

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, August 13, 2008
7:00 PM

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

MEMBERS ABSENT: Harry Hardy

STAFF PRESENT: Chad Bunger, Planner; Anne Antonini, Planning Intern; Stephanie Dikeman, Planning Intern

CONSIDER THE MINUTES

Connie Hamilton motioned to approve the minutes of the July 9, 2008 Board of Zoning Appeals meeting.

La Barbara Wigfall seconded the motion, which passed unanimously.

Consider a request for A 180 DAY EXTENSION for approved exceptions to reduce the minimum rear yard setback for decks greater than 30 inches in height above the grade on which they are located for Lots 12a and 12b to Lot 20a and 20b, Kimball Townhomes addition; a reduction of the minimum rear yard setback for a principal single-family attached residential structure (Lot 12a, Kimball Townhomes Addition); and to allow an increase of the maximum thirty-five (35) percent lot coverage to up to forty-five (45) percent for Lots 12b to 20b, Kimball Townhomes Addition for the purpose of constructing single-family attached residences with decks in the R-2, Two-Family Residential District.

(Applicant: Appletech Construction, Owners: Bayer Construction Co--Lots 12b-18b, Appletech Construction--Lots 19a-20b).

Chad Bunger presented the Staff Memorandum with a recommendation for approval of the Extension request.

Emig opened the public hearing.

With no public comment, Emig closed the public hearing and opened the item up for board discussion.

Hamilton stated she has no objections to the Extension request.

Hamilton moved to grant a 180 Day Extension for approved Exceptions to reduce the minimum rear yard setback for decks greater than 30 inches in height above the grade on which they are located for Lots 12A and 12B to Lot 20A and 20B, Kimball Townhomes Addition; to reduce the minimum rear yard setback for a principal single-family attached residential structure (Lot 12A, Kimball Townhomes Addition); and to allow an increase of the maximum thirty-five (35) percent lot coverage to up to forty-five (45) percent for Lots 12B to 20B, Kimball Townhomes Addition all for the purpose of constructing single-family attached residences with decks. The subject properties are located in the R-2, Two-Family Residential District.

Wigfall seconded the motion, which passed unanimously with a vote of 4-0.

REMOVE from the TABLE and conduct a PUBLIC HEARING to consider a request for a VARIANCE to reduce the required lot width for proposed Lot 1 of Rockhill Estates, Unit 4 and reduce the required lot depth from one-hundred fifty (150) feet to one-hundred fourteen (114) feet for proposed Lot 2 of Rockhill Estates, Unit 4 in the C-1, Restricted Business District. The property is located at 2040 Fort Riley Boulevard. (Applicant/Owners: Steve Springer).

Hamilton motioned to remove from the Table a Variance request at 2040 Fort Riley Boulevard.

Aistrup seconded the motion, which passed unanimously with a vote of 4-0.

Anne Antonini presented the staff report, and recommended approval with one (1) condition.

Hamilton asked for further clarification of an additional Condition suggested by staff, that the stone house on the subject site remain and be maintained in good condition.

Antonini and Bunger provided clarification on the suggested condition.

Hamilton expressed her concern about adding a condition regarding the stone house. She asked staff for clarification about whether the condition would continue to apply in case of extenuating circumstances, such as a natural disaster, which might cause the stone house to be destroyed.

Bunger addressed her concerns and explained that any condition placed on the existing stone house would be in effect whether the house was removed by the owner or because of a natural disaster.

Hamilton asked City Staff whether previously approved setback exception on the subject site ran with the buildings for which they were approved, or whether they ran with the land.

Bunger stated that the previously approved Exceptions ran with the house and property.

Wigfall asked City Staff whether the existing tenants and potential future owners of proposed Lot 1 had given any plans for maintaining the stone structure.

Antonini provided clarification.

Aistrup asked whether the Variances would apply only to the stone house.

Bunger explained that the proposed Variances would run with the land, and not with the structure.

Wigfall asked whether the property is on the list of Nomination of Historic Properties.

