

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, January 13, 2016
7:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton, Vice Chairperson; Angie Danner; Catherine Lavis; LaBarbara Wigfall

MEMBERS ABSENT:

STAFF PRESENT: Chad Bunger, Senior Planner; Amelia Lewis, Planning Intern

CONSIDER THE MINUTES OF THE DECEMBER 9, 2015 BOARD OF ZONING APPEALS MEETING.

Danner moved to approve the December 9, 2015 minutes which was seconded by Hamilton and passed with a vote of (5-0).

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW FOR THE MODIFICATION OF A LEGALLY NON-CONFORMING TWO (2) UNIT RESIDENTIAL STRUCTURE AT 1716 POYNTZ AVENUE WITHIN A R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: BRENT & ANDREA CHAMBERLAIN)

Bunger presented the staff report for the item with the recommendation of approval with three (3) conditions of approval.

Hamilton asked about the second conditional of approval. Bunger clarified that if the property owner were to remove the second dwelling unit in the basement, the conditional use would expire.

Hardy opened the public hearing.

Brent Chamberlain, applicant/owner, spoke to clarify some aspects of the item. Chamberlain stated that even with the addition to the home and the conditional use for the second unit, there was intent to keep the property in character with the surrounding owner occupied homes in the neighborhood.

Hardy closed the public hearing.

Hamilton asked if the conditional use was to make the upper floor the residence for the property owner, and the single-bedroom basement unit for a separate tenant. Bunger said that was correct. Hamilton said she was concerned if another owner were to take over the apartment, and try to convert the basement unit into a two bedroom dwelling unit rental. Bunger said that it would be an illegal unit, but regulating that is challenging.

Hamilton made a motion to approve the CONDITIONAL USE under the terms of the Manhattan Zoning Ordinance of the City of Manhattan, Kansas, to allow for the modification of a legally non-conforming two (2) unit residential structure within a R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions of approval:

1. The proposed improvements shall be constructed as outlined in the application materials, floor plan and site plan.
2. In the event the use upon the site changes to a use permitted at that location by these regulations, the Conditional Use shall expire and shall not be re-established.
3. All applicable permits shall be obtained.

Wigfall seconded the motion which passed on a vote of 4-0.

The Board made the following findings of fact for the Conditional Use at 1716 Poyntz Avenue.

PRESENT USE: Legally nonconforming two (2) unit residential structure

1. THAT THE SIZE OF THE ZONING LOT IS NOT INCREASED FROM THAT WHICH CURRENTLY EXISTS : The subject property measures approximately 50 foot by 150 foot, which is a typical rectangular shaped Ward lot. The size of the lot has not changed since the current property was constructed in 1932 and the lot size is not proposed to increase from what currently exists.

2. THAT EITHER: (A) THE CURRENT EXISTING USE DOES NOT HAVE A SIGNIFICANTLY ADVERSE IMPACT UPON EITHER THE SURROUNDING NEIGHBORHOOD OR THE PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, AND THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL NOT WORSEN SUCH IMPACT; OR, (B) THAT THE CURRENT EXISTING USE DOES HAVE SUCH A SIGNIFICANTLY ADVERSE IMPACT AND THE GRANTING OF THE PROPOSED MODIFICATIONS, ADDITIONS AND DELETIONS WILL BE MORE LIKELY TO REDUCE OR ELIMINATE SUCH IMPACT THAN A DENIAL OF SUCH PROPOSAL: The subject site and surrounding properties are zoned R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay. Property to the east, along Poyntz, is zoned C-1, Restricted Business District. The lots within the area are traditional ward lots with several lots that have been divided and assembled into non-traditional lots. The area is a mix of single-family, two-family and multi-family dwellings with a combination of owner-occupied and rental units, as well as

some commercial businesses. These properties are predominately single-family residential in character with several that have been divided into multi-family units.

