

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, January 11, 2006
7:00 PM

MEMBERS PRESENT: Chuck Jackson, Chair Person; Connie Hamilton, Harry Hardy, Daniel Morin

MEMBERS ABSENT: Calvin Emig

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Jeremy Frazzell, Planner

CONSIDER THE MINUTES

Hamilton asked for an addition to the minutes and moved to approve the December 14, 2005 minutes which was seconded by Hardy and passed with a vote of 3-0.

Hardy moved to remove the item from the Table. Hamilton seconded the motion, which passed on a vote of 3-0.

Morin joined the board.

A PUBLIC HEARING TO CONSIDER A VARIANCE TO NOT PROVIDE SIGHT OBSCURING SCREENING OF NOT LESS THAN SIX (6) FEET IN HEIGHT, BETWEEN THE PARKING AREA AND THE ADJACENT RESIDENTIAL PROPERTY FOR AN EXISTING OFF-STREET PARKING AREA CONTAINING MORE THAN SIX (6) PARKING SPACES LOCATED AT 1020 BLUEMONT AVENUE IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT WITH M-FRO, MULTI-FAMILY REDEVELOPMENT OVERLAY DISTRICT. (APPLICANT/OWNER: P. BERNARD, EMILY, MARLENE IRVINE AND ROBERT SHIVLEY) THIS ITEM WAS TABLED FROM THE NOVEMBER 9, 2005 AND THE DECEMBER 14, 2005 BOARD OF ZONING APPEALS MEETINGS.

Frazzell presented the staff report with a recommendation for denial of the variance.

Jackson opened for public comment.

Robert Shivley, 412 Ehlers, one of the owners of 1020 Bluemont, thanked the board for hearing the request and explained the applicants had made every effort to comply with city regulations and stated that prior to this request, no other variances had been requested. He said they had in some areas of the project, exceeded normal city regulations. He explained their intent was to build the fence however later on decided the fence could pose hazards to users of the alley, which is why they were asking for the variance. He further explained how the applicants felt the request did meet the standards for granting a variance.

- Uniqueness of the property: He stated south of the alley is primarily parking area west to east. He stated the block on both sides of the alley was primarily comprised of rental property, with approximately 71 rental units, 2 people per unit with generally 142 residents that use the alleyway for getting into and out of their parking spaces. He stated the property is close to Aggieville with a large amount of foot traffic through the alley.

- Impact to neighborhood: He said they would be screening only a parking lot to the east. He said to the west there is a section of the apartment building, approximately 30-feet which is next to the parking lot. Other than a small part of the building, the required screening is primarily along a parking area.
- Unnecessary Hardship: He said they don't want to create a condition which is unsafe to the tenants or users of the alley. A user of the parking space adjacent to the end of the alley, would have difficulty backing in and out of the space due to proximity to the fence.
- Adverse Effect on Public Safety and Health: He said granting the Variance would make the area safe for vehicle and pedestrian traffic.
- Appose Spirit of Regulation: He said granting the Variance would not appose the spirit of the regulation. He said one of the intents of the regulation is to minimize the impact to the neighbors but in essence they would be screening off parking lots. He said the density of the neighborhood is fairly uniform. He said in the past, specifically 1983 and 2004, the board had granted similar Variances. He stated they would be willing to place a fence along the portion of the parking lot to screen the neighboring building to the west from the parking area and then stop to prevent screening the two parking areas. He stated the building to the east is generally in line with the apartment building and didn't see a reason to screen the two parking areas.

Delbert Wilks, 7760 Bent Tree, property owner of 1010 Bluemont, said he doesn't totally agree with the zoning requirement for the fences; however he stated that it is a zoning regulation that the applicants were aware of when they applied for a building permit. Wilks said he has constructed two other 12-plex apartment buildings, one at 1105 Ratone, and another at 1118 Vattier and was required to install the fences. He disagreed with the applicant's statement that they had been in compliance. He stated the applicants had allowed occupants into the building prior to having all landscaping and fencing in and prior to obtaining a certificate of occupancy. He further stated that if the board agreed to grant a variance to the request, he would expect the same type of treatment for his additional 12-plex buildings being constructed at 1010 Vattier and 1015 Kearney. He also stated that the 1020 Bluemont property does not meet ADA requirements. He ended by saying that the applicants should have requested the variance prior to the building permit being issued.

Shivley addressed Wilks comments and said they became aware of the problem towards the end of construction. He said his partners had built other investment properties but nothing of this scale; therefore in part the construction of this complex was a learning experience. He said the property had been inspected and approved therefore he could not address the statement that the property did not meet the ADA requirements. He said the weather did not permit the striping of the parking lot.

Wilks further questioned the applicant when the certificate of occupancy was issued.

Jackson closed for public comment and opened for board discussion.

