

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, February 10, 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. Savannah Benedick, Planning Intern

CONSIDER THE MINUTES

Aistrup moved to approve the January 13, 2010 minutes which was seconded by Hamilton. The motion passed unanimously.

TABLE the PUBLIC HEARING to consider an EXCEPTION to consider an EXCEPTION to allow a reduction of the minimum fourteen (14) foot front yard setback requirement to two (2) feet along Leavenworth Street for the construction of a proposed five (5) foot tall fence at 223 N. 14th Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District (Applicant/Owner: Fred and Katherine Hasler).

Aistrup motioned to table the item until the March 10, 2010 Board of Zoning Appeals meeting. Hamilton seconded the motion, which passed 5-0.

REMOVE from the TABLE and conduct a PUBLIC HEARING to consider an EXCEPTION to allow for a reduction of the minimum fourteen (14) foot front yard setback to three (3) feet along N. 9th Street to construct a proposed privacy fence for the property located at 901 Leavenworth Street in the R-M/TNO, Four-Family Residential District and the Traditional Neighborhood Overlay District (Applicant/Owner: Melvin Watson).

Aistrup motioned to remove the item from the table. Hamilton seconded, which passed 5-0.

Bunger presented the staff report, recommending denial of the Exception request.

Hamilton questioned the location of the fourteen (14) foot setback line on the diagram and whether the house sits on that line. Bunger stated that the scale of the diagram may not be accurate.

Hardy opened the Public Hearing.

Melvin Watson, the property owner, spoke on behalf of his application. Watson explained that the back porch is slightly less than fourteen (14) feet from the property line and that it was measured that day, and the ten (10) foot setback on the site plan is incorrect. Watson stated that he understood City Staff's recommendation for denial. Watson explained that he started digging the holes before speaking with the city and without knowledge that he was out of compliance with the Zoning Regulations. He placed the fences posts in the ground so that there wouldn't be exposed holes for someone to trip or fall over. Watson explained that safety has always been his biggest concern, and that there have been two (2) cases of vandalism in the back yard of the subject site. Watson stated that the intent of the fence is to create a safety barrier for his tenants. Watson also stated that bringing in the fence any further would sacrifice a portion of the back yard.

Hamilton questioned whether the applicant considered other alternatives such as reducing the height or making it more open. Watson explained that there will be slats on the fence that would create some visibility and that he did look at other alternatives, but this proposal is the most economic way of meeting the intent of the fence.

Aistrup questioned the setback of the fence and whether setting it at the fourteen (14) foot setback would put it in line with the back porch.

Emily Koenig, the applicant's architect, spoke in regards to the dimensions of the lot. Koenig explained that there is no current survey for the lot and the City could only supply a 1948 ward map with confusing dimensions. Koenig confirmed that she measured the back porch that day and that it does in fact sit fourteen (14) feet from the property line. Koenig expressed that there needs to be a survey done of the lot to identify the true dimensions.

Bunger provided a 1991 site plan to the board to attempt clarification of the lot dimensions. Bunger expressed that there is no proof that the site plan is accurate, but it does show the back porch sitting approximately fourteen (14) feet from the property line.

Dillon asked the applicant whether he is bringing the fence in between the two porches. The applicant stated that this is correct; the fence was brought in between the two porches to create a more private space.

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

Hamilton identified items to be corrected on the Staff Report: the zoning district is R-M instead of R-1, the adjacent streets are 9th and Leavenworth Streets, and the report should address the

safety concerns expressed by the applicant. Hamilton understood the concerns about vandalism, but did not feel that a fence barricade is the solution. Hamilton suggested that neighborhood watches would be more effective. Hamilton was struck by the proposed fence's height and nature, and suggested that landscaping at this height would not violate anything. Hamilton expressed that she understood the stance of local HRB and their concerns with the scale of the fence. Hamilton identified that there will potentially be a parking lot across the street creating visual disruption, but she did not feel that the fence needs to be so tall.

