

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

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

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

**CONSIDER THE MINUTES OF THE SEPTEMBER 9, 2009, BOARD OF ZONING APPEALS MEETING.**

Hamilton moved to approve the minutes of the September 9, 2009 Board of Zoning Appeals meeting which was seconded by Dillon and passed with a vote of 5-0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTIONS TO REDUCE THE MINIMUM REAR YARD SETBACK FOR DECKS GREATER THAN 30 INCHES IN HEIGHT ABOVE THE GRADE ON WHICH THEY ARE LOCATED FOR LOTS 12A AND 12B TO LOT 20A AND 20B, KIMBALL TOWNHOMES ADDITION; A REDUCTION OF THE MINIMUM REAR YARD SETBACK FOR A PRINCIPAL SINGLE-FAMILY ATTACHED RESIDENTIAL STRUCTURE (LOT 12A, KIMBALL TOWNHOMES ADDITION); AND TO ALLOW AN INCREASE OF THE MAXIMUM THIRTY-FIVE (35) PERCENT LOT COVERAGE TO UP TO FORTY-FIVE (45) PERCENT FOR LOTS 12B TO 20B, KIMBALL TOWNHOMES ADDITION FOR THE PURPOSE OF CONSTRUCTING SINGLE-FAMILY ATTACHED RESIDENCES WITH DECKS IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: BAYER CONSTRUCTION, OWNER: BAYER CONSTRUCTION AND APLETECH CONSTRUCTION, INC.).**

Hamilton stated that the memo was accurate and it appeared to be a fairly routine item.

Hamilton moved to approve the Extension, which as seconded by Dillon and passed with a vote of 5-0

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW A DRIVE-IN ESTABLISHMENT TO BE ASSOCIATED WITH AN EXISTING AND PROPOSED LAUNDRY ESTABLISHMENT AT 1120 WESTPORT STREET IN THE C-2, NEIGHBORHOOD SHOPPING DISTRICT (APPLICANT/OWNER: FAR HOLDINGS, INC).**

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY (25) FEET TO TWENTY (20) FEET FOR AN EXISTING CANOPY ASSOCIATED WITH A LAUNDRY ESTABLISHMENT AT 1120 WESTPORT STREET IN THE C-2, NEIGHBORHOOD SHOPPING DISTRICT (APPLICANT/OWNER: FAR HOLDINGS, INC.).**

*(Considered Together)*

Watts presented the staff report and recommended approval of a Conditional Use with four conditions and an Exception with two conditions.

Hamilton asked staff for the definition of a drive-in.

Watts responded that drive-ins are permitted if associated with a permitted or conditional use.

Bunger provided the definition of a drive-in establishment.

Hamilton asked how the parking requirements were calculated.

Watts provided clarification that bathrooms, mechanical rooms and areas occupied by the laundry equipment were not included in the parking calculation.

Hardy opened the Public Hearing.

Tim Clark, the architect for the proposed expansion addressed questions regarding parking.

Hamilton stated her concern that the laundry facility might eventually convert into an arcade.

Clark responded that laundry facilities require a lot of equipment and it would be difficult to reconfigure the building to an arcade.

Dillon asked how many washer and dryers would be included in the design.

Clark stated that the owner would have better information on numbers.

Hamilton expressed concerns on the parking if the building were to be converted to an arcade.

Bunger responded that an arcade and laundry facility would have the same parking requirements.

Fred Borck, the applicant explained the history of the building and the proposed building expansion. He stated that he felt a Laundromat would be successful in this particular location. Borck provided further explanation on the Golf Simulator.

Dillon stated her appreciation of the Golf Simulator concept and asked if the applicant would be opposed to limiting the number of arcade machines allowed on the site.

Borck stated he would not be against limiting the number of arcade machines allowed.

The Board determined this would not be necessary.

Dillon asked how many machines were proposed.

Borck responded there will be 30-35 washing machines and 40-45 dryers. He further explained proposed services the business would offer.

Aistrup commended the applicant on the plan and thanked him for investing in the community by improving the property.

Dillon asked the applicant about the solar panels.

Borck spoke to the green attributed of the proposal, as well as the financial and security features of the proposal.

Harding applauded the efforts of the applicant to improve the site and the green features incorporated into the design.

Wigfall stated her appreciation of the applicant working with the City on landscaping.

Hardy closed the Public Hearing.

Hamilton stated she could support these requests.

