

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, February 8, 2006
7:00 PM

MEMBERS PRESENT: Chuck Jackson, Chair Person; Connie Hamilton, Calvin Emig, Daniel Morin

MEMBERS ABSENT: Harry Hardy

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

CONSIDER THE MINUTES

Hamilton moved to approve the January 11, 2006 minutes which was seconded by Morin and passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR A REDUCTION OF THE FRONT YARD SETBACK ALONG FAIRMAN DRIVE AT 3401 WOODDUCK WAY FROM A MINIMUM TWENTY-FIVE (25) FEET TO FIFTEEN (15) FEET FOR A PROPOSED FENCE IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: CHARLES EISENBERG AND YOUQI WANG)

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

Emig stated that according to the site plan, the applicants were not proposing the fence to be along the property lines. He further stated that fences typically run along side property lines. Frazzell responded stating that fences could be as close as zero feet along side property lines, but were not required.

Hamilton asked if 3401 Woodduck Way was an unbuildable lot where there might be a 14-foot setback. Steve Zilkie responded that this lot was not an unbuildable lot.

Hamilton expressed concern for the extent of the fence into the front yard and asked the applicant to state the reasons for wanting to place the fence as far into the front yard as proposed.

Charles Eisenberg, applicant and owner of 3401 Woodduck Way, stated that the proposed location of the fence was primarily for aesthetic and convenience reasons. He said they did communicate with the neighbors to the east as well as to the south and both neighbors did not express concern for the proposed fence.

Emig commented that the fence as proposed on the site plan has a two foot setback inside the property line and asked if the applicant intended on planting vegetation or shrubbery on the other side of the fence.

Eisenberg said they do plan on planting vegetation on the other side of the fence. He said they rent the house from his wife's parents, but they are responsible for all maintenance on the property.

Jackson closed for Public Hearing and opened for Board discussion.

Morin said he was in full support of the request and thanked the applicant for communicating with the neighbors.

Hamilton said there are alternatives to meet the setback requirements, however the uniqueness of the lot, the existing tree cover to help mitigate the impact of the fence as well as better serving their needs, and especially that older people are renting in the house, she is more sensitive to access off of pavements into backyards so that handicapped access isn't closed. She said she could support the request.

The Board made the following findings of fact for the Exception at 3401 Woodduck Way:

A. The property currently complies with all applicable regulations except for what the Exception is being requested.

B. Adjacent properties to the north, south, east and west are owner occupied, single-family residences. Woodduck Way borders Lot 8, Deer Run Unit 1 to the north and Fairman Drive borders Lot 8, Deer Run Unit 1 to the east. The proposed encroachment to the Fairman Drive front yard setback should not have an adverse effect on adjacent properties or the surrounding neighborhood. The style and magnitude of the proposed fence is characteristic and complementary of the neighborhood. Three trees will screen the proposed location of the fence. The proposed location, height, and style of the fence should not adversely impact the vision along Fairman Drive, Woodduck Way, or the neighboring driveways to the south and east. In addition, the neighbors to the direct south and east of 3401 Woodduck Way have submitted letters stating their approval of the proposed Exception.

C. No adverse impacts are anticipated through approval of the proposed Exception. The fence is proposed to be located within a utility easement which crosses east to west along the southern property line. The fence could be placed at zero feet along the south property line, a side yard of Lot 8, to generally prevent encroachment into the utility easement. Although the City does not encourage placing a fence in the utility easement, in this case, it should not have an adverse effect on the general public. The applicants have stated within the application documents that they understand the implications of placing a fence in the utility easement and accept responsibility for doing such. The proposed location of the fence will not obstruct the vision triangles along Woodduck Way or Fairman Drive.

D. Lot 8 is an odd shaped, corner lot with frontage on both Fairman Dr. and Woodduck Way. The R-2 District requires a minimum front yard setback of twenty-five feet along both Fairman Dr. and Woodduck Way. The intent of the regulation is to maintain uniformity of structure and building placement, keep front yards free of structures, provide open space along streets, and to protect sight distances and vision triangles.

Given the setback requirements and unique shape of the lot, the amount of usable space for a functional rear yard has been reduced by the location of the residential structure. The applicants have proposed a fence which will meet all zoning regulations other than the proposed encroachment into the Fairman Drive front yard setback. The extent of the fence will provide additional landscaping to the lot, create additional usable space within an enclosed functional rear yard, and allow access to an enclosed functional rear yard through a proposed gate from an existing walkway which connects to the driveway. The proposed fence is a convex, vinyl, picket style fence which will vary between four and five feet in height. The proposed style of the fence offers open space between the individual slats of the fence to create what the applicant states as a "see-through" fence. An arbor gate of similar style to the fence, is proposed in the northeast portion of the functional rear yard and will provide access to the

yard from an existing walkway. The fence and gate will not have a solid, blank wall appearance as might be representative of a solid wood privacy fence. The height, style, and proposed extent of encroachment into the front yard setback along Fairman Drive will not obstruct the vision of users of Woodduck Way or Fairman Drive. The proposed location of the fence is generally consistent with the façade of the homes to the south and the three trees located on the east portion of the lot will generally screen the proposed fence in the summer. The fence potentially could be realigned to meet the setback requirements and maintain consistency with the east façade of the house on Lot 8, however given the varying height characteristic and “picket fence” style of the proposed fence, as well as the general proximity of the proposed fence to Woodduck Way and Fairman Drive; strict application of the regulations is unnecessary when all facts and circumstances are considered.

Morin moved to approve an EXCEPTION for a reduction of the front yard setback along Fairman Drive at 3401 Woodduck Way from a minimum twenty-five (25) feet to fifteen (15) feet for a proposed fence in the R-2, Two-Family Residential District with the following conditions:

1. The Exception shall be limited to the fence as proposed in the application documents and site plan.
2. The fence shall be maintained in good condition.

Hamilton seconded which passed with a vote 4-0.

TABLE THE PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A DRIVE-IN ESTABLISHMENT ASSOCIATED WITH A PERMITTED RESTAURANT AT 1101 MORO STREET IN THE C-3, AGGIEVILLE BUSINESS DISTRICT. THE REQUEST IS BEING MADE FOR USE OF THE EXISTING DRIVE-IN ESTABLISHMENT WINDOW ON THE EAST SIDE OF THE BUILDING NOW KNOWN AS DAYLIGHT DONUTS. (APPLICANT/OWNER: GWYN RIFFEL/ANTHONY AND ANDY MOEDER)

Emig moved to TABLE the Conditional Use to the March 8, 2006 Board of Zoning Appeals meeting to allow further site plan review and application documentation.

Hamilton seconded which passed with a vote 4-0.

Chuck Jackson closed the Public Hearing.

Respectfully Submitted,

Jeremy Frazzell, Planner

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