Aistrup agreed that the fence is too tall, and also that it encroaches too far into the fourteen (14) foot setback. Aistrup understood what the applicant is trying to do, but felt that the fence would provide a false sense of security. Aistrup suggested that landscaping would meet the same intent as the fence and would be more attractive in nature. Aistrup also suggested that a smaller fence would also meet the need for safety and privacy. Aistrup also felt that the fence is too close to the sidewalk.

Dillon commended the applicant for his efforts to improve the property; however she did not feel that he would gain much in the back yard to put it so close to the sidewalk. Dillon expressed that she would like to see the applicant fall within the guidelines to continue a positive example for the neighborhood. Dillon did not feel that a three (3) foot setback would not gain very much back yard, and falling within the guidelines would not create an issue.

Lavis expressed concern about the space between the fence and the sidewalk for shrubs.

Hardy stated that he cannot support what is being proposed. Hardy explained that for Exceptions he looks into the amount of intrusion occurring, and this fence intrudes more than necessary into the setback requirement.

Bunger explained that City Staff advertised the fence to be a minimum of three (3) feet from the property line, and that there may be room to compromise. Hardy stated that he could support tabling the item to give the applicant opportunity to explore other alternatives for safety and protection of the back yard.

Aistrup motioned to table the item. Hamilton seconded, which passed 5-0.

A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum eight (8) foot side setback to four (4) feet for an existing attached carport at 800 Mission Circle in the R-1, Single-Family Residential District (Applicant/Owner: Larry Pope).

Bunger presented the staff report, recommending approval of the Exception request.

Hamilton questioned whether City Staff has a timeline for rebuilding a structure that was grandfathered. Bunger explained that there is no timeline, but there is an opinion of nonconformity process that was not done. Bunger identified that other routes could have been taken to resolve the issue.

Hamilton asked whether the back portion of the carport encroaches into the setback. Bunger explained that it is a pie shaped lot and the back portion of the carport does not encroach. Hamilton asked whether a new driveway was constructed, and Bunger stated that no new driveway was constructed.

Hardy opened the Public Hearing.

Larry Pope, property owner, explained that he has lived at this property for approximately twenty (20) years. Pope explained that he had safety concerns about the old carport. Pope explained that he had a contractor work on the house and the carport, and figured that he would be informed if the carport was out of conformity. Pope explained that he is willing to work with the City to get the issues solved. Pope provided pictures of the original carport to show that it had been there. Pope explained that he constructed the new carport nearly the same way as the original carport.

Michael Ricard, the adjacent property owner to the south of the subject site, spoke in opposition to the Exception request. Ricard stated that he went to the City to get the application, and questioned whether he was given the correct application. Bunger stated that it could have been changed since he received it. Ricard referenced the application and the Staff Report and stated issues he had such as: the applicant being inconsiderate and parking in front of his house, the lack of morals, order, prosperity and general welfare for granting the Exception, and drainage into his property. Ricard stated that both the original and the new carports were and are out of compliance with the Zoning Regulations. Ricard did not feel that the Exception should be granted.

Aistrup asked Ricard whether the original carport was there when he purchased his property. Ricard said yes, it was there.

Sharon Pope, co-owner of the property, stated that the parking does not affect the property to the south.

Aistrup stated that he did not see any issues with the request and felt that it should be approved. Dillon stated that public is not familiar with the building permit process, and rely on contractors to explain what needs to be done. Dillon explained that under the circumstances, the request meets the standards and should be approved.

Hardy explained that when like structures are replaced with like structures, there are fewer issues at hand. Hardy stated that the lot is irregularly shaped and he can support the request. Hamilton stated that she can support the request as well, and that the carport does not encroach very far and the design is open. Hamilton felt that there would be no adverse impact on the neighborhood.

The Board made the following findings of fact for the Exception at 800 Mission Circle:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: As stated, the attached carport was built without a building permit. Code Services sent a notice to the applicant

regarding the code violation (*see attached letter*). A building permit was applied for on September 1, 2009. Code Services is waiting to issue the building permit until the question of the location of the structure in the side yard setback is resolved by the Board of Zoning Appeals. Other than the City's Building Code violation and the proposed Exception, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject site and properties located to the south, east and immediately to the north are zoned R-1, Single-Family Residential District. Further to the north and to the east are properties that are zoned R-2, Two-Family Residential District. The majority of homes on Mission Circle and Mission Street are single-family homes, some of which have attached carports similar to the one that the applicant has constructed. The attached carport is not out of character with the surrounding neighborhood.

