

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, November 10, 2010
7:00 PM

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

MEMBERS ABSENT: Harry Hardy, Chairperson

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

CONSIDER THE MINUTES

Hamilton moved to approve the October 13, 2010 minutes which was seconded by Dillon and passed with a vote of 4-0.

Consider a request for a 180 day EXTENSION for an approved exception to allow for an increase of the maximum thirty (30) percent lot coverage to thirty-five (35) percent for a proposed single-story office building at 1509 and 1515 Poyntz Avenue in the C-1, Restricted Business District. (Applicant/Owner: Calvin Emig).

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

A PUBLIC HEARING to consider an EXCEPTION to allow a front yard setback reduction from fifty (50) feet to fourteen (14) feet along Carlson Road; and the continued use of a temporary gravel driveway and off-street parking areas for a period of two years in the I-2, Industrial Park District (Applicant/Owner: Dave Dreiling (GTM Sportswear)).

A PUBLIC HEARING to consider an VARIANCE to allow a reduction of the minimum twenty (20) foot landscape area along Carlson Street to zero (0) feet for a proposed addition to an existing building in the I-2, Industrial Park District. (Applicant/Owner: Dave Dreiling (GTM Sportswear)).

Aistrup asked Bunger to present the Exception and Variance concurrently.

Bunger informed the Board that the Public Hearing sign was mistakenly not posted the required 20 days before the Public Hearing due to City Staff error. It was in fact put up 7 to 10 days prior to the public hearing. The 20 day policy is not a statutory requirement; it is just a City policy. He asked the Board if they wanted to continue with the Public Hearing for the item or table the item so that the sign can be displayed as required by the City's policy?

Hamilton asked what direction the sign typically faces. Is it along Carlson Street? Bunger said it is along McCall Road because Carlson Street is such a low traveled dead end street.

Dillon asked if there was any other sort of public notification. Bunger said yes, it was published in the paper 21 days before the hearing and the property owners within 200 feet of the site were notified by a mailing describing the variance and exception and the date and time of the meeting. City Staff did receive a couple of phone calls from adjacent property owners about it, so the mailing served its purpose.

After some discussion, Aistrup asked Bunger what he recommends for this situation. He said that it is really up to the Board.

Dillon asked when the phone calls were received. Bunger said one was when the letter first came out and the second one was last week. Dillon asked if they would have had time to submit a letter against the requests. He said yes.

Aistrup said that because it isn't a statutory requirement, but a courtesy to the public and not the applicant's fault. He would prefer to go forward with the Public Hearing tonight. Dillon agreed.

Hamilton said she is going to vote against it because the Board is participating with the City to become more visible to the public and the public hearing signs are a component of transparency. Secondly she is not going support it, because Mr. Dreiling should have been aware of the need to have the sign out 20 days before the meeting, especially because of his extensive past with the Board and the processes it entails.

Dillon made a motion to proceed with the requests tonight without the proper 20 day notification due to the previously stated reasons which was seconded by Lavis and passed with a vote of 3-1.

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

Dillon asked if any of the gravel parking is fenced in. Bunger said no, but it isn't a requirement.

Hamilton verified if the concern Bunger received was from Mr. Bosch regarding dust from the gravel parking lot. Bunger said yes.

Lavis asked if there is something special that can be put on gravel roads to reduce dust? Mr. Dreiling said yes, it is an oil base application that GTM has considered applying it to the gravel parking lot to reduce dust.

Aistrup opened the Public Hearing.

Dan Bosch, 905 Enoch, is happy that GTM is growing as a business, but has concerns about the fact they have outgrown their site. He has concerns about the parking lot, due to the dust migration, which isn't easy to control. Concrete defines limits, controls water, and controls traffic, while gravel does not.

He wondered why the Board is even discussing the gravel parking lot now; it is already built and done, past tense. The second part of his concern is the setback reduction. He knows that the City has spent a lot of money to beautify the City, but this doesn't follow it. He said GTM is asking for an Exception, so what are they going to do to reciprocate, in trade for the Exception? Maybe some flowers or grass.

