

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, January 8, 2014
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Catherine Lavis; Angie Danner; and Ray Thompson

MEMBERS ABSENT: Connie Hamilton, Vice-Chairperson

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II; Chase Johnson, Planning Intern

CONSIDER THE MINUTES OF THE DECEMBER 11, 2013, BOARD OF ZONING APPEALS MEETING.

Thompson moved to approve the December 11, 2013 minutes, which passed on a vote of 4-0.

CONTINUE A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR A GROUP DAYCARE CENTER AT 736 TUTTLE STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: DIANE LINDSEY)

CONTINUE A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FIFTEEN (15) FOOT SIDE YARD SETBACK TO SEVEN (7) FEET, FOR A PROPOSED GROUP DAYCARE CENTER AS A CONDITIONAL USE IN AN EXISTING BUILDING LOCATED AT 736 TUTTLE STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: DIANE LINDSEY)

CONTINUE A PUBLIC HEARING TO CONSIDER A VARIANCES TO ALLOW A REDUCTION IN THE MINIMUM REQUIRED LOT AREA FROM 10,000 SQUARE FEET TO 7,350 SQUARE FEET; AND A REDUCTION IN THE MINIMUM LOT WIDTH FROM 75 FEET TO 73 FEET ALL FOR A CONDITIONAL USE FOR A PROPOSED GROUP DAYCARE CENTER IN AN EXISTING BUILDING LOCATED AT 736 TUTTLE STREET IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: DIANE LINDSEY)

Thompson moved to remove the items from the table and conduct a public hearing. Lavis seconded the motion, which passed on a vote of 4-0.

Johnson presented the Conditional Use, Variance and Exception Staff Reports together with a recommendation of denial for the Conditional Use and Variance requests and recommendation of approval for the Exception with two (2) conditions.

Hardy opened the public hearing.

Diane Lindsey, applicant, said that she was present to answer any questions and that an architect was hired for interior improvement and that the fence has been installed.

Jessica Beavor, 748 Tuttle Street, discussed her concerns about the increase in traffic and noise to the neighborhood and said that parking would be an issue. She then said that she has dogs that could pose a threat to the group daycare.

Julie Jones, 5626 Rocky Ford Ave, discussed the public hearing notifications that were sent out to adjacent property owners and said that some of the owners didn't receive the letters. Jones then said that she and other property owners were led to believe that the petition they signed at the neighborhood meeting was an attendance sheet instead of a petition for support.

Angela Beneke, 375 8th Road Bushton, KS, discussed her investment in the neighborhood and that she owns several of the surrounding properties. Beneke expressed her concerns about the impact the group daycare will have on property values in the neighborhood.

Richard Hill, 3513 Stagecoach Circle and representing the Manhattan Landlord Association, said that they have received several phone calls about the validity of the support petition then discussed the intent of zoning and reasonable expectations of property owners in regards their property.

Kim Wolford, 740 Tuttle Street, discussed her concerns with potential increases in traffic and noise caused by the group daycare.

Hardy closed the public hearing.

Thompson said that the daycare should be limited in the neighborhood.

Danner asked if the item was not approved what would the property be used for. Lindsey said that she would move to the subject property and have a home occupation daycare.

Hardy said that the Variance is the most difficult to approve due to satisfying the criteria.

The Board made the following findings of fact for the Conditional Use at 736 Tuttle Street.

PRESENT USE: Vacant single-family residence

A. Compliance with all applicable regulations:

The existing property encroaches into the minimum fifteen (15) foot side yard setbacks for a conditional use in the R-1, Single-Family Residential District. An Exception has been requested to allow for the reduction of the fifteen (15) foot side yard setbacks to seven (7) feet from the west property line and eleven (11) feet from the east property line to comply with the conditional use regulations. Under the current zoning regulations, there is a minimum side

yard setback of eight (8) feet for the R-1, Single-Family Residential District. The subject property was built in 1956 with an addition of the attached garage in 1964. Before 1965, the minimum required side yard setback was six (6) feet. Therefore, the subject property is legally non-conforming to the current side yard setback regulations. The subject site currently complies with all other applicable requirements of the Zoning Regulations.

If the applicants lived in the home and met the other use limitations for a home occupation, a day care home, which is defined in the zoning regulations as “a home occupation in which care is given to six (6) or fewer children, not related to the operator by blood, marriage, or legal adoption” could have been an alternative to the proposed Conditional Use Permit. The proposed Conditional Use Permit and subsequent Variances are requested for the proposed Group day care center.

