

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, September 10, 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: Chad Bunger, Planner; Anne Antonini, Planning Intern; Stephanie Dikeman,
Planning Intern

CONSIDER THE MINUTES OF THE AUGUST 13, 2008 BOARD OF ZONING APPEALS MEETING.

Connie Hamilton moved to approve the August 13, 2008 minutes which was seconded by La Barbara Wigfall and passed with a vote of 4-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to twenty-three (23) feet along Seth Child Frontage Road for the construction of a new front façade associated with the existing automotive dealership at 2828 Amherst Avenue in the C-5, Highway Service Commercial District (Applicant/Owner: Tom Holcombe – Little Apple Toyota, Honda).

Chad Bunger presented the Staff Report with a recommendation for approval of the Exception.

Hardy opened Public Hearing.

Applicant Tom Holcomb explained to the board that the Exception is being requested in order to comply with Toyota standards.

Hardy closed for Public Hearing and opened for Board discussion.

Hamilton was pleased to support the request and mentioned that she is glad they are rebuilding after the tornado.

The Board made the following findings of fact for the Exception at 2828 Amherst Avenue:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The existing building was built with the northwest corner of the foundation twenty-five (25) feet from the front property line of Seth Child Frontage Road. The roof overhang of the building encroaches two (2) feet into the front yard setback. The Exception request is

proposed to correct this condition so that the new façade can be constructed. The location of the existing sales lot of motor vehicles encroaches on the twelve (12) foot setback from the front lot line. It cannot be determined if this is a legally nonconforming use. The applicant should seek an Exception to correct this issue. Other than these issues, the property complies with all applicable regulations

2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal adverse effects on adjacent properties are anticipated. The building and roof overhang has been in place since it was constructed in 1968. The northwest portion of the roof overhang that encroaches into the front yard setback is not proposed to be enlarged or altered other than being resurfaced with glass and the aluminum composite frame. The portion of the building façade that is proposed to be altered will remain outside of the front yard setback. The reason for the Exception request is to bring the nonconforming structure into compliance with the Zoning Regulations so that the building's façade can be remodeled, as required by the Toyota car manufacture.
3. **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 existing building and the remodeled façade will not encroach into any utility easements or adversely affect the internal traffic circulation of the off-street parking lot.
4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the front yard setback on the nonconforming structure would result in preventing the building from be remodel as required by the car manufacture. The owner could remove or reduce the size of the encroaching roof overhang to bring the building into conformance with the Zoning Regulations or chose not to remodel the building façade. Both of these options would be unreasonable, when considering that the building and roof overhang has been in the existing location since 1968.

Hamilton motioned for approval of an Exception to reduce the minimum twenty-five (25) foot front yard setback along Seth Child Frontage Road to twenty-three (23) feet for the remodeling of the front façade of the Toyota automotive dealership in the C-5, Highway Service Commercial District, with the following conditions.

1. The Exception shall be limited to the proposed remodel of the front façade of the existing structure as outlined in the application documents and shown on the applicant's site plan.
2. All applicable permits shall be obtained.

Aistrup seconded the motion, which passed with a vote of 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 to six (6) feet along Wilson Drive for the construction of a four (4) foot tall fence at 3124 Wilson Avenue, in the R, Single-Family Residential District. (Applicant/Owner: Brian and Sarah Thomas)

Stephanie Dikeman presented the Staff Report with a recommendation for approval of the Exception.

Hardy opened Public Hearing.

Property owner, Brian Thomas presented a rendering of the site plan with the proposed fenced landscaping and explained the objectives of the fence.

Hardy closed Public Hearing and opened for Board discussion.

Wigfall commended the applicant for finding a design solution that worked for the applicant personally while also providing a visual asset to the community.

Hardy told the applicant that he appreciated the renderings and they proposed project is aesthetically pleasing.

Hamilton recognized the unique circumstances of the subject site. She also mentioned that in the past there have been circumstances with landscaping being a condition of approval and moved to change the wording of one of the conditions.

Wigfall agreed that the wording of the condition regarding landscaping needed to be addressed.

The Board made the following findings of fact for the Exception at 3124 Wilson Avenue:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site currently complies with all applicable regulations, other than that for which the Exception is requested.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site is located within a new R, Single-Family Neighborhood District. Given the fact that this neighborhood is still under development, the properties located both immediately to the east and west are currently vacant lots. The property located to the east, 3120 Wilson Drive is currently under construction. The property to the west, 3128 Wilson Drive is currently undeveloped. The property located north of the subject site, 3109 Davis Circle is approximately two-hundred and thirty-five feet (235) feet from the proposed fence and the two properties are separated by dense vegetation and mature trees, as well as an elevation change of forty (40) feet. The property located south of the subject site and across Wilson Drive is currently an undeveloped tract of land.

The site plan submitted by the applicant provided a very detailed plan of the landscaping that is to be done both in and around the fenced in area. The applicant stated in their written explanation that they will, “incorporate a variety of appealing,

features into the plan such as trees, perennials, decorative grasses and a lawn area”. The fence will be screened by trees and other types of plants to make the property visually appealing and act as a buffer to the fence. Overall, the proposed fence should have minimal effect on the neighboring properties or on the neighborhood in general.

3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed fence at the subject site would be outside of any vision triangles, drainage or utility easement, and is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare.