Hardy said he struggled with the ability to support the request given the standards required for the variance, in particular "unique to the property" as he didn't see anything unique and "strict application" the applicant was initially ready and able to provide the fence. He said he was inclined to support city staff's recommendation for denial.

Hamilton said she was inclined to support staffs recommendation, but said she thought Mr. Shivley made the best presentation possible based on the facts. She said she had a hard time understanding how just being grandfathered makes the property unique to satisfy the standard "conditions unique to the property". She continued by saying however that in order to reduce the height of the fence the standard

would have to be met. She continued by saying there was enough difference in this property compared to the properties south of Bluemont that recently received similar variances as there are residential units facing right into the parking lot on the west side of the property. She said on the east side, the lot will remain as a single lot and the only way to develop that lot in a good way is to have the screening. The presence of the single lot and the residential unit on the west make enough difference to distinguish this property from the properties to the south. She said she did find enough unique condition to the property to get a reduced fence but not enough to lift the standard.

Morin said he was going with the recommendation of city staff. He said the applicant stated conditions unique to the neighborhood and not to the property. He said the action was created by the applicant which did not meet the standard. He echoed Hamilton by stating trying to fit as many cars into one area seemed to him as trying to maximize revenue through a property and is a problem that needs to be addressed. He said the safety concern was not an initial reason for the plea given the letter submitted by Marlene Irvine. He said the variance request is definitely opposed to the intent of the regulations. He said he was not going to make a decision based on the statement that the request had been approved in the past. He finally stated that the zoning letters stating the noncompliance did not reflect addressing the concern in a timely manner.

After discussion, the board decided they can not meet the standards to allow for a reduction in the fence.

The Board made the following findings of fact for the Variance at 1020 Bluemont Avenue:

1. There are no physical conditions unique to the property which would prevent the applicant from complying with the Manhattan Zoning Regulations. The applicant combined two lots in 2004 to create one large lot for an apartment complex. In doing such, the applicant created a need for twenty-six (26) off-street parking spaces. Regulations at that time did not prevent off-street parking spaces directly off the alley. The location of the off-street parking spaces and the current extent of the parking area therefore could be considered a unique condition to the property now with respect to the screening requirement, despite the fact that the applicant created the condition.

2. To the east is a rental property with two units and a large gravel parking lot behind it which is screened on the east side. The house is required to have four off-street parking spaces, but is not required to provide screening. The apartment building at 1020 Bluemont is a more intensive use than the house to the east, and the increase in vehicle traffic might have an intrusive effect to the east neighbor. The following building to the east, 1010 Bluemont, is a twelve unit apartment building which attained a building permit in July 2004 and installed a six (6) foot high privacy fence to screen the parking area from the neighboring properties.

To the west is 1026 Bluemont, an apartment building which has approximately twelve (12) units and twenty-four (24) off-street parking spaces. 1026 Bluemont received a variance in 1983 to not provide screening for the off-street parking spaces located off of the alley. The Board found screening the neighbor to the east could severely limit the vision of a driver trying to back out onto the alley, and there might be little reason to screen the alley parking from the existing parking to the east. Although both findings could be relative to this Variance request, in this situation, the southwest portion of the parking area at 1020 Bluemont Avenue is adjacent to the northeast portion of the apartment complex at 1026 Bluemont. Requiring the screening would provide privacy to the tenants of those apartments adjacent to the parking area at 1020 Bluemont.

Directly north is an alley followed by a parking area for a house which appears to have been converted

into a rental property. The parking area for the house is off the alley and is screened to both the east and west by six (6) foot high privacy fences from adjacent apartment buildings. South of the parking area at 1020 Bluemont is the apartment building structure followed by Bluemont Avenue. The apartment building generally screens the parking area from Bluemont Avenue and subsequent properties to the south.

Sight obscuring screening consisting of six (6) foot high, wood fencing is characteristic of the block between 11th Street and 10th Street, south of Vattier Street and north of Bluemont Avenue. In general, six (6) foot high, wood privacy fencing is not uncommon throughout the neighborhood or the R-3 and M-FRO residential districts.

3. Requiring strict application of the regulations would require the applicant to screen the parking area with six (6) foot high screening – whether attained through “walls, fences, hedges, berms, evergreen trees or any combination thereof that substantially obstructs structures or land uses from view.” Given the fact that the applicant intended on providing a six (6) foot high fence to screen the parking area at the time the building permit was issued, there is not an unnecessary hardship from the strict application of the regulations.

4. Given that off-street parking stalls are placed directly off of the alley, requiring six (6) foot high screening along the full extent of the parking area may have an adverse effect on users of the alley as the screening may limit the vision of a driver backing out onto the alley.

5. The intent of the regulations related to the screening of off-street parking is to mitigate the negative impact of parking lots, including the light and noise produced by automobile traffic, so that the quality of life for residents of adjacent properties is not diminished. Screening the proposed off-street parking area at 1020 Bluemont would separate residential units to the west (1026 Bluemont) and screen a lower intensity use to the east (1014 Bluemont).

