

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, January 13, 2010
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton; Ricci Dillon; Joe Aistrup;
and Catherine Lavis.

MEMBERS ABSENT: None

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II

Bunger read aloud an email from LaBarbara Wigfall, thank the Board members and the community for the opportunity to serve on the Board.

Chairperson Hardy introduced Catherine Lavis to the Board of Zoning Appeals, as she was recently appointed to the Board.

CONSIDER THE MINUTES

Hamilton moved to approve the December 9, 2009 minutes which was seconded by Dillon. The motion passed unanimously.

A PUBLIC HEARING to consider a CONDITIONAL USE to allow for construction of a two-family dwelling unit at 930 Osage Street, located within the R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay District, in which both of the dwelling units are greater than six-hundred (600) square feet in floor area and where both of the dwelling units has more than two bedrooms. (Applicant: Greg Wege Owner: Ludwig Villasi).

Bunger presented the staff report, recommending approval of the Conditional Use request with five (5) conditions.

Hamilton asked if there had been any new construction of two-family dwellings in the TNO, Traditional University Overlay District. Bunger explained that there had been no new

construction two-family dwellings in the TNO District since its creation. He not that to the north and west of Osage Street there is the R-3/M-FRO, Multi-Family Residential District with Multi-Family Redevelopment Overlay District, several some new two-family and multiple-family buildings have been constructed.

Hardy opened the public hearing.

Ludwig Villasi, the property owner, commented that the property will replicate another two-family dwelling built nearby and will be a high quality structure. Villasi stated that the provided parking would relieve any congestion, but he feels there is little congestion or parking issues existing in the area. Villasi stated that the quality of the building will upgrade the existing housing stock in the area.

Dillon asked the owner whether the construction of a new structure is a better alternative than putting money into the existing structure and its accessory unit to make sure it meets rental inspection standards. The owner responded that he just spent a large amount of money on the property to renovate it, and if the Conditional Use was denied, there would not be concern about the new standards.

Hamilton asked the owner if he had considered proposing a structure that complies with the Traditional Neighborhood Overlay requiring the units to be smaller than six-hundred (600) feet and containing no more than two (2) bedrooms. The owner stated that he did not because he does not feel that more bedrooms and a larger footprint would negatively affect the neighborhood.

Anne Cowan, 415 N Juliette St, spoke against the approval of the Conditional Use. Cowan expressed that there should be a compelling reason for an exception to the standards and the neighborhood set those standards to keep this type of construction from happening.

Bunger pointed out that the request was for a Conditional Use, which provides different standards than an Exception.

Sara Fisher, 811 Osage Street, said she is the Co-Chair of the Neighborhood Association from 17th Street to Juliette Avenue and Bluemont Avenue to Poyntz Avenue. Fisher spoke in opposition to the Conditional Use. Fisher stressed the intention of the TNO, Traditional Neighborhood Overlay and that it is unfortunate that the property is not located in the M-FRO, Multi-Family Redevelopment Overlay, where this type of construction would be permitted. Fisher also stressed the neighborhood compromised a great deal when the rezoning occurred in the area and that she disagrees that there are not any parking or congestion issues in the area. Fisher continued to state that on-street parking is a big issue while school is in session, and some residents are concerned that emergency personnel cannot get down the street. Fisher also stated the difficulty of passing cars on the street when there is on-street parking. Fisher stressed that the proposed six (6) parking spaces would not be enough off-street parking if all eight (8) bedrooms are occupied and all residents own a vehicle. Fisher also showed concern about precedence and whether the approval of one nonconforming structure means that it is okay to

approve this structure. Fisher's last statement had to do with the issue of drainage and that it is a problem in the community.