Antonini stated that the City of Manhattan has a multiple-property registry list for historic stone houses, and that the structure on the subject property is not on that list. She stated that the applicant could further answer whether or not he intends to put the stone structure on the list.

Emig asked if the suggested condition regarding the stone house would apply to the requested Variance or as a deed restriction.

Bunger stated that it would be conditional to the Variance request for proposed Lot 1.

Emig opened the public hearing.

Applicant Steve Springer provided additional information on the history of the stone house on the subject property and on the requested Variances. He also spoke about the suggested additional condition regarding the stone house.

Hamilton stated that she could support the suggested additional condition regarding the stone house because it was not too onerous.

Springer concurred.

Emig asked the applicant for clarification regarding the use of proposed Lot 2.

Springer provided clarification.

June Schnittker, owner of Master Landscape, which currently occupies the stone house, spoke about her intention to preserve the stone house.

With no further public comments, Emig closed the hearing and opened board discussion.

Hamilton stated that she could support the request. She expressed that a modification to the findings of fact should be made regarding unnecessary hardship. She proposed a sentence about unnecessary hardship for the tenant be stricken, and a sentence added to that finding of fact that not granting a variance would cause unnecessary hardship to the applicant by jeopardizing the stone house.

Aistrup stated that he could support the Variance request, with the proposed modification to the City Staff Report, and conditions of approval.

Wigfall commended the applicant and thanked Mr. Springer for his efforts to preserve the stone house.

The Board made the following findings of fact in regards to the Variance at 2040 Fort Riley Boulevard.

1. The subject site is an irregularly-shaped corner lot at the northeast corner of the intersection of Fort Riley Boulevard and Westwood Drive. The subject site has an area of approximately 30,286 square feet. It has a lot depth of approximately three-hundred thirty-five (335) feet, and a lot width of approximately one-hundred eighty (180) feet. It has frontage along Fort Riley Boulevard and Westwood Drive, and gains access from Westwood Drive.

Existing Lot 1 of Rockhill Estates Addition, Unit 2 is proposed to be subdivided into two (2) zoning lots. Proposed Lot 1 of Rockhill Estates Addition Unit 4 would be an irregularly-shaped corner lot on the southern portion of the subject site where the stone house is located. The lot would be 15,282 square feet in area, with a lot depth of approximately one-hundred seventy-four (174) feet, and a lot width of approximately ninety-six (96) feet. It would have frontage along Fort Riley Boulevard and Westwood Drive. Proposed Lot 2 of Rockhill Estates Addition Unit 4 would sit on the northern portion of the subject site, and would contain the Lakins Metal Polishing Business's metal and concrete building and shed. It would be an irregularly-shaped interior lot with an area of 15,004 square feet, a lot depth of approximately one-hundred fourteen (114) feet and a lot width of one-hundred fifty-four (154) feet. It would have frontage along Westwood Drive.

Both proposed lots would gain access to Westwood Drive via the current driveway on the subject site. Under the proposed lot configuration, the property line would run down the center of the driveway, allowing both proposed lots to share it. This is necessary because it would not be possible for the applicant to place another curb cut north or south of the existing driveway. The City Engineer and the Kansas Department of Transportation would not allow another curb cut on Proposed Lot 1 between the current access drive and Fort Riley Boulevard. Further, it would not be possible for the applicant to place additional curb cut on Proposed Lot 2 because of an existing irregularly-shaped city park between the subject site and Westwood Drive. Each property would grant a private cross easement to the other for ingress and egress on their portions of the shared driveway.

The subject site has enough square footage to be divided into two lots in the C-1, Restricted Business District, but due to its irregular shape, it is not possible for the applicant to create two lots that satisfy all lot dimension requirements under the Zoning

Ordinance. There is no configuration which would result in Proposed Lot 2 gaining appropriate lot depth for the C-1 District. The only configuration which might allow for Proposed Lot 1 to have adequate width would prevent Proposed Lot 2 from having the 15,000 foot minimum square footage required for the C-1 District. The unique shape of the subject site was created in part by its topography, in part by its platting history, and to a lesser extent, its zoning history.

