

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, September 10, 2009
7:00 PM

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

MEMBERS ABSENT: Ricci Dillon

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

Wigfall suggested forgoing the removal from the Table and approval of the July 8, 2009 Minutes, and the consideration of the August 12, 2009 Minutes until the end of the meeting. The other Board members had no objections.

A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW A DRIVEWAY TO BE GREATER THAN TWENTY-FOUR (24) FEET IN WIDTH AND 960 SQUARE FEET IN AREA; AND A VARIANCE TO REDUCE THE MINIMUM 75% LANDSCAPED OPEN AREA REQUIRED IN THE FRONT YARD, ALL FOR A PROPOSED PAVED DRIVEWAY FOR A NEW SINGLE-FAMILY DWELLING LOCATED ALONG RANGEVIEW LANE AT 2620 RANGEVIEW LANE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (OWNER/APPLICANT: WAYNE AND VALERIA CONVERSE)

Anne Antonini presented the staff report for the Variance request and recommended approval with 3 conditions.

Wigfall asked City Staff if the increased impervious surface would overload the current stormwater system.

Antonini responded that this would be a question for the City Engineer, but based on the topography of the lot, most of the stormwater runoff would flow toward a wooded area at the rear of the property and not onto the street.

Hardy opened the Public Hearing and invited the applicant to address the Board.

Wayne Converse, the applicant, explained to the Board how the house is being designed to be handicap accessible. He also mentioned that the driveway was designed to allow the maneuvering of vehicles safely in and out of the garage, and given the topography of the lot, the placement of the garage and driveway was limited.

Wigfall stated her appreciation of the applicant investigating the placement of the garage and driveway to safely allow for turnarounds and maneuvering.

Converse stated that they looked at redesigning the driveway to better meet the spirit of the regulation, yet the only solution was a long narrow driveway with a much reduced turnaround space that aesthetically did not fit with the neighborhood and was a potential safety concern.

Daryl Folkerts, the builder, provided clarification for the Board regarding the placement of the driveway and garage on the site. He stated that the Architectural Review Board did not want garages facing the street, leaving the side-entry the only viable option given the topography of the site. Folkerts did state that the side-entry enlarged the size of the driveway considerably to provide for adequate turnaround area. He also addressed Wigfall's concern regarding excess stormwater runoff by stating that an underground drainage system would be installed for all of the gutter systems and drain to the rear and side of the lot so no excess water from the roof would runoff the driveway into the street.

Folkerts expressed his concern that situations much like this one will be encountered much more often as development continues in subdivisions like Grand Mere. He articulated that he would like to see the driveway regulations amended so future situations like this would not be an issue.

Hardy told Folkerts that they are a quasi-judicial board, not legislative, and cannot amend regulations. He expressed his understanding of Folkerts' concerns and agreed that cases like this will permeate during the development of the Grand Mere subdivision.

Bunger provided further information stating that as a staff, this issue is being looked at to determine how or what modifications need to be made.

Hardy concurred with Bunger that the regulations do need to be updated.

Hamilton asked for clarification as to whether the Architectural Review Board referenced was associated with Grand Mere.

Folkerts stated this was correct.

Hamilton asked if the Grand Mere Architectural Review Board had any concerns about the driveway.

Folkerts said that there were no concerns with the driveway.

Wigfall stated that after reviewing the landscape plan, her concerns with the stormwater runoff were lessened, because the vegetation will absorb much of the runoff. She stated her appreciation of the landscaping plan.

Hardy closed the Public Hearing and opened for Board Discussion.

Aistrup stated that given the size of the lot and its conditions, he can support the Variance. He agreed with Folkerts that City Staff should work to remedy this issue in similar subdivisions.

Hamilton agreed that the Variance should be approved, yet asked for modifications to be made to the Findings under the hardship standard (*the Findings below reflect the changes made by Hamilton*).