Bosch discussed the issues of Carlson Street and the fact that it is like a private parking lot road that he, as a land owner nearby, has to pay for it. He thinks that maybe there should not be any parking allowed on Carlson Street.

Dave Dreiling, 120 S. Wreath Avenue, agrees that the City shouldn't take the whole blame for missing the proper time limit for the public hearing sign. He should have remembered it as well. He mentioned that the sign was put at the northwest corner of the lot near McCall, which is under major construction right now and impacts the visibility of the sign, so even if it had been there the correct 20 days, it may not have made any difference.

He then addressed Mr. Bosch's concerns. Annually GTM does a survey of the staff and a year ago parking came up as a big problem, so they tried to solve it. GTM just spent \$500,000 on the huge concrete parking lot to alleviate parking issues.

The parking issue is being addressed in three phases. 1) the concrete parking lot, 2) the gravel strip to the east of Carlson Street next to the building, 3) pave the gravel lot behind Doggie Daycare (which is owned by GTM). He believes the concreting will reduce the blowing dust. And eventually, the parking along the west side of GTM will be limited.

Dreiling said he is in good standing with his neighbors. The Hotel to the south works with GTM and has never complained about the dust. Sometimes GTM allows truckers from the hotel to park in the gravel lot, because the Hotel doesn't have enough parking for large trucks.

Hamilton asked if people who park in the concrete parking lot will be able to cut across the gravel lot to get access to Highway 24. Dreiling said yes. Hamilton asked if there are plans to restrict it. Dreiling said he does not for a couple of reasons. With the widening of McCall, employees trying to leave at 5:00 pm have a horrible time trying to get onto McCall, thus

some leave through the back to gain access to Highway 24. Eventually, GTM will add a couple of truck bays/docks on the newly acquired land from Pioneer on the southwest portion of the property and they need to maintain a way to get around the building to the south.

Hamilton asked when they plan to pave the path to the south. Dreiling said as soon as they figure out what they are going to do to the east they will pave the path.

Dreiling said they installed a drainage ditch along the north side of the hotel parking lot in conjunction with the City.

Aistrup closed the public hearing and opened the Board discussion.

Hamilton said the Board has granted many Variances and Exceptions in the past to GTM, especially due to Carlson Street being used by so few people and is fine with continuing with the past and the established line of the building. Beautifying of Carlson Street is not as important as some other frontages which would impact more people. She is impressed with the parking plan that Dreiling has in mind. The concrete lot will ameliorate the dust issue and congestion along Carlson Street. The dust is not just from his property, there is a lot of construction going on out there. She would be willing to support two years for the temporary gravel lot, but would like the two year limit to be the outer limit of the temporary lot and not see it get extended again.

Dillon said she appreciates Hamilton's comments and agrees with her.

Lavis suggested a year might work. The Board then decided a year is too short of a time frame.

Aistrup added that the applicant isn't averse to paving lots, he has done it before. He just has plans for the area. He does concur with Hamilton's comment. The two year time frame shouldn't be extended again.

Hamilton added that she supports the Exceptions and Variances because of the historical background, unique property shape, and not because of things will be easier inside the building if the applicant didn't have to follow the rules.

The Board made the following findings of fact for the Variance at 520 McCall Road:

CONDITIONS UNIQUE TO THE PROPERTY:

When the site was originally developed, Carlson Street did not exist as a public street, rather it was a private driveway. At that time, the area in question was a side yard and did not require the twenty (20) foot landscape area. In 1995, the private drive was converted to a public street, Carlson Street, creating a grandfather condition for the GTM property. In 2001, the subject property was replatted and the building was expanded along its established façade to the south. Through an oversight by the applicant and City Administration, the required landscape area was not enforced or addressed until 2007 when the building and business expanded along the south façade line; therefore, a Variance was granted in October, 2007,

