with a vote of 5-0.

Continuation of a PUBLIC HEARING to consider a request for an VARIANCE to allow a driveway to be greater than twenty-four (24) feet in width and 960 square feet in area; and, reduce the minimum 75% landscaped open area required in the front yard, all for a proposed paved driveway for a new single-family dwelling in the R, Single-Family Residential District and AO, Airport Overlay District. The property is located at 1021 Park Shire Circle (Applicant/Owner: CBS Construction Co., Inc, Christopher B. Stephens).

Emig moved to remove the item from the table and continue the public hearing. Hamilton seconded the motion, which passed 5-0.

Bunger provided an updated staff report explaining a new driveway design and recommended approval of the Variance request with three (3) conditions.

Hardy opened the public hearing.

Christopher Stephens, applicant, provided information concerning the new driveway design and made himself available for comments.

With no further comments, Hardy closed the public hearing.

Hamilton commented that she appreciated Stephen's efforts to redesign the driveway. She also stated that she could support the re-designed driveway and understands the constraints on the front yard area caused by the natural ravine in the back and the situation created by issuing a building permit in error.

Wigfall agreed with Hamilton's comments and thanked the applicant's for his efforts to meet

the character of the neighborhood.

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

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is a large lot (approximately 22,900 square feet) and is irregular in shape due to its location along the bulb of a cul-de-sac (Park Shire Circle). The subject site has a large rear yard, where a forty (40) foot wide, natural ravine exists. The area is not in a drainage or conservation easement and no other restrictions are in place that would limit building in this area, except the minimum twenty-five (25) foot rear yard setback and the expense of filling and grading the natural drainage area. If the proposed home was set back further from the front property line, the proposed circle drive may not have exceeded the minimum landscaping requirement.

A unique condition was created when the building permit was signed and issued in error. An assumption was made by the Zoning Inspector that the driveway, that was ultimately approved, met all off-street parking regulations. The approved driveway does not meet open landscape requirement (Section 7-102 (C)(2)) and would be required to receive a Variance to be built as designed.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse affects to adjacent properties are expected. The subject site and all of the adjacent properties are within an R, Single-Family Residential District with an Airport Overlay District. Park Shire Circle contains four (4) lots, all of which are fairly large, with none of the being less than .42 acres (18,525 square feet). The new driveway design is necessary to access the 3-car garage that is under construction. The thirty (30) foot wide driveway allows the owner to drive directly into the attached garage. The driveway will be similar in character to other residential lots in the Lee Mill Heights and Miller Ranch neighborhood. Although the open, landscape area adjacent to the driveway is less than the prescribed front yard area of the front yard area (49% compared to 75%), the house under construction consumes a portion of the prescribed front yard area (21%). If only the functional front yard was considered (area between the front façade of the house and the front property line), the proposed driveway only consumes approximately thirty (30%) percent, an area closer to the regulation that the Variance being sought for. The proposed landscape design associated with the site plan should help to minimize any negative impacts the driveway may have on adjacent properties.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The strict application of the off-street parking regulations would require the owner to build a driveway that would eliminate direct access to one of the parking spaces of the three-car garage under construction. Even if the driveway was designed to have a typical, ten (10) foot wide driveway leading to a nineteen (19) foot by thirty (30) foot parking pad (space in front of the three-car garage), the standard driveway would require a Variance due to the location of the house and the area of the prescribed front yard. Because of the “V-shaped” design of the house, and location of the house (twenty-seven (27) feet) from the front lot line), no reasonable driveway configuration could be created that would provide access to the three-car garage under construction. When all facts and circumstances are reviewed, including the fact that the building permit was issued in error, requiring the strict application of the parking regulations

would be an unnecessary hardship for the applicant.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed driveway would not encroach on any public rights-of-way or easements or vision triangles. There appears to be no adverse effect on the public health, safety or general welfare.

