

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, October 12, 2005
7:00 PM

MEMBERS PRESENT: Connie Hamilton, Chuck Jackson, Harry Hardy, Calvin Emig, Dan Morin

MEMBERS ABSENT: None

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

CONSIDER THE MINUTES

Hardy moved to approve the September 14, 2005 minutes which was seconded by Emig and passed with a vote of 4-0.

TABLE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION TO THE TNO, TRADITIONAL NEIGHBORHOOD OVERLAY REQUIREMENT FOR A NEW DRIVEWAY LOCATED WITHIN A FRONT YARD AT 322 SOUTH 17TH STREET, IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH THE TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT.

Connie Hamilton moved to table the Exception requested at 322 S. 17th Street which was seconded by Harry Hardy and passed with a vote of 4-0.

TABLE THE PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE ACCESSORY USE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK TO TWENTY (20) FEET FOR A DOG PEN AND TO FORTY-FIVE (45) FEET FOR A SHED AT 3501 ENGLEWOOD IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT.

Harry Hardy moved to table the request for the Exception for the property located at 3501 Englewood which was seconded by Connie Hamilton and passed with a vote of 4-0.

Morin joined the Board.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO SEVEN (7) FEET FOR THE EXTENSION AND ENCLOSURE OF A CARPORT INTO A GARAGE AT 2406 REBECCA RD, IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT.

Frazzell presented the staff report.

Emig identified that the revised staff report had a change in wording from chair lift to porch lift. He asked why the change was made. Frazzell said that it had been addressed that there was a difference between a chair lift and the proposed porch lift. Frazzell explained that a chair lift is a lift along a stairway while a porch lift is similar to an open elevator structure. Emig asked that it be noted in the findings that the staff report had been revised.

Jackson opened for public comment.

Ray Weisenburger, consultant, addressed Emig's question about the difference between the terminology in a chair lift and porch lift. He explained that he and the Shanlines put the proposal together for the Exception with the best available information, but became nervous with the exact placement on the site, as everything would have to fit perfectly or it wasn't going to work. Therefore they decided there was a need for a survey, which identified discrepancies in the original application and is why the revision was necessary.

Larry Hackney, ADA coordinator for the City of Manhattan, and Human Resources Specialist. He explained that he has been to the site and didn't see any negatives on what has been proposed. He said that the project is a practical enhancement, with one of the primary purposes to keep the Shanlines in their own home as long as they can stay there, which is a good thing. He continued by saying that there is a lack of ADA accessible rental housing in the area, and having the opportunity to add accessible housing to the area is a good thing for the City of Manhattan.

Hardy said he could support the request based on the revised staff report. He asked to strike the second sentence in the strict application section of the staff report. He said the project was a good improvement to the property.

Hamilton said she could support the application. She thanked the Shanlines for taking the initiative to have a survey completed and she thanked Larry Hackney for evaluating the ADA proposal and addressing that the proposal is reasonable and workable. She continued by saying that the request is a minimal exception over what they already have and they gain a lot and so she could support it.

The Board made the following Findings of Fact for the Exception based on the revised staff report:

A. A Variance was granted in 1970 to reduce the front yard setback from twenty-five (25) feet to twelve (12) feet for a carport. The carport was built with an eight (8) foot setback and not the twelve (12) foot setback, which was originally granted. If the proposed Exception is granted, Lot 8, N. Timberland Addition will comply with all applicable regulations.

B. The neighborhood is located on the side of a hill, generally north of Anderson Avenue, and

accessed by Rebecca Road to the west and Woodland Street to the east. The subject property is located on Rebecca Road, generally on the ridge line of the hill. Dense vegetation, mostly consisting of large mature trees and shrubbery, surrounds the neighborhood generally screening individual properties from one another. On the subject property, the topography conditions required the existing carport and driveway to be cut into the side of the hill, placing the carport roof, which is currently utilized as a deck, generally at grade with the neighboring property to the west and the subject property's front yard to the east. The existing site conditions should allow the proposed extension to remain generally screened with the neighboring property to the general west and east. Properties to the general north are screened from the existing carport and proposed garage by the residential structure and the site's topography. Residential properties located to the south are separated by elevation and below structural grade of the subject property and Rebecca Road. The south properties are currently screened from the existing carport by existing dense tree and shrub vegetation.

C. The granting of the Exception will provide an additional ADA accessible house within the City of Manhattan. The extension and enclosure of the carport will not encroach upon an easement or affect a vision triangle. No adverse effects are anticipated on the public health, safety, morals, order, convenience, prosperity, or general welfare.

