

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, September 8, 2010
7:00 PM

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

MEMBERS ABSENT: Connie Hamilton

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

CONSIDER THE MINUTES

Aistrup moved to approve the August 11, 2010 minutes which was seconded by Dillon and passed with a vote of 4-0.

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 AppleTech Construction, Inc.).

Aistrup moved to approve the 180 day extension which was seconded by Dillon and passed with a vote of 4-0.

A PUBLIC HEARING to consider an EXCEPTION to allow for a reduction of the minimum required ten (10) foot rear yard setback to zero (0) feet and to reduce the minimum required three (3) foot side yard setback to zero feet for a proposed detached garage. The proposed detached garage will replace the existing detached garage in the same general location. This property is located at 325 N. 17th Street in the R-1/TNO/UO, Single-Family Residential District with Traditional Neighborhood Overlay District and University Overlay District. (Applicants/Owners: Kevin and Sue Donnelly).

Bunger presented the Staff Report with a recommendation for approval of the Exception request.

Hardy opened the Public Hearing.

Mike Kratochvil, D&R Construction, wanted to say there is a new development regarding the overhang, needs to be 4" overhang on both the north and south side of the garage to keep the eyebrows balanced. Also, the current garage is in very bad shape and needs to be redone in a way that is consistent with the neighborhood.

Hardy closed the Public Hearing and opened the Board discussion.

Aistrup said it is fairly straight forward.

Hardy said it is a well designed project incorporating the character of the existing house and on top of the existing footprint of the house.

The Board made the following findings of fact for the Exception at 325 N. 17th Street:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The 50 to 60 year old existing detached garage currently does not conform to the current Zoning Regulations. The garage encroaches into the three (3) foot side yard and ten (10) foot rear yard setbacks. The location of the existing garage is a nonconforming condition of the property. The Exception requests for the proposed detached garage would correct the condition. Other the Exception requests, the subject site complies with all applicable regulations.

The location and design of the proposed detached garage does not meet the City's Building Codes. The issue revolves around the proposed one (1) foot along the north side of the structure. The Building Code requires that structures with a one (1) foot overhang have a minimum of a five (5) foot building setback from an adjoining residential property line. The proposed structure could be built in the proposed location with a four (4) inch roof overhang on the north side of the structure. The property owner's consultant, Mike Kratochvil of D and R Construction, Inc., has stated that they would like to construct the new detached garage in its proposed location with a four (4) inch overhang to be able to use the existing garage and not impact the rear yard. The other three (3) sides of the detached garage would have one (1) foot overhangs.

The Traditional Neighborhood Overlay District requires that residential structures have a minimum of a one (1) foot overhang (Section 4-111(F)(2)(c)). Accessory structures shall maintain a similar architectural character as the existing residential building. The Building Design Standards are not applicable to accessory structures (4-111(F) Additions and Modifications). The proposed modification to the new detached garage should not be out of character with the existing residential structure or the surrounding neighborhood.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The subject site and the properties immediately to the north are also zoned UO, University Overlay District.

The proposed detached garage should not adversely affect the adjacent property owners. The proposed garage will replace an existing garage that has been in its location for over 50 years and is part of the character of the neighborhood. The existing garage is in need of major repair. The proposed garage will be in approximately the same location and be orientated the same as the existing garage. The proposed garage will be designed to complement the look of the house, with carriage house style garage doors and shake shingle siding on the roof gable.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The public health, safety and general welfare is not anticipated to be affected by the proposed Exception requests. The proposed detached garage will not encroach into any utility easements. The proposed detached garage will be accessed from N. 17th Street and should not impact the narrow alley to the west.

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 require that the garage be located at least ten (10) feet from the rear lot line along the alley and three (3) feet from the northern side property line. The proposed garage will be in the same location as the existing garage. The existing garage is in need of major repair and the property owners and their consultant have decided it would be better to replace the garage rather than repair it. The property is already developed to accommodate the location of the garage, including the existing driveway and a screening fence. Considering these factors, requiring the strict application of the rear and side yard setbacks for the proposed accessory structure maybe unreasonable.

Aistrup made a motion to approve an EXCEPTION to allow for a reduction of the minimum required ten (10) foot rear yard setback to zero (0) feet and to reduce the minimum required three (3) foot side yard setback to zero feet for a proposed detached garage at 325 N. 17th Street in the R-1/TNO/UO, Single-Family Residential District with Traditional Neighborhood Overlay District and University Overlay District with the following conditions.

1. The Exceptions shall apply to the proposed detached garage as shown on the application site plan and outlined in the application documents.
2. All applicable permits shall be obtained.

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

A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to nine (9) feet for a proposed fence along Kauffman Drive at 3709 Hawthorne Wood Terrace in the R, Single-Family Residential District. (Applicants/Owners: Frank and Anya Martin)

Bunger presented the Staff Report with a recommendation for approval of the Exception request.

Hardy opened the Public Hearing.

Applicant's representative, Scott Howe, was present at the meeting, but did not desire to make comments.

Hardy closed the Public Hearing and opened the Board discussion.

Hardy said the City Staff did a good job discussing the strict application of the regulations, which made it easier for the Board to process.

The Board made the following findings of fact for the Exception at 3709 Hawthorne Woods Terrace.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other the Exception requests, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R, Single-Family Residential District. The property is within a developing residential neighborhood in the northwest area of the community.

