

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, March 9, 2005
7:00 PM

MEMBERS PRESENT: Connie Hamilton, Daniel Morin, Chuck Jackson, and Harry Hardy

MEMBERS ABSENT: Calvin Emig

STAFF PRESENT: Steve Zilkie, Senior Planner

CONSIDER THE MINUTES OF THE FEBRUARY 9, 2005, BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the February 9, 2005 minutes. Jackson seconded the motion, which passed with a vote of 4-0.

TABLE THE PUBLIC HEARING TO THE APRIL 13, 2005, BOARD OF ZONING APPEALS MEETING FOR A VARIANCE TO ALLOW AN EXISTING INTERNALLY ILLUMINATED SIGN FOR ST. THOMAS MORE CATHOLIC CHURCH, AT 2900 KIMBALL AVENUE, LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: ROGER SCHULTZ.)

Zilkie said the Notice of Public hearing was incorrect for the application and would have to be re-published for the March Board of Zoning Appeals meeting.

Jackson moved to table the request to the March 13, 2005, Board of Zoning Appeals meeting in order to re-publish the Notice of Public Hearing. Hamilton seconded the motion, which passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE/EXCEPTION FOR A PROPOSED EXPANSION OF A LEGALLY NONCONFORMING TWO-FAMILY RESIDENTIAL DWELLING UNIT, WHICH IS LOCATED AT 303-307 SOUTH 16TH STREET. THE EXISTING TWO-FAMILY DWELLING UNIT IS LOCATED IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH THE TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT AND OWNER: GARY STOWE.)

Zilkie presented the staff report and recommended denial. He described an alternative floor plan provided by the applicant and said that City Administration was concerned that the floor areas designated for uses other than bedrooms could easily be used for bedrooms. He said that the floor area should be self-regulating.

Hardy asked what staff's opinion would have been if the alternative had been proposed. Zilkie said it was his opinion that the floor area could be used for bedroom space, which may not be the applicant's intent, but a future owner could use the space for bedrooms.

Jackson asked for staff's thoughts regarding a change in the floor plan to allow two bedrooms in the basement and the modification of the upper floors? Zilkie said that based on bedroom size in the existing dwelling unit, two persons could live in the unit, or a total of four in the two-unit dwelling. This is equivalent to the number of unrelated that can occupy a single-family dwelling. If the basement was designed with two bedrooms in each unit, there is a possible occupancy of four persons per unit, or a total of eight persons in the two-unit dwelling.

Hardy opened the public hearing.

Gary Stowe, applicant/owner, said that he is attempting to utilize the vacant basement space to make the units more functional. He indicated his first choice was to convert the building to a single-family home, but its configuration is too unusual. He agreed that an expansion into the basement was that it could be used for occupancy and did not disagree with staff.

Sandy Chandler, 1530 Pierre Street, spoke against the request. She said the dwellings have been used as one bedroom units and added unrelated student occupancy will likely lead to the common problems associated with student occupancy.

Susan Kelly, 1600 Pierre Street, spoke in opposition to the expansion.

Hardy closed the public hearing.

Hamilton agreed with the staff's findings. She said the expansion would be contrary the downzonings and the efforts to stabilize the neighborhood.

Morin asked how long the dwelling had been vacant and if the problems were structural. Stowe said there is a serious foundation problem and is waiting for a decision to decide which direction to go on repairs. He said the building has been vacant since July 2004, when leases were terminated.

Morin asked Chandler if she knew if the building had been consistently occupied over time. She said it had been consistently occupied.

Hardy, Morin and Jackson indicated they agreed with the staff report and the use should continue in its current configuration.

The Board made the following findings of fact:

1. THAT THE SIZE OF THE ZONING LOT IS NOT INCREASED FROM THAT WHICH CURRENTLY EXISTS

The subject property is Lot 280, Ward 6, which measures 50 feet in width (east to west) and 150 feet in depth (north to south) , and is 7,500 square feet in area. Lot 280 is a corner lot with front yards on South 16th Street and Pierre Street. Lot size does not change.

2. THAT EITHER: (A) THE CURRENT EXISTING USE DOES NOT HAVE A SIGNIFICANTLY ADVERSE IMPACT UPON EITHER THE SURROUNDING NEIGHBORHOOD OR THE PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, AND THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL NOT WORSEN SUCH IMPACT; OR, (B) THAT THE CURRENT EXISTING USE DOES HAVE SUCH A SIGNIFICANTLY ADVERSE IMPACT AND THE GRANTING OF THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL BE MORE LIKELY TO REDUCE OR ELIMINATE SUCH IMPACT THAN A DENIAL OF SUCH PROPOSAL

The existing use as a two family residential dwelling unit consisting of one bedroom per dwelling unit does not have any known adverse effects on adjacent properties or the public. The dwelling has been a part of the neighborhood for a lengthy time frame and there are no complaints about the subject property on record, with the exception of the need to remove a third illegal dwelling unit from the basement in 1984.

The applicant is proposing to modify the basement by splitting in it half, and add two bedrooms in the basement for each unit, which would increase the number of total bedrooms from two existing bedrooms, one per unit, to six bedrooms, or three bedrooms in each unit. The surrounding blocks are predominately a single-family neighborhood in character, with a mixture of two-family dwellings (structure built as a two-family dwelling) and single family conversions to two-family dwellings.

It is likely that there would be an adverse effect on adjacent properties if the use of the subject property were allowed to increase its density from an existing two bedrooms to a proposed six bedrooms. Modernization of the basement to provide living space without adding bedrooms would not be seen as an increase in intensity depending upon the functional use and improvement. Any change which increases the opportunity for additional persons to live in either dwelling unit can be seen as a potential adverse impact on the neighborhood, which is zoned R-1 District.

