

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, December 14, 2005
7:00 PM

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

MEMBERS ABSENT: Dan Morin

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

CONSIDER THE MINUTES

Hamilton moved to approve the November 9, 2005 minutes which was seconded by Hardy and passed with a vote of 4-0.

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

**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)**

Bernard Irvine, property owner of 1020 Bluemont, stated that he thought Calvin Emig might have a conflict of interest. He stated that he had addressed the concern earlier in the day with staff.

Zilkie said we forwarded the question to the legal department but had not received a response and that we did not have the answer.

Emig said he could sit on the board with an objective opinion.

After board discussion, the board said they would prefer to have an answer from the legal department before continuing with the public hearing. Bernard Irvine made a formal request to table the item until the January 11, 2006 meeting.

Hardy made a motion to table the item to the January 11, 2006 meeting to get an opinion by City legal staff which was seconded by Hamilton, and passed with a vote 4-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE NORTH SIDE
YARD SETBACK FROM EIGHT (8) FEET TO SIX (6) FEET AND A REDUCTION IN THE
REQUIRED FOUR (4) OFF-STREET PARKING SPACES TO ZERO (0) OFF-STREET
PARKING SPACES FOR AN EXISTING TWO-FAMILY RESIDENTIAL DWELLING
LOCATED AT 900 LEAVENWORTH STREET IN THE R-M, FOUR-FAMILY**

RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE EXCEPTION IS ASSOCIATED WITH A PROPOSED FINAL PLAT. (APPLICANT/OWNER: BRUCE AND NANCY ARNOLD)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO THE SOUTH SIDE YARD SETBACK FROM EIGHT (8) FEET TO (6) FEET AND TO REDUCE THE REQUIRED FOUR (4) OFF-STREET PARKING SPACES TO TWO (2) EXISTING OFF-STREET PARKING SPACES FOR AN EXISTING TWO-FAMILY DWELLING LOCATED AT 311 N. 9TH STREET IN THE R-M, FOUR-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE EXCEPTION IS ASSOCIATED WITH A PROPOSED FINAL PLAT. (APPLICANT/OWNER: BRUCE AND NANCY ARNOLD)

A PUBLIC HEARING TO CONSIDER AN VARIANCE TO ALLOW A REDUCTION IN LOT AREA FROM SEVEN THOUSAND FIVE HUNDRED (7,500) SQUARE FEET TO SIX THOUSAND ONE HUNDRED EIGHTY THREE (6,183) SQUARE FEET FOR AN EXISTING TWO-FAMILY DWELLING LOCATED AT 311 N. 9TH STREET IN THE R-M, FOUR-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. THE VARIANCE IS ASSOCIATED WITH A PROPOSED FINAL PLAT. (APPLICANT/OWNER: BRUCE AND NANCY ARNOLD)

Frazzell presented the staff reports and recommended approval for all three requests.

Hamilton clarified that the requests would not expand a nonconformity in any way, that they were only replatting the lots in order to sell them individually. The lots and structures could continue existing in the same condition as they currently are, as they would be grandfathered.

Hardy clarified that the board would not be allowing any additional uses or anything they didn't already have had they not proposed the split of the zoning lot into Lot A and Lot B.

Hamilton said she wanted to also clarify that if the structure at 900 Leavenworth was to be eliminated and a new structure was erected, the new structure would be required to meet the off-street parking requirements of the current zoning regulations.

Zilkie said they would be required to meet the current zoning regulations. If it is a legally non-conforming use and the structure was destroyed, provided within one year a building permit was obtained, the zero off-street parking Exception would stay in effect.

Emig asked about the number of bedrooms in each structure.

Frazzell said there are three bedrooms downstairs and two bedrooms upstairs at 900 Leavenworth and three bedrooms upstairs and two bedrooms downstairs at 311 N. 9th Street.

Emig asked if parking would be allowed in the west side yard setback on Lot A provided it met the other requirements of the TNO District. Frazzell responded he believed that was accurate and that discussion had been made with the City Engineer about placing a future curb cut in that location to provide future off-street parking to the proposed Lot A.

Jackson closed for Board discussion.

Hardy said he could support all three based on the understanding that the requests do not add anything to the property that doesn't currently exist and that any future modification, alteration, addition, or change to the existing structure or use would require compliance with the current zoning regulations.