The Board made the following findings of fact for the Variance at 2620 Rangeview Lane:

- 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. The proposed driveway and parking area would be in character with the established neighborhood. Many of the homes along Rangeview Lane and throughout the Grand Mere subdivision have similar driveways and home entrances. The proposed site plan has been reviewed and approved by the Grande Mere Architectural Review Board.
- C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** Although the driveway, parking area and house could be redesigned to meet the regulations, a substantial number of the properties along Rangeview Lane and throughout the Grand Mere subdivision have circular driveways and parking areas that do not meet Zoning Regulations for minimum open landscape area in the front yard or maximum driveway width. The large driveways that violate the Zoning Regulations were not reviewed by the Community Development Department during the building permit application process (*Note: Under current procedures, Zoning Inspectors typically do not review single-family home construction plans for compliance*). When the neighboring properties' illegally nonconforming driveways and parking areas are considered, an unfair circumstance is created. Given the size of the lot, the applicant's compliance with the local architectural review board, and the topographic limitations in the placement of the garage, the strict application of the regulations would create a hardship for the applicant.
- D. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** No affects on public health, safety or welfare are anticipated. The proposed driveway would not encroach on any public rights-of-way or easements. The circular driveway would enable vehicles to exit the property in a safer forward motion instead of backing out of the driveway. The proposed circular driveway should not improve or worsen the safety of Rangeview Lane, a cul-de-sac with ten (10) properties gaining access onto it.
- E. RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the off-street parking regulations is to reduce the visual impact of large parking areas to passers-by and adjacent residential uses. The original intent of the regulation that requires landscaped open space and the maximum amount of paving for driveways was 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 regulation was created in the mid-1980's as a result of paved parking being placed in front of apartment buildings in the Ward Districts. The proposed site plan meets the spirit and intent of the regulations. All parking is behind the minimum front yard setback.

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 53%, 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, and several trees, which

will reduce the visual impact of the paved area.

Aistrup made a motion to approve a VARIANCE to allow the maximum driveway width to increase from twenty-four (24) feet to sixty-five (65) feet; allow the maximum driveway area to increase from 960 square feet to 2,601 square feet; and, reduce the minimum 75% landscaped open area required in the front yard to 53%, all for a proposed paved driveway for a new single-family home in the R, Single-Family Residential District with Findings as modified and with the following conditions:

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

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO TWENTY-FOUR (24) FEET; AND TO ALLOW A REDUCTION OF THE MINIMUM SIX (6) FOOT SIDE YARD SETBACKS TO FOUR (4) FEET ALL FOR THE EXISTING HOUSE LOCATED AT 514 STONE POINTE DRIVE IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (OWNER/APPLICANT: JOHNNY ECLAVEA)

Chad Bunger presented the staff report and recommended approval with 2 conditions.

Hardy opened the Public Hearing and invited the applicant to speak.

Johnny Eclavea, the applicant, explained to the Board that this problem was discovered while going through the process of constructing a fence. He stated that he wanted to remedy the situation now as opposed to waiting until they sell the property and this issue arises again. Eclavea stated that he has spoke with the property owners in the adjoining duplex and they have agreed to go through with the Boundary Line Adjustment Plat in order to have clear title to the property.

Hamilton commended the applicant for taking care of the problem now as opposed to waiting.

Hardy closed the Public Hearing and opened for Board discussion.

The Board agreed that this request should be approved.

Hamilton stated that fortunately this kind of situation is uncommon.

The Board made the following finding of fact for the Exception at 514 Stone Pointe Drive:

- A. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property currently complies with all applicable requirements of these regulations, other than the one for which an Exception is being requested and the issues as a result of the surveying error.
- B. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the immediate north, east and south are zoned R-2, Two-Family Residential District. Properties to the west, across Stone Pointe Drive and to the north of Highland Ridge Drive are zoned R-3, Multiple-Family Residential District. The existing single-family attached dwelling

on the site and the adjoining property was built in 2007. The surrounding single-family attached properties to the north, east and south were also built in 2007 or 2008. The multiple-family development to the west and north are currently being developed.