RELATIONSHIP TO INTENT OF REGULATIONS: The intent of the regulation that requires landscaped open space and the maximum amount of paving for driveways is to reduce the amount of front yard area that can be paved and to help maintain the residential character of properties located within residential zoning districts. The proposed driveway is similar in design and width to residential properties in the area and would not detract from the character of the Lee Mill Heights or Miller Ranch neighborhoods.

The proposed driveway design would create a front yard where 30% of the area would be impermeable surfaces (excluding portions of the house in the prescribed front yard area). Although this design does not meet the strict application of the parking regulations because of the narrow front yard area created by the cul-de-sac, the intent is met by the proposed landscape included in the site plan. If the landscape was installed as proposed along the front and sides of the house, the impact caused by the increase in impermeable surfaces would be minimized.

Hamilton moved that the Board grant a Variance to allow a six (6) foot increase in the maximum twenty-four (24) foot width of a paved driveway; a 180 square foot increase in the maximum allowed paved driveway area of 960 square feet; and a twenty-six (26%) percent reduction in minimum required seventy-five percent (75%) of area in the front yard that must be maintained as landscaped open space for the construction of a proposed paved driveway for a new single-family dwelling at 1021 Park Shire Circle in the R/AO, Single-Family Residential District with the Airport Overlay District based on the staff report with the following conditions:

1. The driveway shall be constructed and located as shown on the application documents and site plan.
2. The landscaping shown on the site plan shall be maintained in good condition.
3. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed 5-0.

A PUBLIC HEARING to consider a request for an VARIANCE to allow a driveway to be greater than twenty-four (24) feet in width and 960 square feet in area; and reduce the minimum 75% landscaped open area required in the front yard along Sunny Slope

Lane and to allow a driveway to be greater than twenty-four (24) feet in width and 960 square feet in area; and reduce the minimum 75% landscaped open area required in the required front yard along Sunny Slope Circle, all for a proposed paved driveway for a new single-family dwelling on Lots 2 & 3, Ball Addition, in the R, Single-Family Residential District. (Applicant: *Bowman, Bowman, Novick, Inc*, Owner: *Mike & Janet Daniels*).

Bunger provided the staff report, recommending approval of the Variance requests with four (4) conditions.

Emig asked who owns the property to the north of the subject site and if City staff new of any plans to develop the property in the near future. Bunger said that he did not know the owners of the property, but the information could be found in the application file. Bunger also stated that he was not aware of any immediate plans to develop that land. Emig felt that it maybe unfair to the property owners to approve the Variance and require the driveway to be installed, and then have the property to the north be developed in the near future, which would force the owner to remove a new driveway.

Aistrup asked if the vacant lot to the east of the Sunny Slope Lane Right-of-Way could access the temporary extension of the street. Bunger responded that the temporary extension of Sunny Slope Lane is in the Public Right-of-Way, so the property presumably could access the temporary street. Bunger commented that the Public Works Department would need to determine if the temporary road would need to be constructed to an urban street if that lot was developed.

Hardy opened the public hearing.

Michael Carson, applicant, made his self available for questions.

Emig asked Carson if his firm had been contacted about developing the property to the north of the subject site. Carson stated that no one had approached his firm about the development, but the Daniel's (subject site owners) had spoke with the Ball family (owners of the adjacent property) and the Ball's response was that they had no intentions of developing the tract of land in the near future.

With no further comments, Hardy closed the public hearing.

Emig stated that his questions were related to his concerns of when Sunny Slope Lane would be built. Emig felt assured that the owner's had spoken to the Ball family about the adjacent property and that the Daniel's willingness to develop the subject site and create the temporary street required the construction of this driveway.

Wigfall agreed with Emig's comments and felt that the Board could not penalize the property owners for the lack of development to the north of the subject site.

Hardy commented that the proposed site plan meets the intent of the off-street parking regulations and limits the amount of driveway seen by the public and that he could support the request.

Hamilton stated her support for the proposal and said that this is the first time a situation like this has been brought to the Board since she has been serving on the Board of Zoning Appeals.