reducing the landscape strip from twenty (20) feet to zero (0) feet along Carlson Street. Once again, the building is expanding to the south and requires another Variance to extend the reduced landscape strip along the building facade to the south.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Minimal adverse affects should be felt by adjacent property owners by granting the Variance. Properties to the north and west are zoned I-2, Industrial Park District, and produce similar types and intensity of uses. To the west and south of the subject property are lots zoned C-5, Highway Service Commercial District and C-6, Heavy Commercial District. The C-5 district to the east of the subject property is Orschlen Farm and Home Supply business. To the south is the Best Western Hotel. Any business activity on the subject site will occur along Carlson Street and away from the adjacent C-5 district properties. On-street parking has become congested along Carlson Street, but the proposed Variance request for the existing building and the addition should not impact the number of vehicles parking on the street. GTM recently constructed a concrete parking area of approximately 207 stalls to the west of the Carlson cul-de-sac.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The strict application of the regulations would require the property owner to remove or reduce a portion of the existing building to provide the twenty (20) foot landscape area, causing an unnecessary hardship. Likewise, requiring the property owner to redesign the proposed addition to provide the twenty (20) foot landscape area would create a hardship. The redesigned expansion would reduce the effective use of the building and be contrary to the building pattern on the property. Furthermore, requiring the landscaped area to be installed for the addition would be counter-productive, since over 680 feet of the building's façade along Carlson Street does not have the landscape area.

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

The proposed elimination of the twenty (20) foot landscape area along Carlson Street is not anticipated to adversely affect the health, safety, or general welfare of the neighborhood or community at large. The subject property's non-conformity has been present since at least 2001 with no public complaint and a similar Variance was granted in 2007. Granting the Variance will not improve nor worsen the on-street parking situation along Carlson Street.

RELATIONSHIP TO INTENT OF REGULATIONS:

The use limitation to provide a twenty (20) foot landscape area on all property lines that abuts a public street is intended to provide adequate separation between lots and public roads, while providing sufficient green space. Even though the required landscape space is not provided, there is adequate separation between properties. Although a 165 foot long portion of the building is only six (6) feet from the western property line, the remainder of the existing building (520 feet) is located over thirty-five (35) feet from the property line. The proposed expansion will be fourteen (14) feet from the property line. Furthermore, the sixty (60) foot Carlson Street right-of-way provides additional separation between the properties to the west. When the property as a whole and the circumstances surrounding the landscape area is

considered, the intent of the regulations is met without requiring a landscape area.

Hamilton made a motion to approve a Variance to allow a reduction of the minimum twenty (20) foot landscape area along Carlson Street to zero (0) feet for a proposed addition to an existing building in the I-2, Industrial Park District with the following condition of approval.

1. The Variance shall be limited to the Site Plan, as proposed.

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

The Board made the following findings of fact for the Exception at 520 McCall Road:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject site currently complies with all applicable regulations, other than that for which the Exceptions are requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Front Yard Setback

There should be minimal effects on adjacent property if the proposed addition is allowed. Properties to the north and west are zoned I-2, Industrial Park District, and produce similar types and intensity of uses. To the west and south of the subject property are lots zoned C-5, Highway Service Commercial District and C-6, Heavy Commercial District. The C-5 district to the east of the subject property is Orschlen Farm and Home Supply business. To the south is the Best Western Hotel. Any business activity on the subject site will occur along Carlson Street and away from the adjacent C-5 district properties. The current use of the existing loading dock has at times negatively impacted the property to the west. The proposed warehouse addition may increase the amount of truck traffic along Carlson Street, which could adversely impact the neighbors to the west. The proposed addition is to be aligned with the current building. If the buildings were not aligned, the façade would have a discontinuous and inconsistent frontage causing an odd curb side appearance and disturbing the internal floor plan.