Minimal adverse impacts on adjacent properties are anticipated by approving the Exception. Although the area where the fence is proposed to be located is technically the front yard along Kauffman Drive, it functions as a side yard. The property to the north has a similar lot design, where the house faces Hawthorne Woods Terrace, creating a functional side yard along Kauffman Drive. The vacant properties to the west could be developed so that houses would face Kauffman Drive, but the fence should not visually impact the future development of these lots. These lots are lower in grade than the subject site. The fence will be a part of a professional designed landscape area that will help to soften any visual affects of the required security fence on adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed fence is to be located within a ten (10) foot wide utility easement along Kauffman Drive. Structures that do not require a building permit, including fences less than six (6) feet in height, are allowed to be in utility easements, but will be removed if the structure is obstructing work within the easement. The property owners need to be aware that if access to the utility easement is required and the fence must be removed, the cost of replacing the fence will be the responsibility of the property owners. Other than this issue, minimal effects on the public are anticipated. The property fence is outside of any vision clearance triangles created by Kauffman Drive.

The proposed fence is required to protect children from having access to the private swimming pool. Installing the proposed fence will improve public safety.

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 for accessory uses would require that the proposed fence be located a minimum of twenty-five (25) feet from the property line along Kauffman Drive. The fence is required by City Code to surround the swimming pool to prevent children from having open access to the swimming pool and drowning. Because of the grade of the subject site and excavation done for the swimming pool and landscape areas, the most logical and effective location of the proposed fence is to the north of the landscape area and along Kauffman Drive. If the fence was required to be behind the required twenty-five (25) foot front yard setback, it would cut through terraced landscape beds, possibly allowing children to use the change in elevation of the landscape beds to gain access to the swimming pool, which the fence is to prevent. Considering the safety concerns, the City Code that the proposed fence is to address and its minimal impacts on adjacent properties, the strict application may be unreasonable.

Dillon made a motion to approve an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to nine (9) feet for a proposed fence along Kauffman Drive at 3709 Hawthorne Woods Terrace in the R, Single-Family Residential District with the following conditions:

1. The Exception shall apply only to the fence as described in the application documents and shown on the application site plan.
2. The fence and landscape area adjacent to the fence shall be maintained in good condition.

Aistrup seconded the motion, which passed by a vote of 4-0.

A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum required fourteen (14) foot front yard setback to twelve (12) feet along S. Manhattan Avenue for an existing building at 1231 Yuma Street in the R-2/TNO, Two-Family Residential District and the Traditional Neighborhood Overlay District. No addition or expansion is proposed for the structure. The Exception is to address an existing condition so that the property can be replatted. (Applicant: David Baker Owners David Baker and Wendell Baker)

Bunger presented the Staff Report with a recommendation for approval of the Exception request.

Hardy opened the Public Hearing.

David Baker, the applicant, was present at the meeting, but did not desire to make comments. Hardy closed the Public Hearing and opened the Board discussion.

The Board all agreed it was a straight forward application.

The Board made the following findings of fact for the Exception at 1231 Yuma Street.

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property complies with all applicable regulations, other than for the Exception request. The existing house on the subject site was built in approximately 1920, prior to the adoption of Zoning Regulations in the City of Manhattan. The existing location of the house is a nonconforming condition, which must be corrected prior to the approval of the Baker Addition Boundary Line Adjustment Plat.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. To the northeast, a multiple-family development is zoned PUD, Residential Planned Unit Development.

Minimal adverse affects on adjacent properties are expected. The existing house was built in approximately 1920, prior to the adoption of Zoning Regulations in the City of Manhattan in 1926. No additions or expansions are proposed for the house. The need for the Exception is due to the proposed Boundary Line Adjustment Plat of the Baker Addition and the need to correct the nonconforming condition. According to the applicant's consultant, Jeff Hancock of SMH Consultants Inc., the Boundary Line Adjustment Plat is required so that the subject site can be subdivided and Lot 2 be developed for a future residential structure.

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 house. The existing house does not encroach onto any utility easements. The Boundary Line Adjustment Plat does not create any new easements. A private permanent sanitary sewer easement was filed with the Riley County Register of Deeds to allow a sanitary sewer service line to run from the subject site, across the neighboring property to the south and connect to the public sanitary sewer in the alley.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the fourteen (14) foot setback regulation in the R-2/TNO District would not allow the Boundary Line Adjustment Plat of the Baker Addition to be approved and filed. The Baker Addition Boundary Line Adjustment Plat would re-orientate the lots to the north and south so that the existing house is on one (1) lot, with a vacant lot to the east, which is proposed to be developed for a residential use in the future. The existing house could be relocated on the site or removed entirely to adhere to the front yard setback requirements of the R-2/TNO District. Both of these options appear to be unnecessary considering that no additions or expansion is proposed for the existing house and the house was built in its current location in approximately 1920, prior to the adoption of Zoning Regulations in the City of Manhattan.

Aistrup made a motion to approve a an Exception to allow a reduction of the minimum

required fourteen (14) foot front yard setback to twelve (12) feet along S. Manhattan Avenue for an existing building at 1231 Yuma Street in the R-2/TNO, Two-Family Residential District and the Traditional Neighborhood Overlay District with the following conditions:

1. The Exception shall apply to the existing structure as a single-family detached residential use as outlined in the staff report and shown on the site plan.

Dillon seconded the motion, which passed by a vote of 4-0.

Hardy adjourned.

Respectfully Submitted,

Ashley Myers, Planning Intern

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