The current existing use does not have a significantly adverse impact upon the surrounding neighborhood or the public, health, safety or general welfare. The subject site was built in 1932 and has generally remained the same since it was constructed. It is unknown at this time if the structure was originally built with two (2) dwelling units or if the 2nd unit was added at a later date. There are several properties within the immediate neighborhood with more than one (1) dwelling unit, including 1715 Poyntz, 1701 Poyntz, 113 N. 17th Street, 121 N. 17th Street and 109 N. 17th Street. The multiple dwelling units held by these properties is a remnant of the "A" Residence zoning history, which allowed more than a single dwelling unit per zoning lot. Combined, the two (2) units have a total of 4 bedrooms and 2 ½ bathrooms, which is typical for a single-family house within the surrounding neighborhood.

The Zoning Regulations indicate that a legally nonconforming use shall be deemed a conditional use in the zoning district in which it is located. In general, a legally nonconforming use cannot be expanded, enlarged or increased in intensity beyond that which existed when it became legally nonconforming unless a conditional use is approved. An expansion, enlargement or increase in intensity is the use of additional structures, land area, or floor space within the same structure not originally designed or arranged for such use. The proposed addition seems to be consistent with the intent to not increase the intensity of the legally nonconforming use as it relates to significant adverse impacts on adjacent properties and the surrounding neighborhood.

3. THE PROPOSED CONDITIONAL USE COMPLIES WITH ALL APPLICABLE PROVISIONS OF THESE REGULATIONS, EXCEPT FOR THOSE EXISTING CONDITIONS THAT ARE LEGALLY NONCONFORMING; HOWEVER, THE PROPOSAL MAY CONTAIN REQUESTS FOR EXCEPTIONS TO SUCH REQUIREMENTS AS PROVIDED IN PARAGRAPH (F) HEREINAFTER: The proposed Conditional Use complies with all applicable provisions of the regulations.

4. THE EXISTING USE CONTINUES IN A SUBSTANTIALLY SIMILAR FORM, OR IN A FORM THAT IS ALTERED ONLY TO MAKE IT MORE MODERN OR EFFICIENT: The proposed modification to the existing two (2) dwelling-unit structure maintains the existing character and similar form of the structure. The majority of the improvements are interior, without adding additional bedrooms. The existing use of the structure should continue in a substantially similar form. There are no other modifications proposed to the subject site at this time.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO APPROXIMATELY ZERO (0) FEET OFF OF ENGLEWOOD STREET FOR A PRIVACY FENCE AT 2037 SOMERSET SQUARE, LOCATED IN

THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT (APPLICANT/OWNER: JOHN O'MALLEY)

Lewis presented the staff report for the item with the recommendation of approval with two (2) conditions of approval.

Hardy opened the public hearing.

John O'Malley, applicant/property owner, said he was unaware of the corner lot restrictions prior to building the fence.

Rich Jankovich, 2021 Somerset Square, stated his support for the fence.

Hardy closed the public hearing.

Danner made a motion to approve an EXCEPTION to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to approximately zero (0) feet for a privacy fence, located in the R, Single-Family Residential District, with the following conditions::

1. The Exception shall be limited to the existing fence.
2. The fence shall be maintained in good condition.

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

The board made the following findings of fact for the property at 2037 Somerset Square.

PRESENT USE: Single-family residential property

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: Other than for what the Exception request is for, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and immediate properties are located in the R, Single Family Residential District. Neighboring areas to the east along Englewood Street are zoned R-1, Single Family Residential. The area is residential in nature, primarily composed of single-family houses.

The effect on adjacent properties is minimal as no surrounding properties directly face the fence. The properties across Englewood Street are sited facing the cul-de-sac, Laurel Circle, angled away from Englewood Street and placed far enough back that their view is not significantly impacted. The fence is not out of character for the neighborhood as there are several other privacy fences and fences located along Englewood Street. Considering these factors, the probable effect on adjacent properties should be minimal.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The fence does not inhibit the views of

motorists or pedestrians and is not located within the right of way. The fence comes within several feet of the existing sidewalk along Englewood Street, however it does not run directly up against it and leaves ample room for pedestrians.

