

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, March 9, 2016**  
**7:00 PM**

MEMBERS PRESENT: Angie Danner; Labarbara Wigfall; Brandi Nelson

MEMBERS ABSENT: Harry Hardy, Chairperson; Connie Hamilton, Vice Chairperson

STAFF PRESENT: Chad Bunger, CFM, AICP; Doug May, Planner and Amelia Lewis,  
Planning Intern

**CONSIDER THE MINUTES OF THE FEBRUARY 10, 2016, BOARD OF ZONING APPEALS MEETING.**

Nelson made a correction to the minutes.

Wigfall moved to approve the February 10, 2016 minutes as corrected which was seconded by Nelson and passed with a vote of (3-0).

**REMOVE FROM THE TABLE AND CONDUCT A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FOR AN EXISTING FENCE FROM TWENTY-FIVE (25) FEET TO ZERO (0) FEET ALONG PLYMOUTH ROAD AT 1901 AND 1903 PLYMOUTH LANDING IN THE PLYMOUTH LANDING PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT (APPLICANT: LARIE SCHOAP OWNER: LARIE SCHOAP AND MARILYN TAYLOR)**

Wigfall made a motion to remove the item from the table. Nelson seconded the motion which passed on a vote of 3-0.

Bunger presented the item with recommendation of approval and with the four (4) conditions of approval.

Danner opened the public hearing.

Larie Schoap, applicant, said the fence was to protect the backyard space from the neighboring property but said she was willing to comply with all the conditions of approval.

Danner closed the public hearing.

Nelson said she visited the site and did not have any issues with the existing fence. Wigfall said she was concerned about the encroachment into the right of way.

Wigfall made a motion to approve the Exception to allow for the reduction of the minimum

required front yard setback for an existing fence from twenty-five (25) feet to zero (0) feet along Plymouth Road at 1901 and 1903 Plymouth Landing in the Plymouth Landing PUD, with the four (4) conditions of approval.

Nelson seconded the motion which passed on a vote of (3-0).

The Board made the following findings of fact for the Exception at 1901 and 1903 Plymouth Landing.

**PRESENT USE:** Single-Family Attached Homes

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Other than issue with the fence being located in the public right-of-way and the Exception request, the properties comply with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal adverse impacts on adjacent properties are anticipated. The existing fence was installed in August, 2015. The violation of the fence encroaching into the front yard setback was discovered by the City's Zoning Inspection Officer conducting a routine neighborhood inspection (*see attached notice of violation letter, dated November 30, 2015*) and not by the complaint of a neighbor.

The applicant states in the application documents that she has spoken with her neighbors about the location of the fence. The location of the fence does not appear to impede the sight distance for the property owner's driveway to the west.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Once removed out of the public right-of-way (ROW), minimal impacts on the public health, safety and general welfare are anticipated from allowing the existing fence. The fence is required to be removed from the ROW to avoid impacted existing and future utilities in the ROW and to avoid any adverse impacts on the roadway.

The applicant did try to incorporate measures to ensure that sight distances along Plymouth Road or the adjacent property's driveways were not impacted by the fence's location. These measures should be continued with the relocated fence.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the Zoning Regulations would require the fence to be setback at least 25 feet from the front property line along Plymouth Road. 1901 Plymouth Landing is a uniquely lot in that it is a corner lot that also ends at a point at the western corner of the property. Because of the unique shape of this lot, virtually no fence could be located on the property that would follow the setback in this general area.

The applicant's property at 1903 Plymouth Landing is only 38 feet wide. One of the primary

purposes of the fence is to screen her backyard and home from vehicles and pedestrians along Plymouth Road to the south. Adhering to the required 25 foot front yard setback would result in a fence 13 feet wide on the northern edge of the property would most likely not meet the applicant's objective.

The applicant has taken the steps to reduce the impacts on adjacent properties and the general public by angling the fence away from the street. Considering these factors, the strict application of the setback requirement for this property is unreasonable.

**STAFF COMMENTS:** City Administration requires that the existing fence in the road right-of-way of Plymouth Road be removed for public access and safety reasons.