The subject site has existed as a subdivision, under one name or another since its annexation into the City of Manhattan in 1914 as Lot 53 of the Rockhill Addition. This was twelve (12) years prior to the City's adoption of Zoning Regulations in 1926. The east-to-west lot depth of the subject site was established at the time of its annexation, and it has remained constant to this date. In 1978, a preliminary plan was created, which rezoned the subject site from R, Single-Family Residential to PUD, Planned Unit Development, and subdivided it into three (3) lots. However, a final development plan and final plat were not filed until 1986, when the subject site was replatted into Lots 1, 2, and 3 of the Lakin Addition PUD.

The property was again replatted and rezoned in 1992, to C-1, Restricted Business District, and the northern portion was sold to an adjacent property owner in the R, Single-Family Residential District. Lot 3 of the Lakin Addition and Lot 27 of Rockhill Estates were replatted into Lot 2 of Rockhill Estates, Unit 2 and sold to the owner of Lot 27 of Rockhill Estates. The remaining portion of the subject site was re-consolidated into Lot 1 of Rockhill Estates, Unit 2. Around this time, the Master Landscape Company began operating its business out of the stone structure along Fort Riley Boulevard.

The subject site received an Exception to the twenty-five (25) foot front yard setback requirement along Westwood Drive to nine (9) feet in March of 2000, and an Exception to the twenty-five (25) foot front yard setback requirement along Fort Riley Boulevard to seventeen (17) feet in October of 2007.

The current Variance request would essentially restore the subject site into Lots 1 and 2 of the 1986 Lakin Addition PUD. The boundary line would be moved slightly south of the boundary of Lots 1 and 2 of the Lakin Addition PUD to give Proposed Lot 2 of Rockhill Estates Addition Unit 4 sufficient square footage for zoning lots in the C-1, Restricted Business District.

Existing improvements to the subject site consist of three commercial structures. One commercial structure is a stone house that was built around 1900, which presently houses a landscaping business. Another commercial structure at the subject site is a concrete and metal building that is used for a wood and metal polishing business, Lakins Metal & Wood Restoration, and the remaining third structure is a shed that is also used by Lakins Metal & Wood Restoration. Lakins Metal & Wood Restoration has been in operation on

the subject site since around 1940, and has been located in its present building on the northern portion of the subject site since 1955. The metal polishing business on the subject site was initially established by the residents of the stone house, in conjunction with an antique store. The antique business and the wood and metal polishing business were conducted in the stone house until around 1955. The existing configuration of improvements was established at that time when the metal and concrete building and shed were built on the northern portion of the subject site. According to the applicant, Master Landscape has been located in the stone house on the south half of the subject site for approximately seventeen (17) years.

The unique characteristics of the subject site: its shape, its configuration of uses, and its zoning history, all contribute to a unique situation that prevents the applicant from subdividing the subject site and selling the proposed southern lot, Proposed Lot 1 of Rockhill Estates Addition Unit 4 to the existing tenant.

2. As no improvements are proposed to the subject site, no effect is expected on adjacent properties. Due to the subject site's topography and natural landscaping, it is screened and separated from adjacent uses. The subject site is screened from properties to the north and east by a heavily wooded area. Fort Riley Boulevard, which is a four (4) lane arterial, runs between the subject site and the C-5, Highway Service Commercial businesses to the south. The subject site is separated from properties to the west by a seventeen (17) foot concrete drainage channel and Westwood Road, which is a two-lane collector street.
3. The previously described unique characteristics of the subject site: its shape, its configuration of uses, and its zoning history, all contribute to a unique situation that prevents the applicant from subdividing the subject site and selling the proposed southern lot, Proposed Lot 1 of Rockhill Estates Addition Unit 4 to the existing tenant, who according to application documents, has "assured [the applicant] the stone house will not be destroyed."