The properties to the north, east and west should not be impacted by the new carport. The property to the north is screened from the carport by the existing house. The properties to the east are separated by the subject site's large rear yard, which is approximately 100 feet from the rear of the house to the rear property line on the subject site. To the west, is the bulb of the Mission Circle cul-de-sac. Mission Circle runs directly into the subject site. The property owner most impacted by the new carport is the property immediately to the south. The applicant has stated that the new carport replaced a similar structure that had fallen into disrepair because of storm damage and needed to be removed. Although no building permit or documents have been provided to show the placement of the old structure, it is presumed that it was placed in a similar location to the new structure because of the driveway. Considering that a carport was present on the subject site, in presumably a similar location, minimal impacts should be experienced by the property to the south.

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

The attached carport should not affect the public health, safety or welfare. The structure is not located within any platted or dedicated easements on the subject site. A drainage easement is located on the adjacent property to the south of the subject site. The structure is approximately four (4) feet from the edge of the drainage easement. The structure does have down spouts, which directs stormwater runoff from the structure to the drainage easement, where it flows to the retention pond in the Prairie Lakes subdivision. Directing stormwater runoff to the drainage easement on the adjacent property is permitted and is what the easement was intended for.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

The strict application of the side yard setback regulations would require that the new carport to be removed or altered so that it is in compliance with the regulations. The attached carport would need to be moved approximately four (4) feet to the north to remove it outside of the minimum eight (8) foot side yard setback. If the carport could somehow be clearly detached from the house, it would be considered an accessory structure, which would have a side yard setback of three (3) feet. A detached carport would meet the minimum requirements, but may not be as aesthetically pleasing as the attached structure.

Although the carport was constructed in the required setback as a result of the applicant not applying for and being issued a building permit, it would be unreasonable to require the addition to be removed or altered under the circumstances. If a building permit had been applied for, the setback issue would have been discovered, at which time the applicant could have applied for an Exception to correct the issue. Because the carport has a minimal impact on adjacent properties due to the fact that a carport existing in approximately the same location before it was removed due to storm damage and because it architecturally follows the existing roofline, a proactive Exception request would have most likely been approved. A “no permit fee” will be assessed to the applicant as a penalty for not being issued a permit before the construction began.

Aistrup motioned to approve an Exception, as corrected, to allow a reduction of the minimum eight (8) foot side setback to four (4) feet for an existing attached carport at 800 Mission Circle in the R-1, Single-Family Residential District with the following conditions:

1. The Exceptions shall be limited to the attached carport garage as proposed in the application materials and the site plan.
2. All applicable permits shall be obtained.

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

A PUBLIC HEARING to consider a VARIANCE to allow a second sign in a residential district; and to allow a proposed internally lit, wall mounted identification sign located along Sunset Avenue at the Sigma Phi Epsilon fraternity at 1015 Sunset Avenue in the R-M/UO, Four-Family Residential District with the University Overlay District (Owner: Kansas Beta Alumni Corp. of Sigma Phi Epsilon Applicant: Miracle Sign).

Bunger presented the staff report, recommending denial of the Variance request.

Hardy opened the Public Hearing.

Luke Luttrell, representative from Miracle Sign, spoke on behalf of Sigma Phi Epsilon. Luttrell explained why the applicant is proposing an internally illuminated sign. Luttrell stated these reasons include: 1) the LED halo light would create less illumination on the property than an externally illuminated sign, and 2) his professional opinion is that this type of sign would fit the residential character of the neighborhood, and the LED lighting would be less costly than spot-lights. Luttrell also spoke on behalf of the Variance for the second sign, stating that there is sentimental value to the original sign. Luttrell explained historic properties of the property and the original sign indicate that the fraternity could not take this sign down. Luttrell also explained that if the sign were to be moved to another side of the building, it would not be visible from the entrance.