Hamilton said she could support the requests as well. She said requiring additional parking on the west side of the lot at 900 Leavenworth did not seem necessary at this time as the addition would result in an addition of concrete, possible loss of vegetation and addition of congestion to an already busy street.

Emig said he had a concern with the lack of adequate off-street parking given there is a combination of ten bedrooms. He felt that there was adequate room on Lot B to add an additional parking stall adjacent to the existing slab off of the alley and would like that to be added to the conditions.

Jackson opened for public hearing again to allow the applicant to respond to the additional condition.

Fred Gibbs, BG Consultants, said they could easily add the third parking space to Lot B. The parking on the west side of Lot A was not proposed as it would really impose on the adjacent neighbor to the west. He continued by saying they would like the Exceptions to be allowed to be carried on if the use is changed from the existing two-family use to single-family use.

Jackson closed for Board discussion.

The board discussed the additional parking space off of the alley and decided it would essentially replace the parking space lost by closing the curb cut on 9th Street.

The Board made the following findings of fact for the Exception at 900 Leavenworth:

A. The property currently complies with all applicable regulations except that which the Exceptions are requested.

B. Directly north of 900 Leavenworth Street is a two-family dwelling located on proposed Lot B. The proposed Exception to the north side yard setback should not adversely impact this property given the fact that the structures have coexisted since the 1960's. With the additional house added to the zoning lot in 1966 (proposed Lot B), and the previous change in use from single-family to two-family, there has always been an insufficient amount of off-street parking. The presence of an existing curb cut directly off of 9th Street, which generally separates the proposed lots may negatively impact future property owners of Lot A and Lot B, given that neither owner will technically have the right to utilize the curb cut without a travel easement or agreement.

Given the existing conditions, the reduction to zero off-street parking spaces is not anticipated to adversely impact the north property. Given the historic lack of off-street parking without any known implications and the additional separation distance of 9th Street and Leavenworth Street; the presumed single-family residences to the west, south, and east are not expected to be adversely impacted by the proposed Exceptions.

C. The granting of the Exception to the north side yard setback is not anticipated to adversely impact the health, safety and general welfare of the public given the structures have coexisted without known implications for approximately forty years. Adjusting the proposed lot line would decrease the fire separation distance of one of the existing structures which potentially could be a safety risk to future owners and the general public as a whole.

An Exception to reduce the off-street parking requirement to zero (0) off-street parking spaces will require owners and possible tenants of proposed Lot A to park on the street. This condition has existed for possibly more than forty years without known implications to the health, safety, general welfare of the public. According to the City Engineer, a future curb cut might be possible off of Leavenworth Street which might allow the minimum off-street parking requirement to be met. Without a change in use or modification to the existing structure, the proposed off-street parking Exception should not alter any conditions which would have an adverse effect on the general public.

D. The applicants have proposed to Final Plat Lots 257 and 258 of Ward 4 in order to sell the properties separately. There is not a proposed change in use or modification to the existing structure. According to the applicant, strict application of these regulations is unreasonable or unnecessary as “the structures were established in the present layout since the early 1960’s, the applicants purchased the properties in 1986, therefore did not create the requirement of these exceptions.” Similarly, “the applicant acquired the properties without knowledge of the conditions which require the exception.” “There are no reasonable alternatives which would meet the strict application of the zoning regulations due to the close proximity of the placement of the structures on limited lot space, and granting the exception will not have a relative gain or loss to the health, safety and general welfare of the community.”

Although off-street parking potentially could be provided on proposed Lot A, the TNO, Traditional Neighborhood Overlay District would require that a driveway be no greater than ten feet in width and parking be located behind the front façade of the house. It is unknown at this time whether this location would actually satisfy the parking requirements or would still require an Exception. Without a change to the use or the structure itself, strict application of the requirements is unreasonable and unnecessary at this time.

Emig moved to approve the Exception to allow a reduction in the minimum required eight (8) foot side yard setback to six (6) feet, and a reduction in the off-street parking requirement of four (4) off-street parking spaces to zero (0) off-street parking spaces all for an existing two-family residential dwelling at 900 Leavenworth in the R-M, Four-Family Residential District, with TNO, Traditional Neighborhood Overlay District with the following conditions:

1. The existing curb cut shall be closed along 9th Street according to City Engineer specifications.
2. Future additions or modifications to the existing use or structure shall require conformance with the zoning regulations.
3. The Exceptions shall be limited to the existing use and structure, with the modification that a single-family use shall maintain the Exceptions.