B. Probable effect on adjacent properties:

Properties to the south, east and west are all within the R-1, Single-Family Residential District, with the majority single-family and owner occupied homes. The properties to the north are located within the Butterfield PUD, which is predominately single-family residential. If the proposed Conditional Use Permit is approved, an increase in traffic can be anticipated in the morning and late afternoon hours along Tuttle Street. In addition, the drop-off and pick-up times can be expected to fluctuate throughout the morning and late afternoon hours. According to the application, a six (6) foot high privacy fence will be constructed to enclose the rear yard and to provide screening of an outdoor play area. An outdoor play area will create noise associated with children playing. Due to the proposed maximum number of twelve (12) children, the noise impact is anticipated to be approximately twice than what could be expected from a day care home, which could be permitted as a home occupation in a single-family residential neighborhood. As part of the application documents, the applicants submitted a petition which was signed by five (5) adjacent property owners, with two (2) of those properties being owned by the same party, in support of their request for a conditional use. These neighbors include the properties directly to the east and west of the subject property. Although the existing neighbors to the east and west have signed the petition for support, the proposed group day care center in a single-family dwelling requiring the subsequent variances and exceptions due to the lot size, may be inappropriate. The intensity of the proposed conditional use is anticipated to cause adverse impacts to the adjacent properties. It may be appropriate to limit the amount children allowed for the group daycare to avoid adverse impacts to noise and traffic. City Administration is recommending a condition of approval to address this concern.

C. Domination by use over neighboring properties: The subject property has existed since 1956, as a single-family residence. The application states that a six (6) foot high privacy fence will be constructed to enclose the rear yard but no structural improvements are requested at this time. The applicant has requested a change in use from a single-family residential use to a Group day care center use, which requires the Conditional Use Permit and subsequent Exceptions and Variances.

1. **Location, nature, and height of physical improvements:** The proposed group day care center is to be located inside the existing structure on the subject site. A proposed six

(6) foot privacy fence will be constructed to enclose the rear yard. The application states that an outdoor play area will be added to the enclosed backyard. No other physical improvements are proposed to the existing house or lot at this time. Neither the existing house, nor the proposed use should dominate the use of other properties.

2. Landscaping and screening: The proposed six (6) foot privacy fence will be constructed to enclose the rear yard and to provide screening of the outdoor play area. No additional landscaping is proposed or required

D. Adequate provision of parking and loading: Off-street parking is proposed on the existing eighteen (18) foot wide by thirty (30) foot long driveway. The existing driveway would allow enough space for four (4) typical parking stalls. An additional two (2) vehicles could be parked in the garage. As proposed in the application documents, day care service would be provided for up to a maximum of twelve (12) children with two (2) employees. According to 7-103(C)(4) of the Manhattan Zoning Regulations, parking requirements for Group day care centers and nursery schools are “at least one (1) parking space for each employee and one (1) parking space for each five (5) children.” In this case, a minimum of five (5) off-street parking spaces would be required for the Group day care center as proposed by the applicant. Parking is permitted along both sides of Tuttle Street. With the subsequent variance, adequate off-street parking would be available for the proposed use on the subject site.

E. Adequate provision of drainage, and other public utilities:
No changes are being proposed which would alter the current drainage of the subject site. Public utilities are adequately served and no additions or modifications are proposed at this time.

F. Adequate provision of access:
The subject property is an interior lot with an existing single-family home which faces to the south. The primary entrance into the house and access to the driveway is from the south, off of Tuttle Street. Tuttle Street is a local road which dead ends just east of the subject property and connects to other local streets including Manfax Avenue, Sloan and Brockman Street. On-street parking is allowed along both sides of Tuttle Street. Other than the aforementioned, no other improvements have been proposed to the existing residential structure and provisions for ADA accessibility have not been provided or proposed at this time.
Danner made a motion to deny the a CONDITIONAL USE under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for a Group Daycare Center in the R-1, Single-Family Residential District.

Lavis seconded the motion, which passed by a vote of 4-0.

The Board made the following findings of fact for the Variances at 736 Tuttle Street.

PRESENT USE: Vacant single-family residence

CONDITIONS UNIQUE TO THE PROPERTY:

The subject site meets the lot area and lot width requirements for a single-family residential use, but does not meet the requirements for a Conditional Use Permit. Although the lot size was not created by the applicant and the size of the lot cannot be increased to meet the lot area requirements for the proposed Group day care center, the property itself is not unique to the surrounding area or other properties zoned R-1 single-family residential district throughout the City. The subject site is similar in size to other single-family dwellings in the neighborhood and throughout the City. To meet the off-street parking requirements for a Group day care center, a minimum of five (5) off-street parking spaces are required. Unless the applicant requested a Variance to not provide off-street parking, or created a parking area north of the existing residential structure, in the functional rear yard, off-street parking could not be attained without being located in the existing front yard setback. This too is not unique to the subject property.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Properties to the south, east and west are all within the R-1, Single-Family Residential District, with the majority single-family and owner occupied homes. The properties to the north are located within the Butterfield PUD, which is predominately single-family residential. If the proposed Conditional Use Permit is approved, an increase in traffic can be anticipated in the morning and late afternoon hours along Tuttle Street. In addition, the drop-off and pick-up times can be expected to fluctuate throughout the morning and late afternoon hours. According to the application, a six (6) foot high privacy fence will be constructed to enclose the rear yard and to provide screening of the outdoor play area. An outdoor play area will create noise associated with children playing. Due to the proposed maximum number of twelve (12) children, the noise impact is anticipated to be approximately twice than what could be expected from a day care home, which could be permitted as a home occupation in a single-family residential neighborhood. Reducing the lot area from the minimum required 10,000 square feet to the current lot area of 7,350 square feet for the proposed Group day care center could potentially have adverse impacts to the adjacent properties. The amount of noise and traffic generated from the proposed use may adversely impact the adjacent property due to the intensity of use of the proposed Group day care facility. The proposed Variance to allow the required off-street parking to be located on the existing driveway should not have an adverse impact on adjacent properties.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The subject site is approximately 7,350 square feet in lot area and seventy-three (73) feet in lot width. A Conditional Use Permit in the R-1, Single-Family District requires a lot area of 10,000 square feet and a lot width of seventy-five (75) feet. Requiring strict application of the off-street parking requirement, lot area and lot width requirements would require the subject site to continue as a single-family residential use, and would not allow for the proposed Conditional Use Permit. The applicant could still use the single-family dwelling for any uses by right defined by the Zoning Regulations. Therefore, the strict application of the regulations is not a hardship to the applicant.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

