

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

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

MEMBERS ABSENT: None

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

CONSIDER THE MINUTES

Lavis moved to approve the September 8, 2010 minutes which was seconded by Aistrup and passed with a vote of 4-0. Hamilton abstained because she was not present at the September meeting.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW A BED AND BREAKFAST INN AT 617 COLORADO STREET WITHIN A R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANTS/OWNERS: JIM AND BONNIE LYNN-SHEROW).

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM REQUIRED FIFTEEN (15) FOOT SIDE YARD SETBACK TO NINE (9) FEET FOR A PROPOSED BED AND BREAKFAST INN. THE PROPOSED BED AND BREAKFAST INN IS TO BE ESTABLISHED IN AN EXISTING BUILDING IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND THE TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. NO ADDITION OR EXPANSION IS PROPOSED FOR THE STRUCTURE. (APPLICANTS/OWNERS: JIM AND BONNIE LYNN-SHEROW).

The items were considered together. Bunger presented the Staff Reports, recommending approval of both the Conditional Use and Exception requests.

Aistrup asked Bunger when the three additional parking spaces were going to be added to the current five stalls. Bunger stated they would need to be added as the use begins. Even though the additional stalls are on a different lot, it is okay because it is under the same ownership and shared parking is allowed within the zoning regulations as long as there is agreement with the property owners and there is adequate room.

Hardy said based on the regulations, parking would need to be provided up front.

Hamilton clarified, they could operate as a bed and breakfast with the five parking stalls they have. But as soon as they try to hold a non-resident event for catering or receptions they would need the extra three spaces. Bunger said correct. Hamilton said if there are no restrictions stating the business can't be used until the parking is implemented. Hamilton asked why the applicant isn't applying for a conditional use bed and breakfast permit. Why is the applicant going towards the end, when it is several years away and the parking isn't even available yet? Bunger said that the applicant might be better able to answer that question.

Hardy opened the Public Hearing and invited the applicant to address the Board.

Jim Sherow, 617 and 621 Colorado, addressed questions about the parking. He said the parking can be established at anytime, the back side of the lot just needs to be cleared off and it is there. They are not ready to establish that portion of the business yet, but as soon as it is, it will be taken care of.

Bonnie Lynn-Sherrow said the primary reason for making the property an inn and not a bed and breakfast is because of the regulations for bed and breakfast homes versus bed and breakfast inns. Bed and breakfast home does not allow a non-resident manager. If they were to take a sabbatical and teach at a different university, they would not be able to continue the bed and breakfast business while they were out of town. They have no big plans for holding major receptions or anything of that nature on the property.

Jim Sherow said another aspect of the inn is that the kitchen is a commercial grade kitchen that will be licensed by the State. The regulations do not allow bed and breakfast homes to be utilized for catering.

Hamilton asked, so even if you have a commercial kitchen, you still can't do an event for nonresidential uses? Sherow replied right.

Sherow said they have made substantial investments in the kitchen, so they would like to be able to use it.

Sherow summarized saying the nonresident manager and the kitchen were the reasons why they choose to go the inn route rather than simply a bed and breakfast home.

Hamilton said she appreciates the reasons and it helps explain the proposal. She asked if the applicant would have any qualms establishing the three additional parking stalls before the duplex was demolished. Sherow said no, that is not a problem.

Dillon asked if the adjacent duplex was occupied. Sherow said yes.

Bunger said the duplex has a grandfathered condition with no off street parking now. The shared parking would be able to accommodate the removal of the grandfathering status. In addition, the adjacent property has enough land and space for the parking, so the site plan could be updated at the meeting.

Sherow had a comment about bed and breakfast homes in general and a comment about the probable effect on adjacent properties in the conditional use report. He stated that the Historic Resources Board should have been looking at the how use of 617 Colorado will affect the historic environs of the property and the district and not if the Federal standards for historic places were met.

Hardy said he understands what Sherow is saying, but the Staff Report is only reporting on what the Historic Resources Board did, so it does not affect this decision.

The applicant and the board had a general discussion of the possibility of amending the Zoning Regulations to allow bed and breakfast homes and inns be licensed by the City rather than proceeding with a Conditional Use application. During the discussion, the Board expressed their understanding of the issues, but felt that the Conditional Use process was adequate at this point in time to ensure quality bed and breakfast homes and inns in the City and to protect neighboring residential properties.

Hardy closed the public hearing.

Hamilton is fine with the conditional use proposal as long as the three additional parking stalls are installed before any function is started.

The Board agreed to modify the Staff Report and the Conditions to be as followed:

- Hardy and Hamilton made a change to the Staff Reports regarding the State Historic Preservation Office conclusion.
- The three (3) additional required off-street parking spaces shall be provided prior to the site being operated as a bed and breakfast inn.
- Condition number 3 of the Exception staff report and number 5 of the Conditional Use staff report, regarding the State Historic Preservation Office's determination are removed.