Hardy seconded the motion, which passed 4-0.

The Board made the following findings of fact for the Exception at 311 N. 9th Street:

A. The property currently complies with all applicable regulations except that which the Exceptions and Variance are requested.

B. Directly south of 311 N. 9th Street is 900 Leavenworth Street, a two-family dwelling located on Lot A of the proposed Final Plat. The proposed side yard setback Exception should not adversely impact 900 Leavenworth given the fact that the structures have coexisted since the 1960’s. The lack of sufficient off-street parking has been a condition since the addition of 311 N. 9th Street to the zoning lot. An alley is located directly north of 311 N. 9th Street, followed by a presumed single-family

residence. To the east is 9th Street, followed by a presumed single-family residence. West is a single-family residence. Given the fact that the conditions requiring the Exceptions have existed generally since the 1960's without any known implications, the residences to the north, south, west, and east are not anticipated to be adversely impacted with the proposed Exceptions.

C. The granting of the Exception to the south side yard setback is not anticipated to adversely impact the health, safety and general welfare of the public given the fact the structures have coexisted without known implications for approximately forty years. Adjusting the proposed lot line would decrease the fire separation distance of one of the existing structures which potentially could be a safety risk.

An Exception to reduce the off-street parking requirement to two (2) existing off-street parking spaces may require owners and possible tenants of proposed Lot B to park on the street. This condition has existed for approximately forty years. Without a change in use or modification to the existing structure, the proposed off-street parking Exception should not alter any conditions which would have an adverse effect on the general public.

D. The applicants have proposed to Final Plat Lots 257 and 258 of Ward 4 in order to sell the properties separately. There is not a proposed change in use or modification to the existing structure. According to the applicant, strict application of these regulations is unreasonable or unnecessary as "the structures were established in the present layout since the early 1960's, the applicants purchased the properties in 1986, therefore did not create the requirement of these exceptions." Similarly, "the applicant acquired the properties without knowledge of the conditions which require the exception." "There are no reasonable alternatives which would meet the strict application of the zoning regulations due to the close proximity of the placement of the structures on limited lot space, and granting the exception will not have a relative gain or loss to the health, safety and general welfare of the community."

It does not appear that adequate off-street parking has ever been provided for 311 N. 9th Street since the change in use from single-family to two-family. Although the minimum off-street parking requirement could potentially be provided off of the alley, without a change to the use or the structure itself, strict application of the requirements is unreasonable and unnecessary at this time.

Hardy moved to approve the Exceptions to allow a reduction in the minimum required eight (8) foot south side yard setback to six (6) feet, and a reduction in the off-street parking requirement of four (4) off-street parking spaces to three (3) off-street parking spaces all for an existing two-family residential use at 311 N. 9th Street in the R-M, Four-Family Residential District, with TNO, Traditional Neighborhood Overlay District with the following conditions:

1. The existing curb cut along 9th Street shall be closed according to City Engineer specifications.
2. Future additions or modifications to the existing use or structure shall require conformance with the current zoning regulations.
3. The Exceptions shall be limited to the existing use and structure, with the modification that a single-family use shall maintain the Exceptions.
4. The applicant shall add an additional parking space off of the alley at 311 N. 9th Street to provide a total of three (3) off-street parking spaces.

Hamilton seconded the motion, which passed 4-0.

The Board made the following findings of fact for the Variance at 311 N. 9th Street:

1. According to Riley County records, Lots 257 and 258 of Ward 4 were combined through purchase in

approximately 1916 to create the current zoning lot. Around 1920 a house was constructed in the southern portion of the zoning lot. During sometime between 1920 and 1960, the single-family residential use changed to a two-family residential use. In 1966, an additional house addressed 311 N. 9th Street, was relocated to the northern portion of the zoning lot, creating two principal structures on one zoning lot. According to the Polk Directory, the use changed in 1967 from single-family residential to two-family residential. The presence of two principal structures on one zoning lot does not conform to the current Zoning Regulations which were adopted in 1969 and in 1996. Although there may be other properties within the City of Manhattan that has a similar layout, the condition is unique to the property.

