

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, June 9, 2010
7:00 PM

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

MEMBERS ABSENT: Ricci Dillon

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II, Savannah Benedick, Planning Intern, Ashley Myers, Planning Intern.

CONSIDER THE MINUTES

Hamilton motioned to approve the May 12, 2010 minutes which was seconded by Lavis. The motion passed with a 4-0 vote.

TABLE the PUBLIC HEARING to consider an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow a reduction in the minimum required number of off-street parking spaces from 63 parking spaces to 5 parking spaces for a proposed self-storage unit business on property located in the I-2, Industrial Park District. (Applicants/Owners: Mid Gey, LLC)

Aistrup motioned to table the item until the July 14, 2010 Board of Zoning Appeals meeting. Hamilton seconded the motion, which passed 4-0.

A PUBLIC HEARING to consider an EXCEPTION to allow for a reduction of the minimum twenty-five (25) foot rear yard setback to seventeen (17) feet for proposed additions to the existing house. The property is located at 2504 Purcell's Mills in the Butterfield, Unit 7 PUD, Residential Planned Unit Development. (Applicants/Owners: Karen Franklin).

Bunger presented the Staff Report, recommending approval of the Exception request.

Hardy opened the Public Hearing.

Greg Covington, project contractor, stated that it is important to discuss the mistake and make sure the approved dimensions are correct, because this case has affected people. Covington said that the mistake could have been made by anyone. If the Board can approve a seventeen (17) foot setback at the property directly adjacent to the subject property, the Board should approve this setback. Covington felt that it was important to learn from this in order to make sure it does not happen all the time, and that some type of amendment to further decrease the margin of error would be helpful for the BZA.

Hardy closed the Public Hearing.

Aistrup stated that he has no issues with the Exception request. Aistrup further stated that it would be the Planning Commission's authority to amend the way the BZA runs.

Hamilton agreed with Aistrup and Covington. Hamilton stated that the Board approves and denies cases based on supplied site plans. The only thing the Board could do is deny based on negligence.

Hardy questioned "is close good enough?" and that the Board is a function of the set standards provided by the Planning Commission.

Bunger went over the BZA process: usually site plans provided by the applicant must be approved in order to obtain a building permit. A site plan that does not meet the regulations is sent to the BZA. That is as far as the standards go.

The Board made the following findings of fact for the Exception at 2504 Purcell's Mill:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The site plan shows an existing garden shed at the rear of the property that belongs to the applicant. The shed encroaches into the five (5) foot rear yard setback and is partially located on the adjacent property to the east. The applicant will need to address the location of the shed separately from the current application. If the applicant chooses to move the shed completely onto her property, the shed must conform to the Zoning Regulations by being setback a minimum of five (5) feet from the rear lot line and three (3) feet from the side lot lines or seek and Exception. Other than this issue, the property complies with the applicable regulations and for the Exception request.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The properties to the east, south and west are zoned PUD, Butterfield Residential Planned Unit Development. To the north of the subject site are properties zoned R-2, Two-Family Residential District, and are currently vacant. The adjacent properties in the Butterfield PUD are single-family dwellings.

The Exception request is not anticipated to adversely affect adjacent properties. The property to the immediate north had an Exception approved for a similar request for an addition on April 14, 2010. The adjacent property to the east has an existing screening fence that is approximately six (6) feet from the adjoining rear property line. The fence and the added six foot of separation

from the proposed addition should reduce the impact on the properties to the east. The location of the proposed bedroom addition is on the northeast corner of the house. The house should screen properties to the south and west from the proposed master bedroom addition. The property to the south will be the most impacted by the screened-in porch. Considering that there is already a concrete pad at this location, the proposed screened-in porch should not adversely impact the adjacent property owner.

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

The Exception request does not encroach on any utility or drainage easements. The request is not anticipated to negatively affect the public health, safety, or welfare.

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

The strict application of the Zoning Regulations would prevent the addition to be constructed as proposed. The applicant originally had received a building permit for an addition that met the minimum setback requirements. The measurement error by the contractor in digging the foundation footing creates the need for the Exception. The applicant's consultant, Greg Covington of Covington Home Crafters, explains the steps that it would take to fill in the trench made in error and prepare the area for the permitted addition in the application documents. According to Mr. Covington ". . . filling in the excavated footings with attention to appropriate compaction of soil in incremental 'lifts', followed by re-excavation of the footings at a point only a few feet closer to the existing home. This would likely result in 'crumbling' of sidewalls of the newly excavated trenches while they are being dug, or shortly thereafter, particularly with the weight of the backhoe being applied directly over those areas." Considering the amount of time and extra resources it will take to correct the error of the contractor and that the applicant has decided that the larger addition would better meet her needs.