The strict application of the lot depth and lot width requirements in the C-1, Restricted Business District would not allow the applicant to subdivide his property and sell the portion upon which Master Landscape sits. It would be unreasonable for the City to create the necessity for the applicant to jeopardize the stone house.

4. Improvements to the subject site do not encroach upon any public easement or vision clearance triangle. No modifications or improvements are proposed in conjunction with the Variance request, and therefore no effects on the public health, safety, morals, order, convenience, prosperity, or general welfare are anticipated.
5. The intent of C-1 District is to allow for non-retail commercial development that is compatible with residential neighborhoods. The intent of the lot depth requirement is to ensure that there is enough space between the public right-of-way and the parallel rear

boundary of the subject site to create a building envelope that would allow for compliance with front and rear yard setback requirements. The intent of the lot width requirement is to ensure that there is enough space between each of the side lot lines to ensure an adequate building envelope to allow for compliance with side yard setback requirements. This is achieved in the Proposed Lots 1 and 2 of Rockhill Estates Addition Unit 4. Setback requirements ensure that buildings are far enough from the street so as to not impede visibility for passing traffic, and are far enough from buildings on adjacent properties to ensure privacy, allow for adequate air and light, allow for open yards along streets, and prevent the risk of damage in case of fire on adjacent properties. The placement of the existing buildings on Proposed Lot 2 of Rockhill Estates Addition Unit 4, the park, and the wooded area at the rear of the subject site all ensure adequate spacing, vision clearance for passing traffic, and sufficient air and light.

Hamilton moved to approve a VARIANCE to reduce the required lot width for Proposed Lot 1 of Rockhill Estates, Unit 4 and reduce the required lot depth from one-hundred fifty (150) feet to one-hundred fourteen (114) feet for Proposed Lot 2 of Rockhill Estates, Unit 4 at 2040 Fort Riley Boulevard, in the C-1, Restricted Business District with modification to the findings of fact and with the following conditions:

1. A Lot Split Plat is approved for Rockhill Estates Addition, Unit 4.
2. The existing stone structure on proposed Lot 1 of Rockhill Estates, Unit 4 shall be preserved and be maintained in good condition.

Wigfall seconded the motion, which passed unanimously.

A public hearing to consider an exception to allow a reduction of the minimum twenty-five (25) foot front yard setback requirement to ten (10) feet for the construction of a proposed four (4) foot tall wooden fence At 320 Sunset Avenue in the R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay District (Applicant/Owners: Robert Pottroff).

Stephanie Dikeman presented the staff report, and recommended approval with two (2) conditions.

Emig opened the public hearing.

Applicant Bob Pottroff provided further information to the Exception request.

Hamilton asked for clarification on the proposed fence.

Dikeman and Pottroff provided clarification.

Hamilton commended the applicant for the landscaping of the subject property.

Wigfall asked the applicant for clarification on the proposed landscaping to be added in conjunction with the fence.

The applicant provided clarification.

Debbie Saroff, owner of the McFarlane-Wareham House, of which the subject property is within the five-hundred (500) foot historical environs, stated that she had no objection the applicant's proposed fence, and that it would not be incompatible with her home.

With no further public comment, Emig closed the hearing and opened board discussion.

Wigfall stated that she could support the application because of the aesthetic value of the fence, and because of its compatibility with existing landscaping at the subject site.

Hamilton stated that she could support the Exception request because of the topography of the subject site and the safety hazard that the proposed fence would resolve.

Aistrup concurred.

The Board made the following findings of fact in regards to the Exception at 320 Sunset Avenue.

1. The subject site currently complies with all applicable regulations, other than that for which the Exception is requested. The subject property was given an Opinion of Nonconformity in 1983, stating that "the Zoning Ordinance in 1963 allowed for a special exception for this property for the purpose of establishing a medical/professional office building", thus giving an Opinion of Legal Nonconformity.
2. The proposed fence should not have a negative effect on the adjacent properties. The north and east portions of the subject project have very dense vegetation and large trees acting as a natural buffer to both the property to the north and the one to the east. The overall height of four (4) feet and the wood material selected for the proposed fence would allow it to blend in with the natural surroundings and make the fence less obstructive. The applicant stated in their written explanation that landscaping will be placed along the exterior of the fence to ensure it is aesthetically pleasing and be a positive improvement for both the subject property and neighborhood.

