

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

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

MEMBERS ABSENT: None.

STAFF PRESENT: Cameron Moeller, Planner II; Jeremy Frazzell, Planner

CONSIDER THE MINUTES

Hamilton moved to approve the October 12, 2005 minutes with one modification which was seconded by Hardy and passed with a vote of 4-0.

Hardy moved to remove the item from the Table. Hamilton seconded the motion, which passed on a vote of 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE ACCESSORY USE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK TO SEVEN (7) FEET FOR AN EXISTING DOG PEN AND TO TWENTY-FIVE (25) FEET FOR A PROPOSED SHED AT 3501 ENGLEWOOD STREET IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: ERIC AND LESLIE JAGER)

Morin joined the Board.

Frazzell presented staff report.

Hardy asked Frazzell about the Strict Application standard, if the City's reasoning that strict application is unreasonable is based on the fact of the uniqueness of the shape of the lot?

Frazzell said that was correct, and he apologized for not making that fact more clear in the presentation.

Emig asked if this was a case in which the dog pen had already been installed?

Frazzell responded saying yes the dog pen had already been installed.

Jackson opened for public comment.

Eric Jager, 3501 Englewood, said Frazzell covered everything he had to say. He mentioned others in the neighborhood had shed structures and discussed the orientation of house. He said that he had already begun putting in bushes and that no one would be able to really see it.

Hardy asked how long have you owned the house?

Jager said about a year.

Hardy said he noticed that the yard is extremely well landscaped.

Jackson closed for public comment.

Hamilton said she seconded Hardy's comment about strict application. She asked to strike last two sentences of the first paragraph. She said given the unique shape of the lot, she could support the request.

Hardy agreed and said he could support the request as well. With Hamilton's comments about the shape of the lot, but also the fact of the applicant's taking into account the existing landscaping. He said he also agreed with the point that staff made about other possible locations being an eyesore for the neighborhood.

Morin said that he has a continued concern about the condition being created by the applicant. He said he is becoming apprehensive with people frequently coming to the Board asking to relieve a condition that was created by the applicant.

Hardy said he understood Morin's concerns with "Standard D", however "actions of applicant" is just one example that is considered under that standard.

Hamilton clarified that the reason she asked for the last two sentences to be struck from the findings was based on the fact that it is not unreasonable if the applicant has to take something down that they put up. She continued by saying the practice of the board has been to look at the request as if the dogpen was not there.

Emig said that applicants might not know the zoning regulations and codes of a particular lot or area prior to construction and that when the codes and zoning regulations are brought to their attention this is the best recourse that they have. He continued by saying it was the Boards obligation to look at those conditions with an open mind. He said this was an application he can support due to landscaping and shielding and also, the fact that there are no neighbors expressing concern.

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

A. The subject property currently complies with all applicable regulations except that which the Exception is being requested.

B. The proposed location for the accessory uses in the northwest corner of the lot is proposed to be screened to all surrounding neighbors, Englewood Street and Stonehenge Court with proposed shrubs and existing landscaping. Hudson Trail borders the lot to the general northwest and provides additional woody vegetation screening in this direction.

The adjacent property to the general south currently has a shed structure located generally behind the proposed location for the proposed shed. Additional screening of the proposed accessory uses to the south is provided by a medium, approximately four (4) foot high, privacy fence and existing shrubs. Placing the shed or the dog pen directly behind the house, (general southeast location on the lot) to meet the minimum sixty (60) foot accessory use setback, could be intrusive to the adjacent property to the south, as this side yard abuts the front yard of the adjacent neighbor.

The house and existing shrubs and trees located both north and south of the house should provide adequate screening of the proposed shed and dog pen to the general east. Similarly, properties to the general east are separated in distance by the length of the lot and Stonehenge Court.

Properties to the general north are currently screened with shrubs and trees on Lot 122 as well as distance across Englewood Street. A few of the north properties are screened to Englewood Street by existing privacy fences and will subsequently be screened from the proposed accessory uses. Lot 129, across Englewood Street, faces the general location of the existing dog pen and proposed shed. The addition of the bushes will screen the accessory uses from this lot. Given the extensive landscaping currently on the subject property, it appears there should not be an adverse effect to adjacent properties in granting the proposed Exception.