The Board made the following findings of fact for the Conditional Use at 617 Colorado Street:

A. Compliance with all applicable regulations: The house on the subject site does not meet the minimum fifteen (15) foot side yard setback required for Conditional Uses in the R-M, Four-Family Residential District. The house was built in 1892, prior to the adoption of Zoning Regulations in the City of Manhattan. In 1908, the subject site and the adjacent properties to the west were reconfigured to create a lot between the subject site and the properties to the west. This lot is 42 feet wide and 150 feet deep (east 30 feet of Lots 638, 639 and 640 and the west 12 feet of Lots 636 and 637). The reconfiguration of the zoning lot created a circumstance where the house is approximately nine (9) feet from the side property line to the west. The applicants have requested an Exception to reduce the minimum fifteen (15) foot side yard setback to bring the property into compliance with the Zoning Regulation. Other than this condition, the property complies with all applicable regulations.

B. Probable effect on adjacent properties: The subject site and properties in the immediate area are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay. To the west of Juliette Avenue, properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District and R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. To the south and east is the Treasures of the Heart Planned Unit Development, which is a mixed use residential and commercial development. The surrounding neighborhood consists of a mix of single-family dwellings, two-family dwellings, multiple-family dwellings, and public use buildings. Directly across Colorado Street to the north is the Municipal Court Building. To the west, along Juliette Avenue is the Manhattan Catholic Schools.

The subject site is listed on the State and National Register of Historic Places and is within the 500 foot environs of the Houston-Pierre Street Historical District. The Manhattan Historic Resource Board reviewed the proposed Conditional Use and Exception requests on September 27, 2010 and forwarded a recommendation of approval to the State Historic Preservation Office finding that the proposal meets the Secretary of the Interior's Standards for Rehabilitation (*see attached*). The State Historic Preservation Office (SHPO) has determined the proposed project will not encroach upon, damage or destroy any listed historic property or its environs.

The proposed Conditional Use for a Bed and Breakfast Inn should not cause substantial injury to the value of other property in the surrounding neighborhood. The applicants have renovated the interior and exterior of the house and have improved the landscaping of the subject site. Their efforts to improve the subject site and prepare the structure for a Bed and Breakfast Inn should improve the property values of adjacent properties.

The applicants have held a neighborhood meeting, as required by new procedures recently adopted by the City. The meeting summary is attached. The use of the subject site as a Bed and Breakfast Inn should not impact the properties values of the neighborhood or adversely impact adjacent property owners. The proposed Inn will have a maximum of three guest rooms. The small number of guests at any one time should not cause a nuisance to adjacent properties.

The applicants have proposed to host meetings, receptions and other functions catered to non-overnight guests, which is permitted with the Bed and Breakfast Inn, as defined by the Zoning Regulations. The occasional large reception or meeting for non-overnight guests may disrupt the neighborhood in regards to noise, light and parking availability. The neighborhood meeting summary states that the applicants explained the difference from a Bed and Breakfast Inn and Bed and Breakfast Home. The summary states that no objects were raised over the use of the property as a Bed and Breakfast Inn and that those in attendance were supportive of the applicant's proposal.

C. Domination by use over neighboring properties: The proposed use should not dominate over neighboring properties. For the most part, the use of the dwelling as a bed and breakfast will be limited to weekends. Even with the addition of guests, the number of total occupants within the structure should remain similar to the number of occupants residing within neighboring dwellings.

- 1. Location, nature, and height of physical improvements:** The existing structure is a three-story tall structure built in 1892. The applicants have recently completed major exterior renovations to the structure and landscaping improvements on the subject site. No future improvements to the existing structure have been proposed with the application documents. The site plan shows a proposed two-car, detached garage to be built sometime in the future. The garage will be thirty-six (36) feet wide and twenty-four (24) feet deep and will be located in the southeast corner of the site.
- 2. Landscaping and screening:** The landscaping of the property includes a grass lawn, existing trees and building foundation plantings. A fence is proposed to enclose the rear yard of the property. The application documents state that the fence will most likely be made of wrought iron.

D. Adequate provision of parking and loading: Section 7-103(A)(8) states: Bed and Breakfast Inn: A minimum of (2) off-street parking spaces, plus one (1) off-street parking space per full time equivalent employee, plus one (1) space for each guest room, plus for accessory meeting space and catered functions, a minimum of one (1) off-street parking space for each three (3) persons, based on maximum design occupancy.

Five (5) off-street parking spaces are proposed on the site for the Bed and Breakfast Inn. Three (3) parking spaces are proposed to serve the guests of the Inn. A two-garage detached garage is proposed to be constructed at the southeast corner of the subject site. The garage will provide the required parking spaces for the applicants. The applicants are proposing three (3) off-street parking spaces on the property to the west of the subject site. The applicants own the property to the west and have proposed to remove the two-family dwelling on the property in the future. Once the two-family dwelling is removed, the vacant land will become a part of the subject site. The design occupancy of the Bed and Breakfast Inn is 10 which require a minimum of three (3) off-street parking spaces. A total of eight (8) off-street parking

spaces are proposed for the Daughters Bed and Breakfast Inn, which meets the minimum off-street parking requirements for the proposed Inn.

