

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, January 14, 2009
7:00 PM

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

MEMBERS ABSENT: Harry Hardy

STAFF PRESENT: Chad Bunger, Planner;

CONSIDER THE MINUTES

Aistrup moved to approve the January 14th, 2009 minutes which was seconded by Wigfall and passed with a vote of 3-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A CONDITIONAL USE TO ALLOW FOR THE MODIFICATION OF A LEGALLY NON-CONFORMING THREE (3) UNIT APARTMENT BUILDING WITHIN A R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT, AND FOR AN EXCEPTION TO ALLOW A REDUCTION OF THE REQUIRED NUMBER OF OFF-STREET PARKING SPACES FROM EIGHT (8) PARKING SPACES TO SEVEN (7) PARKING SPACES ASSOCIATED WITH THE MODIFICATION OF THE APARTMENT BUILDING. THE PROPERTY IS LOCATED AT 1004 COLORADO STREET. (APPLICANTS/OWNERS: KENT KIRACOFE AND CHRIS HAUS).

Chad Bunger presented staff report and recommended approval with 5 conditions.

Aistrup clarifies if the garage should have a lock.

Bunger replied that it is one of the conditions.

Hamilton stated she was concerned that the same evidence presented in 2001 was determined insufficient to grant legal non-conformity to the forth dwelling unit.

Hamilton asked for clarification on the conditional use process.

Bunger responded by giving examples on what requires a conditional use.

Hamilton opens public hearing.

Hamilton asked if the owner had a problem that the fencing was placed as a condition.

Hamilton closed public hearing and opened board discussion.

Aistrup supported the conditional use and exception, because the modifications will be brought back into conformity.

Wigfall agreed with Aistrup's statement and also supports approval.

Hamilton was willing to approve it, yet want it recorded that the history of its use was essential to the approval.

Wigfall appreciated the staffs attempt to identify the issues.

The Board made the following findings of fact for the Conditional Use and Exception located at 1004 Colorado Street:

- A. **THAT THE SIZE OF THE ZONING LOT IS NOT INCREASED FROM THAT WHICH CURRENTLY EXISTS:** The subject property is Lot 402, Ward 5, which is a typical rectangular shaped Ward lot. The lot is to the north of Colorado Street and has a lot width of fifty (50) feet and a lot depth of 150 feet. Lot 402 is 7,500 square feet in area. The lot size is not increased from what currently exists.

- B. **THAT EITHER: (A) THE CURRENT EXISTING USE DOES NOT HAVE A SIGNIFICANTLY ADVERSE IMPACT UPON EITHER THE SURROUNDING NEIGHBORHOOD OR THE PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, AND THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL NOT WORSEN SUCH IMPACT; OR, (B) THAT THE CURRENT EXISTING USE DOES HAVE SUCH A SIGNIFICANTLY ADVERSE IMPACT AND THE GRANTING OF THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL BE MORE LIKELY TO REDUCE OR ELIMINATE SUCH IMPACT THAN A DENIAL OF SUCH PROPOSAL:** The use prior to the apartment fire was a four-family residential dwelling which consisted of six (6) bedrooms. Units #1, #2, and #3 were determined by City Administration to be a legally nonconforming use. This opinion was first issued in September, 1986 and later confirmed in a second opinion in May, 2001. The applicant for the 2001 Opinion of Nonconformity presented evidence that the fourth unit had been installed in the 1950's. But, the Opinion of Nonconforming Use letter states that no corroborating evidence could be found to change the opinion from three (3) legally nonconforming apartment units to four (4) legally nonconforming apartment units. The 2001 Opinion for Nonconforming Use letter to the applicant does state that the Polk Directory (a phone book that compiles addresses, phone numbers, etc. through voluntary responses) showed four (4) units in 1975. The fourth unit has been used since that time until an apartment fire destroyed the fourth unit in December, 2008. Based on the information provided in the "Opinion" letter and by the applicant in 2001, it can be assumed that structure had been a four-family structure since at least 1975 and at the most the 1950's. The 2001 "Opinion" letter confirms that there were four (4) apartments in the structure since 2001.

The applicants are proposing to expand the third apartment unit into the area that was formally occupied by unit #4; which was gutted by fire in December, 2008. The new area will increase the apartment from approximately 430 square feet in area to 890 square feet in area. The number of bedrooms in unit #3 will increase from one (1) bedroom to two (2). The net increase of bedrooms for the entire building will be zero (0) since the one-bedroom unit #4 will be absorbed by the proposed unit #3. Surrounding properties to the north, east, south and west are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. These properties are predominately single-family residential in character, but several two-family dwellings exists in the neighboring areas.

It is unlikely that there would be an adverse effect on adjacent properties if the use of the subject property were allowed to be altered as proposed. The proposed expansion of unit #3 will increase its size and number of bedrooms, but it will occupy an area that included a one-bedroom nonconforming apartment unit. The net result will not increase the structure's number of bedrooms or alter the exterior of the structure.