C. The proposed locations for the accessory uses are not within a utility easement, right of way, or vision triangle and are not anticipated to be a distraction to passing traffic. The location of the proposed accessory uses should not have an adverse effect on public health, safety, morals, order, convenience, prosperity, or general welfare.

D. Lot 122 is a curved, triangularly shaped, corner lot with front yards on both Englewood and Stonehenge Court. Along Stonehenge Court, the eastern most portion of Lot 122, the lot is the widest, at approximately 103-feet long. Moving generally west across the lot, Lot 122 narrows. The house is situated on the eastern portion of the lot, with the front of the house and primary access off of Englewood Street and driveway access off of Stonehenge Court. Given the position of the house on the lot, the accessory use setback must be met along Englewood Street, preventing the applicants from utilizing the lot as proposed without an encroachment into the required setback. Extensive landscaping consisting of shrubs, trees and landscaped beds currently occupy the area to the immediate west of the house and does not prove to be a viable location to the applicants for the proposed accessory uses. The applicants recently removed a portion of the trees located in the northwest corner of the lot to accommodate for the existing dog pen and proposed location of the shed.

Given the unique shape of the lot; the location and position of the house; the fact that the

accessory uses are out of the right of way, do not encroach any easements and are proposed to be screened in all directions; it is not anticipated that the accessory uses will have an adverse effect on surrounding properties. When all facts and circumstances are considered, it appears the strict application of the regulations is unreasonable and unnecessary.

Hardy moved to grant an Exception to allow a reduction of the accessory use minimum sixty (60) foot front yard setback to seven (7) feet for an existing dog pen and to twenty-five (25) feet for a proposed shed at 3501 Englewood Street in the R, Single-Family Residential District with the following conditions:

1. The Exception shall be limited to an existing dog pen and proposed shed as shown on the site plan.
2. The dog pen and shed shall be maintained in good condition.
3. Landscape screening shall be provided, as described in the application documents, and shall be maintained in good condition.

Hamilton seconded, which passed 5-0.

Hardy moved to remove the item from the Table. Morin seconded the motion, which passed on a vote of 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO THE TNO, TRADITIONAL NEIGHBORHOOD OVERLAY REQUIREMENT FOR A PROPOSED DRIVEWAY GREATER THAN TEN (10) FEET IN WIDTH, LOCATED WITHIN A FRONT YARD BETWEEN THE STREET AND THE FRONT BUILDING FACADE ALONG COLORADO STREET; AND TO REDUCE THE MINIMUM NORTH THREE (3) FOOT SIDE YARD SETBACK TO ZERO (0) FEET FOR A PROPOSED DETACHED GARAGE AT 322 S. 17TH STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: MATHEW AND KARIN BEAN)

Frazzell presented staff report.

Hamilton asked if the driveway had been an existing gravel flared driveway, would it have fallen within this TNO regulation or would the width have been “grandfathered”?

Frazzell responded said he believed in that case it would have been “grandfathered”.

Hamilton asked if the TNO ten foot wide restriction would apply if the driveway had been off of an alley.

Frazzell responded no, this particular regulation would not apply in that case.

Emig said according to the applicant's letter to the Board he is going to pour a new driveway. He asked if he is going to pour new concrete or new gravel. He further asked if the additional parking space was going to be gravel or concrete.

Frazzell and the applicant Matthew Bean, responded that the driveway will be concrete and the additional parking space will be pavers.

Morin asked if the stated hardship was based solely on the financial aspect.

Matthew Bean, applicant 322 S. 17th Street, said they would only be able to install a single car garage and it would be a financial hardship.

Matthew Bean, the applicant, said this is a "trickle-down" garage/driveway planning. If builder had paid closer attention to the TNO standards could have repaired at prior location. He continued to explain the reasoning behind the garage and driveway width was to provide adequate parking but to also provide them with adequate space for other uses (work shop) than just parking.