E. Adequate provision of drainage, and other public utilities: Adequate provisions for drainage and other public access has been provided.

F. Adequate provision of access: The off-street parking spaces and detached garage will gain access from the concrete alley to the south. Sidewalks are present along the front property line and throughout the neighborhood to provide for pedestrian access.

Aistrup moved to approve the proposed Conditional Use to allow a Bed and Breakfast Inn at 617 Colorado Street within an R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District with the following conditions of approval and modifications to the finding of facts as proposed.

1. The associated Exception of the required side yard setback shall be approved.
2. If the applicant sells the property, the new owner should reapply for a Conditional Use for a Bed and Breakfast Inn, prior to operating the use.
3. The Bed and Breakfast Inn shall be limited to three (3) guest bedrooms as proposed.
4. The Bed and Breakfast Inn shall conform with the use limitations associated with Bed and Breakfast Inns in the R-M, Four-Family Residential District.
5. The additional three (3) required off-street parking spaces shall be provided prior to the site being established as a bed and breakfast inn.

Hamilton seconded the motion, which passed by a vote of 5-0

The Board made the following findings of fact for the Exception at 617 Colorado Street:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other than the issue that the Exception is to address, the property complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties in the immediate area are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay. To the west of Juliette Avenue, properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District and R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. To the south and east is the Treasures of the Heart Planned Unit Development, which is a mixed use residential and commercial development. The surrounding neighborhood consists of a mix of single-family dwellings, two-family dwellings, multiple-family dwellings, and public use buildings. Directly across Colorado Street to the north is the Municipal Court Building.

To the west, along Juliette Avenue is the Manhattan Catholic Schools.

The subject site is listed on the State and National Register of Historic Places and is within the 500 foot environs of the Houston-Pierre Street Historical District. The Manhattan Historic Resource Board reviewed the proposed Conditional Use and Exception requests on September 27, 2010 and forwarded a recommendation of approval to the State Historic Preservation Office finding that the proposal meets the Secretary of the Interior's Standards for Rehabilitation (*see attached*). The State Historic Preservation Office (SHPO) has determined the proposed project will not encroach upon, damage or destroy any listed historic property or its environs.

Minimal adverse impacts on adjacent properties should occur by approving the Exception. The circumstance is created by the applicant wanting to use their newly renovated and remodel home as a Bed and Breakfast Inn. The Inn will have three (3) guest rooms, which should not be a significant increase in the amount of light, noise and traffic. The purpose of the increased side yard setback for Conditional Uses is to mitigate the potential impacts that a Conditional Use may create on the adjacent properties. The applicants own the adjacent two-family dwelling property, so the impacts would only be felt by the applicants and their tenants. The applicants have proposed to have the structure removed in the future and the vacant land would become part of the Bed and Breakfast Inn property. Once this occurs, the side yard setback would increase from the present nine (9) feet to fifty-one (51) feet, eliminating the need for the Exception and provide adequate space between the Inn and the adjacent properties to the west.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal adverse impacts on the public health, safety and welfare are anticipated. The Exception request is to address an existing condition and how it relates to the proposed Conditional Use for a Bed and Breakfast Inn. The existing house does not encroach into any utility easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the regulations would not allow the proposed Conditional Use for the Bed and Breakfast Inn to be approved because the subject site does not meet all applicable requirements of the R-M District.

The two-family dwelling on the adjacent lot that the applicants own could be immediately removed and the vacant land be included with the subject site as proposed for the future. This would increase the side yard setback from nine (9) feet to over fifty-one (51) feet. Although this would address the issue of the side yard setback, the two-family dwelling is occupied and the applicants have stated in their application documents that they "would like to continue to provide housing for these families for at least a few more years.

Considering the property that will be most likely impacted by the reduction in side yard setback is a two-family dwelling owned by the applicants and the long-term plan is to remove

the two-family dwelling, the strict application of the regulation is unreasonable and unnecessary.

Dillon moved to approve the Exception to allow a reduction of the minimum required fifteen (15) foot side yard setback to nine (9) feet for a proposed Bed and Breakfast Inn with the following conditions of approval and modifications to the finding of facts as proposed.

1. The Exception shall apply to the existing structure as outlined in the staff report and shown on the site plan.
2. The Conditional Use for a Bed and Breakfast Inn shall be approved.

Aistrup seconded the motion, which passed by a vote of 5-0

Hardy adjourned.

Respectfully Submitted,

Chad Bunger, AICP, CFM, Planner II and Ashley Myers, Planning Intern

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