D. The proposed Exception is not out of character of what was previously approved in the 1970 Variance. The environmental site conditions and surrounding neighborhood uses prohibit the applicants from creating a garage in any other location on their property. To meet the twenty-five (25) foot front yard setback and to construct a garage as desired, the applicants would need to move the residential structure north, which is unreasonable. It appears that strict application of the regulations is unreasonable and unnecessary when all facts and circumstances are considered.

Hardy made a motion to grant an Exception to reduce the front yard setback from twenty-five (25) feet to seven (7) feet for a proposed extension and enclosure of an existing carport for a proposed garage located at 2406 Rebecca Rd, Lot 8, N. Timberland Addition in the R, Single-Family Residential District with the following conditions:

1. All applicable building permits shall be obtained.
2. The structures and equipment shall comply with all applicable codes.
3. The Exception shall be constructed as proposed in the revised site plan.
4. The proposed garage structure shall be maintained in good condition.

Connie Hamilton seconded which passed 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE NORTH TWENTY (20) FOOT SIDE YARD SETBACK TO TWELVE (12) FEET FOR EXISTING OFF-STREET PARKING AND A REDUCTION IN THE SOUTH SIDE YARD SETBACK FROM TWENTY (20) FEET TO ZERO (0) FEET FOR PROPOSED OFF-STREET PARKING AT MANKO WINDOW SYSTEMS, LOCATED AT 800 HAYES DRIVE IN THE I-2, INDUSTRIAL PARK DISTRICT.

Frazzell presented the staff report.

Morin asked Frazzell whether City Administration believed it was better to encroach into the utility easement or reduce the amount of landscape lawn. Frazzell responded City Administration believed it was better to encroach the utility easement. Morin followed up by asking what the worst thing that could happen by encroaching the utility easement. Frazzell responded that the applicant would have to replace the paving if the utility company had to get into the easement. Morin asked in general, how often that happens. Frazzell responded that there are encroachments over utility easements throughout the City of Manhattan. Morin responded saying that one of the standards for exceptions is whether there are reasonable alternatives which would allow the applicant to meet strict application of the regulations. He asked Frazzell if putting the parking in the general southwest corner and reducing the landscape area was not a reasonable alternative. Frazzell responded that he believed the proposed location for the parking was the best location for the parking.

Jackson asked what utilities were in the utility easement. Frazzell said he did not know and Jackson said he would ask the applicant.

Gary Jones, president for Manko Windows Systems, said the utility easement will be vacant in sixty days. At this time it has electricity lines for two light poles. Manko Windows owns the property to the south and he does not foresee in the future that any utilities will be in there.

Emig asked if Manko Windows Systems anticipates additional building on the site and if so, do they have room for parking?

Jones responded saying that they are basically out of room now. They have done a master plan for the site and they have about thirty thousand more square feet for the building in the northeast corner of the lot. There could be some additional parking along the southeast, basically continuing down from the southwest corner where they are now. In doing that, they would have to reconfigure to find a new place for the semi-trailers.

Hamilton said that she could support the request as Manko appeared to be doing a very reasonable job of being an industrial site with commercial property surrounding it. She applauded them for keeping as much landscaped green space as possible. She said that the request seems reasonable especially given the information that there are no utilities in the easement.

The Board made the following Findings of Fact for the Exception:

A. Lot A, Manko II Addition currently is in compliance with all applicable regulations except for the requested Exceptions.

B. The lot to the general north is a recently constructed commercial center within a C-5, Highway Service Commercial District consisting of a restaurant and a future furniture store. The existing north parking stalls, located within the side yard on the subject lot, are adjacent

to the commercial center parking lot. To the general west is Hayes Drive followed by the Wal-Mart PUD. Generally south of the subject property is a C-5, Highway Service Commercial District with various auto repair and machine shops. The applicant owns the adjacent parcel of land directly south of the proposed off-street parking encroachment in the south side yard setback. East of the subject property is vacant land and a research facility both of which are in the I-2, Industrial Park District and the back of a commercial center located in the C-2, Neighborhood Shopping District. The properties to the east are generally screened from the subject property by existing shrubbery vegetation. Given the general similarity of the surrounding uses, there should not be any adverse effects on adjacent properties with granting the Exception.