The Board made the following findings of fact for the Conditional Use at 1120 Westport Street:

**A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The existing drive-in establishment is a nonconforming use, because at the time of construction, drive-in establishments were neither a permitted or conditional use in the C-2 District. An Exception is also being requested for an existing canopy that encroaches into the front yard setback by approximately five (5) feet. The subject property is currently in compliance with all applicable regulations other than for which the Exception and Conditional Use are being requested.

**B. PROBABLE EFFECT ON ADJACENT PROPERTIES:** Properties to the north, south and west are all in the C-2 Neighborhood Shopping District. The properties to the east are zoned C-1, Restricted Business District. The property located immediately north is a commercial development consisting of several businesses. The property to the south is occupied by a dentist office. There is a single family house and office located on a large lot immediately east of the subject site. The property located across the street on the west side of Westport Street, is currently a vacant building.

The site has an overall elevation change of thirty (30) feet from the northeast property line to

the southwest property line. A majority of the eastern portion of the site is covered with mature trees and dense vegetation. The property to the east of the site is not visible from the property due to the heavy vegetation.

A drive-in establishment was part of the original 1987 building permit for the site and there have been no complaints filed for this property. It is not anticipated that the continuation of a drive-in establishment on this site will negatively impact adjacent properties.

**C. DOMINATION BY USE OVER NEIGHBORING PROPERTIES: (SITE PLAN)**

- a. **LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:** The proposed addition will increase the building area to approximately 4,200 square feet. The existing building on site is approximately 1,800 square feet, so the addition will increase the total building footprint by approximately 2,300 square feet. The proposed building will be a single-story Laundromat and drop-off dry cleaning facility. A drive-in establishment currently exists on the west side of the building, covered by a canopy. The location of the drive-in establishment on the property is not proposed to be altered. A drive-in establishment would not be out of character for this specific C-2, Neighborhood Shopping District. There are several banks and one restaurant located along Westport Street with drive-in establishments.
- b. **LANDSCAPING AND SCREENING:** No landscaping or screening is required for the drive-in establishment, however, the applicant has provided a landscape plan in which provides a general idea of the landscape improvements to be made to the property.

The site is currently occupied by very dense and mature vegetation along a majority of the east portion of the site. There is also an overall elevation change on the site of thirty (30) feet, which provides additional screening of the site to the properties to the east.

- c. **ADEQUATE PROVISION OF PARKING AND LOADING:** There are currently eleven parking spaces on the site. With the building addition and removal of the drive-in lane around the back of building, an additional three (3) parking spaces will be added. The proposed site plan has a total of fourteen (14) parking spaces. The parking requirements for the proposed building are one parking space for every 200 feet of floor area. The floor area calculation does not include mechanical rooms or areas occupied by the washers and dryers, so the total floor area to be used in the calculation is 2570 square feet, requiring thirteen (13) parking spaces. Based on the proposal, the applicant has provided adequate parking. There will only be one employee on site,

operating the drop-off dry cleaning facility.

- d. **ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Adequate public utilities are currently provided to the site. Stormwater runoff on the site drains from the northeast corner of the site to the southwest and utilizes existing stormwater systems along Westport Street. The City Engineer has reviewed the proposal for adequate drainage and had no comments.
- e. **ADEQUATE PROVISION OF ACCESS:** Adequate access currently exists off of Westport Street; however the applicant is proposing an entrance only driveway approximately seventy-five (75) feet north of the existing two-way drive. This new curb-cut would allow for one way access to the drive-in portion of the facility from the north and patrons would exit onto Westport Street from the existing two-way drive to the south. Currently, patrons access the drive-in by maneuvering through the parking lot and around the back of the building. If the building is expanded as proposed, this would eliminate the current drive aisle around the building. City Engineer, Rob Ott, has reviewed the proposal and has recommended approval. *See attached memo.*

The applicant stated that the current drop-off dry cleaning establishment has between 15 and 60 customers per day. Traffic counts according to the applicant are forecasted to increase the operation's customers by 10 to 40 per day. This would result in a maximum traffic count of 100 customers per day. Currently, the average customer count is 38 customers per day and would increase to 55 customers per day with the addition of the Laundromat operation.