The Exception request is to correct existing conditions created by a surveying error at the time of construction. Because of the error, the dwelling was constructed at a slight angle, which puts the northwest corner of the front roof eave overhang into the front yard setback, and a small portion of the northeast corner of the dwelling and the roof overhang into the side yard setback. No complaints have been filed with the Community Development Department regarding the property. The degree of encroachment is minor, 0.3 feet into the minimum twenty-five (25) front yard setback and 1.9 feet into the six (6) foot side yard setback at its widest point. The encroachments on the existing dwelling are undetectable from Stone Pointe Drive or properties to the west. The single-family attached dwelling located directly to the north of the subject site is the property most affected by the existing encroachments. This property was issued a building permit in April, 2008, approximately eight months after the Certificate of Occupancy was issued for the house on the site. It is not perceived that a reduction in the front yard setback along Stone Pointe Drive or the side yard setback along the north property line will have an adverse effect on adjacent properties.

- C. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exceptions do not adversely affect the public's health, safety, or general welfare. The location of the existing house is not in platted easements and will not affect vision clearance for traffic traveling along Stone Pointe Drive.
- D. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The cause of the single-family attached dwelling being located in the front and side yard setbacks is due to an error in the survey of the property at the time the dwelling was constructed. The survey used a property pin to establish the adjoining lot line that was approximately five (5) feet to the north of the actual property line, measured at the rear lot line. The result is that the house on the subject site was built at an angle that places the extreme corners of the house into the front yard and side yard setbacks and a portion of the neighboring single-family attached dwelling is built on the applicant's property. To strictly apply with the setback regulations, portions of the house and gutters would need to be removed. Requiring these steps to be taken would be unreasonable considering the facts and circumstances.

A Boundary Line Adjustment Plat has been submitted to the Community Development Department that will correct the error with the adjoining property line. This Plat will be finalized if the Exception requests are approved by the Board of Zoning Appeals.

Hamilton made a motion to approve an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to twenty-four (24) feet; and to allow a reduction of the minimum six (6) foot side yard setbacks to four (4) feet all for the existing house located at 514 Stone Pointe Drive in the R-2, Two-Family Residential District with the following conditions:

1. The Exceptions shall be limited to the front and side yard setbacks as shown on the site plan and described in the application documents.
2. The Boundary Line Adjustment Plat of Johnny's Addition shall be completed and filed with the Riley County Register of Deeds.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK REQUIREMENT TO TWENTY-THREE (23) FEET FOR THE EXPANSION AND RENOVATION OF THE BUILDING LOCATED AT 1408 POYNTZ AVENUE IN THE C-1, RESTRICTED BUSINESS DISTRICT. (OWNER/APPLICANT: LOGOS RESEARCH INSTITUTE DBA-CORNERSTONE FAMILY COUNSELING CENTER/MICHAEL WELSH, EXECUTIVE DIRECTOR)

Stephanie Watts presented the staff report and recommended approval with 2 conditions.

Hardy opened the Public Hearing and invited the applicant to speak.

Michael Welsh, the applicant, provided the Board with additional information on the request and explained that moving parking further back on the property would provide clients with more confidentiality. He expressed his concerns with meeting the landscape condition placed on the request.

Hardy explained that the intent of the landscape condition is used as an enforcement mechanism by the City.

Wigfall contended that the landscaping will not be drastically changed, but believed that the applicant would reestablish the landscaping removed at some point to provide additional confidentiality to the clients.

Larry Shankwieler, the architect for this project, explained how the new façade material would solve a moisture problem, provide more insulation, update the look of the building, and allow for the installation of more energy efficient windows. He also provided additional information regarding the roof improvements and covered walkway.

Hardy closed the Public Hearing and opened for Board discussion.

Aistrup felt this was a vast improvement to the property and stated his support of this item.

Hardy mentioned that the improvements would soften the view from the street.