Morin commended applicant for coming forward prior to construction.

Bean said the garage pad had been there for 10 years.

Emig said if it would be more convenient to drive into the additional parking space, he suggested the applicant widen the right side of the driveway to complement the angle of the left side.

Hamilton said she had no problem with the exceptions. She thanked the applicant by saying this lot shows that a single-family home can be built on a downtown lot and people are willing to do it.

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

A. The subject property currently meets all applicable regulations except for what the Exceptions are being requested.

B. The property located to the general west is a two-family duplex, screened to the proposed driveway and parking area by existing shrubbery vegetation. Further west are three, single-family residences with ten foot wide driveways. Property to the east is a duplex with a gravel parking lot in the functional rear yard followed by single-family residences with parking generally off of the alley. Properties to the general east are separated by distance across 17th Street and are mostly screened from the proposed driveway and proposed garage by the down sloping topography and the existing residential structure. To the general south is Colorado Street followed by a two-family duplex with a gravel parking lot off of an alley. Southwest are five single-family residences with ten foot wide driveways. To the north is a single-family

residence which has a ten foot wide driveway entrance from 17th Street and parking in the rear. The general location of the accessory structure with the side yard encroachment will be adjacent to the north neighbor's parking area in the rear and should not have an adverse impact.

The proposed width of the driveway is not characteristic of the single-family residences to the general southwest, however is not uncharacteristic of the surrounding two-family residences. The applicant's proposal to maintain the ten (10) foot wide driveway for a portion of the driveway and then widen to reach the existing garage pad and proposed additional parking stall appears to be a combination of what currently exists for off-street parking areas in the surrounding neighborhood. The Exceptions are characteristic of the differing residential uses surrounding the subject property and are not anticipated to adversely affect the surrounding neighborhood.

C. Access off of Colorado Street is not unique to the neighborhood and will not have an adverse effect on traffic along Colorado Street or 17th Street. The proposed driveway and garage does not encroach into any easements. The creation of the driveway will allow access to the proposed garage without the need for an additional curb cut. The creation of the proposed driveway and garage will allow the applicant to meet the off-street parking requirement of at least two (2) off-street parking spaces for each dwelling unit, which will remove two vehicles from parking on Colorado Street. The additional parking stall does not authorize additional dwelling units. The granting of the Exceptions should not have an adverse effect on the public health, safety, morals, order, convenience, prosperity or general welfare.

D. The subject property is a corner lot and the applicant does not have access to the lot from any other location. No new curb cuts are being proposed. The applicant has proposed to replace a portion of a previous gravel driveway with a ten (10) foot wide, paved driveway. The regulation requires the driveway to remain ten (10) feet in width up to the front façade of the house and in this case, the front façade of the house and the front of the existing unattached garage pad are approximately one foot apart in distance from Colorado Street. The existing garage pad is not directly in line with the existing location of the curb cut and subsequent driveway. Requiring strict application of the regulations would require the applicant to move west off of a ten (10) foot wide driveway and run over a portion of unpaved area to fully access the twenty (20) foot wide existing garage pad and proposed garage. The applicant could remove the existing garage pad and replace it with a narrower garage pad directly in line with the existing Colorado Street curb cut and far enough away from the north property line to prevent encroachment into the three (3) foot north side yard setback. This option appears to be unnecessary and unreasonable as doing such might be a hardship on the applicant, could reduce the use of the functional rear yard, and a garage pad currently exists on-site. Moving the garage pad further north to provide additional distance between the pad and the front façade of the house is not a viable option as the proposed garage with new footings and overhangs already encroaches into the three (3) foot north side yard setback.