C. The proposed off-street parking located within the south side yard setback, is located within a utility easement. The applicant has been informed that if the utility company would need access, it is the applicants responsibility to remove and replace the paving at the applicants own expense. Although the City of Manhattan does not encourage an encroachment into an easement, the proposed encroachment does not appear to be of significant concern. The existing off-street parking located generally in the north portion of the lot, does not encroach into any easements nor impair the vision triangle. There should not be an adverse effect on public health, safety, morals, order, convenience, prosperity, or general welfare through the side yard encroachments.

D. The proposed location within the south side yard setback will allow the applicant to meet the parking space requirement, will place the parking spaces generally out of the way of large semi-trailer trucks, and will retain the landscaped yard area to the general west. An area behind the Manko structure is currently utilized generally for storage and parking of large semi-truck Manko trailers. The area potentially could be used to accommodate the additional parking, however this could require a portion of the semi-truck trailers to be relocated to another area on the lot. It appears that a portion of the additional parking spaces could be placed in the general southwest corner of the lot; however this location would encroach into the front yard setback along Hayes Drive and would reduce the amount of landscaped lawn area. Placing the off-street parking at the proposed south boundary of the lot will cause an encroachment into a utility easement. The encroachment will consist of one hundred seventy (170) feet and does not appear to be significant. The parking spaces shall be removed at the applicant's expense if deemed necessary by the utility company(s). It appears the strict application of the side yard setback regulations is unnecessary for the proposed off-street parking along the south boundary of the lot when all facts and circumstances are considered.

The existing parking in the north provides the applicant with necessary parking to fulfill the parking requirements. Approximately nineteen (19) parking spaces encroach into the north side yard setback. The spaces are existing and removal would require an Exception to reduce the amount of required parking spaces. Moving the parking spaces south out of the side yard would reduce the amount of backing space available and would encroach into the existing side entrance drive. To apply strict application of the regulations would require the applicant to reconfigure the existing flow and parking configurations and possibly remove the opportunity to utilize the existing north entrance off of Hayes Drive. Given that the adjoining property has

a similar parking lot use and the fact that there is not an encroachment into a utility easement, it appears requiring strict application of the regulations is unreasonable and unnecessary for the existing off-street parking in the northwest portion of the lot.

Hardy made a motion to reduce the north twenty (20) foot side yard setback to eleven (11) feet for existing off-street parking and reduction of the south side yard setback from twenty (20) feet to zero (0) feet for proposed off-street parking at 800 Hayes Drive, Lot A, Manko II Addition with the following conditions:

1. The Exceptions shall be limited to the existing and proposed off-street parking spaces as shown on the site plan.
2. The parking spaces shall be maintained in good condition.

Hamilton seconded which passed with a vote 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE WEST SIDE YARD SETBACK FROM SIX (6) FEET TO FOUR (4) FEET AND THE EAST FRONT YARD SETBACK FROM FOURTEEN (14) FEET TO ELEVEN (11) FEET TO ACCOMMODATE FOR RECENTLY CONSTRUCTED WINDOW WELL COVERS AT 1200 KEARNEY IN THE R-3, MULTI-FAMILY RESIDENTIAL WITH THE M-FRO, MULTI-FAMILY REDEVELOPMENT OVERLAY.

Frazzell presented the staff report.

Hardy asked why city staff did not add the current non-compliance issues as a condition of approval. He said that if he wanted to consider approval he would want to have those attached as conditions of approval.

Frazzell said the reason for not adding them as conditions was because the applicants have been working with city staff to alleviate the problems.

Hardy said he understood they are working on it, but said it is not done. He said that if there was a statement in the staff report saying that the problems were identified, City Administration had been working with them, and now is compliant, he wouldn't have a problem with it.

Todd Thaemert, part owner of 1200 Kearney, said that they just learned of the non-compliance issue a few days ago. He explained that horticulture services of several places had advised them to wait until planting the shrubs until after the temperature had cooled off. He said they needed twenty shrubs, and no one in town had them. Complete Outdoors is doing the project and they are scheduled to plant the shrubs and landscape it with river rock on Monday. For the parking in the front yard setback, they have talked with the tenants and are being more stringent on them. Those were the two issues. Todd continued by saying that they put the window well covers on to help protect the foundation from rain as well as to make it look a little nicer.