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

Hardy stated that he feels it would be a hardship for the fraternity to take down the existing sign.

Hamilton explained that she understands City Staff's recommended denial of an internally illuminated signs in a residential neighborhood; however she feels that this particular sign would be very tasteful. Hamilton stated that using less energy is a great idea, and this type of sign is much more attractive than a simple message board. Hamilton expressed that this situation is different than other sign proposals in the past.

Aistrup agreed that the sign is very tasteful and that the scope and size of the property is important to consider. Aistrup stated that the original sign is very small and that he had always thought the property was a house.

Lavis agreed that the proposed sign is tasteful.

Bunger questioned whether aesthetics are the proper way to base decisions on. Bunger warned the board that aesthetics are subjective.

Aistrup understood the need for City Staff to recommend denial of the Variance; however Aistrup explained that the scale of the impact is really what is important. Aistrup stated that this situation is minor. Aistrup noted that the board needs to set the standards for this situation.

Hardy agreed with Aistrup's statement.

Bunger reiterated that using aesthetics is risky because another property owner in the same neighborhood may want an internally illuminated sign that could be denied by the board based on its aesthetics.

Hamilton stated that the reason City Staff recommends denial is because this type of sign is considered more commercial, however this particular sign would not be commercial in nature. Hamilton felt that there would be less safety issues with this type of sign than with flood lights.

Bunger explained that halo lights are commercial and that there are halo lights in Aggieville. Aistrup stated that there are also externally illuminated signs in Aggieville as well. Dillon explained that identifying halo lights as only commercial is limiting.

Bunger stated that the board should steer away from using aesthetics as a reason to approve the Variance request.

The Board made the following findings of fact for the Variance at 1015 Sunset Avenue:

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is a large corner lot, with a fraternity house located on it. The fraternity fronts on Sunset Avenue and Platt Street. The subject site is approximately 1.35 acres in area. The large corner lot is not unique to the immediate area, but is unique to the R-M/UO, Four-Family Residential District with University Overlay District. The immediate area was platted in the late 1940's and early 1950's. Several of the subdivisions platted at that time set aside large lots to accommodate fraternity house uses. The subject site is Lot 2, Fraternity Knoll Addition, which was specifically platted for the Sigma Phi Epsilon Fraternity. No other R-M or UO Districts have such large lots in them specifically

intended for fraternities.

Similarly, the large building associated with the Sigma Phi Epsilon Fraternity is not unique to the immediate area, but is unique to R-M/VO Districts throughout the City. The building on the subject site has a building footprint of approximately 3,530 square feet. Other fraternities in the area are of similar size. The Mercy Regional Hospital building is located to the north, which is also a large building. This building is in the R-3/VO, Multiple-Family Residential District and University Overlay District.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the immediate south and west are zoned R-M/VO, Four-Family Residential District with University Overlay District. To the north and east are properties zoned R-3/VO, Multiple-Family Residential District and University Overlay District. To the west are properties zoned R, Single-Family Residential District, R-1, Single-Family Residential District and the Tecumseh Lofts PUD, Residential Planned Unit Development. Also in the area are properties zoned U, University District and R-2, Two-Family Residential District. The area is a mix of fraternities, owner-occupied and rental single-family dwelling, two-family dwelling, multiple-family apartments, the hospital and Kansas State University dormitories.

Internally Illuminated Sign Variance

The proposed sign should not adversely affect the adjacent properties. Properties to the north and west will be screened from the sign by the existing building. The properties to the south and east will be separated by distance. The proposed sign will be approximately 150 feet from the front property line along Sunset Avenue and over seventy-five (75) feet from the south property line. The application documents state that the light produced by the proposed internally illuminated sign will be “a soft white halo glow” and should not be strong enough to adversely impact the adjacent properties.

Other internally illuminated signs exist along Sunset Avenue, including the United Methodist Campus Center to the south and the Mercy Regional Hospital campus to the north. The proposed internally illuminated sign should not visual detract from the area along Sunset Avenue.