Through the proposed Final Plat, the applicant is creating a condition which would prevent Lot B from meeting the minimum lot area requirement; however the zoning lot can not be divided in a manner which would gain additional lot area to attain the minimum seventy-five hundred square feet.

According to the applicant, “the property owner/applicant did not place the homes in their present locations, but are creating this action by splitting the lots in order to sell one or both properties separately.”

2. North of the property is an alley followed by the rear yard of a residential structure. East is 9th Street, followed by residential properties. South is proposed Lot A of the Final Plat with a residential structure, followed by Leavenworth Street. West is a residential structure. According to the applicant, “granting this variance will not affect the rights of adjacent property owners. The use and the function of the properties will remain as they have been for the last 50 years.” The Variance is the result of the proposed lot division, not from a change in use or modification of the existing structure. The proposed Variance should not have any greater affect on the neighboring properties than what already exists.

3. Given the fact that the zoning lot and the dwellings have existed in their current condition since approximately 1966, “not granting this Variance creates a hardship to the applicant by not having the flexibility to sell one or both properties separately, if desired.”

4. According to the applicant, the proposed Variance “will not affect the public health, safety, morals, order, convenience, prosperity or general welfare of the community.” Given the history of the zoning lot, City Administration concurs with the applicant that there should not be an adverse effect on the health, safety, or general welfare of the general public.

5. Lot area regulations are intended to provide adequate space for differing uses within the district. Minimum lot area is generally determined by the intensity of the use and the intended density of the district. A single-family detached dwelling in the R-M, Four-Family Residential District requires a minimum of 6,000 square feet while a two-family dwelling requires 7,500 square feet. The R-M District is intended to promote a medium density mixture of single-family, two-family, and small multi-family residential developments, with a maximum of four (4) dwelling units per structure on a single lot and at a density no greater than four (4) dwelling units per 9,000 square feet. While proposed Lot B does not meet the minimum lot area requirement, the intensity of the existing use on the site is similar to adjacent properties and appears to be generally consistent with the intent of the R-M District Regulations. The TNO, Traditional Neighborhood Overlay District does not have additional lot area requirements. The Granting of the Variance should not oppose the spirit and intent of the regulations.

Hardy made a motion to approve a VARIANCE to allow a reduction of the proposed lot area of 311 N.

9th Street from a minimum seven thousand five hundred (7,500) square feet to six thousand one hundred eighty three (6,183) square feet for an existing two-family dwelling located in the R-M, Four-Family Residential District with TNO, Traditional Neighborhood Overlay District with the following condition:

1. Future additions or modifications to the existing use or structure shall require conformance with the zoning regulations.
2. The Variance shall be limited to the existing use and structure.

Hamilton seconded, which passed 4-0.

Jackson withdrew from the board for the next item on the agenda.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO REDUCE THE REAR YARD SETBACK FOR AN ACCESSORY STRUCTURE OFF OF AN ALLEY FROM TEN (10) FEET TO ONE (1) FOOT AND A REDUCTION OF THE EAST SIDE YARD SETBACK FOR AN ACCESSORY STRUCTURE FROM THREE (3) FEET TO TWO (2) FEET FOR A PROPOSED DETACHED GARAGE LOCATED AT 912 FREEMONT WITHIN THE R-M, FOUR-FAMILY RESIDENTIAL DISTRICT WITH TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: CHUCK JACKSON)

Frazzell presented the staff report and recommended denial for the request.

The board asked for clarification of the setbacks on the submitted site plan and discussed among themselves the location and position of the proposed detached garage as well as associated drainage.

Chuck Jackson, applicant stated that gutters would be placed on the garage and water would be drained to his yard. He said the reason for going up to the alley was to maintain consistency with the neighbor's garage, and the east to west positioning of the garage was to provide safe ingress and egress. He further stated that he went from 11th Street to Juliette and from Poyntz to Bluemont and counted the number of garages located directly off of the alley with either a zero or one foot setback. He said there was a total of 104, an average of five garages per block, set on the alley facing either east or west which indicated it was not out of the ordinary to have what he requested.

Hamilton asked if there was a problem with cutting the overhangs back from two feet to one foot. Jackson responded saying no. She further asked why he chose to pitch the roof as proposed. Jackson responded saying it would allow him to have more room inside as proposed. Hamilton followed up by asking Jackson what the implication would be if required to meet the setback requirement. Jackson responded saying it would put the garage further south on his lot and would be more intrusive to the neighbor to the east.