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

CONDITIONS UNIQUE TO THE PROPERTY: The condition that is unique to the large zoning lot is that the lot currently has no access from an urban street. The platted portion of Sunny Slope Lane dead-ends approximately 85 feet south of the subject site. Although Sunny Slope Lane and the intersecting cul-de-sac, Sunny Slope Circle right-of-ways are platted, the streets have not been constructed because of the lack of development pressures in the area. Because the development of the property to the north of the subject site is not anticipated in the near future and the expenses associated in constructing the street and cul-de-sac would be too high for one property owner to pay for, the City has agreed to allow the owners to construct a temporary, asphalt road as an extension of Sunny Slope Lane. This condition will cease to exist when Sunny Slope Circle is constructed; however, Sunny Slope Lane may be constructed sooner. At the time that Sunny Slope Circle is built to an urban street, the owners have agreed to remove the proposed temporary driveway and construct a permanent driveway onto the cul-de-sac.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse affects to adjacent properties are anticipated. The subject site and all of the adjacent properties are within the R, Single-Family Residential District. Currently, adjacent lots to the north and east are vacant. It is not anticipated that the home owners to the south of the subject site will be adversely impacted. The proposed driveway is on the northern portion of the property, opposite the residential structures to the south and will be partially screened by the new house.

In relation to the property owners to the east, the proposed driveway is offset to the north of the proposed house. The remaining portion of the area between the Sunny Slope Lane property line and the front façade of the house will be sidewalks and open, landscaped space. This offset driveway design is similar in character to many residential lots throughout the City and should not pose an adverse affect on the adjacent property to the east. At the time the property to the north of the subject site is developed, Sunny Slope Circle will be required to be built to City street standards. At that time, the owner's have agreed to remove the proposed driveway and construct a permanent driveway that will extend from the attached-garage north to Sunny Slope Circle. No adverse impacts are anticipated on the property to the north or west, once Sunny Slope Circle and the permanent driveway are constructed.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The strict application of development standards to construct public streets and the off-street parking regulations would require that Sunny Slope Lane and Sunny Slope Circle be constructed and the driveway gain access directly from Sunny Slope Circle or the proposed house is redesigned so that the owners can access the garage from the temporary extension of

Sunny Slope Lane via a shorter, more direct driveway. The costs associated with constructing the street and cul-de-sac to City standards would be a hardship and unreasonable for one property owner to bear to create an environment where the new residential development would meet the parking regulations. The house could be redesigned so that the attached-garage would be located toward the front of Sunny Slope Lane to meet the open landscaped front yard area requirement. Requiring the owners to redesign the house when a satisfactory, temporary alternative is available until Sunny Slope Circle can be built may be unreasonable, when all facts and circumstances are considered.

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

The proposed driveway is not anticipated to adversely affect the public health, safety, or general welfare. The driveway does not impact the Sunny Slope Circle/Sunny Slope Lane vision triangle and will not affect the eight (8) foot utility easement that runs along the front property lines.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the regulation that requires landscaped open space and the maximum amount of paving for driveways is to reduce the amount of front yard area that can be paved and to help maintain the residential character of properties located within residential zoning districts. Because of the design of the proposed house, the parking regulations require the Sunny Slope Lane front yard area to be measured approximately 157 feet deep from the east front property line and run the entire width of the lot along Sunny Slope Lane (184 feet). This area is approximately 28,900 square feet and consumes a majority of the proposed house. If, only the functional front yard along Sunny Slope Lane was reviewed, which would begin at the house's façade, only nineteen (19 %) percent of the front yard would be consumed by the driveway and sidewalk. The intent of the regulation for the front yard along Sunny Slope Lane is met when reviewed in this manner.

When reviewing the Variance request for the Sunny Slope Circle front yard, the intent of the landscaped, open space requirement is not met. The entire paved driveway is located within the prescribed front yard area and reduced the landscaped, open area to sixty (60%) percent. However, this design is needed to access the attached-garage due to the unique condition in that the platted streets are not constructed. Furthermore, the proposed driveway will not diminish the residential character of adjacent properties, because of the minimal impacts to the developed properties to the south and the absence of development to the west, north and east.