Chris Banner, 618 Osage Street, spoke in support of the Conditional Use. Banner stated that the neighborhood is constantly changing, and the intention of the TNO, Traditional Neighborhood Overlay is to keep certain changes from occurring. Banner stated that students are the primary consumers of housing in the community, and the housing stock needs to provide for them. Banner thought that the design and quality of the proposed structure will improve the area, which is mostly comprised of run-down buildings. Banner continued to state that there is a three (3)-unit residential building two (2) doors down from his property that is larger than most of the surrounding buildings, however there are no issues that have arisen because of it. Banner did not see any issues with providing six (6) off-street parking spaces for the proposed structure because there are less off-street parking spaces available now, so the neighborhood would gain from the increase in off-street parking. Banner did not agree that drainage would be affected.

Michael Mecerri, 1015 Leavenworth Street, spoke in opposition to the Conditional Use. Mecerri stated that he is a designer and did not think the design of the proposed structure is compatible with the neighborhood. Mecerri felt that the density of the structure is an issue.

With no other comments from the public, Hardy closed the Public Hearing.

Dillon agreed that there needs to be a reason to grant the Conditional Use. Dillon stated that it is important to recognize that the zoning district is R-M and is more dense than R or R-1. Dillon expressed concern about the existing structure and whether it would meet the codes of the rental inspections. Dillon stated that the reason to grant the Conditional Use would be the financing of the structure or resale because the detached structure would not be accepted by the rental inspector. Dillon said the proposed structure would revitalize the property, would be safer, and provide better parking.

Aistrup stated that the focus should be on the Conditional Use and if it meets the requirements. Aistrup stressed that this is the reason the City has the Conditional Use is to go through this process of allowing certain types of structures.

Hamilton stated that there is a difference of zoning from the east side of N. 10th Street to the west side of N. 10th Street. Hamilton stressed that creating the Conditional Use was a very long process and said that it is easier to meet the standards for a Conditional Use than a Variance or Exception.

Aistrup agreed with the concept that the Conditional Use standards are easier to meet but wondered how the TNO factors into those standards. Hamilton expressed concern that there are no standards under the Conditional Use that would be different in a TNO District.

Hardy stated that the R-M/TNO District is very hard to deal with because the standards of a multi-family structure are complicated. Hardy mentioned that the configuration of the structure could be changed and it would meet the guidelines.

Dillon stated that she has difficulty with the concept of the TNO District in an R-M District. Dillon mentioned that the City could have down-zoned the area, but did not, based on what was there. Dillon mentioned the importance of revitalizing what is there, but stressed that structures get to the point where they are not worth revitalization.

Aistrup explained that the TNO District was created as a political compromise; however it does seem that under the Conditional Use that it is not useful. Aistrup continued to explain that the TNO provides a foundation for development, but if the Conditional Use standards have been met, the proposal should be approved base on what the board has been given.

Hamilton agreed that the standards have been met, but did not agree that the economic factors are important to consider. Hamilton stressed concern about the detached structure on the property.

Bunger explained the meaning of the TNO District. Bunger explained that the design standards of the TNO District were created to provide compatibility standards that certain structures were not providing. Bunger continued to explain the Conditional Use process for this situation and that it was created to allow structures that meet the design standards but with a second dwelling unit that was larger than 600 square feet of floor area and/or contain more than two (2) bedrooms. Bunger stated that the location and context of the structure comes into play and if it meets the character of the surroundings, it should be approved.

Hamilton questioned Bungers statement and mentioned that the density and size standard is part of the TNO District regulations and not a design standard. Bunger explained that the standard does not prohibit this type of structure; it states it would be allowed under certain conditions of the design as well as the context of the area.

Aistrup questioned whether the design of the structure really does meet the character of the area. Bunger agreed that it does not meet the character of the neighborhood, and mentioned that focusing on aesthetics is a very subjective matter. Dillon asked the applicant whether he would consider modifying the front entry of the structure. Villasi stated that he could change the design and that he worked with City Staff to get a compatible design.

Hamilton asked Bunger whether the TNO District standards would prohibit the conversion of the landscaped portion of the property to parking. Bunger explained that the TNO District standards require a certain amount of landscaping and would not allow these areas to be used for parking. Hamilton showed concern that the driveway might become a parking area and wanted to provide standards to prevent that from occurring. Bunger mentioned that parking on the driveway would most likely be self-policed and probably would not work based on the nature of the lot.

