

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, August 12, 2009
7:00 PM

MEMBERS PRESENT: La Barbara J. Wigfall, Vice-Chairperson; Joe Aistrup; Connie Hamilton; and Ricci Dillon.

MEMBERS ABSENT: Harry Hardy, Chairperson

STAFF PRESENT: Chad Bunger, Planner; Stephanie Watts, Planning Intern; and Savannah Benedick, Planning Intern

Wigfall suggested forgoing the consideration of the Minutes until the end of the meeting. The other Board members had no objections.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR AN APPROVED 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).

Hamilton moved to approve an 180 Day Extension for an approved 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.

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

A PUBLIC HEARING TO CONSIDER A EXCEPTION TO ALLOW THE LOT COVERAGE TO BE INCREASED FROM THE MAXIMUM THIRTY (30) PERCENT TO THIRTY-THREE (33) PERCENT FOR THE CONSTRUCTION OF A NEW DETACHED GARAGE; AND, A REDUCTION OF THE MINIMUM FOURTEEN (14) FOOT FRONT YARD SETBACK AND THE EIGHT (8) FOOT SIDE YARD SETBACKS FOR THE EXISTING HOUSE FOR THE OWNERS TO HAVE CLEAR TITLE TO THE PROPERTY; ALL FOR THE PROPERTY LOCATED AT 527 PIERRE STREET IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND THE TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (OWNER/APPLICANT: JOHN DICICCO)

Bunger presented the staff report and recommended approval with three (3) conditions.

Hamilton asked Bunger if rezoning the property to the Traditional Neighborhood Overlay District changed the lot coverage requirement.

Bunger responded in the affirmative. He explained that if the property was zoned to the R-M, Multi-Family Residential District with no overlay, the lot coverage would be thirty-five (35) percent, and that the addition of the Traditional Neighborhood Overlay reduced the maximum allowable lot coverage to thirty (30) percent.

Dillon brought a typographical error in the staff report to staff's attention, and Bunger stated that the error would be corrected.

Wigfall opened the public hearing and invited the applicant to speak.

John DiCicco approached the podium to make known to the Board that he was present.

Wigfall closed the public hearing and opened for Board discussion.

Hamilton expressed her appreciation of the Exception mechanism and felt as if the application had met all of the standards for Exceptions. She stated that she could support the staff report as corrected.

Aistrup concurred with Hamilton's statement.

The Board made the following findings of fact for the Exception at 527 Pierre Street:

- A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The site was configured in its existing state in 1938 when Lots 566-568, Ward 1 (oriented to the east and west), was subdivided into a 65 foot by 150 foot lot (529 Pierre Street), a 50 by 150 foot lot (525 Pierre Street) and a 35 foot by 150 foot lot (527 Pierre Street and the subject site), all of which are oriented to the north and south. This division of land was done prior to the adoption of the City of Manhattan Subdivision Regulations. The improved nonconforming lot is allowed to exist as long as the use is permitted in the Zoning District (Section 8-301). The improved nonconforming lot may be added, enlarged, maintained, repaired or remodeled so long as the changes do not increase the degree of nonconformity (Section 8-302).

The property owner's to the east has a fence that encroaches onto the site by approximately two (2) feet. This is an existing condition that should be resolved by the applicant and the adjacent property owner.

Other than the issue with the improved nonconforming lot, the property and the proposed detached garage complies with all applicable requirements of the Zoning Regulations, other than the ones for which the Exceptions are being requested.

- B. PROBABLE EFFECT ON ADJACENT PROPERTIES: The site and the properties to the north, south, east and west are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. These properties are a mix of owner-occupied, single-family dwellings, rented, single-family dwellings and two-family and multiple-family dwellings. Also in the area are the Boys and Girls Club of Manhattan office and the Municipal Court Building and the open space associated with the building. Further to the east are properties zoned C-4, Central Business District and two (2) properties zoned PUD, Residential Planned Unit Development, which are multiple-family dwellings.

Minimal impacts are anticipated to the adjacent properties by approving the Exception. The proposed garage meets the minimum required setbacks for an accessory structure. This issue is that the site is narrower than required and does not have adequate lot area, which results in the issue with the lot coverage. The applicant's proposal would allow for him to remove a car off of a busy, local residential street and place it at the rear of the site in a secured detached garage. This should be a positive effect to the adjacent properties. In the application documents, the owner states "I have spoken to the neighbors on either side of my home as well as the neighbor behind me across the alley and none of them have any objection to this structure being constructed."