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

The topography and the conservation and drainage easement associated with the subject site limit where the applicants and their family are able to utilize a usable rear yard on the subject site. The conservation and drainage easement encroaches on approximately seventy (70) percent of their property and the approximate fifteen (15) percent grade change does not allow for a suitable rear yard area. Due to the topography and conservation easement of the subject site, and the modest area and height of the fence, it is unreasonable to require the applicant to build within the twenty-five (25) foot front yard setback requirement.

A Conservation Note was placed on the Preliminary Plat for the subject site. The Conservation and Drainage Easement was implemented to help conserve and preserve the Environmentally Sensitive Area as recommended by the Manhattan Urban Area Comprehensive Plan. Please see attached Future Land Use map from the Comprehensive Plan.

Aistrup motioned for approval of an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback requirement to six (6) feet for the construction of a proposed four (4) foot tall white vinyl fence in the R, Single-Family Residential District at 3124 Wilson Drive, 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.
3. The landscaping described and provided on the site plan shall be planted in substantial compliance and be maintained in good condition.

Wigfall seconded the motion, which passed with a vote of 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 to seventeen (17) feet along Brook Lane for the construction of a four (4) foot tall fence at 522 Brookmont Drive in the R-2, Two-Family Residential District. (Applicant/Owner: Jason Woodman).

Anne Antonini presented the Staff Report with a recommendation for approval of the Exception.

Hardy opened Public Hearing.

Applicant Jason Woodman stated that he revisited the site plan to make the enclosed area more modest to lessen the effects on the neighborhood.

Hardy closed for Public Hearing and opened for Board discussion.

Hardy made a note to change the spelling of the applicant's name in that staff report and to add the address of the site in the description.

Wigfall pointed out that the property does have some constraints and that the awkward setup of the house leaves the applicant with no other choice.

Hardy thanked the applicant for revisiting the site plan and making the fenced area smaller.

Hamilton appreciated the applicant's neighbor contacted the board to inform them that they had no problems with the proposed fence.

The Board made the following findings of fact for the Exception at 522 Brookmont Drive:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject property complies with all applicable requirements, other than that for which an Exception is requested.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal negative effects are anticipated on adjacent properties. Adjacent properties to the north, east, south and west are zoned R-2, Two-Family Residential District and consist of two-family homes. Properties to the north and east front onto and gain access from Brookmont Drive, and properties to the west and south front onto and gain access from Brook Lane.

The proposed fence would tie into an existing fence on the property east of the subject site, with which the existing house on the subject site shares a wall. The proposed fence will maintain the visual consistency of rear yard fences along Brookmont Drive, and no negative impact is anticipated on those properties as a result of this request.

However, the proposed fence would break the visual consistency of front yards along Brook Lane. Properties to the south and west of the subject site face onto Brook Lane, and have twenty-five (25) foot front yard setbacks for principle structures and have open front yards. The proposed seventeen (17) foot setback at the subject site will not

be consistent with the open yards to the south along Brook Lane. The negative impact of this break in visual order is mitigated by the screening and containment of outdoor activities conducted in the proposed fenced-in area of the subject site, and is further mitigated by modifications the applicant has made to the site plan: The applicant originally requested that the fence encroach an additional three (3) feet into the front yard setback, for a total encroachment of eleven (11) feet into the front yard setback, but elected to change the dimensions of the proposed fence to minimize its effects on the surrounding neighborhood, while preserving the benefit he would gain from its addition to his property.

The materials and color of the proposed fence would match fences on new homes directly north of the subject property, and no negative impact is anticipated on those properties.

3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed fence at the subject site would be outside of any 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 white composite fence is proposed for a location that would be outside the vision clearance triangle at the intersection of Brooklawn Drive and Brook Lane.
4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the zoning regulations would allow the applicant to enclose approximately twelve (12) to fifteen (15) feet of his functional rear yard, and four and a half (4.5) feet of his front yard along Brook Lane. This would not allow him to enclose an existing patio on the west side of the structure along Brook Lane, as that patio extends approximately eight-and-a-half (8.5) feet west from the house. Normally, there is a zero (0) foot side and rear yard setback for fences in residential zoning districts. However, the drainage easement encompassing twenty (20) feet of the southern portion of the subject site substantially limits where a fence can be placed.

The area to be enclosed by the proposed fence includes the existing patio and the area intended by the builder to serve as usable outdoor space. The building on the subject site does not have a rear entrance along its south side, to what would normally be considered its functional rear yard. There is an entrance on the western façade of the existing home, in close proximity to the front door. The strict application of the zoning regulations would only allow the applicant to fence in an area which he would have no access from inside the house. The applicant's proposed exception would allow him to utilize his western yard along Brook Lane as the builder intended, and would allow him to enclose a sufficient area to have a functional rear yard in a logical location, as it encompasses the existing concrete patio and rear door, as well as a sufficient area around the patio to allow for its utilization. The fence would allow for increased safety to those utilizing the subject site, and to traffic on Brookmont Drive and Brook Lane.

Emig motioned for approval of an Exception to allow a reduction in the twenty-five (25) foot front yard setback to seventeen (17) feet for a proposed fence at 522 Brookmont Drive in the R-2, Two-Family Residential District, with the following two (2) 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.

Wigfall seconded the motion, which passed with a vote of 5-0

ADJOURNED

Respectfully Submitted,

Anne Antonini and Stephanie Dikeman, Planning Interns

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