The proposed screened-in porch was only considered after it was determined that the Exception for the master bedroom addition was needed. The porch will be approximately seventeen (17) feet at its closest point to the rear property line and nineteen (19) feet from at the point furthest from the rear property line. The rear yard property is diagonal in relation to the house, which limits the available area to construct the proposed screened-in porch. Due to the angle of the rear property line, the rear yard setback is as close as four (4) feet from the rear of the house. If the proposed addition was to comply with the twenty-five (25) foot setback requirement, the applicant would not have enough space available to build the proposed addition. Due to the circumstances of the error in the preparation for the master bedroom addition and the lot design of the subject site, the strict application of the zoning regulations is unreasonable.

Aistrup motioned to approve an EXCEPTION to allow for a reduction of the minimum twenty-five (25) foot rear yard setback to seventeen (17) feet for proposed additions to the existing house at 2504 Purcell's Mill, in the Butterfield, Unit 7 PUD, Residential Planned Unit Development.

1. The Exception shall apply to the proposed additions as outlined in the application documents and as illustrated in the site plan, dated May 18, 2010.

2. All applicable permits shall be obtained.

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

A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum eight (8) foot side yard setback to zero (0) feet for an existing building on proposed Lot 1, Meyer Addition; and a reduction of the minimum eight (8) foot side yard setback to five (5) feet for an existing house on proposed Lot 2, Meyer Addition, all for properties located at 813 Colorado, in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. (Applicants: Jeff Hancock – SMH Consultants Owners: Jeremy Meyer)

Bunger presented the Staff Report, recommending approval of the Exception request.

Hamilton asked whether the buildings would have to be reconstructed to comply with the setback regulations if they were to be demolished. Bunger stated that the buildings would have to meet the regulations if rebuilt.

Hardy opened the Public Hearing.

Jeremy Meyer, applicant, stated he could answer any questions posed by the Board. Meyer said that the property is historic, and at the time of purchase, the electric lines of the buildings were connected. The property was People's Grocery at one time, the business moved. Meyer has tried to find other commercial tenants to occupy the property, but has had little luck and is converting both properties to residential. Meyer hope is to preserve the historic qualities of the buildings.

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

Hamilton stated she has no problem with the Exception request.

The Board made the following findings of fact for the Exception at 813 Colorado Street:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Historically, the subject site would be considered a Zoning Lot. A Zoning Lot is defined as: A contiguous parcel of land that is designated by its owner or developer, at the time of applying for a building permit, as a tract all of which is to be used, developed, or built upon as a unit under single ownership. As long as it satisfies the above requirements, such lot may consist of: (1) A single lot of record, or (2) A portion of a lot of record, or (3) Any combination of lots of record, and/or portions of lots of record (Article XVI). The subject site has been under one (1) owner since at least 1944.

The establishment of the two (2) buildings on one (1) Zoning Lot and the uses of the subject site as a single-family residence and a grocery store were done in approximately 1912. The condition of the subject site pre-dates the adoption of Zoning Regulations in the City of Manhattan in 1926 and would be considered a legally nonconforming condition. Section 3-

401(A) prohibits more than one (1) principle structure on a residential zoning lot. The proposed Meyer Addition Boundary Line Adjustment Plat would create two (2) lots were both buildings would be on a separate lot. The proposed plat will correct the nonconforming condition. Other than this issue and the issues addressed with the Exception request, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and the surrounding properties to the north of the alley are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. To the south of the alley are properties that are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. The subject site is within the 500 foot Historic Environs of the Houston Pierre Historic District. Because the Exception deals with existing buildings that are not proposed to be altered or removed and that the proposed Boundary Line Adjustment Plat addresses a nonconforming situation, the State Historic Preservation Office (SHPO) has determined that a historic environs review is not required. If the buildings are to be added onto or removed, the applicant will need to have an official review completed by the local Historic Resource Board and the SHPO.