The site is also a contributing property in the Houston-Pierre Street Historic District and within the 500 foot historical environs of the downtown Historic District, Hulse-Daughters House, Lyda-Jean Apartment House, Seven Dolors Catholic Church, Elliot House and Wharton House. Both the Historic Resource Board and the State Historic Preservation Officer reviewed the proposed detached garage. The State Historic Preservation Officer has provided a letter determining that the "proposed project will not encroach upon, damage or destroy any listed historic property or its environs" (*attached*).

The existing house has been a part of the neighborhood since 1927, when it constructed in its existing location. There have been no complaints on record to the Community Development Department. The Exceptions for the existing house will not adversely the adjacent properties and give the property owner clear title to the property.

- C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Exception on the site is not anticipated to have an adverse impact on the public. The proposed detached garage is not within the vision triangle of the alley or encroaches on public easements. The existing house also does not encroach into public easements.

The proposed detached garage allows the applicant to remove his vehicle(s) off of the busy, local residential street, which provides for a safer traffic environment along Pierre Street. The proposed detached garage is adequately setback off of the alley and meets the City's Off-Street Parking Lot Configuration Standards. The rear yard setback of twenty-two (22) feet allows the driver to back a vehicle out of the garage

and stop and look for traffic before entering the alley. This proposed setback provides for a safe driving environment along the alley.

- D. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The site is an improved nonconforming lot that is thirty-five (35) feet wide and 5,269 square feet in lot area. The lot is fifteen (15) feet shorter than the required minimum lot width of fifty (50) feet and 731 square feet smaller than the required lot area of 6,000 square feet. Although the proposed detached garage meets the minimum setback requirements for an accessory structure, the strict application of the Zoning Regulations would not allow the applicant to construct the two-car, detached garage and workspace because the foot print of the garage would exceed the lot coverage of thirty (30) percent in the TNO, Traditional Neighborhood Overlay District. The lot coverage for property in the R-M, Four-Family Residential District without the TNO District is thirty-five (35) percent. Based on the square footage of the existing house and the size of the improved, nonconforming lot, the applicant would be allowed to construct a detached garage that has a maximum area of 316 square feet, including the roof overhangs.

The condition that causes the need for the Exception to construct the 441 square foot detached garage is the narrow, thirty-five (35) foot wide lot. This lot was created in 1938 when it was reconfigured with the lot to the immediate east and west, before Subdivision Regulations were adopted in the City of Manhattan and prior to the applicant purchasing the site. If the site met the minimum lot width of fifty (50) feet, the existing house and the proposed detached garage would have a lot coverage of twenty-three (23) percent and would conform to the Zoning Regulations. Although an alternative would be to construct a detached garage that is 316 square feet or less, the applicant has requested the Exception allow for the construction of an approximate 441 square foot detached garage that would accommodate his vehicles and a small workshop. Considering these circumstances and that the proposed structure will not adversely impact the adjacent properties or properties in the Houston-Pierre Street Historic District or other historic properties environs, the strict application of the lot coverage in the R-M/TNO District is unreasonable.

No reasonable solution is available to correct the issue with the front yard and side yard setbacks of the existing house. An opinion of legal nonconformity could be applied for to address the issues of existing house to give the applicant clear title of the property. Since Exceptions for the location of the existing house could be included with the Exception request for the proposed detached garage, it would be unnecessary to require an opinion of legal nonconformity application.

Dillon made a motion to approve an EXCEPTION to allow the lot coverage to be increased from the maximum thirty (30) percent to thirty-three (33) percent for the construction of a new detached garage; an Exception to allow for a reduction of the minimum fourteen (14) foot front yard setback to nine (9) feet; and an Exception to allow for the reduction of the minimum eight (8) foot side yard setbacks for the existing house for the owners to have clear title to the

property; all for the property located at 527 Pierre Street in the R-M/TNO, Single-Family Residential District and the Traditional Neighborhood Overlay District with the following conditions of approval:

1. The Exceptions shall be limited to the detached garage as proposed in the application materials and the site plan and the existing house as shown on the application site plan.
2. The detached garage shall be constructed according to the application and site plan documents.
3. All applicable permits shall be obtained.

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

A PUBLIC HEARING TO CONSIDER A EXCEPTION TO ALLOW A REDUCTION IN THE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK TO FIFTY (50) FEET ALONG EDGERTON STREET FOR A TRASH RECEPTACLE SCREENING ENCLOSURE AT 430 EDGERTON AVENUE IN AN R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (OWNER/APPLICANT: TORGEIR AND EVY NORHEIM)

Savanah Benedick presented the staff report and recommended approval with four (4) conditions.