Second Sign a Residential Lot

The proposed second sign on the subject site should not adversely affect the adjacent properties. The existing sign is a small set of Greek letter, approximately 3.5 square feet in gross surface area. The second sign would add approximately 35.3 square feet of signage to the building. The combined total of signs on the building would be approximately thirty-nine (39) square feet, which is one (1) square foot less than the maximum allowable size of an identification sign in a residential district.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

Internally Illuminated Sign Variance

The application documents states that the subject site is “currently hard to identify due to lack of signage and that its locations that is set back from Sunset Avenue.” The owner has proposed to

construct an internally illuminated identification sign on the east wall of the structure that is approximately thirty-five (35) square feet in gross surface area. The proposed internally lit sign creates a soft halo effect, which would not be intrusive to the adjacent residential properties and is not typical of other internally lit commercial sign or message boards. Limiting the applicant to an externally lit sign when there are benefits from the proposed sign would be a hardship.

Second Sign a Residential Lot

The application documents states that the existing sign that is located on the east wall of the structure, between two (2) banks of windows on a stairway tower, “has historical and sentimental value” to the Sigma Phi Epsilon Fraternity. Given the overall size of the existing size in relationship to the building, the fact that the gross surface area of the two (2) signs added together is less than the maximum allowed sign size in a residential district and the historic significance of the existing sign, there would be an unnecessary hardship to the applicant.

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

The effects on the health, safety, morals, order, convenience, prosperity, or general welfare of the neighborhood should be minimal. The proposed internally illuminated sign should have little or no effect on the public. The proposed sign would provide less overall illumination than an externally illuminated sign and would be more energy efficient. The distance of the proposed sign from Sunset Avenue provides an adequate buffer to limit the impact of the sign on adjacent properties and traffic on the street.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the Sign Regulations within residential districts is to limit the size, placement, number, and illumination characteristics so that residential properties are not negatively impacted.

Internally Illuminated Sign Variance

The intent to limit signs to be externally lit is of an aesthetic nature to maintain a residential character. The proposed internally illuminated sign, with its halo effect, does not overall adversely impact the character of the surrounding residential neighborhood. The distance between the proposed sign and Sunset Avenue (approximately 150 feet) further limits the impact of the proposed sign on adjacent properties. Because of these facts, the proposed sign meets the intent of the Sign Regulations.

Second Sign a Residential Lot

The intent of the restriction regarding the number of signs is to not have signs dominate the surrounding residential neighborhood. When the sizes of the existing and proposed signs are added together, they meet the maximum size regulation for a sign in a residential district. Having two (2) signs on the east wall of the structure appears to meet the intent of the sign regulations considering the size of the subject site, the size of the building and that the two (2) signs should not adversely impact the surrounding properties.

Aistrup motioned to approve a Variance, as corrected, in the R-M/UO, Four-Family Residential

District with the University Overlay District. to allow a second sign in a residential district; and approve a Variance to allow a proposed internally lit, wall mounted identification sign at 1015 Sunset Avenue with the following conditions:

1. The Variance shall only apply to the proposed site plan and the proposed sign.
2. All applicable permits shall be obtained.
3. The proposed sign shall be full cutoff design and not cast direct light onto public streets or adjacent property.

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

Board Officer Elections

Hamilton motioned to nominated Harry Hardy as Chairperson for the Board of Zoning Appeals. Joe Aistrup seconded the nomination, which passed 4-0, Hardy abstaining. Hamilton nominated Joe Aistrup as Vice Chair for the Board of Zoning Appeals. Hardy seconded which passed on a vote of 4-0, Aistrup abstaining.

Capital Improvements Plan forms

Bunger stated that the Finance Department has asked the Board of Zoning Appeals for any suggested Capital Improvement Projects to forward.

Hamilton stated that there should be an accessible database providing past decisions by all boards. Bunger explained there is currently an internal database. Hamilton mentioned a database with this information should be provided to the public. Bunger explained that this database could become a Capital Improvement Project that could be available to the public. Bunger stated this project can be drafted and that City Staff will provide this draft at the March 10, 2010 BZA meeting.

Hardy adjourned.

Respectfully Submitted,

Savanah Benedick, Planning Interns