Hamilton motioned to approve a Conditional Use, as corrected, in the C-2, Neighborhood Shopping District to allow a drive-in establishment to be associated with a proposed laundry establishment with the following conditions:

1. The Conditional Use Permit shall be limited to the Westport Dry Cleaners drive-in establishment.
2. The Conditional Use Permit shall only apply to the site plan as proposed. Any future additions or expansions shall require a new Conditional Use Permit.
3. The applicant shall obtain all necessary permits.
4. The Exception to reduce the minimum front yard setback to twenty (20) feet for an existing canopy shall be approved prior to approving the Conditional Use request.

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

The Board made the following findings of fact for the Exception at 1120 Westport Street:

- A. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** A Conditional Use is also being requested to allow for an existing nonconforming drive-in establishment to be associated with the existing and proposed laundry facility use. Drive-in establishments were not a permitted or conditional use in the C-2 District at the time of construction, which is why the current drive-in establishment is a nonconforming use. The subject property is currently in compliance with all applicable regulations other than for which the Exception and Conditional Use are being requested.
- B. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Properties to the north, south and west are all in the C-2 Neighborhood Shopping District. The properties to the east are zoned C-1, Restricted Business District. The property located immediately north is a commercial development consisting of several businesses. The property to the south is occupied by a dentist office. There is a single family house and office located on a large lot immediately east of the subject site. The property located on the west side of Westport Street, is currently a vacant building.

The property located east of the site is separated by an elevation change of over thirty (30) feet and large mature trees and dense vegetation.

The Exception should have minimal impact on all neighbors given the canopy has been in its current location for over thirty (30) years without any complaints filed. The canopy's existing concrete footings and steel posts are proposed to remain in their current position, yet be covered with a stone and eifs material to form an archway. By covering the existing metal posts, the appearance of the structure will be significantly improved.

- C. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Approval of the setback reduction is not anticipated to have an adverse effect on the health, safety, and general welfare of the community, given the canopy has been located in the setback for over thirty (30) years without any complaints or problems on file. The existing canopy is clear of 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 front yard setback would not allow the applicant to continue using the canopy in association with the drive-in portion of the dry cleaning establishment. The proposed building expansion will utilize the existing structural components of the existing canopy and building, and only update the façade of the existing building. To conform to the front yard setback requirement, the applicant would either need to remove the canopy in its entirety, or demolish the existing structure and build the proposed building five (5) feet further back on the property. Considering that the existing canopy has been in its current location for over thirty (30) years without any complaints filed with Code Services, and the applicant is left with no practical alternative options, the strict application of the regulations would be unreasonable.

Hamilton motioned to approve an EXCEPTION to allow for a reduction of the minimum front yard setback from twenty (25) feet to twenty (20) feet for an existing canopy associated with a laundry establishment in the C-2, Neighborhood Shopping District with the following conditions of approval:

1. The Exception shall apply only for the existing canopy as shown on the site plan and in the application documents.
2. The applicant shall obtain all necessary permits.

Wigfall seconded the motion which passed on a vote 5-0.

**A PUBLIC HEARING TO CONSIDER A VARIANCE TO ALLOW AN INCREASE IN THE MAXIMUM WIDTH OF A DRIVEWAY FROM TWENTY-FOUR (24) FEET TO THIRTY-THREE (33) FEET; AND TO REDUCE THE MINIMUM 75% LANDSCAPED OPEN AREA REQUIRED IN THE FRONT YARD TO 63%, ALL FOR A PROPOSED PAVED DRIVEWAY FOR A NEW SINGLE-FAMILY DWELLING LOCATED AT 3200 WILSON DRIVE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: YVONNE HOLTHAUS).**

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

Hardy asked if the driveway south of the subject site was larger than what the regulations permitted.

Bunger responded that it was.

Hamilton asked if it had received a Variance.

Bunger responded that it appeared that it had not received a Variance, but the City had not received a

complaint on that property so the driveway width has not been enforced.

Hardy opened the Public Hearing.

Brent and Sheila Fahey, 3204 Wilson Drive, stated initial reason behind their complaint. They also stated that their builder told them their driveway had been approved by code. They then expressed their concerns on how this Variance might impact the appearance of the neighborhood.

Mr. Fahey stated his concern for the location of the proposed driveway to their property and what might be parked on the additional concrete.

Hardy explained that just because the builder may say the driveway fits within the regulations does not mean that it is okay. He pointed out that the Fahey's driveway appears to be wider than the regulations allow and even though it has already been built, does not mean it is permitted.

Dillon asked if there were covenants for the neighborhood.