Hamilton asked staff to explain the reasoning behind the sixty (60) foot front yard setback for accessory uses.

Benedick replied that trash receptacle screening enclosures are typically associated with commercial uses and acts as a visual buffer.

Hamilton asked for clarification of whether the primary intention of the sixty (60) foot setback requirement was visual aesthetics.

Bunger provided further clarification and stated that he did not know how the distance of sixty (60) feet was selected. He stated the intent of the accessory use front yard setback was to keep accessory uses in the rear yard and well behind the front façades of buildings.

Hamilton asked staff whether the concrete pad would be considered a fence or an architectural feature, and not an accessory use, if it was not being utilized as a trash enclosure.

Bunger stated that Hamilton was correct that it could be considered a fence if it was not serving the purpose of a trash screening enclosure. Bunger explained that when staff first investigated the complaint and was not aware of the structure's purpose, it was interpreted that it was a fence and would have been in compliance with all setbacks. But, because of its use, it must follow the sixty (60) foot setback.

Hamilton remarked that this was the most unstructured accessory use ever to be brought before the Board, and contended that if the structure was used as architectural detail rather than a trash enclosure, it would have fewer setback restrictions.

Bunger agreed with Hamilton, and stated the matter had been brought to the attention of staff because of a complaint received. He explained that upon investigation of that complaint, staff found that the structure was being used to screen trash receptacles. It was for this reason that staff considered the structure to be a trash enclosure.

Hamilton clarified that the complaint was regarding the location of the trash enclosure, not its use. She asked staff if it was a Zoning Administrator who had made the determination that the enclosure was to be considered an accessory use.

Bunger responded that it staff interpreted the structure to be a trash enclosure because the applicant stated to staff that that was the structure's function.

Dillon asked whether the applicant would still need an Exception for the Front Yard Accessory Use setback if he was to make that area into a patio.

Bunger responded that if the applicant made the area into a patio, it would be considered a fence, in which case the front yard setback would be twenty-five (25) feet. Bunger stated that the applicant has been very willing to comply with the regulations and go through the Exception process to alleviate the compliant and issue.

Wigfall opened the public hearing and invited the applicant to speak.

Torgeir Norheim, the applicant, described the rationale behind the trash screening enclosure. He explained how it serves as both a fence and trash enclosure.

Dillon asked the applicant what material was used on the façade of the house.

Norheim replied that the material was slotted cedar.

Dillon asked the applicant if he had considered using the slotted cedar around the trash enclosure.

The applicant responded that he had not.

Hamilton asked the applicant to address the vegetation that would be planted around the trash enclosure.

Norheim stated that it was his intention to plant English Ivy in the fall to eventually screen the concrete structure.

Hamilton asked him if the intention behind his plan to landscape around the structure with the English Ivy was to soften the concrete with natural vegetation.

Norheim responded in the affirmative. He provided information about the intent behind the trash enclosure, stating that he constructed the trash enclosure so that his neighbor would not have a direct view of the trash can.

Wigfall asked the applicant about a set of stairs south of the trash receptacle.

Norheim stated that the stairs led down to a yard area.

Wigfall closed the public hearing and opened Board discussion.

Hamilton stated she was swayed by the fact that the structure could be a fence and an accessory use. She contended that the structure functions more as a fence and architectural feature than a trash enclosure. She stated that she did not have a problem allowing the applicant a closer setback for the enclosure. She further stated that people should know where their property lines are, but that she understood that mistakes are made. She stated she could support the request.

Dillon expressed that she felt as if the concrete structure was aesthetically positive and could serve many purposes, and stated that she could support the request.

Wigfall expressed her appreciation for the vegetation and the softening affect it will have on the concrete. She said she could support the Exception.

Aistrup said he had nothing to add.

The Board made the following findings of fact for the Exception at 430 Edgerton Avenue:

- A. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The site complies with all applicable regulations except that for which the Exception was requested.
- B. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and all properties in the neighborhood are zoned R, Single-Family Residential District. The enclosure is not anticipated to negatively affect any of the adjacent properties to the east, west and south. The enclosure can be seen from Edgerton Avenue to the west and properties to the east when viewed at a direct angle. However, if the enclosure complied with the setback requirement, it would still be seen at these locations. The applicant's house obstructs any views from the property owner to the south.