Through the recent change in zoning, the ten hundred block of Bluemont has been allowed to increase in density. Recent construction in 2004 however, may reveal that apartment complexes have been constructed with as many units as parking will allow. In doing such, parking has been squeezed onto the lot, and in some circumstances, allowed directly off the alley. In December 2004, City Administration created parking lot design regulations which now require a specific amount of distance between off-street parking spaces and the alley. The current zoning regulations require that parking areas containing more than six (6) off-street parking spaces be screened, therefore if a builder places parking along the alley, screening is required up to the alley. If the Board identifies a possible vision problem with screening the entire parking area, City Administration recommends allowing the screening to be reduced from six (6) feet to not less than three (3) feet for no greater distance than eighteen and a half (18.5) feet from the north property line (length of a typical parking stall). This would maintain the intent of the regulations as well as prevent the applicant from creating a possible safety concern associated with backing onto the alley for their residents and the general public. Requiring the screening would allow the more intensive use to be screened from lower intensive uses as well as provide privacy to adjoining residents.

Hardy moved do deny a VARIANCE to not provide sight obscuring screening of not less than six (6) feet in height, between the parking area and the adjacent residential property for an existing off-street parking area containing more than six (6) parking spaces located at 1020 Bluemont Avenue, Lot 623 & 624 Ward 3, in the R-3, Multiple-Family Residential District and M-FRO, Multi-Family Redevelopment Overlay District.

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

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION IN THE WEST SIDE YARD SETBACK FROM A MINIMUM SIX (6) FEET TO FIVE (5) FEET FOR A RECENTLY CONSTRUCTED ENCLOSURE AND MODIFIED ROOF OVERHANG ON AN EXISTING RESIDENTIAL STRUCTURE LOCATED AT 1114 VATTIER STREET IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT WITH M-FRO, MULTI-FAMILY REDEVELOPMENT OVERLAY DISTRICT. (APPLICANT/OWNER: KAIL KATZENMEIER)

Frazzell presented the staff report and recommended approval of the Exception.

Hamilton clarified that the roof overhang was decreased from its previous extent, and asked for further clarification of the phrase in the staff report “increased the nonconformity”.

Frazzell explained that previously the structure was in noncompliance because of the extent of the roof overhang. When the applicant enclosed the area under the staircase, the enclosure also encroached into the setback which increased the degree of nonconformity. Had the applicant only decreased the roof overhang without enclosing the staircase, it is possible there would not have been a need for the Exception.

Kail Katzenmeier, 1083 Wildcat Creek, property owner, said that he had a signed letter stating that the builder would be responsible for all permits, and the builder had deemed it was not necessary for a permit because they were simply enclosing something that existed. He explained the modification to the roof was a huge improvement, and clarified that the actual structure is not encroaching into the setback, only the overhang is encroaching by approximately six inches.

Morin asked to view the letter and asked if the complaint that initiated the Exception was from a neighbor. Katzenmeier said it was from a crew that was working in the area.

Jackson closed for public hearing and opened for board discussion.

After discussion, Hamilton and Hardy determined that the enclosure does not encroach into the side yard setback, only the overhang and gutters encroach into the setback.

Morin stated he appreciated the letter, said there seemed to be a good faith effort, and said he could support the request.

The Board made the following findings of fact for the EXCEPTION at 1114 Vattier Street:

A. The enclosed addition has increased the degree of existing nonconformity. The applicant did not obtain a building permit prior to construction and a complaint from the public led to City Administration contacting the owner. A building permit application was submitted to City Administration after contacting the owner and after completion of the addition. If the Exception is granted, the modified structure will be required to meet all code requirements. The property currently complies with all applicable zoning regulations except for what the Exception is being requested.

B. North is an alley followed by a single-family residence used as student rental property. West is a large multi-family apartment complex. East is a multiple family dwelling with two or three dwelling units. South is a recently constructed multiple-family apartment complex. The surrounding properties are not anticipated to be adversely impacted by the proposed reduction to the side yard setback. The recent modification may be an improvement to the residential structure which may help to enhance the surrounding properties and neighborhood.

C. The enclosure and reduction of the overhang should not adversely impact the general health, safety or general welfare. The recent modifications might help to improve the aesthetics of the general neighborhood which might provide an improved quality of life to residents and the general public.