Mr. Fahey responded no.

Hamilton asked if they had any concerns with screening and if the Variance was approved, if they would want screening required.

The Fahey's responded yes. Mrs. Fahey stated that the extra parking stall along the side of the house would be out of character with the neighborhood. She also expressed her concern of an air compressor located in the backyard.

Dillon asked the Fahey's if they were concerned that the driveway could potentially lead to the rear yard.

Mr. Fahey stated that this was not a concern.

Yvonne Holthaus, the applicant, explained why a fourth parking stall was needed and provided information on the air compressor.

Hardy closed the Public Hearing.



Hamilton stated that the Board had turned down a similar request recently. She felt that even though the applicant is constrained by topography, there is no hardship in not being allowed to have a parking stall for four cars. She stated she would have the same concerns as the Fahey's about this extra parking stall, but the Board can only look at the width of the driveway and open area, not the proximity the driveway is to the side yard.

Aistrup commented that it appeared as if the applicant decided after the initial design was completed to add the extra parking space. He stated he was sympathetic to the neighbor, yet the Board grants similar requests frequently and there is not a sufficient reason to deny this request.

Hardy stated that the house could not be pushed back in further on the lot due to the topography of the site.

Wigfall asked what would happen to the parking pad when the sister moved out and no longer need a place to park her car.

Dillon stated that the Board is not here to determine what the use of the parking space will be; they are considering the landscaping area and width of the driveway. She stated her sympathy for the neighborhood.

Hamilton stated that she could support all Findings of Fact, except for hardship, because having four cars does not constitute a hardship. Without the Variance, the applicant could legally park five cars on their property. She stated that she could not support this request because there has been no compelling argument made for how there is a hardship.

Dillon expressed concerns that a permanent structure would be built on the parking pad sometime in the future.

Bunger explained that a structure cannot be built in an easement and a building permit would be needed, yet building permits would not be issued because of the side yard setback.

Dillon asked if a carport would need a building permit.

Bunger responded yes.

Dillon agreed with Hamilton's assessment.

Aistrup stated that the hardship is the nature of the lot, because the house could not be pushed back any further. He mentioned that the Board has granted the same request for lots in Colbert Hills based on the lot, not on the intended use.

*Wigfall excused herself from the meeting and left the meeting room.*

Aistrup stated he could support the request.

Hardy agreed that similar requests have been approved.

Aistrup stated that the lot created the hardship.

Dillon stated that there is no hardship because they have adequate parking without the granting the request.

Aistrup asked if the Board will deny future driveway requests in Colbert Hills and Grand Mere.

Hardy stated that the applicant would have more green space if they could push the house further back on the lot, but the topography limits this.

Dillon expressed that there is a difference between a grandiose driveway and a parking pad.

Hamilton asked that her reservation of how the hardship applies and questioned the need of the parking space be noted in the minutes. Dillon concurred with her reservation.

The Board made the following findings of fact for the Variance at 3200 Wilson Drive:

- A. **CONDITIONS UNIQUE TO THE PROPERTY:** The site is a large lot that is approximately seventy-nine (79) feet wide, 382 feet deep, with a lot area of 38,438 square feet. The rear two-thirds of the site (25,581 square feet) are dedicated as a conservation and drainage easement. The area in the conservation and drainage easement is heavily wooded and

has steep slopes that are on the edge of a natural drainage channel that directs stormwater from the northeast to the southwest. The purpose of the easement is to protect the drainage channel and the steep slopes from encroaching development and to maintain the natural drainage area. Construction of any buildings or structures is prohibited by City Ordinance in this type of easement unless it is required to carry out the function of the easement, such as channel lining. Because of the conservation and drainage easement and the steep slopes, the house is required to be located closer to the front property line as compared to properties that do not have this type of easement or topography. This type of topography and large, restrictive easements are unique to this area of the City and are not typically found within the same R, Single-Family Residential Zoning District in other areas of the City.

- B. PROBABLE EFFECT ON ADJACENT PROPERTIES:** The site and residential properties to the north, south and east are zoned R, Single-Family Residential District. Properties to the west and further south of the site are zoned County G-1, General Agriculture District. The area is a relatively new residential development with several lots either vacant, under construction or developed with new houses. Most homes in the area have a standard driveway width of approximately twenty-four (24) feet for a two-car attached garage, aside from the property directly to the south of the site. This property has an approximately thirty-four (34) foot wide driveway leading to a three-car, attached garage.