Hamilton expressed her appreciation of the renovations occurring along Poyntz.

The Board made the following finding of fact for the Exception at 1408 Poyntz Avenue:

- 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 proposed interior and exterior renovations and the expansion of the current building, should not negatively affect any of the adjacent properties. Properties to the east, west and south are all zoned C-1, Restricted Business District. The property immediately north, across the alley, is zoned R-1/TNO, Single-Family Residential District with a Traditional Neighborhood Overlay District. The two properties immediately east are both single-family homes. The existing building on the subject site is approximately sixty-five (65) feet from the house immediately east of the current

building. The proposed addition will not shorten this distance.

The property located to the west of the subject site is also a residential structure. The proposed expansion should not negatively impact this property either as the portion of the building to be expanded will not be visible from this property.

The front yard setback encroachment would be caused by the renovation of the exterior façade of the building. The renovation would update the look of the building, making it more visually appealing and thus, should enhance the aesthetics of the neighborhood.

The site plan provides a landscaping plan along the north and east sides of the building. Existing parking is proposed to be removed along the east side of the building and landscaping will be planted in its place. A new sign and sidewalk, leading to the sidewalk along Poyntz Avenue are proposed. The removal of parking spaces and proposed landscape should provide a more aesthetic view for the property immediately east of the site.

C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed expansion and renovation 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 applicant has stated in the application materials that the exterior renovation of the building will in essence improve the health and safety of their clients and staff by eliminating a water problem which has caused some mold issues.

D. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: To be compliant with the minimum front yard setback, the renovation to the existing façade as proposed could not be completed. The applicant has stated that the new exterior material will better insulate the building, while the proposed roof overhang will help eliminate a water problem which has caused mold issues.

The applicant could proceed with the building addition and use the proposed materials, by moving the addition back twenty (20) inches as to not encroach into the front yard setback. This would result in an inconsistent front façade and not correct the water problems with the existing building. The applicant could also remove the concrete block wall and replace it with the proposed façade materials twenty (20) inches further back on the property, yet this seems unreasonable. Given the material of the current building, the applicant is left with few viable options for updating the exterior of the building without covering the existing concrete block wall or removing it completely.

Even if the applicant were to not expand the building, an Exception would still be needed for the proposed façade renovation and roof fascia modifications.

Wigfall made a motion to approve an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback requirement to twenty-three (23) feet for the expansion and renovation of the building located at 1408 Poyntz Avenue in the C-1, Restricted Business District, with the following conditions:

1. The Exception shall be for the proposed building renovation and expansion, as provided in the application documents and site plan.

2. The landscaping plan provided in the application materials shall be planted as shown and be maintained in good condition.

Hamilton seconded the motion, which passed 4-0.

REMOVE FROM THE TABLE AND CONSIDER THE MINUTES OF THE JULY 8, 2009, BOARD OF ZONING APPEALS MEETING.

Aistrup made a motion to remove from the Table and consider the Minutes of the July 8, 2009 meeting.

Wigfall seconded the motion, which passed unanimously.

Hardy stated that based upon the City Attorney's discussion, the Board must approve the Minutes. Hardy clarified that in the future, if findings need to be modified, the changes need to be clearly spelled out.

Hamilton commented that when items produce a lot of comment and the Board's findings are different than City Staff's findings, the Board has the option of amending the findings at the time of discussion or tabling the item until the findings can be written to the Board's approval.

Aistrup further clarified that the Board could Table the item, and ask Staff to modify the findings that reflect the Board's opinions. He further stated that he felt this was the most reasonable way to proceed with this type of situation and probably the safest legal way.

Hamilton added that this process could create several different problems, for instance, if a different composition of Board members was present at the two different meetings, the findings could potentially change.

Aistrup again stated that this would be infinitely safer from a legal perspective, unless minor modifications can be made at the meeting. He referred to the previous request made for a daycare center on Hudson Avenue, stating that one of the key Findings of Fact for the Board was the impact of the facility on surrounding property values.