The Zoning Regulations indicate that a legally nonconforming use shall be deemed a conditional use in the zoning district in which it is located. In general, a legally nonconforming use cannot be expanded, enlarged or increased in intensity beyond that which existed when it became legally nonconforming unless a conditional use is approved. An expansion, enlargement or increase in intensity is the use of additional structures, land area, or floor space within the same structure not originally designed or arranged for such use.

Although the structured was given an opinion of legally nonconforming use for three (3) apartment units with a total of five (5) bedrooms, the structure was actually being used as four (4) apartment units with a total of six (6) bedrooms. Altering the structuring to expand unit #3 to include a second bedroom and a larger living space will increase unit #3's intensity beyond that which the legal nonconforming use has, but it will not increase the intensity of actual use of the structure.

- C. THE PROPOSED CONDITIONAL USE COMPLIES WITH ALL APPLICABLE PROVISIONS OF THESE REGULATIONS, EXCEPT FOR THOSE EXISTING CONDITIONS THAT ARE LEGALLY NONCONFORMING; HOWEVER, THE PROPOSAL MAY CONTAIN REQUESTS FOR EXCEPTIONS TO SUCH REQUIREMENTS AS PROVIDED IN PARAGRAPH (F) HEREINAFTER:** The proposed Conditional Use complies with all applicable provisions of the regulations with the exception of the request to reduce the required number of parking spaces from eight (8) to seven (7) and the need for sight obscuring screening around the parking lot. The site currently has seven (7) off-street parking spaces for the apartment building, which is equal to the total number of required parking spaces for the current legally nonconforming use of the three unit apartment. The use of the site as a four (4) unit apartment building with a total of six (6) bedrooms would require nine (9) off-street parking spaces based on today's Off-

Street Parking Regulations. The proposed renovation requires the site to have a total of eight (8) off-street parking spaces. The existing use of four (4) units has utilized the seven (7) parking spaces without any recorded complaints. The proposed use would have a parking ratio of approximately 1.2 parking spaces to each bedroom, which would allow an additional parking space for a guest. Considering these circumstances, the request to reduce the number of required parking spaces from eight (8) to seven (7) should not adversely impact the surrounding properties.

The applicants are aware of the requirement to provide sight obscuring screening of not less than six (6) feet tall for the east side of the parking lot and have agreed to install the needed screening.

- D. THE EXISTING USE CONTINUES IN A SUBSTANTIALLY SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE IT MORE MODERN OR EFFICIENT:** The proposed renovation maintains the existing character of the building and keeps the apartments in a substantially similar form. Unit #2 is not proposed to be altered. The stairway that led to the former unit #4 is proposed to be framed into a new closet for unit #1 so that there is no longer access to the second story from this unit. Only Unit #3 will increase in size and the layout and number of bedrooms will be changed.

Aistrup moved to approve a Conditional Use to allow for the modification of a legally non-conforming three (3) unit apartment building with five (5) bedrooms to a three (3) unit apartment building with six (6) bedrooms within a R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, and for an Exception to allow a reduction of the required number of off-street parking spaces from eight (8) parking spaces to seven (7) parking spaces associated with the modification of the apartment building at 1004 Colorado Street with the following conditions:

1. Unit #3 shall be renovated as outlined in the application documents and shown on the applicant's floor plan.
2. Sight obscuring screening of not less than six (6) feet in height shall be provided on the east side of the existing parking lot. The sight obscuring screening on the east and west side of the parking lot shall be maintained in good condition.
3. All applicable permits shall be obtained.
4. The Exception shall be limited to the reduction of the required number off-street parking space to seven (7) off-street parking spaces as outlined in the application documents and shown on the applicant's site plan.
5. The detached garage shall be counted as an off-street parking space for the tenants of the building and shall not be used for storage or other uses.

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

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A 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 HOME IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. THE PROPERTY IS AT 2800 HEARTLAND VALLEY DRIVE. (OWNERS: CHARLEY AND NANCY COLE AGENT: ANDERSON-KNIGHT ARCHITECTS – TRACY ANDERSON).

Bunger presented staff report and recommended approval with three conditions.

Wigfall asked how many units like this one are not meeting the requirements.

Bunger responds that six or seven units do not currently meets the requirements.

Hamilton opens the Public Hearing.

Tracy Anderson, with Anderson/Knight Architects stated that he contacted the immediate property owners and they do not have any issues with the request. He also recommended the City review and update zoning regulations.

Hamilton closes Public Hearing and opens Board discussion.

Hamilton recommended changing the last sentence of the hardship section to remove “were allowed”.

Wigfall said she appreciated the amount of landscaping to soften the hard surfaces, but there is a larger issue that the City should look into.

The Board made the following findings of fact for the Variance located at 1004 Colorado Street:

- A. **CONDITIONS UNIQUE TO THE PROPERTY:** The property is located in the Grand Mere Development, a unique development when compared to other subdivisions in the City. While zoned R, Single-Family Residential District, the

neighborhood consists of estates properties with significantly larger homes and entrances unlike other similarly zoned and platted subdivisions. These platted lots are much wider and larger in lot areas than typical lots found throughout the City. This large lot, estate type development is a unique condition compared to other subdivisions that are zoned in the R District.

B. PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse impacts are anticipated on adjacent properties. Many of the homes along Heartland Valley Drive already have similar driveways and home entrances. Constructing the proposed driveway and parking area would be in character with the adjacent properties. Jerry Petty, Project Director for Grand Mere Development, Inc. and the chairperson of the Design Review Committee for the Grand Mere Home Owner's Association has submitted a letter stating that the preliminary plans submitted to his office would likely be approved based on the architecture, grading and landscape design.

C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: No specific hardship exists for the applicant if the driveway and parking design regulation was strictly applied. The driveway, parking area and the house could be redesigned to meet the regulations. However, A majority of the properties along Heartland Valley Drive that have been built upon, have circular driveways and parking areas that do not meet the requirements of the minimum open landscape area in the front yard or maximum driveway width and area requirements. The applicant's agent has calculated the percentage of paved driveways and buildings located in the defined front yard area on these properties as ranging from 25% to 55%. These homes were built between 2001 and 2005 and the large driveways that violate the Zoning Regulations were not reviewed by the Community Development Department during the building permit application process (*Note: The current procedures typically do not have the Zoning Inspectors review single-family home construction plans for compliance*). When the situation of the neighboring properties having driveways and parking areas that exceed the design requirements of the Parking Regulations is considered, an unfair circumstance is created. These property owners were allowed to construct their homes, driveways and parking areas as desired. This situation may be seen as an unnecessary hardship in that the applicants cannot develop their property as proposed although the neighboring properties were built with similar homes and driveways without issue.

D. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No affects on public health, safety or welfare is anticipated. The proposed circular driveway should not improve or worsen the safety of Heartland Valley Drive, a cul-de-sac with eight (8) properties gaining access onto it.

E. RELATIONSHIP TO INTENT OF REGULATIONS: The original 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 is paved and to help maintain the residential character of properties located within residential zoning districts, especially for lots located in the older, Ward districts. The Ward district lots generally are smaller than those in the Grand Mere subdivision. Likewise, the housing market in the Grand Mere development differs significantly from other established neighborhoods. Although the open landscape space in the defined front yard area is proposed to be reduced to approximately 57%, the proposed house and circular driveway will match the residential character of adjacent houses and the Grand Mere Development. The intent of the regulation is also met when the proposed landscape plan is reviewed. This plan shows several heavily landscaped flower beds built from stone walls, a rain garden and several trees.

Aistrup moved to approve a Variance to allow the maximum driveway width to increase from twenty-four (24) feet to fifty-three (53) feet; allow the maximum driveway area to increase from 960 square feet to 3,168 square feet; and, reduce the minimum 75% landscaped open area required in the front yard to 57%, all for a proposed paved driveway for a new single-family home in the R, Single-Family Residential District with the following condition.:

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 with a vote of 3-0

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW A SECOND SIGN IN A RESIDENTIAL DISTRICT TO BE LOCATED ALONG LOMBARD DRIVE FOR FRANK V. BERGMAN ELEMENTARY SCHOOL AT 3430 LOMBARD DRIVE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: BERGMAN ELEMENTARY PTO OWNER: MANHATTAN-OGDEN SCHOOLS USD 383 AGENT: JS SIGNS – JOHN STROH).

Bunger presented the staff report and recommended approval with two conditions.

Hamilton opened Public Hearing.

John Sloop of 3433 Lombard Drive lives across the street from the school. Shared concerns about the proposed Variance. Stated there had been no communication by the school of the proposed sign and no input of the placement of the sign was given to neighbors. There was initial confusion of whether the sign was going to be internally or externally lit. Expressed that the placement of the sign does not make it very readable because of parked cars, school buses, traffic, etc. Felt there is also a safety concern. Stated that he does not believe that the sign is needed for communication, but stressed the school uses other means of communication.

Bunger clarified that the maximum number of signs on one zoning lot in a residential district is one.

John Stroh, with JS Sign Company, addressed the concerns of Mr. Sloop.

Aistrup asked why the sign has to be internally illuminated.

John Stroh clarified that the internal illumination was an error on the sign permit and the sign as of right now will not be illuminated because there is no electricity at the signs location.

Hamilton suggested that a condition be added to limit illumination.

Aistrup asked if anyone from the PTO was present to address John Sloop's issues and address the intent of the PTO as to why they want to put the sign in front.

John Stroh told PTO members that there was no need for them to come.

Hamilton asked if time is of the essence.

John Stroh said time was not a factor right now.

Hamilton and Aistrup felt it was more appropriate to table the item until next month so a

representative of PTO could be present.

Aistrup stated he understands the need for the sign to be used as communication, but also sees issues presented by neighbors.

Mrs. Sloop worried about the sign being vandalized.

Wigfall wanted the sign details to be more clearly defined.

John Stroh agreed with the board that the item should be tabled so PTO members can be present.

Hamilton closed public hearing and opened Board discussion.

Aistrup moved to table the Variance until the March 11, 2009 Board of Zoning Appeals Meeting.

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

ADJOURN

Respectfully Submitted,

Stephanie Dikeman, Planning Intern

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