Both buildings were built before the City adopted Zoning Regulations in 1926. The house was built in 1898. The stone building was built in approximately 1912. The two (2) buildings have been a part of the character of the neighborhood for almost 100 years. No additions or expansions are proposed for the buildings and they are not proposed to be torn down. The need for the Exception is due to the proposed Meyer Addition Boundary Line Adjustment Plat, which would create a new side property so that each building would be on a separate lot. The proposed plat and side property line would cause both buildings to encroach into the minimum eight (8) foot side yard setback. Adverse impacts are not anticipated on adjacent properties based on the fact that no changes are proposed for the existing buildings and the proposed Boundary Line Adjustment Plat (which causes the need for Board of Zoning Appeals action) is required to addresses the nonconforming issues with the subject site.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The Exception should not affect the public health, safety or general welfare. There are no proposed additions or expansion to the existing buildings and the buildings are not proposed to be removed. The buildings do not encroach onto any easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the minimum eight (8) foot side yard setback in the R-1/TNO District would not allow the Meyer Addition Boundary Line Adjustment Plat to be created as proposed. The proposed plat is needed so that each building can be on separate lots. The current configuration of the subject site is two (2) buildings on one zoning lot that is comprised of two (2) Ward lots (Lots 171 and 172). Both buildings have portions that cross the side property line originally established with the lots. The buildings are approximately five (5) feet from each other. Because of the location of the buildings, a side property line cannot be established that would not cause both buildings to encroach in to the minimum side yard setback. Considering

the facts and circumstances of the property, no other reasonable alternative exists to subdivide the subject site where the buildings would be on separate lots and that completely meet the minimum Zoning Regulations.

Hamilton motioned to approve an EXCEPTION to allow a reduction of the minimum eight (8) foot side yard setback to zero (0) feet for an existing building on proposed Lot 1, Meyer Addition; and a reduction of the minimum eight (8) foot side yard setback to five (5) feet for an existing house on proposed Lot 2, Meyer Addition, all for properties located in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with the following conditions of approval:

1. The Meyer Addition, Boundary Line Adjustment Plat shall be approved by City Administration.
2. The Exception shall apply to the existing structures on Lots 1 and 2, Meyer Addition.

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

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 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 Crossgate Terrace at 1108 Crossgate Terrace, in the R, Single-Family Residential District. (Applicants/Owners: Javier and Mirta Chavez).

Benedick presented the Staff Report, recommending approval of the Variance request.

Aistrup questioned whether there were other reasonable alternatives to the driveway design, and felt that residential properties should not have so much pavement in the front yard. Benedick agreed and stated that the applicants would state their reasoning for so much pavement.

Hardy opened the Public Hearing.

Javier and Mirta Chavez, property owners, spoke on behalf of the Variance request. J. Chavez stated that pushing the setback toward the functional rear yard would create more pavement in the front yard. J. Chavez explained that he could not find any other alternatives for what they were trying to accomplish.

M. Chavez stated that they wanted to comply through the entire planning and building process. They considered many designs in order to try and comply, and once they found the right one they found out about the Variance.

J. Chavez mentioned that they spoke with many different contractors and none of them knew about the Variance request relevant to this case. Hardy stated that contractors should know what the regulations are. When they don't know, many property owners are brought to the BZA because of it. Hardy found it to be interesting that a lot of recent properties do not comply with this regulation.

Bunger stated that this particular regulation is a big issue, and that City Staff is in the process of coming up with a recommended amendment to the regulation. Bunger mentioned that amending the regulation will be very difficult because so many newer subdivisions are the same zoning district as the older ward districts.

The Board made the following findings of fact for the Variance at 1108 Crossgate Terrace:

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is a rectangular shaped, through lot in the Miller Ranch, Unit 1 neighborhood, with a lot depth of approximately 155 feet and a lot width of approximately 82 feet. The lot fronts two (2) streets, which classifies it as a through lot with two (2) front yards. The front yard abutting Crossgate Terrace is considered a functional front yard where access is granted. The front yard abutting Miller Parkway, a busy collector street, is considered a functional rear yard and has restricted access from Miller Parkway. Because of the through lot, the house is located as close to Crossgate Terrace as possible to reduce the impact of the Miller Parkway traffic on the proposed house. The house is setback fifty-six (56) feet from the front yard that abuts Miller Parkway.