Several Board members indicated that this was not included in the Findings of Fact.

Bunger responded that property values were not part of their modified findings; it was only mentioned during the discussion portion of that item.

Hamilton stated that she believed the Board was clear on the fact that property values were a main deterrent from approving the request.

Bunger responded that the Board did not mention that as part of their findings, which is why it was not included in the Findings of Fact.

Wigfall stated that Bunger continuously said in the last meeting that the Board needs to say

specifically what their findings are if different than Staff's; and the Board must be able to show they have established something as a fact.

Aistrup stated that a public hearing establishes facts based on neighbors comments. So in this case, the public hearing established that the child care center had a good chance of damaging property values.

Bunger asked if the Board would like to see written procedures of their options or possible motions in future staff reports, similar to the staff reports prepared for the Planning Board.

Hardy stated that he did not think that would be helpful and would create more work for Staff.

Hamilton mentioned that occasionally Staff will present the Board with options or alternatives in the staff report if it is believed the Board could rule either way.

Hardy agreed that it is helpful when Staff presents recommended conditions in case the Board is inclined to approve the item.

Hamilton agreed with Hardy and further commented that it is easier to arrive at a decision when Staff has something in writing for the Board to look at and work off of.

Wigfall agreed.

Hamilton felt it was fairly clear after the first meeting on the child care item that the Board was heading in a different direction than the Staff's findings. She commented that she was anticipating Staff to return to the next meeting with proposed findings reflecting the Board's discussion. Hamilton stated that when Staff did not modify the Findings of Fact or provide the Board with alternatives to consider, it appeared while reading the Minutes that Staff was unwilling to budge from their position or made it seem that any other decision was unreasonable.

Bunger stated that Staff would try in the future to ensure the Board's findings were clearly articulated, even though it may take more time to craft them during the meeting.

Hardy agreed.

Hamilton spoke to the open meeting provision referenced in the memo from legal staff and stated that no one on the Board contacts each other regarding items on the agenda or other Board matters.

Bunger responded that it was not implied that this was occurring; it was more of a reminder.

Hamilton asked if Board members are prevented from suggesting language to the staff for revising the Findings of Fact.

Bunger replied that this would be acceptable, but the Board cannot engage in email exchanges

or discussions outside of the Public Hearing.

Hardy reassured Staff that this was not occurring.

Bunger responded that he did not intend to imply that it was.

Aistrup further clarified that the open meeting provision applies if a majority of a quorum, meaning that even two people could not converse about an item.

Hamilton asked if she sent Staff proposed language, if it would be kept internal or if it would be sent to other Board members.

Bunger responded that it would be kept internal as to avoid potentially violating the open meeting provisions. Bunger suggested disclosing it at the next meeting if a Board Member provided Staff with suggested language.

Aistrup restated that a Board Member can send Staff suggested language, but other Board Members cannot comment on it until the next public meeting.

Hamilton asked if it would be possible to receive the Minutes earlier.

Bunger replied that ideally, the Minutes are finished in the two days following the meeting, but it depends on how busy Staff is at the time.

Hardy suggested emailing the Minutes electronically.

Wigfall asked that if there was a language issue with the Findings of Fact on a particular item, if both the Minutes and item would be held up.

Bunger responded that only the item would be delayed. He also provided clarification that if an item is Tabled, it would provide the applicant with time to bring back a revised proposal.

Hamilton asked what the Board is approving when they approve the Minutes.

Bunger responded that the Board is approving the record and the discussion.

Aistrup motioned to approve the Minutes from the July 8th meeting.

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

CONSIDER THE MINUTES OF THE AUGUST 12, 2009, BOARD OF ZONING APPEALS MEETING

Wigfall moved to approve the Minutes from the August 12th meeting.

Aistrup seconded the motion, which passed unanimously.

Hardy adjourned.

Respectfully Submitted,

Stephanie Watts, Planning Interns

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