The neighbor to the south filed a complaint with the Community Development Department about the location of the proposed parking space and extension of the driveway. The basis of the complaint was that the view of a car or other vehicle, such as a boat or trailer, parked in the proposed location would adversely affect their enjoyment of their property. The proposed parking space would affect this property owner the most. The location of the proposed parking space does not violate any Zoning Regulations or warrant a Board of Zoning Appeals action. It is the width and reduction of the open landscape in the prescribed front yard area that requires the Variance. To address the adjoining neighbor's complaint of seeing a parked vehicle on the south side of house, a screening fence could be installed. Because of the proposed parking space's proximity to the side property line approximately 1 foot away, the planting of a vegetative screening would not be appropriate unless the property owner and neighbor agreed to plant and maintain a hedge row or other vegetation screening together.

The actual parking space will be located behind the front façade of the attached garage. An angled concrete approach will lead from the driveway to the additional parking space. This design will leave a large, open landscape area of approximately 2,000 square feet in front of

the main entrance to the house, as well as a small, open landscape area of approximately 170 square feet to the south of the existing driveway and in front of the proposed parking space. Considering the amount and location of the open landscaped spaces, the site maintains a residential character and the proposed driveway should not adversely impact the adjacent properties.

**C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:**

The hardship to the applicant from the strict application of the regulation is related to the restrictions placed on the site by the platted drainage and conservation easement and the steep slopes along the drainage channel. The rear two-thirds of the site are located in a conservation and drainage easement. This is required to maintain the steep slopes associated with a natural drainage channel in the area. Because of these topographical and deed restrictions on the site, the house is required to be located closer to the front property line than otherwise required. If the easements were not present, the house could be moved further back on the site, which would allow for more options to park an additional vehicle and provide for more open landscaped space in the front yard area.

**D. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:**

Approving the Variance is not proposed to adversely affect the public health, safety or general welfare. Allowing the additional parking space would neither improve nor worsen the traffic flow on Wilson Drive for vehicles, bicycles or pedestrians. The proposed parking area would be within an eight (8) foot wide utility easement. Constructing a parking space or parking a vehicle within a utility easement is not prohibited. However, the applicant needs to be aware that if the City or a utility company needs access to the portion of the utility easement that is paved for the parking space, the replacement of the concrete is the responsibility of the property owner.

**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 Oak Hollow subdivision. Likewise, the housing market in this area of the City differs significantly from other established neighborhoods. Although the open landscape space in the defined front yard area is proposed to be reduced to approximately sixty-three (63%) percent, the proposed house and driveway will match the residential character of adjacent houses and the residential

neighborhood and will meet the intent of the parking regulation. The 2,000 square foot area in front of the front door of the house will be an open landscaped space. The area in front of the proposed parking space approach will also be open landscaped space with an area of 170 square feet.

Aistrup motioned to approve a Variance to allow an increase in the maximum width of a driveway from twenty-four (24) feet to thirty-three (33) feet; and to reduce the minimum 75% landscaped open area required in the front yard to 63%, all for a proposed paved driveway for a new single-family dwelling located at 3200 Wilson Drive in the R, Single-Family Residential District, with the following conditions of approval:

1. The Variance shall be limited to the driveway and parking space as shown on the application documents and site plan.
2. The driveway and parking space shall be constructed and located as shown on the application documents and site plan.
3. Sight obscuring screening of not less than six (6) feet in height shall be installed on the property along the southern edge of the parking area to screen the parking space from the adjoining property owner. .
4. All applicable permits shall be obtained.

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

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TEN (10) FEET ALONG ENGLEWOOD STREET FOR A PROPOSED FENCE AND PATIO, AND A REDUCTION OF THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) TO FIFTEEN (15) FEET ALONG FARMINGDALE COURT FOR AN EXISTING PATIO AND FENCE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: GARY L AND WENDY L SKRDLANT).**

**A PUBLIC HEARING TO CONSIDER A VARIANCE FROM THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW AN ENCROACHMENT OF FIVE (5) FEET INTO THE THIRTY (30) FOOT VISION CLEARANCE TRIANGLE AT THE INTERSECTION OF ENGLEWOOD STREET AND FARMINGDALE COURT FOR A PROPOSED FENCE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: GARY L AND WENDY L SKRDLANT).**

*(Considered Together)*

Antonini presented the staff report and recommended approval of the Exception with four conditions

and recommended denial of the Variance.