Dillon expressed concern about the conditions of sidewalks after a new building is constructed on the site and asked Bunger if there are any requirements for sidewalks. Bunger explained that the code department inspects sidewalks and is responsible for enforcement of sidewalk repair.

The Board made the following findings of fact for the Conditional Use at 930 Osage Street:

A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The proposed Conditional Use complies with all applicable regulations of the R-M, Four-Family Residential District and TNO, Traditional Neighborhood Overlay District. The Conditional Use is required because the second dwelling unit of the proposed structure has a total floor area that is larger than 600 hundred square feet (approximately 1,445 square feet) and the dwelling unit has more than two (2) bedrooms (4 bedrooms are proposed).

In 1989, the existing three-family dwelling was given an opinion of nonconformity that in order for the use to be legally nonconforming, the required six (6) off-street parking spaces would need to be established and that the detached structure would need to cease to exist as a dwelling unit. The parking spaces were not provided, thus the use of the property as a three-family dwelling is nonconforming to the Zoning Regulations. The detached structure is currently being used as an office. An office is permitted as a home occupation in the principle structure or an accessory structure as long as the owner/employee of the home occupation is an occupant of the dwelling (Section 5-303). It is City Administration's understanding that owner/employee of the home occupation is not a resident of the property, thus the use of the detached structure as an office is not permitted in the R-M/TNO District.

B. PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject site and properties to the north, east and south are zoned R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay District. Properties to the west of the subject site and north of Osage Street are zoned R-3/M-FRO, Multiple-Family Residential District with Multi-Family Redevelopment Overlay District.

The overall character of the area is a medium-to-high density residential neighborhood, consisting largely of two-story, single-family structures, many of which have been converted to two-family and multiple-family dwellings. The three (3) lots east of the subject site (916, 922 and 926 Osage Street) are newer, two-family dwellings. These newer two-family dwellings are one-story structures, with a full basement and with approximately 2,200 square feet of lot coverage for each structure. All three (3) properties have a total of eight (8) bedrooms. 916 and 926 Osage Street were granted Conditional Use Permits by the Board of Zoning Appeals in 2003. The Conditional Use Permits were required in the R-M District because the structures were two-family dwellings with two habitable stories and met certain criteria that created the need to obtain a Conditional Use Permit. The Conditional Use is still a requirement in the R-M District (*see attached R-M District regulations*), but is superseded by the TNO District. The area was rezoned to add the TNO District in April, 2004. 922 Osage Street did not require a Conditional Use Permit because the building permit was issued in February, 2001, prior to the R-M District being amended in May, 2001 to its current provisions.

The existing structure is a nonconforming, three-family dwelling with five (5) total bedrooms. The current configuration of the subject site does not provide any off-street parking spaces. The result is that the parking demand generated by the existing use would have to use the available on-street parking. The proposed development will increase the number of bedrooms; an increase in intensity is expected in terms of potential occupants. The six (6) proposed parking spaces along the alley will improve the on-street parking situation in the area when compared to the current conditions of the subject site. The proposed two-family dwelling does not appear to be out of character when compared to many residences in the surrounding area in terms of the

intensity of the use, the number of occupants, and the amount of off-street parking.

The proposed two-family dwelling should have minimal negative impacts on adjacent properties. The applicant proposes to remove the existing dilapidated three-family dwelling structure in order to construct the proposed two-family dwelling. The proposed structure meets the minimum requirements of the TNO District Building Design Standards. Instead of constructing a porch, which is recommended by the TNO District Building Design Standards, a portico is proposed. The portico is a roof overhang supported by two columns that covers the front entrance to the two (2) units. This architectural feature is not common to the surrounding neighborhood. The applicant is also intending to preserve three (3) street trees along the west and south road right-of-ways as well as plant four (4) deciduous trees along the N. 10th Street and Osage Street front property lines. The existing and proposed trees will help to enhance the appearance of the property.