Gravel Driveway/Parking

The gravel parking lot, that was granted a temporary Exception in January 2009, is still in use and would like to be continued. Off-street parking and drives and aisles are required to be paved surfaces because they control dust and soil erosion, while making buildings more handicapped accessible. The gravel parking area being requested may generate a continued amount of dust and erosion, which could have a potential impact on surrounding properties. The property immediately to the south, 601 E. Poyntz Avenue, has a hotel located along its southern boundary line. The proposed gravel parking would be approximately 87 feet north of the building, separated by a paved parking lot on the hotel's property. Located to the west of the subject site at 600 McCall Road, separated by Enoch Lane, is triangular shaped lot. The proposed gravel area would be around 700 feet from the commercial building located on the site. The gravel area and building are separated not only by Enoch Lane, but by a large open area and paved parking lot. The property immediately north of the east half of the proposed gravel parking area is a vacant lot. The property immediately to the west is owned by GTM,

in which an approximant 207 stall concrete parking lot was recently constructed. The edges of the concrete lot will be lined with parking stalls, with approximately 105 stalls placed in the middle of the lot arranged in four parallel aisles. All surrounding properties are zoned either C-5, Highway Service Commercial District or I-2, Industrial Park District. Considering all facts, the gravel parking area should have minor impacts on adjacent properties. The gravel parking could however provide adequate parking for GTM Sportswear Employees, which could possibly lessen the congestion caused by the on-street parking along Carlson Street.

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

There are two ten (10) foot utility easements on the property. One is along the east side of Carlson Street. Although a 177 foot long portion of the building encroaches on this easement by approximately by five (5) feet, the rest of the current and proposed addition is clear of the easement. The second utility easement is along the south property line of Lot 1, GTM Sportswear Addition, Unit 5 and will not be affected by the proposed addition. Minimal adverse effects on the health, safety and welfare of the public are expected.

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

Front Yard Setback

The subject site is a unique lot with frontages along McCall Road, Carlson Street, Enoch Lane, and E. Poyntz Avenue; therefore, it is considered to have four front yards. Both the existing building and the proposed addition have limited separation from Carlson Street. Carlson Street is a cul-de-sac providing access to only five zoning lots and sees limited daily traffic from these abutting properties. In 1995 the private through street, Carlson Street, was dedicated as a public street. The reduction in the front yard setback along Carlson Street from fifty (50) feet to fourteen (14) feet will allow the proposed warehouse addition to be aligned with the existing building. The proposed location for the addition does not encroach into any utility easements or vision triangles. To require strict application, the proposed addition would have to be offset from the existing structure by approximately thirty-six (36) feet to meet the front yard setback of fifty (50) feet, which would disturb the internal floor plan and cause an inconsistent street frontage. The complete proposed lot coverage is approximately 36 percent, which is under the maximum allowable lot coverage of 50 percent for the I-2, Industrial Park District. When all facts and circumstances are considered, strict application is unreasonable and unnecessary.

Gravel Driveway/Parking

The applicant is seeking to use gravel as opposed to a paved surface for two years because this portion of the site “will likely be used in the future for expansion of the GTM Sportswear facility...”. The applicant has explored other options, including asphalt millings, yet has determined this would not be a suitable material for what will likely become a future building area. Applying strict application of the regulation would be unreasonable, because the applicant would be required to pave the proposed parking area, only to remove it a few years later for likely building expansion. The applicant even states that the growth of GTM Sportswear, “...has created a situation where building expansions are nearly continuous...”.

Dillon made a motion to approve an Exception to allow a front yard setback reduction from fifty (50) feet to fourteen (14) feet along Carlson Road; and the continued use of a temporary gravel driveway and off-street parking areas for a period of two years in the I-2, Industrial Park District with the following conditions:

1. The addition shall be constructed according to the application and site plan documents.
2. All applicable permits shall be obtained.
3. The temporary gravel off-street parking and driving aisles shall continue to conform to the requirements of Article VII, Off-Street Parking and Loading, and minimum side yard setbacks, within two years of the date of approval of the Exceptions.
4. The temporary gravel off-street parking and driving aisles shall only be located on the areas designated by the site plan.
5. The temporary gravel off-street parking and driving aisles shall be maintained in good condition to prevent blowing dust.

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

Aistrup adjourned.

Respectfully Submitted,

Ashley Myers, Planning Intern

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