Additionally, the subject site and surrounding neighborhood can be classified as having lots and homes that are newer, larger, and unlike other similarly zoned and platted subdivisions. The current zoning regulation that applies to this Variance was created in 1984 to reduce the occurrence of paving and parking lots in the front yard of properties located in the Ward Districts. The regulation was amended in 1996 to allow for expanded driveway space in the front yard. The regulation has not been amended since 1996 even though the housing market and development patterns have changed. The current single-family housing market focuses on two- (2) and three- (3) car garages that require a larger driveway area, as opposed to the older residential subdivisions platted before 1990 that focused primarily on one (1) car, front-loading garages.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal adverse impact is anticipated to occur on adjacent properties. The subject site and all adjacent properties to the north, east and west are zoned R, Single-Family Residential District. The properties to the south of the subject site are zoned I-5, Business Park District. Although the three (3)- car, side-loaded garage is not typical in the Miller Ranch neighborhood, the design of the garage and driveway should not create an adverse impact. Additionally, the proposed landscape design associated with the site plan and rendering should help to minimize any negative impacts the driveway may have on adjacent properties.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The approved site plan associated with the building permit illustrates a driveway design that meets the off-street parking requirements. The approved site plan provides a driveway width of twenty-two (22) feet, which is not adequate back-up space for a three (3)-car, side-loaded garage. Therefore, the proposed site plan illustrates a driveway width of thirty (30) feet beyond the minimum twenty-five (25)-foot front yard setback but within the area defined by Section 7-102 (C)(2). While the garage could be re-designed as a two (2)-car or a front-loading garage, the proposed design is similar in nature to other properties in the Miller Ranch subdivision that do not meet the off-street parking requirements. Several properties along Crossgate Terrace, Overhill Road and in the Miller Ranch neighborhood do not meet the off-street parking

requirements. The large driveways that do not conform with 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*).

The applicant is wishing to build a three (3)-car, side-loaded garage in order to "...fit the type and quality of homes in the area." In order to provide adequate access to the parking space closest to the house, the driveway must be widened to thirty (30) feet, particularly to allow for adequate back-up space for an average-sized vehicle.

The market for new single-family residential dwellings has changed since Section 7-102 (C)(2) was adopted in the mid-1980's. At that time, the intent of the provision was to protect areas generally in the Ward District. The affect of the regulation did not keep pace with market demand changes in the last twenty-five (25) years, since the provision was adopted, and creates a hardship in some new single-family residential developments such as Miller Ranch.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: No adverse effect on the public is expected with the Variance request. The proposed, widened driveway would not encroach on any public rights-of-way or easements. Additionally, the proposed driveway may enable vehicles to exit the three (3)-car, side-loading garage in a safer, more direct way.

RELATIONSHIP TO INTENT OF REGULATIONS: The 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 required by Section 7-102 (C)(2) that can be paved and to help maintain the residential character of properties located within residential zoning districts. The proposed driveway is similar in design and width to residential properties in the area and would not detract from the character of the Miller Ranch neighborhood. All parking is behind the minimum twenty-five (25) foot front yard setback. Additionally, the twenty-five (25) foot front yard area contains a driveway twenty (20) feet wide, which conforms with the regulations if this setback line were used to define the area for which pavement is regulated.

Although the landscaped open space in the defined front yard area is proposed to be reduced to approximately 52% as defined by Section 7-102 (C)(2), the proposed house and driveway will match the residential character of adjacent houses and the Miller Ranch Development. The intent of the regulation is also met when the proposed landscape plan and rendering are reviewed. These documents show landscaped areas along the driveway and trees along the southwest perimeter of the lot, which may reduce the visual impact of the paved area.

The specific regulation requiring the Variance was created in the mid-1980's as a result of paved parking being placed in front of residential structures in the older grid street patterned portion, or Ward Districts, of the City. The intent of the regulation in that part of the City was to preserve front yards along primarily rectangular lots and grid street patterns. Development patterns in the Ward Districts included smaller, front-loaded garages that did not require driveways wider than twenty-four (24) feet. The proposed single-family house, garage, and driveway are consistent with modern development patterns versus development patterns found in the older

neighborhoods, some of which were created in the late 1800's and early 1900's.

Aistrup motioned to approve a VARIANCE, as corrected, to allow a driveway to be greater than twenty-four (24) feet in width and 960 square feet in area; and to reduce the minimum 75% landscaped open area required in the front yard to 52%, all for a proposed paved driveway associated with a new single-family dwelling at 1108 Crossgate Terrace in the R, Single-Family Residential District, 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 and rendering shall be installed and maintained in good condition.
3. All applicable permits shall be obtained.

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

Hardy adjourned.

Respectfully Submitted,

Savanah Benedick, Planning Intern