Hardy opened the Public Hearing.

Gary and Wendy Skrdlant, the applicants, explained the proposal and the need for the fence. They explained how building a fence and patio to the west was not an option because the dryer vent was located there and there were no doors to lead outside along the west side of the house.

Michael Miller, 2108 Farmingdale Court, stated that the vision clearance triangle improved when the applicants removed previous vegetation on the subject site.

Hardy closed the Public Hearing.

Hamilton stated that she had no problem with the Exception, yet she did have issues with the recommendation on the Variance.

Hardy concurred, because the fence was determined not to be an issue with sight visibility and he believed there was a hardship.

Hamilton stated that given the three front yards and orientation of the house, the applicant had little privacy and there is a hardship. She also stated that there was too strong of a focus on the intended use of the space.

Aistrup agreed that the hardship was created by the original design of the house and the three front yards, which restricts activities of the outdoor living space and privacy. He stated the proposal was modest and he could support both requests.

Hardy stated he could support this item because there are no negative impacts on the vision clearance triangle.

Dillon stated her support of the item.

The Board made the following findings of fact for the Exception at 2101 Farmingdale Court:

**A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site complies

with all applicable regulations, aside from the requested Exception and Variance. A previous Variance was obtained in 1983 to allow for the previous homeowners to retroactively obtain a building permit for a porch constructed within the twenty-five (25) foot front yard setback along Englewood Street. That porch is located eleven (11) feet from the front property line along Englewood Street. Another Variance was obtained in 2001 to allow for that porch to be enclosed and for a fence to be constructed along Englewood Street.

**B. PROBABLE EFFECT ON ADJACENT PROPERTIES:** Properties to the north, south, east, and west are zoned R-1, Single-Family Residential, and consist of single-family homes. Minimal adverse impact to these properties is expected from the granting of this Exception. The proposed fence would extend into the setback along Englewood Street no further than the applicant's current porch. That porch has been part of the established neighborhood for nearly twenty years. There was a previous, non-site obscuring fence in the approximate location of the proposed fence in the front yard setback along Farmingdale Court. The proposed fence will encroach slightly further into the setback, it will be taller, and it will be site-obscuring. The proposed fence would encroach approximately five (5) feet into the thirty (30) foot vision clearance triangle at the corner of Englewood Street and Farmingdale Court. The applicant has submitted a companion Variance request to address that encroachment. The proposal was reviewed by the City Engineer to determine whether or not it would adversely affect the safe movement of traffic at that intersection and a visual study was conducted by City Administration to determine whether the encroachment into the vision clearance triangle would impede visibility of the roadway from Farmingdale Court or from Englewood Street. It was determined that the encroachment would not impede visibility of the roads in any direction.

In the application documents, the applicants express that they believe the proposed fence would have a positive impact on the neighborhood surrounding the subject site because of the building materials proposed, and because of the privacy it will afford them when utilizing their patio.

**C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed fence does not encroach into any easements or public rights of way. The proposed fence does, however, encroach into the vision clearance triangle at the corner of Englewood Street and Farmingdale Court. The applicant is seeking a companion Variance at this time to address that encroachment. The proposed fence would encroach approximately five (5) feet into the thirty (30) foot vision clearance triangle at the corner of Englewood Street and Farmingdale Court. The proposal was

reviewed by the City Engineer to determine whether or not the encroachment would adversely affect the safe movement of traffic at that intersection. The City Engineer determined that it would not adversely affect the safe movement of traffic. Granting the proposed Exception will have no negative impact on the public health, safety, morals, order, convenience, prosperity, or general welfare, regardless of whether the companion Variance is approved.

**D. 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 regulations would be unreasonable in this case. The house on the subject site is situated in such a way that the back door nearest the living area opens to the area of the yards nearest the corner of Englewood Street and Farmingdale Court. This affords the applicants little privacy when using this space. No reasonable alternatives exist which would allow the applicants to place their patio area in a location outside of the front yard setbacks. In the application materials, the applicants explain that the existing, concrete-slab patio is located on the east side of the house, along Farmingdale Court, because it corresponds with the location of their kitchen, and allows for them to entertain outdoors. The applicants explain further that in order to place the proposed patio and fence outside of the front yard setbacks, the patio location would no longer be near their kitchen, dining and living space. Rather, it would enclose the area nearest the dryer vents and hose hookup on the opposite side of their house. The applicants state that this would be unpleasant and would make it difficult to water their lawn.