The fence is located within a utility easement along the back property line. If for any reason the utility easement needs to be accessed, damage to the fence is at the property owner's expense. The granting of the Exception should not have an adverse effect on the public health, safety, morals, order, convenience, prosperity or general welfare.

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

The strict application of the front yard setback would require that the fence be located a minimum of twenty-five (25) feet from the property line along Englewood Street. The lot and yard space along Englewood Drive is more narrow at the northern edge of the lot, where Englewood Street curves, limiting the space that could be enclosed by a fence if the required setback were adhered to. Considering these factors and that the proposed fence should not adversely impact the adjacent properties or the general public, it appears that the strict application of the front yard setback regulation is unreasonable.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO APPROXIMATELY TWENTY-FOUR (24) FEET OFF OF BUTTERFIELD ROAD; AND FOR THE REDUCTION OF THE MINIMUM REQUIRED SIXTY (60) FOOT FRONT YARD SETBACK TO APPROXIMATELY FORTY-TWO (42) FEET OFF OF BUTTONWOOD DR, ALL FOR A PROPOSED ACCESSORY STRUCTURE AT 2444 BUTTONWOOD DRIVE, LOCATED IN A PUD, PLANNED UNIT DEVELOPMENT. (APPLICANT/OWNER: HAROLD DAVIS)

Lewis presented the staff report for the item with the recommendation of approval with one (1) condition of approval.

Hamilton asked if it was an addition to the house as opposed to an accessory structure, the setback would only be 25 foot setback and would be allowed to go into the setback one foot. Bunger said that was correct.

Hardy opened the public hearing.

No one from the public was in attendance.

Hardy closed the public hearing.

Wigfall asked about the regular number of corner lot cases and if City Staff had any plans to change the zoning regulations for corner lots to reduce the number of exceptions associated

with them. Bunger said it was something City Staff might look at when the zoning regulations are reviewed in the future.

Wigfall made a motion to approve the the EXCEPTION request to allow for the reduction of the minimum required twenty-five (25) foot front yard setback to approximately twenty-four (24) feet off of Butterfield Road; and for the reduction of the minimum required sixty (60) foot front yard setback to approximately forty-two (42) feet off of Buttonwood Drive, all for a proposed accessory structure located in a PUD, Planned Unit Development, with the following condition:

1. The Exception request shall be limited to the accessory structure addition as explained in the application and shown on the site plan.

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

The board made the following findings of fact for the property at 2444 Buttonwood Drive.

PRESENT USE: Single-Family House

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property complies with all applicable requirements of these regulations, other than the ones for which the Exception request is for.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site is located in the Butterfield Planned Unit Development. The houses within the PUD are primarily single story, single family homes. The surrounding neighborhood to the north is zoned R-2, Two-Family Residential District and is higher density in nature with duplexes and single family homes. The surrounding neighborhoods to the west and the south are zoned R-1, Single-Family Residential. Northview Elementary School is located less than a mile to the south of the subject property.

Impacts on adjacent properties should be minimal due to the location and design of the structure. The structure will be visible to the properties located directly to the east of the subject site that are oriented towards Buttonwood Drive. However, the shed is relatively small and the design fits in with the existing neighborhood. The location of the structure to the side of the house creates a minimal visual impact for the properties located across the street on Butterfield Road.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal adverse affects on the general health, safety or welfare of the public is anticipated. The structure is not located within the right of way or any utility easements. The structure will not affect the traffic along Butterfield Road or Buttonwood Drive, as the structure is setback adequately from the street. There is no sidewalk located along the side of Butterfield Road where the property is located.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR

UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

The strict application of the minimum front yard setbacks would prohibit the addition of the structure. The location of the structure is a factor of both the property owner's desire to place it in proximity to the existing accessory structure and the location on the west side of the house maintains the yard space to the north of the house. Considering these factors and that the proposed addition will have a limited impact on the adjacent properties or the general public, the strict application of the minimum front yard setback seems unreasonable.

Hardy adjourned the meeting.

Respectfully Submitted by,

Amelia Lewis, Planning Intern