DOMINATION BY USE OVER NEIGHBORING PROPERTIES: (SITE PLAN)

C. Domination by use over neighboring properties:

1. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS: The total floor area of the existing structure is 2,139 square feet. The total floor area of the proposed structure is approximately 2,890 square feet, which is an increase of 751 square feet in total floor area. The existing house is a two-story, three-dwelling unit structure with a height of approximately 25 feet. The height of the proposed structure will stay at 25 feet, and the lot coverage will be approximately 27%, which complies with the bulk regulations of the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. Additionally, all setbacks of the proposed structure will be in compliance with the district regulations. If the total floor area of the second dwelling unit could be reduced to 600 square feet, the structure would meet all requirements under the R-M/TNO District regulations.

The height, lot coverage and setbacks of the proposed structure are similar to the dimensions of the surrounding structures in the neighborhood. Therefore, the proposed Conditional Use should not dominate or prevent development on adjacent properties.

2. LANDSCAPING AND SCREENING: The applicant has provided a landscape plan. The plan shows bushes along the foundation to be planted on the west side and the southwest corner of the building. Four (4), 2-1/2 inch caliber deciduous trees are also shown to be planted along the front property lines along N. 10th Street and Osage Street. The remainder of the landscape areas shown on the site plan will be grass. Although not shown on the landscape plan, the applicant has stated that a thirty (30) inch tall landscape border consisting of bushes will be planted along the west edge of the parking lot to screen the parking from the street. The applicant has also stated that the existing street trees (3 in total) will remain and that efforts will be made to preserve the other mature trees on the property.

There is no screening fence proposed for the east side of the parking lot. The parking lot is to have six (6) off-street parking spaces. The Zoning Regulations only requires parking lots

containing more than six (6) parking spaces to provide sight obscuring screening. The configuration of the adjacent property to the east also prevents the installation of screening fence. A retaining wall was built at the adjoining property line where the neighboring parking lot is located. Currently, the bumpers of the cars from the two-family dwelling next door overhang into the subject property.

D. ADEQUATE PROVISION OF PARKING AND LOADING: The applicant has proposed six (6) parking spaces in a concrete parking lot. The parking spaces will be angled at 60° and will be located along the east property line. The proposed two-family structure has a total of eight bedrooms. Potentially, if each bedroom within the dwelling was occupied, and each occupant had an automobile, two vehicles would have to park on the street. However, the applicant is providing two more off-street parking spaces than the minimum requirement of the Zoning Regulations, or two (2) parking spaces for each dwelling unit, for a total of four (4) off-street parking spaces.

When compared with the existing conditions of the nonconforming, three-family dwelling, the proposed off-street parking lot improves congestion of on-street parking in the area by providing for a majority of the parking demand generated by the eight (8) bedroom, two-family dwelling.

E. ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES: Drainage on the site flows to the alley and to the storm sewer along Osage Street and North 10th Street, and is adequate for the proposed use. Water, sewer, and other utilities currently exist on the site and are adequate for the proposed use.

F. ADEQUATE PROVISION OF ACCESS: Access is provided via an unimproved alley on the north side. The alley is in fair to good condition and should be adequate for the proposed use. No curb cuts are proposed off of Osage Street or N. 10th Street. Sidewalks in the neighborhood, and along the front lot lines of the property, provide for pedestrian access. Adequate access is provided for the proposed use.

Aistrup motioned to approve a Conditional Use, as corrected, in the R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay District to allow for construction of a two-family dwelling unit in which both of the dwelling units are greater than six-hundred (600) square feet in floor area and where both of the dwelling units have more than two bedrooms, with the following conditions:

1. The building floor plan shall be constructed as proposed in the site plan and application documents
2. All applicable permits shall be obtained.
3. The landscape plan shall be installed as proposed and maintained in good condition.
4. Trees located in the N. 10th Street and Osage Street road right-of-ways shall be preserved.
5. A minimum thirty (30) inch tall landscape buffer shall be planted. At the time of planting, the landscape stock shall have a maximum separation of three (3) feet on center to screen the parking lot from N. 10th Street.

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

Hardy adjourned.

Respectfully Submitted,

Savanah Benedick, Planning Interns