Emig moved to grant the Variances to allow a fourteen (14) foot increase in the maximum twenty-four (24) foot width of a paved driveway; a 3,253 square foot increase in the maximum allowed paved driveway area of 960 square feet; a eleven (11%) percent reduction in the minimum required seventy-five percent (75%) of area in the front yard that must be maintained as open landscaped space along Sunny Slope Lane; and a fifteen (15%) percent reduction in the minimum required seventy-five percent (75%) of area in the front yard that must be maintained as open landscaped space along Sunny Slope Circle for the construction of a proposed paved driveway for a new single-family dwelling on Lots 2 & 3, Ball Addition in

the R, Single-Family Residential District based on the staff report with the following conditions:

1. The Variance shall be limited to the proposed driveway as outlined in the application documents.
2. The proposed driveway shall be built according to the site plan and maintained in good condition.
3. At the time the construction of Sunny Slope Circle is completed, the proposed driveway shall be removed and a new driveway that meets the Zoning Regulations shall be built, providing a new, permanent connection between the garage and Sunny Slope Circle.
4. All applicable permits shall be obtained.

Aistrup seconded the motion, which passed 5-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback for a proposed covered porch for the property located at 2927 Brian Place, in the R, Single-Family Residential District.
(Applicant/Owner: Aaron Madison).

Bunger provided the staff report, recommending approval of the Exception requests with two (2) conditions.

Hardy opened the public hearing.

Jackie Madison, owner, provided information about the proposed covered porch and was available for questions.

Alan Gast, 2931 Brian Place, expressed his support for the proposed porch.

With no further comments, Hardy closed the public hearing.

Aistrup stated his support for the proposal is based on the minor intrusion to the front yard setback, and the enhancement the new porch will bring to the neighborhood. Aistrup did mention that the Board would prefer homeowners request an Exception or Variance for projects before beginning construction.

Hamilton expressed her support of the Exception request based on its minimal encroachment into the front yard setback and the improvement the new porch will give to the house.

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

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property currently complies with all applicable land use regulations, other than that for which the Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Adjacent properties are located in the R, Single-Family Residential District. The proposed

Exception is minimal. The front porch under construction is not perceived as out of character with the rest of the neighborhood, and it is not anticipated that a reduction of the front yard setback will have a negative impact on adjacent properties. The property immediately west of the subject property has two covered porch areas, and so the new porch of the subject property will be consistent with the character of the established neighborhood. Due to the position of the property at the bulb of the cul-de-sac, the porch will not interfere with adjacent property owners' visibility of the road from their driveways.

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 configuration of the porch will not affect vision clearance for traffic traveling along Brian Place. The front porch addition will not encroach into either of the two (2) utility easements on the property, located at the East and West property lines.

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

There are two (2) encroachments into the front yard setback. In each case, the encroachment is approximately one (1) foot of roof overhang, at a corner of the L-shaped porch structure. The intention of the front yard setback requirement is to provide uncluttered visibility along streets for drivers and pedestrians. The subject property sits at the termination of a cul-de-sac, and travelers along Brian Place would not need unobstructed visibility at that portion of the road. If the strict application of the regulations is applied, the applicant would be forced to remove a section of the porch covering to conform to the twenty-five foot front yard setback. Due to the minor degree of encroachment, this would be a hardship on the applicant disproportionate to the degree of non-compliance with the setback requirement. When all facts and circumstances are considered, strict application of the regulations for the proposed improvements is unnecessary.

Wigfall moved that the Board grant an EXCEPTION to reduce the twenty-five (25) foot front yard setback to twenty-four (24) feet at 2927 Brian Place based on the staff report, with the following conditions:

1. The porch shall be constructed as indicated on the site plans submitted by the applicant.
2. A Building Permit shall be obtained.