The adjacent property to the north has the most direct view of the enclosure; however the enclosure conforms to the north side yard setback. Additionally, the application documents state that "eventually the exterior of the trash enclosure will be overgrown with climbing evergreen vine." This vegetation buffer will assist in mitigating the potentially negative effects on the adjacent properties.

- C. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exception is not anticipated to adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. The accessory use does not encroach upon any easements or obstruct any vision clearance triangles.
- D. **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 require the applicant to demolish the existing trash receptacle screening enclosure and rebuild it a minimum of sixty (60) feet from the front property line to comply with the Zoning Regulations. Because the enclosure did not require a building permit, the City did not

review the setbacks before the enclosure was constructed and the applicant did not contact the City regarding the setback requirements for trash receptacle screening enclosures. The application documents explain that the required setback for the enclosure was “mistakenly allocated from the street curb” rather than the front property line. It appears that the applicant was attempting to follow the required front yard setback for accessory uses, and the enclosure does not conform to the minimum sixty (60) foot setback due to a misunderstanding of where the property line begins.

To date, no complaints have been made to the City regarding the trash enclosure’s encroachment into the front yard setback for which the Exception was requested. It has been considered that the encroachment of the enclosure is towards the front property line and not the side property line and that the enclosure is planned to be buffered by landscaping consisting of climbing evergreen vine. Requiring the applicant to move the trash enclosure to comply with the Zoning Regulations may be unreasonable.

Hamilton made a motion to approve an EXCEPTION request to reduce the setback from 60 (sixty) feet to 50 (fifty) feet for a trash receptacle screening enclosure at 430 Edgerton Avenue in an R, Single-Family Residential District with the following conditions:

1. The Exception shall apply to the trash receptacle screening enclosure setback outlined in the application documents, the application site plan, and the staff report.
2. The trash receptacle screening enclosure shall be kept in good condition.
3. The landscaped buffering of all exterior walls, consisting of climbing evergreen vine, shall be planted in the fall of 2009.
4. The landscaped buffering of all exterior walls, consisting of climbing evergreen vine, shall be maintained in good condition.

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

A PUBLIC HEARING TO CONSIDER A FOR AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK REQUIREMENT TO TEN (10) FEET ALONG STONE GLENN CIRCLE FOR THE CONSTRUCTION OF A PROPOSED SIX (6) FOOT TALL PRIVACY FENCE AT 900 HIGHLAND RIDGE DRIVE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (OWNER: THORNTON CONSTRUCTION INC – DAN THORNTON. APPLICANT: ROBERT AND LESLIE WHITED)

Stephanie Watts presented the staff report and recommended approval with three (3) conditions.

Dillon expressed her appreciation for the pictures in Watt’s presentation of the staff report.

Wigfall opened the public hearing and invited the applicant to approach the Board.

Robert Whited presented the Board a landscape plan and provided further description of his intentions and the phasing of the landscaping.

Wigfall thanked the applicant for the landscape plan and digital photos.

Wigfall closed the public hearing and opened the Board discussion.

Hamilton contended that the application stressed the restrictions of front yard setbacks. She expressed her appreciation of the applicant's modest request and the fact they were not trying to construct a fence any closer to the street. Hamilton expressed concerns about the effect the fence could have on lot southwest of the site.

Wigfall stated that she was in favor of the fence because there is plant material that will soften the fence as it matures. She also expressed her appreciation of the reasonableness of the applicant's consideration of the phasing of the landscaping and the time it will take for it to mature.

Dillon contended that she could see an issue with the car lights hitting the back of the house, and stated that she appreciated that the fence follows the curvature of the lot line. She stated that she had no problem with the request and felt that requiring the applicant to have two separate fenced-in areas would be unreasonable.

The Board made the following findings of fact for the Exception at 900 Highland Ridge Drive:

- A. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site currently complies with all applicable regulations, other than that for which the Exception is requested.
- B. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The fence would not be out of character for this R-1, Single-Family Residential Neighborhood District in either size or material. The immediate neighborhood is currently under construction with single-family detached homes. The neighborhood two blocks north of the subject site is zoned R-2, Two-Family Residential District and R-3, Multiple-Family Residential District. Many properties in both the single-family and multiple-family neighborhoods have conforming fenced yards to serve as a useable and private space. However, given the corner configuration of the lot and the placement of the house, the applicant is forced to use the west side yard and northern front yard as their functional rear yard. It is not uncommon in this neighborhood for property owners to fence in their rear yards. Because the subject property does not technically have a rear yard, proposed fenced in area is the only logical space to function as the rear yard.