Colorado Street, west of 17th Street, is divided with half of the street in the Traditional Neighborhood Overlay District, while the other half is out. The area north of Colorado Street

was down zoned in December 2003 from R-2, Two Family Residential to R-1, Single-Family Residential with the Traditional Neighborhood Overlay District. South of Colorado Street remains in the R-2, Two Family Residential with the Traditional Neighborhood Overlay District. The unique neighborhood with a mix of zoning districts and existing uses therefore reveals an opportunity to be flexible with the Traditional Neighborhood Overlay District driveway regulation and side yard setback to create a neighborhood which complements itself. In this case, it appears that the Traditional Neighborhood Overlay District regulation is unreasonable and unnecessary when all the facts and circumstances are considered.

Emig moved to approve an Exception to the TNO, Traditional Neighborhood Overlay requirement for a proposed driveway greater than ten (10) feet in width, located within a front yard between the street and the front building façade along Colorado Street and to reduce the minimum north three (3) foot side yard setback to zero (0) feet for a proposed detached garage at 322 S. 17th Street in the R-1 Single-Family Residential District with TNO, Traditional Neighborhood Overlay with the following conditions:

1. The proposed driveway and proposed garage shall be maintained in good condition.
2. The applicant shall obtain all necessary building permits and shall comply with all applicable codes.
3. The proposed driveway and proposed garage shall be constructed as outlined in the application materials and site plans.
4. The Exception shall be limited to the proposed driveway and proposed garage.
5. The applicant shall be allowed to match the east side portion of the driveway with the expansion of the west side of the driveway if desired.

Morin seconded, passed 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK ALONG BROWNING AVENUE TO ZERO (0) FEET FOR A PROPOSED FENCE AT 2734 KIMBALL AVENUE IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: STEVE GOETZ)

Frazzell presented the staff report.

Hardy commented that staff did a good job of addressing the uniqueness of the lot under the “Strict Application” portion of the staff report.

Jackson opened for public comment.

Steve Goetz, the applicant, said they took care to avoid the vision triangle. They wanted to be very accurate on detail, and that is why they did the survey. He continued by saying the fence should enhance the corner, including additional landscaping.

Morin commented that the letter from applicant was very informative. He asked if the applicant notified the neighbors to the north.

Goetz said they did not introduce themselves to the neighbor to the north, but he was sure they noticed the sign.

Jackson said the neighbor would have received a public notice letter.

Jackson closed the public hearing and opened for board discussion.

Hardy said he can support the request based on the staff report and the fact that the North Pointe Townhomes have rear yards facing the property.

Hamilton said she agreed with Hardy's comments given the fact that there are many fenced lawns around the property, especially the North Pointe Townhomes and felt very comfortable with the proposed fence.

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

A. Lot 3, Kimball Korners Addition was platted in September 1966. As platted, Lot 3 is smaller in lot area and lot depth than what is required by the current R, Single-Family Residential District. If the applicant was proposing an addition to the existing residential structure or was requesting a building permit to construct the house, the lot would need to conform to the current bulk regulations and lot size requirements. As is, Lot 3, Kimball Korners Addition currently is in compliance with all applicable regulations except the aforementioned and that which the Exception is being applied for.

B. The adjacent lot to the north is Lot 2, Kimball Korners Addition, which has a single-family residence use. The proposed fence may obstruct a portion of the southwest view of Lot 2 but is not anticipated to have an adverse effect as the proposed fence should provide screening of the Kimball Avenue and Browning Avenue intersection. The following lot, Lot 1, Kimball Korners Addition, has an existing chain link fence which encloses the front yard. Single-family residences are east of Lot 3 and will be primarily screened from the proposed fence by the house on Lot 3 and distance. West of Lot 3 is Browning Avenue, followed by the North Pointe Townhomes. South of Lot 3 is Kimball Avenue followed by single-family residences. Similar types of fencing currently exist along the south side of Kimball Avenue. No adverse effects are anticipated to surrounding properties through the granting of the Exception.