Adequate off-street parking can be provided on the existing driveway. A five (5) foot utility easement located along the north portion of subject site will not be impacted by the proposed Variances. The effects of approving the Variance should not adversely impact the general public, health, safety and welfare.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the regulations regarding the increased lot size and lot width standard for Conditional Uses is to decrease density and to allow adequate spacing between those conditional uses and the uses allowed in the residential district by right. In this case, the subject site is a platted interior lot bound by existing platted lots and street right-of-way, preventing the lot from expanding in lot size. The reduction in lot area from 10,000 square feet to 7,350 square feet and the reduction of lot width from seventy-five (75) feet to seventy-three (73) feet, would allow for a Conditional Use Permit to be considered for a proposed Group day care center in the R-1, Single-Family Residential District. The intensity of the proposed group day care facility seems to be inappropriate for the subject property. Because of this, the intent of the regulations for the required minimum front yard, minimum lot width, and minimum lot area are not met.

Lavis made a motion to deny the VARIANCES from the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow off-street parking within the required front yard; and a reduction in the minimum required lot area from 10,000 square feet to 7,350 square feet; and a reduction in the minimum lot width from 75 feet to 73 feet all for a Conditional Use for a proposed Group Daycare Center in an existing building located in the R-1, Single-Family Residential District.

Danner seconded the motion, which passed by a vote of 4-0.

The Board made the following findings of fact for the EXCEPTION at 736 Tuttle Street.

PRESENT USE: Vacant single-family residence

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property was built in 1956 with an addition of the attached garage in 1964. Before 1965, the minimum required side yard setback was six (6) feet. Therefore, the subject property is legally non-conforming to the current side yard setback regulations. As a single-family residence, the property currently complies with all other applicable regulations. Concurrently, a Conditional Use Permit and Variances have been proposed to allow a Group day care center to be located at the existing single-family residence. The Conditional Use requires an Exception to allow for the reduction of the minimum required side yard setback from fifteen (15) feet to (7) feet for the west property line and from fifteen (15) feet to eleven (11) feet for the east property line.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Properties to the south, east and west are all within the R-1, Single-Family Residential District, with the majority single-family and owner occupied homes. The properties to the north are located within the Butterfield PUD, which is predominately single-family residential. As a single-family residence, the property currently complies with all applicable regulations. The Exception to allow for the reduction of the side yard setbacks is a requirement for the subsequent Conditional Use Permit. The properties impacted the most by the proposed reduction to the side yard setbacks are located to the direct east and west of the subject property. According to the application, a six (6) foot high privacy fence will be constructed to enclose the rear yard and to provide screening for an outdoor play area. In addition the applicants submitted a petition which was signed by five (5) adjacent property owners, with two (2) of those properties being owned by the same party, in support of their request for the Conditional Use and subsequent Exception and Variances. The effects of approving the Exception should not adversely impact the adjacent properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

The Exception will not impact any vision triangles or utility easements located on the property. The effects of approving the Exception should not adversely impact the general public, health, safety and welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

The condition requiring the Exception is an existing condition which was not created by the applicant. According to the application, the property was recently acquired for the proposed Group day care center as a Conditional Use. The proposed Conditional Use requires an increase to the minimum side yard set back from eight (8) feet to fifteen (15). Due to the shape and size of the lot, the subject property would need to be reconfigured and constructed in order to comply with the regulations. When all facts and circumstances are considered, requiring strict application of the regulations seems to be unreasonable.

Thompson made a motion to approve the an EXCEPTION under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the reduction of the minimum required fifteen (15) foot side yard setback to seven (7) feet from the west property line, and to eleven (11) feet from the east property line, all for a proposed Group Daycare Center as a Conditional Use in an existing building located in the R-1, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall apply only to the Conditional Use for the Group Daycare Center as outlined in the application materials and shown on the site plan.
2. The Exception shall be limited to the applicants.

Danner seconded the motion, which passed by a vote of 4-0.

Respectfully submitted by

Chase Johnson, Planning Intern