The proposed fence should not negatively affect either of the adjacent properties immediately west or south of the subject site. The property located to the west, Lot 46, Stone Pointe Addition, is currently undeveloped, yet even when a house is located on the lot, the fence should not cause adverse effects. The proposed fence would be approximately ten (10) feet from neighboring property line. The proposed fence will act as a buffer from typical backyard activities, screening the west adjacent property's front and side yard from the subject site's functional rear yard.

The neighboring property to the south, Lot 48, Stone Pointe Addition, is also an undeveloped lot and should not be affected by the Exception request. The south shared property line is considered a side yard, which has a zero (0) foot setback for fences. The proposed fence along the southern property line complies with all applicable requirements.

The subject property is unique in that fact that the functional rear yard fronts onto Stone Glenn Circle, while the other homes located along this cul-de-sac have their front yards fronting onto Stone Glenn Circle. The proposed fence would provide privacy for the applicants while using their functional rear yard, and would also screen neighbors residing on Stone Glenn Circle from typical back yard activities at the subject property. The fence would provide screening for those neighbors from lawn furniture, grills, children's toys, and other items typically found in rear yards. The fence would act as a buffer from any potential conflicts between typical front yard and rear yard activities.

The applicants have also submitted a landscape plan which incorporates landscaping around the entire site, both inside and outside of the proposed fenced in area. Large trees are to be located along the north and east property lines, serving as a natural buffer to the fence.

- C. 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 wooden fence is proposed for a location that would be outside the vision clearance triangles of current or any future driveways. The proposed fence is also outside the ten (10) foot vision clearance triangle created by the future driveway on the property immediately west of the subject site. Due to the curvature of the street, the property immediately west of the subject site is already visually limited and the fence will not induce any further obstructions.

The proposed fence is located twenty-five (25) feet from the Stone Glenn Circle and should not obstruct the line of sight of users of Stone Glenn Circle. There are currently no sidewalks along Stone Glenn Circle. According to the Construction Plans on file, sidewalks are proposed along the south side of Stone Glenn Circle. The sidewalk would begin at northeast corner of the subject site and run approximately fifty (50) feet west, ending before the bulb of the cul-de-sac. The sidewalk will be located approximately nine (9) feet from the back of the curb, and approximately twenty-six (26) feet from the proposed fence.

- D. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE

CONSIDERED: The north and northwestern property lines follow the curve of Stone Glenn Circle along the side and back of the house. The cul-de-sac is not a symmetrical bulb, but rather is an off centered bulb, curving along the south of the cul-de-sac, but straight along the north of the cul-de-sac. Any cars driving on Stone Glenn Circle at night would flood the windows on the rear of the house with light from the headlamps. The applicants have stated that this would include the window in their master bedroom. If the applicants were to construct a legal fence, they would be left with only a one-and-a-half (1.5) foot distance between the northwest corner of the house and the fence. This would split the fenced in portion of the yard into two different areas, not allowing full enjoyment of their functional rear yard. The Exception would allow the applicants to place the fence approximately sixteen (16) feet from the house, allowing the yard to be used as intended. When all facts are considered, the strict application of these regulations is unreasonable.

Aistrup made a motion to approve an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback requirement to ten (10) feet along Stone Glenn Circle for the construction of a proposed six (6) foot tall wooden privacy fence at 900 Highland Ridge Drive, in the R-1, Single-Family Residential District, with the following conditions:

1. The Exception shall be for the proposed fence as provided in the application documents and site plan.
2. The proposed fence shall be maintained in good condition.
3. The landscaping plan provided in the application materials shall be planted as shown and be maintained in good condition.

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

Wigfall entered into record that Chairman, Harry Hardy was absent.

CONSIDER THE MINUTES OF THE JULY 8, 2009 MEETING

Hamilton commended the staff's ability to capture the Board's discussion in an accurate manor. However, she expressed concern that in the Findings of Fact for the Conditional Use request for the child care center at 1500 Hudson Avenue, the tone was inconsistent. The majority of the Board's Findings, which come from the City Staff Report, sound quite positive and seem to indicate no negative impact to the surrounding neighborhood. However, the tone changes abruptly and the Findings conclude that the proposed use would have an adverse impact on surrounding properties and would dominate the neighborhood. She contended that the findings can stand and that they were the Board's findings. Hamilton asked if there was a way that the Findings for the 1500 Hudson Avenue request could be altered to better reflect the comments and position of the Board. Hamilton expressed a desire to find a way to say in the Findings of Fact which contentions were those of staff and which are Board Findings when there is disagreement.