C. The applicant has proposed the new privacy fence to be located outside of the Kimball Avenue and Browning Avenue vision triangle. Browning Avenue has an eighty (80) foot right of way, meaning there is forty (40) feet from the center of the street to the west property line on Lot 3. An existing 5-foot wide sidewalk is located within the Browning Avenue right of way followed by an additional fifteen (15) to the west property line on Lot 3. With approximately twenty (20) feet between the property line on Lot 3 and Browning Avenue, there should be sufficient separation distance between Browning Avenue and the proposed location for the fence. The proposed fence should not be a distraction to passing vehicle traffic or users of the sidewalk. A water meter is located in the northwest corner of the lot. The

proposed fence will be adjusted to keep the water meter accessible from outside of the fence. Given the separation distance between the fence and sidewalk, the fence and Browning Avenue, and the vision triangle clearance, no adverse effects are anticipated on the public health, safety, morals, order, convenience, prosperity, or general welfare.

D. Lot 3 is a corner lot that does not meet the current lot size requirements for a R, Single-Family Residential District, but does meet the bulk regulations. To meet the minimum setback requirements, the house was positioned in the northeast section of the lot, which decreased the amount of space in the functional rear yard. The applicant recently acquired Lot 3 and did not create the conditions which decreased the functional rear yard. Alternatives do exist to allow the fence to encroach into the front yard setback along Browning Avenue without extending out to the west property line however this would still require an exception. In order to fully utilize the property as desired, there is not an alternative other than that which the applicant has requested to increase the functional rear yard. If Lot 3 was not a corner lot, the applicant would be able to place the proposed fence up to the side and rear property line. The proposed location for the fence is within the functional west side yard. In certain areas of the City, the separation distance between a rear fence along a rear property line and an adjoining street or sidewalk might be significantly less than what is available between Browning Avenue and the west property line of Lot 3, Kimball Korner.

Given the fact that there is an approximate 20-foot separation distance between the west property line and Browning Avenue and the applicant has proposed the fence to be clear of the vision triangle and parallel with the front façade of the house; it appears strict application of the regulations is unnecessary.

Morin moved to approve an Exception to reduce the west front yard setback of 2734 Kimball, Lot 3, Kimball Korner Addition from a minimum twenty-five (25) feet to zero (0) feet for a proposed six (6) foot high, white, vinyl, privacy fence in the R, Single-Family Residential District with the following conditions:

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

Hardy seconded the motion, which passed on a vote of 5-0.

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: MARLENE IRVIN)

Emig addressed the board and said he drives by the property every day. He said he noticed the public hearing sign for the first time last week. He said he has a concern about proper public notification to the adjacent property owners.

Morin agreed with what Emig said.

Emig asked Frazzell if he was aware if the property had been properly advertised for with a sign out in front of it, and asked if the applicant signed the notice.

Frazzell said the applicants were informed that if something was to happen to the sign, to come in and get a replacement. He said they did come in to get a replacement sign about a week ago. He said the applicant did sign the affidavit, and Marlene Irvine did put a comment on the affidavit which stated the sign had been pulled out three times and they put it back up as soon as she noticed it was down.

Emig asked what the standard was for the sign to be out in front of the property.

Frazzell stated the sign needed to be posted twenty days prior to public hearing, which would have been October 19, 2005.

Emig said last week was the first time he saw the sign and his feeling was it had not been adequately advertised.

Jackson said the applicant noticed there was a problem and notified the city. He said he could see that being a problem in that area with people walking up and down the street in the middle of the night and the sign disappearing.

Hamilton said since the request was to not build a fence, she did not see there being a problem for the applicant in waiting until the next month to ensure adequate posting.

Hardy commented that there might be the same problem.

Bernard Irvine, one of the owners of the property, said that a replacement was put in promptly. He said they had no objection in tabling until the next meeting. He stated that the area is a College student area and that it is inevitable that the sign will be removed. He said they have tried to comply with the law the best they can.

Hardy said he didn't have a problem in tabling the item, given that there isn't a pressing need to put something in rather than refrain from doing it. He said he was not convinced that the sign will be there during the next public hearing notice period, that the applicant would probably have to replace it again. He said that Emig's concern is legitimate given that he drives by there on a regular basis.

Hardy moved to table the item until next month.

Emig seconded the motion, which passed 5-0.

Meeting was adjourned.

Respectfully Submitted,

Jeremy Frazzell, Planner

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