The Zoning Regulations indicate that a legally nonconforming use shall be deemed a conditional use in the zoning district in which it is located. In general, a legally nonconforming use cannot be expanded, enlarged or increased in intensity beyond that which existed when it became legally nonconforming unless a conditional use is approved. An expansion, enlargement or increase in intensity is the use of additional structures, land area, or floor space within the same structure not originally designed or arranged for such use.

The use of the subject property as a two-unit dwelling with one bedroom in each unit may continue as has been determined by an Opinion of Nonconformance. If additional bedrooms are allowed to be established in the basement, an increase in intensity will result and may adversely impact the neighborhood. The use of the basement area as a family room, storage, laundry room, etc., may not be seen as increasing the intensity. The basement was originally intended for use by each unit as garage space, when constructed. The enclosure of the garage in 1950 does not appear to have resulted in the basement being used as an extension of the existing main floor. No record of the extension of the main floor to include the basement has been provided.

The subject property currently has no off-street parking provided. The Zoning Regulations require a minimum of two off-street parking spaces per unit for two-family residential dwelling units. The applicant is proposing four off-street parking space and six bedrooms total. This may require two of the residents to use on street parking if the dwelling units are occupied by unrelated persons. There may be an adverse impact on adjacent properties as a result of added on-street parking.

3. THE PROPOSED CONDITIONAL USE COMPLIES WITH ALL APPLICABLE PROVISIONS OF THESE REGULATIONS, EXCEPT FOR THOSE EXISTING CONDITIONS THAT ARE LEGALLY NONCONFORMING; HOWEVER, THE PROPOSAL MAY CONTAIN REQUESTS FOR EXCEPTIONS TO SUCH REQUIREMENTS AS PROVIDED IN PARAGRAPH (F) HEREINAFTER

The proposed Conditional Use is inconsistent with the intent to not increase the intensity of a legally nonconforming use. An increase in occupancy may adversely affect the neighborhood and is contrary to the rezoning of the neighborhood to R-1/TNO District.

The Manhattan Zoning Regulations allow for the basement foundation walls to be repaired without the Conditional Use, due to their unsafe and hazardous condition.

No exceptions are required.

4. THE EXISTING USE CONTINUES IN A SUBSTANTIALLY SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE IT MORE MODERN OR EFFICIENT.

The applicant is proposing to continue the use as a two-family residential dwelling unit. However, four additional bedrooms are proposed in the basement, or six total bedrooms compared to an existing two total bedrooms in the structure. The change is not a substantially similar form to the two-family dwelling unit as it has been historically used. Alterations to the basement may be necessary to make the unused vacant space usable living area, for example a laundry room, mechanical space, or other space that does not increase, or accommodate, the occupancy of either or both halves of the two-family dwelling unit. It is possible for this use to continue in a similar form and alter the basement to create a more modern and efficient use, without increasing intensity of occupancy.

Hamilton moved that the Board deny the Conditional Use to expand a legally nonconforming two-family residential dwelling unit at 303-307 South 16th Street which is located in the R-1, Single-Family Residential District, with TNO, Traditional Neighborhood Overlay District, based on the findings in the staff report.

Jackson seconded the motion, which passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW AN INCREASE OF THE MAXIMUM LOT COVERAGE FROM FORTY (40) PERCENT TO FIFTY-THREE (53) PERCENT; A DECREASE IN THE FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO TWELVE (12) FEET ALONG KEARNY STREET; A DECREASE IN THE FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO NINE AND A HALF (9 ½) FEET ALONG NORTH MANHATTAN AVENUE; AND A REDUCTION OF THE REQUIRED ONE-FOOT ROOF EAVE OVERHANG ON A RESIDENTIAL BUILDING FOR PORTIONS OF THE ROOF, ALL FOR A PROPOSED SIX (6) DWELLING UNIT APARTMENT BUILDING AT 1000 NORTH MANHATTAN AVENUE. THE PROPERTY IS IN THE R-3, MULTIPLE-FAMILY RESIDENTIAL DISTRICT, UO, UNIVERSITY OVERLAY DISTRICT, WITH M-FRO, MULTIPLE-FAMILY REDEVELOPMENT OVERLAY DISTRICT. (APPLICANT AND OWNER: STAN AND ROSEMARY HOERMAN.)

Zilkie presented the staff report and recommended approval.

The Board expressed concern about the relationship of the proposed Aggieville-Campus Edge Master Plan as a basis for meeting the Variance standards, specifically, “The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant”, and, “the strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.” It was noted by Zilkie that the regulations advertised for consideration to allow a Variance could also be considered, subject to the standards for an Exception. There was an apparent communication problem between the staff and applicant’s consultant, but the application documents indicated Exceptions were requested. Zilkie suggested that rather than table or deny the Variance request, the applicant should withdraw the request and the application would be re-advertised as an Exception. Zilkie said the application would be re-advertised, at not cost to the applicant.

The Board took a ten minute recess.

After the recess and further discussion between the Board, Ken Ebert and staff, Ebert, speaking on behalf of the applicant, withdrew the Variance request.

ELECTION OF BOARD CHAIRPERSON AND VICE-CHAIRPERSON.

Hamilton nominated Jackson as Chairperson. Hardy seconded the motion, which passed on a vote of 4-0.

Jackson nominated Hamilton as Vice-Chairperson. Morin seconded the motion, which passed 4-0.

Respectfully Submitted,

Steve Zilkie, Senior Planner

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