Aistrup reiterated Hamilton's comment and elaborated, stating that when the Board found differently from City Staff, the Board would like City Staff to change the Findings to reflect the sentiments of the Board's comments so that there is no contradiction. He stated that at the public hearing, it is possible to make limited changes to specific wording, but it is not an appropriate forum for more extensive

wordsmithing as might be required for findings where staff's and the Board's philosophies were at odds.

Bunger expressed the willingness of City Staff to modify Findings of Fact, but asked the Board to let staff know what they want changed.

Hamilton stated that the Board was not able to be very specific given the constraints of the public forum setting, but that inconsistencies become more apparent later, when the Board members have the opportunity to individually review the Findings for each item in the Minutes, which are made available to them after the Public Hearing.

Bunger reiterated that City Staff needs specific direction and guidance from the Board to make modifications to Findings of Fact, and that without that guidance, staff would have no way of knowing which modifications the Board would like to see made.

Wigfall stated that in regard to the specific Findings of fact that prompted the discussion, the Board desired to see changes in both the wording and tone of the findings. She referenced the fact that the Notice of Decision procedures had recently changed, and the Board no longer had the opportunity to read and suggest edits to staff reports as they had been previously able to do.

Bunger suggested that in instances where staff and the Board's opinions diverged widely, the items be tabled so that the Findings could be reconciled.

Aistrup suggested that the Findings of Fact be revised in the Minutes at the following meeting. He reiterated that the Findings of Fact need to be modified to reflect the Board's philosophy when it was different from that of staff, because it was the Findings of the Board.

Dillon suggested that the Board could refuse to adopt the minutes.

There was discussion among the board on the topic of fairness to the applicant, and whether revising the Findings of Fact in the minutes would be fair. It was ultimately concluded that since the applicant would have already received their Notice of Decision, it would be unfair.

There was more discussion regarding whether applicants would need to be sent revised Notices of Decision when Minutes were changed.

Hamilton referenced the intention of the new Notice of Decision procedures, which is to get the Notice to the applicant quickly, and contended that tabling Minutes, and thus Findings of Fact which are part of both the Minutes and the Notice of Decision, would be contrary to those intentions.

There was more discussion regarding the procedures and the Board's opportunity to review the Minutes prior to approving them.

Hamilton reiterated her suggestion to differentiate within the Findings of Fact between the findings of city staff and those of the Board.

Bunger expressed staff's amenability to that suggestion. He reiterated that would be happy to do whatever the Board recommended, but that it needed direction from the Board so that staff could know how to proceed.

Wigfall expressed concern that if modifications were made to the Findings of Fact after the hearing, the Board would not ultimately have the opportunity to see what was being sent to the applicant.

Bunger contended that the concern expressed by Wigfall illustrated his previous point that Staff needs specific direction from the Board on its findings. He stated that it would be necessary to check with the City Attorney to make sure that the suggestion to differentiate between staff and Board findings would not have any legal implications that the current discussion did not consider. He suggested that in the matter at hand, the Minutes be tabled for revision based on the Board's concerns, and for review of the Board's suggestion by the City Attorney.

Hamilton stated that the Board wanted the Findings of Fact in the Conditional Use Application for the Day Care Center on Hudson in the July hearing to be modified to reflect the Board's Findings at the hearing. Specifically, she stated that she wanted the Probable Effect on Adjacent Properties findings altered to include that the Board found that there would be a negative effect on surrounding property values.

Dillon cited fairness, stating that discrepancies between the Board and Staff's findings were unfair to applicants. She also stated that it was helpful when staff took pictures from all four sides of applications.

Wigfall stated that in general, staff does a wonderful job of capturing what goes on during public hearings, but that in the last two months, there have been very difficult cases that have highlighted a weakness in the existing procedure for Notices of Decision and Findings of Fact.

Bunger reiterated that communication and specific guidance from the Board was crucial to City Staff on this issue.

Hamilton repeated the suggestion that conflicts may require tabling minutes, and made a motion to table the Minutes from the July 8, 2009 Board of Zoning Appeals meeting for further revision.

Aistrup seconded the motion, which passed unanimously.

Wigfall adjourned.

Respectfully Submitted,

Anne Antonini and Stephanie Watts, Planning Interns

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