Hamilton said one of the standards they have to apply requires that there is compliance with all applicable regulations other than what is being requested for the Exception. When staff says that you are not in compliance, it makes her wonder how they can meet this particular requirement that they have to meet to be able to grant the Exception. She said they needed something more than a general reference from staff that you are working to meet this. The schedule that Thaemert gave about the shrubs and that the tenant problem is being addressed is pretty specific. Hamilton said she would support a modification to the conditions that examines compliance more thoroughly than that. She encouraged in the future that anyone who wished to come before the board to be in compliance with all regulations or come with paper or documentation stating what is going on. She said that she would accept their statements this time. For the window wells, she said they were somewhat in the character of the structure and she appreciates the fact that they are helpful when it rains. She also understands the reason for having them for the egress windows. She said that compared to others, these were works of art. She said she could support the request with modification to the conditions which would require the City to issue a report that would go in the record stating that there was compliance with these two regulations.

Hardy said based on Hamilton's comments and the modification to the condition, he could support it as well.

The Board made the following Findings of Fact for the Exception:

A. Lot 753, Ward 3 (subject property) is not currently in compliance with:

- Section 4-112(F)(1)(e): Buffering of Parking Lots: Off-street parking lots located within twenty-five (25) feet of, and visible from, a public street right-of-way, shall be buffered by a continuous row of shrubs planted at a maximum separation of three (3) feet on center. Shrubs shall be a minimum thirty (30) inches in height at the time of planting. The required shrubs have not been planted.
- Section 4-112(F)(1)(b)(2)(a): There shall be no off-street parking spaces, nor any parking, located: Within the required front yard, except that parking is permitted on the driveway for residential buildings containing no more than two (2) dwelling units provided such driveway conforms with the provisions of Section 4-112(F)(1)(a). Tenants are parking in the front yard setback.

The property owners were sent a notice of non-compliance with the above regulations on September 28, 2005. But for the above two issues, and the requested Exceptions, the property is in compliance.

B. Minimal impact is expected on adjacent properties. A six-foot privacy fence has been built on the west side of the property screening the window covers from the adjacent apartment building. The property directly to the north of the residence is separated by an alley and the properties to the east and south are separated by 12th Street, Kearney Street, mature trees and daily on-street parking.

C. Minimal adverse effects to the public are expected. The 2003 International Residential Code allows the use of bars, grills, covers, screens or similar devices to be placed over window wells but such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

The Residential Code further states, guards or covers shall be provided to safeguard against falls into the window well. The covers are a physical barrier to the well. The window well covers generally do not encroach into any utility easements or vision triangles and the design of the coverings comply with Building Design Standards of the M-FRO District, which means that additions or modifications shall maintain a similar architectural character as the existing residential building.

D. Strict application of the Regulations would require the applicant to remove the window well covers. Although Building Code requires that guardrails or covers shall be provided, they are not exempt from the Zoning Regulations.

If the covers were removed, Code Services indicates guardrails would have to be built at a greater height than the current window well covers. Removing the covers would expose the foundation to rain entering the window. Front and side yard setbacks were created to minimize the impact of uses to surrounding neighbors. In this case, involving a corner lot with an alley to the north; the closest surrounding neighbor is an apartment complex directly to the west, which is separated by an existing 6-foot high privacy fence.

The M-FRO District regulations are in the process of being amended with second reading of the ordinance scheduled to occur on October 11, 2005. The amendments would reduce front yard setbacks for front stoops, roof eaves, porches, porticos, and balconies to ten (10) feet to the front property line. Therefore, the window well covers would, in general, be like a roof eave, and conform to the proposed M-FRO 10 foot front yard setback.

The reduction of the 6-foot side yard setback to 4-feet along the west side yard is a minimal encroachment. Accessory structures may be as close as 3-feet. Some accessory structures may have roof eaves, such as a detached garage. It would not be unusual for a roof eave to be within 3-feet of a side property line. The reduction to 4-feet is not inconsistent with setback requirements for accessory structures.

When all the facts and circumstances are considered, it appears that the strict application of the regulations is unnecessary.

Hardy made a motion to grant an Exception to reduce the west side yard setback from six (6) feet to four (4) feet and the east front yard setback from fourteen (14) feet to eleven (11) feet for existing window well covers located at 1200 Kearney Street, Lot 753 in Ward 3, in the R-3, Multiple Family Residential District with the M-FRO, Multi-Family Redevelopment Overlay District, with the following conditions:

1. The existing window well covers shall be maintained in good condition and shall remain consistent with the M-FRO District Building Design Standards.
2. The existing window well covers shall be in conformance with all codes.
3. The Exceptions shall be limited to the existing window well covers.
4. The granting of the Exception shall require City Administration to issue a report into the record stating compliance with the two non-compliant regulations outlined in the staff report.

Dan Morin seconded which passed 5-0.

Jackson closed the public hearing.

Respectfully Submitted,

Jeremy Frazzell, Planner

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