The property located to the north of the subject property is the Saint Luke's Evangelical Lutheran Church located at 330 Sunset Avenue. Along the northern property line of the subject property (or the Church's southern property), the structures are separated by dense vegetation that would provide a buffer to the fence. The property owner to the east at 1932 Sunset Lane has agreed to allow the applicant to build the proposed fence on their property to connect to their existing fence. However, the Exception will only affect the western edge of the subject property, which is located approximately one-hundred (100) feet from 1932 Sunset Lane's most western property line. The properties to both the

south and west are both owned by the city. Overall, the proposed fence should have minimal effect on the neighboring properties or on the neighborhood in general.

The subject property and adjacent properties to the north, east and west are all located within the historic environs of the McFarlane-Wareham Residence. The Local Historic Board had no comments regarding the Exception Request, but did recommend approval. The proposal is being reviewed by the State Historic Preservation Office to determine the proposed fence's effects on the listed historic property or its environs.

3. The proposed fence at the subject site would be outside of any vision triangles, drainage easement or utility easement, and is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare.

The proposed fence is located ten (10) feet from the road right-of-way and should not in any way obstruct the line of sight of anyone utilizing the sidewalk given its modest height.

4. The elevation change caused by the topography of the subject site is somewhat limiting as to where the applicant can construct a fence. The applicant has placed terraces along the two steepest slopes to soften the drastic change in elevation; however, the terraces provide no barrier for pedestrians on the sidewalk. The fence would be only four (4) feet high, so it should not act as a visual barrier, but at the same time will help to increase the overall safety of those utilizing the sidewalk. The fence is proposed to be built in the only reasonable space on the property, which happens to be within the twenty-five (25) foot setback requirement, due to the change in topography. The existing terraces are approximately eleven (11) feet from the west property line, so the applicant is not able to build a fence any further than ten (10) feet from the property line, again due to the change in elevation. Given the existing condition of the topography of the subject site, as well as a concern for pedestrian safety, it is unreasonable to limit the construction of the proposed fence to within the setback requirements set forth by the Zoning Regulations.

Aistrup moved to approve an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback requirement to ten (10) feet for the construction of a proposed four (4) foot tall wooden fence at 320 Sunset Avenue in the R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay District with the following conditions:

1. The Exception shall be for a proposed fence, which shall be maintained in good condition.
2. The fence shall be constructed as shown on the site plan and the application documents.

Hamilton moved to second the vote, which passed with a vote of 4-0.

A public hearing to consider a conditional use to allow for a group day care at 2605 Allison Avenue in a C-1, Restricted Business District (*Applicant: Gilbert Divila, Owner: Lisa and*

Dan Knight).

Bunger provided the staff report, which recommended approval with three (3) conditions.

Hamilton asked Bunger for clarification regarding an existing sign on the subject property.

Bunger provided clarification.

Wigfall asked Bunger for clarification regarding the prior use of the subject property.

Bunger provided clarification.

Wigfall asked Bunger if the City had found any information on the clientele of the previous daycare center operated from the subject site.

Bunger stated that the City had not found any such information.

Wigfall asked Bunger whether the proposed use of the subject site would generate an amount of traffic create a safety issue at nearby intersections.

Bunger stated that the proposed use of the subject site would cause minimal effects on the traffic. He stated that the site would generate around thirty (30) cars per day, and that nearby intersections were controlled adequately to handle this increase. He further stated that the proposed use would serve as a continuation of the business corridor in the neighborhood surrounding the subject site.

Emig opened the public hearing.

Applicant Gilbert Davila stated that he would be happy to answer any questions from the board.

The board did not have any questions for the applicant.