Emig asked how far the existing structure (shed) is from the alley. Jackson responded saying six feet. Emig asked if a compromise could be made where the garage would be setback the same distance as the existing structure. Jackson said there would still be an offset plus it would open the area for weeds and trash, but if required he could live with it.

Hamilton said from what she understood the alley is used frequently by the neighborhood, therefore the look of the structures on the alley is important.

Hamilton closed the public hearing and opened for board discussion.

Hardy said there is an obvious alternative, but that throughout the neighborhood, garages are up to the alley and allowing the Exception would blend the proposed garage with what currently exists. He said that requiring the setback could make the garage more out of character with the surrounding neighborhood.

Emig said he would like to see the garage be located at least two feet from the alley as proposed on the site plan, given that there is a roof overhang. He said he could appreciate both sides as the applicant was trying to align the proposed garage to maintain aesthetics while City Staff addressed the fact there are alternatives. He said provided the applicant built as proposed on the site plan and reduced the overhang to one foot, he could support the request.

Hamilton said there might be more concrete if required to meet the setback. She said if the request was in isolation then she could understand staff's recommendation, however she was concerned with the intrusiveness of the garage on the east neighbor by requiring the minimum setback. She mentioned the Board had previously approved a similar request in the 1600 Block of Osage and continued by saying that if there was not a neighboring garage on the alley; the proposal would probably not work.

The Board found the Following Findings of Fact for the Exception:

A. The zoning lot consists of Lots 292, 293, and the west ten feet of Lot 291. The zoning lot contains 16,500 square feet of area. Given the extent of the zoning lot, the property currently complies with all applicable regulations except for the requested Exception.

B. To the south is Fremont Street followed by residential homes. These properties will be generally screened to the proposed accessory structure by distance and the existing house. North of the proposed accessory structure is an alley, followed by the rear yards of residential homes. The west property is a single-family home separated in distance by Lot 293 and generally screened by existing shrubs and trees.

To the east is a single-family home with an existing detached garage structure generally in line with the proposed accessory structure. The west ten feet of Lot 291 was purchased at least fifty years ago. The existing detached garage on the adjoining property is located directly on the side lot line with an approximate one foot overhang onto the applicant's property. The lack of distance from the lot line is a condition which would not meet current code for fire separation distance. According to the applicant, the condition has existed for over fifty years, and has not had an adverse effect on either property. Although the proposed location for the proposed accessory structure will conform to Section R302 of the 2003 Building Planning Code, the code only addresses the location of new structures on the lot and not existing conditions on adjoining properties. Granting the Exception will decrease the amount of fire separation distance between the overhangs of the two accessory structures.

C. The proposed location of the garage is off of the alley and should not have an adverse effect on the general public. Creating the garage in a west to east position will enable the applicant to safely enter and leave his property, while at the same time, protecting the safety and convenience of the general public from a vehicle backing onto the alley.

Aligning the proposed garage with the neighboring garage to the east may reduce the intrusion the proposed garage might have on the adjacent property.

D. According to the applicant, "strict application of the zoning rules would require him to create a very

unattractive and somewhat unsafe situation in this case. Location in this case allows a safe ingress and egress onto the property, it also gives safe traffic flow westward in the alley.”

Strict application would be an unreasonable intrusion on the order and the character of the neighborhood. The applicant and another person at the end of the block are the only two owner occupied properties within the block.

Because the garage is lining up with an existing structure on the alley because the zero setback is not designed to have any cars coming in and out directly onto the alley and because it does mitigate for an oversized construction which the applicant is allowed to build, then 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 rear yard setback for an accessory structure off of an alley from ten (10) feet to one (1) foot and a reduction of the east side yard setback for an accessory structure from three (3) feet to two (2) feet for a proposed detached garage at 912 Fremont, located within the R-M, Four-Family Residential District with TNO, Traditional Neighborhood Overlay District with the following conditions:

1. The structure shall be limited to no more than a one foot roof overhang.
2. The structure shall be constructed as proposed on the site plan and application documents.

Emig seconded the motion, which passed 3-0.

Hamilton adjourned the meeting.

Respectfully Submitted,

Jeremy Frazzell, Planner

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