Hamilton seconded the motion, which passed unanimously, 5-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot rear yard setback to fifteen (15) feet for a proposed deck and stairs for the house at 420 Highland Ridge Drive, in the R-1, Single-Family Residential District. (*Applicant/Owner: Manhattan Technical College*).

Bunger provided the staff report, recommending approval of the Exception requests with two (2) conditions. Bunger did note that the Code Service Department had contacted him and that the plans submitted for the building permit would need to be redesigned to accommodate an

egress window. Code Service officials did feel confident that the any new design could be fit within the confines of the Exceptions request.

Hardy opened the public hearing.

Dr. Rob Edleston, applicant, provided information about the proposal and possible alternatives to the decks design to meet the needs of the Building Code.

With no further comments, Hardy closed the public hearing.

Hamilton expressed that she understood the circumstances of the lot and the position that the technical college is in to sell the property. Although she could support the request, she did not feel that marketability of the house was a satisfactory reason to approve the Exception. Hamilton asked that her fellow Board members consider creating a condition of approval that would limit the new deck to remain open to the sky and not be covered or enclosed so that it would decrease any adverse impacts on adjacent properties.

Hardy felt that the Exception request for the second story deck is not out of character for the neighborhood. He felt that the emergency access gained by the new deck was justification to approve the Exception. Hardy also agreed that the condition of approval to keep the second story deck from being covered or enclosed would be appropriate.

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 the Zoning Regulations, other than the one for which an exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and adjacent properties to the east, south and west are zoned in the R-1, Single-Family Residential District. Properties located to the north of the subject site are zoned R-2, Two-Family Residential District. The proposed deck will be attached to the rear of the house on the second story (main floor) and will measure 20 feet wide by 10 feet deep. The deck will gain access to the house by a sliding glass door and also to the back yard by a set of return style stairs. Other properties throughout the residential neighborhood, particularly adjacent properties to the south and east, have similar second-story decks providing access to the rear yard. The proposed deck would aesthetically match the character of the residential neighborhood. The ten (10) foot deep deck and stairs would encroach into the required minimum twenty-five (25) foot rear yard setback that is design to provide adequate separation between neighboring properties. A natural drainage area runs along the rear of the subject site and adjacent properties. This ravine should provide adequate physical and visual separation from neighboring properties. Because the proposed deck is consistent with the character of the residential neighborhood and the natural contours of the area will create appropriate separation from adjoining properties, the Exception request should not have an adverse effect on adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: A ten (10) foot utility easement crosses the rear portion of the property in a north to south direction. The proposed addition is not located within the utility easement. Approval of the setback reduction is not anticipated to have an adverse effect on the health, safety, and general welfare of the community.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The Manhattan Technical College (MATC) student-constructed home was built to maximize the lot by building to the front and rear property lines while maintaining the maximum allowed lot coverage. The original design of the house put the basement level rooms below grade with egress windows placed at approximately chest height for emergency access. Because of the house's design, no other conceivable option is available to provide the rear yard access. The applicants feel that the proposed deck and stairs will improve the safety of the house by providing an additional exit from the house in case of an emergency. When all facts and circumstances are considered, it would be unreasonable to strictly apply the rear yard setback requirements for the proposed deck and stairs.

Aistrup moved that the Board grant an Exception to allow a reduction of the minimum twenty-five (25) foot rear yard setback to fifteen (15) feet for a proposed deck and stairs at 420 Highland Ridge Drive in the R-1, Single-Family Residential District, based on staff report with the following conditions:

1. The Exception shall be limited to the proposed deck and stairs as outlined in the application documents and shown on the applicant's site plan.
2. The proposed deck shall remain open to the sky and not be covered or enclosed
3. A new design of the proposed deck shall be submitted and approved by the Code Service Department.
4. All applicable permits shall be obtained

Emig seconded the motion, which passed unanimously, 5-0.

ADJOURNED.

Respectfully Submitted,
Chad Bunger

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