D. According to the applicant, the modification was done to improve the existing residential structure and aesthetics of the neighborhood. "It was not known by the applicant at the time that such a change would cause a setback issue. This previously existing roof cannot be repaired properly without a minimal "overhang" which created the setback issue." The modification to the roof overhang is more uniform with the existing structure than what previously existed. The improvement is not aesthetically uncharacteristic of other properties throughout the neighborhood. The purpose of the overhang and gutter is to help divert water away from the walls and foundation. "The purpose of the enclosed addition is to allow basement access from the main floor without going outside." The side yard setback encroachment is minimal and the neighboring multi-family apartment complex use to the west should not be adversely impacted by the encroachment. When all facts and circumstances are considered it is unreasonable and unnecessary to require strict application of the regulations.

Hardy moved to approve an EXCEPTION to the west side yard setback from a minimum six (6) feet to five (5) feet for a recently constructed enclosure and modified roof overhang on an existing residential structure property located at 1114 Vattier Street in the R-3, Multiple-Family Residential District with M-FRO, Multi-Family Redevelopment Overlay District with the following conditions:

1. The overhang, gutter, and the enclosed addition shall conform to all applicable codes.
2. The Exception shall be limited to the existing overhang, gutter and enclosed addition on the west side of the existing structure as presented in the site plans and application documents.

Hamilton seconded which passed 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE FRONT YARD SETBACK ALONG SOUTH 8TH STREET FROM A MINIMUM FOURTEEN (14) FEET TO SEVEN (7) FEET FOR A PROPOSED ADDITION TO AN EXISTING RESIDENTIAL STRUCTURE LOCATED AT 731 COLORADO STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH THE TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE EXCEPTION IS RELATED TO A PROJECT ADMINISTERED BY THE CITY OF MANHATTAN, COMMUNITY DEVELOPMENT DEPARTMENT. (APPLICANT/OWNER: CITY OF MANHATTAN/FRANCIS CRAIG)

Frazzell presented the staff report and recommended approval of the Exception.

Jackson opened the public hearing, however with no discussion he closed the public hearing and opened for board discussion.

Morin stated he was in full support of the request.

Hamilton said she could support the request and stated that the family came to be present for the hearing past their bedtime.

Hardy said he could also support the request.

The Board made the following findings of fact for the EXCEPTION at 731 Colorado Street:

A. The west 37½-feet of Lot 72, Ward 5 does not meet the current minimum lot width and lot area requirements of the R-1, TNO Districts. Between 1967 and 1968, the east 12½-feet of Lot 72, Ward 5 was sold, which created a nonconforming lot. An existing detached garage structure is located in the southwest portion of the lot, which does not currently meet the minimum front yard setback requirements along South 8th Street. No improvements or modifications are proposed at this time for the existing detached garage structure or the use, therefore an Exception is not required at this time. The property currently complies with all applicable regulations other than the aforementioned and for what the Exception is requested.

B. North of the proposed building addition is Colorado Street followed by the Family Center Budget Shop. East is a single-family residence. West is South 8th Street followed by a single-family residence. South is an alley, followed by the rear yard of a single-family residence.

The location of the proposed addition will be consistent with the west side of the existing structure and is not anticipated to have an adverse impact to the surrounding neighborhood. The proposed 12-foot by 12-foot addition will be professionally constructed and will utilize complementary materials and colors. No adverse impacts to adjacent properties or surrounding neighbors are anticipated with granting the proposed Exception.

C. The proposed addition will improve the conditions of the existing structure which will in turn have a positive effect on the occupants as well as the health, safety and general welfare of the community.

D. The lot is a corner lot with front yards on both Colorado Street and South 8th Street. The underlying R-1 District requires a front yard setback distance of twenty-five (25) feet from the front property line. The Traditional Neighborhood Overlay District allows structures to be setback a minimum of fourteen (14) feet from the front property line on each side abutting a street. The existing house with overhangs and gutter is approximately seven (7) feet from the front property line on South 8th Street which does not meet the R-1 or TNO minimum front yard setback. The lot does not meet the minimum lot width or lot area for a single-family detached dwelling and has been in this state since the mid 1960's. The property owner did not create the existing structure or the current conditions of the lot. Given the placement of the

structure on the lot, the house has never met the minimum setback requirements along South 8th Street. The proposed addition could be adjusted to meet the minimum setback requirements however doing such would defeat the purpose of the addition, which is to provide additional usable space to the applicant, provide safe indoor access to the basement, and to maintain consistency with the west façade of the existing house. When all facts are considered the Exception request is reasonable and strict application of the regulations is unnecessary.

Hardy moved to approve an EXCEPTION to reduce the front yard setback along South 8th Street from a minimum fourteen (14) feet to seven (7) feet for a proposed addition to an existing residential structure property located at 731 Colorado in the R-1, Single-Family Residential District with the TNO, Traditional Neighborhood Overlay District with the following conditions:

1. The proposed addition shall be constructed as outlined in the site plan.
2. The Exception shall be limited to the existing residential structure and proposed addition.

Morin seconded, which passed 4-0.

Jackson adjourned the meeting.

Respectfully Submitted,

Jeremy Frazzell, Planner

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