With no further public comment, Emig closed the public hearing and opened for Board Discussion.

Hamilton stated that she can approve the Conditional Use request because the site had previously been used as a daycare, and because that use would not adversely affect adjacent properties.

Aistrup concurred.

Wigfall asked for clarification on the optimal occupancy of the proposed daycare center.

The applicant stated that they would have approximately 24 children ages three (3) to four (4).

The Board made the following findings of fact for the Conditional Use at 2605 Allison Avenue.

1. The subject site currently complies with all applicable regulations, other than that for which the Exception is requested. The subject property was given an Opinion of Nonconformity in 1983, stating that “the Zoning Ordinance in 1963 allowed for a special exception for this property for the purpose of establishing a medical/professional office building”, thus giving an Opinion of Legal Nonconformity.
2. The proposed fence should not have a negative effect on the adjacent properties. The north and east portions of the subject project have very dense vegetation and large trees acting as a natural buffer to both the property to the north and the one to the east. The overall height of four (4) feet and the wood material selected for the proposed fence would allow it to blend in with the natural surroundings and make the fence less obstructive. The applicant stated in their written explanation that landscaping will be placed along the exterior of the fence to ensure it is aesthetically pleasing and be a positive improvement for both the subject property and neighborhood.

The property located to the north of the subject property is the Saint Luke’s Evangelical Lutheran Church located at 330 Sunset Avenue. Along the northern property line of the subject property (or the Church’s southern property), the structures are separated by dense vegetation that would provide a buffer to the fence. The property owner to the east at 1932 Sunset Lane has agreed to allow the applicant to build the proposed fence on their property to connect to their existing fence. However, the Exception will only affect the western edge of the subject property, which is located approximately one-hundred (100) feet from 1932 Sunset Lane’s most western property line. The properties to both the south and west are both owned by the city. Overall, the proposed fence should have minimal effect on the neighboring properties or on the neighborhood in general.

The subject property and adjacent properties to the north, east and west are all located within the historic environs of the McFarlane-Wareham Residence. The Local Historic Board had no comments regarding the Exception Request, but did recommend approval. The proposal is being reviewed by the State Historic Preservation Office to determine the proposed fence’s effects on the listed historic property or its environs.

3. The proposed fence at the subject site would be outside of any vision triangles, drainage easement or utility easement, and is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare.

The proposed fence is located ten (10) feet from the road right-of-way and should not in any way obstruct the line of sight of anyone utilizing the sidewalk given its modest height.

4. The elevation change caused by the topography of the subject site is somewhat limiting as to where the applicant can construct a fence. The applicant has placed terraces along the two steepest slopes to soften the drastic change in elevation; however, the terraces

provide no barrier for pedestrians on the sidewalk. The fence would be only four (4) feet high, so it should not act as a visual barrier, but at the same time will help to increase the overall safety of those utilizing the sidewalk. The fence is proposed to be built in the only reasonable space on the property, which happens to be within the twenty-five (25) foot setback requirement, due to the change in topography. The existing terraces are approximately eleven (11) feet from the west property line, so the applicant is not able to build a fence any further than ten (10) feet from the property line, again due to the change in elevation. Given the existing condition of the topography of the subject site, as well as a concern for pedestrian safety, it is unreasonable to limit the construction of the proposed fence to within the setback requirements set forth by the Zoning Regulations.

Aistrup moved to approve a Conditional Use for a Group Day Care Center at 2605 Allison Avenue in the C-1, Restricted Business District, with the following conditions:

1. The Group Day Care Center shall be owned and operated by Bebé Learning Center, Corporation as proposed.
2. The Group Day Care Center shall be limited to the hours between 7:30 AM – 6:30 PM, Monday through Friday; and to one Saturday a month, with activities to be concluded by 5:00 pm.
3. The applicant shall obtain all necessary day care licenses.

Wigfall seconded the motion, which passed unanimously with a vote of 4-0.

ADJOURNED.

Respectfully Submitted,

Anne Antonini and Stephanie Dikeman