Aistrup motioned to approve an EXCEPTION to allow a reduction of the minimum front yard setback from twenty-five (25) feet to ten (10) feet along Englewood Street for a proposed fence, and a reduction of the minimum front yard setback from twenty-five (25) to fifteen (15) feet along Farmingdale Court for proposed fence in the R-1, Single-Family Residential District with the following four (4) conditions:

1. The fence and patio are constructed as shown on the site plan and in the application documents.
2. The Exception is limited to the proposed fence as shown in the site plan and in the application documents.
3. The site plan is adopted as modified so that the fence will not encroach into the vision clearance triangle at Englewood Street and Farmingdale Court.
4. The fence shall be maintained in good condition.

Dillon seconded the motion which passed 4-0.

The Board made the following findings of fact for the Variance at 2101 Farmingdale Court:

- A. CONDITIONS UNIQUE TO THE PROPERTY:** The property is located on a corner lot



that has three front yards as defined by the Zoning Regulations. The Zoning Regulations state that a property is considered to have a front yard along all sides abutting a street. Normally, corner lots are considered to have two (2) front yards, one along each street of the intersection they abut. 2101 Farmingdale Court abuts Englewood Street to the south, Farmingdale Court to the east, and the bulb of the Farmingdale cul-de-sac to the north. 2101 Farmingdale Court therefore has front yards with twenty-five (25) foot front yard setbacks along each of those aforementioned sides. The property is elevated from the properties to the south and west with a three (3) foot retaining wall running along the sidewalk.

- B. PROBABLE EFFECT ON ADJACENT PROPERTIES:** Properties to the north, south, east, and west are zoned R-1, Single-Family Residential, and consist of single-family homes. Minimal adverse impact to these properties would be expected from the granting of this Variance. The proposed fence would encroach approximately five (5) feet into the thirty (30) foot vision clearance triangle at the corner of Englewood Street and Farmingdale Court. The proposal was reviewed by the City Engineer to determine whether or not the encroachment would adversely affect the safe movement of traffic at that intersection. The City Engineer determined that it would not adversely affect the safe movement of traffic.

In the application materials submitted, the applicants express that they believe that the proposed fence would have a positive impact the neighborhood surrounding the subject site because of the building materials proposed, and because of the privacy it would afford them when utilizing their patio.

- C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** In The site has a unique condition of having three (3) front yards; one (1) along Englewood Street and two (2) along Farmingdale Court. This unique lot configuration and the orientation of the house limit the private enjoyment of the applicants' outdoor living space at the rear of the house. Neither of these conditions was created by the applicants. When the fact that the proposed fence will not adversely impact the vision of vehicular or pedestrian traffic is considered, the strict application of the regulation presents the applicants with an unnecessary hardship.

- D. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Granting the proposed Variance would have no negative impact on the public health, safety, morals, order, convenience, prosperity, or general welfare. The proposed fence would not encroach into any easements or public rights of

way. Upon City Administration review, it was determined that the encroachment into the vision clearance triangle would not impede visibility of the roads in any direction for drivers or pedestrians.

**E. RELATIONSHIP TO INTENT OF REGULATIONS:** The proposed Variance meets the intent of the vision clearance triangle regulation. The intent that regulation is to ensure that nothing interferes with drivers' and pedestrians' ability to see far enough along streets and sidewalks to utilize them safely. A visual study was conducted by City Administration to determine whether the encroachment into the vision clearance triangle would impede visibility of the roadway from Farmingdale Court or from Englewood Street. It was determined that the encroachment would not impede visibility of the roads in any direction.

Aistrup motioned to approve a VARIANCE, with the substituted Findings of Fact, to allow an encroachment of five (5) feet into the Vision Clearance Triangle at the intersection of Englewood Street and Farmingdale Court for a proposed fence at 2101 Farmingdale Court in the R-1, Single-Family Residential District with the following conditions:

1. The Variance shall only apply to the proposed fence as shown in the site plans and application documents.
2. The fence shall be constructed as shown in the application documents.
3. The fence shall be maintained in good condition.

Dillon seconded the motion, which passed unanimously.

Hardy adjourned.

Respectfully Submitted,

Stephanie Watts, Planning Interns

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