City Administration recommends approval of a Exception for the reduction of the minimum required front yard setback for an existing fence and any portion of the fence being relocated off of the public right-of-way from twenty-five (25) feet to zero (0) feet along Plymouth Road in the Plymouth Landing PUD, Residential Planned Unit Development, with the following conditions of approval.

1. The Exception request shall be limited to the existing fence as explained in the application and shown on the site plan.
2. The fence shall be removed from the public right-of-way along Plymouth Road and be solely on private property.
3. The fence shall remain in good condition.
4. All applicable permits shall be obtained.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE THE INCREASE OF THE THIRTY-FIVE (35) PERCENT MAXIMUM LOT COVERAGE FOR 224 HIGHLAND GROVE TO APPROXIMATELY THIRTY-FIVE POINT TWO (35.2) PERCENT FOR A PROPOSED DECK AND STAIRS ASSOCIATED WITH AN EXISTING DUPLEX LOCATED IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: ALAN DAYS & CAROL SHERLEY-DAYS.)**

May presented the staff report with the recommendation of approval and with the two (2) conditions of approval.

Wigfall wanted to clarify that as an attached unit, 224 was the only property needed an Exception and not 226 Highland Grove was not an issue as it had been advertised.

Danner opened the public hearing.

Alan Days, applicant, said their primary concern was improving the access to the storm shelter.

Danner closed the public hearing.

The board commented it seemed like a reasonable comment that improved the safety of residents.

Nelson made a motion to approve the exception to allow for the the increase of the thirty-five (35) percent maximum lot coverage for 224 Highland Grove to approximately thirty-five point two (35.2) percent for a proposed deck and stairs associated with an existing duplex located in the R-2, Two-Family Residential District with the two (2) conditions of approval.

The Board made the following findings of fact for the Exception at 224 Highland Grove Drive.

**PRESENT USE:** Single Family Attached Home

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The site complies with all applicable regulations, other than the Exception request.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The area is a mix of single family homes, two-family homes, and multi-family apartment complexes. The lots located to the north and south are zoned R-2, Two-Family Residential. The lots located across Highland Grove Drive are zoned R-1, Single Family Residential. The lots to the east are zoned R-3 Multiple Family Residential. The lots to the east, across Scenic Drive are part of a Planned Unit Development (PUD). All of lot 42B is within the Airport Overlay.

The probable effect on adjacent properties is likely to be minimal. As the proposed deck is on the rear of the existing duplex, and as the duplex currently backs up to Scenic Drive, there would be no adjacent properties to experience any effects of this proposed deck. Additionally, the proposed deck still sits within the rear setback, so it is unlikely that it would have a significant impact on adjacent properties.

The applicants have stated that the purpose of the proposed deck is to allow for easy and safe access to the storm shelter in the walkout basement, which is currently only accessible from the exterior rear of the house.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal effects on the public health, safety, and order are anticipated from the proposed deck. The proposed deck is not located in any easements or in a location to affect pedestrians or motorists.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The applicants state that access to the storm shelter in the basement is currently difficult and dangerous as they must traverse steep slopes to access it. The proposed deck and stairs are meant to make access safer, quicker, and easier, especially for children and the elderly. This proposed deck would only increase the lot coverage by approximately one point two (1.2) percent, and the proposed deck would still be within the rear setback

**STAFF COMMENTS:** City Administration recommends approval of the Exception to allow for the increase of the thirty-five (35) percent maximum lot coverage to approximately thirty-five point one three (35.13) percent for a proposed wooden deck and stairs associated with an existing two-family home at 224-226 Highland Grove Drive in the R-2, Two-Family District, with the following conditions of approval:

1. The Exception request shall only apply to the deck and stairs as proposed in the staff report.
2. All necessary building permits shall be obtained.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW FOR THE INCREASE OF THE THIRTY (30) PERCENT MAXIMUM LOT COVERAGE TO APPROXIMATELY THIRTY-TWO (32) PERCENT FOR A PROPOSED ALUMINUM PATIO COVER ASSOCIATED WITH AN EXISTING SINGLE FAMILY HOME AT 1121 HYLTON HEIGHTS ROAD, LOCATED IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/OWNER: BENEDICT J. ECKART)**

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

Wigfall asked how tall the retaining wall along the north property line was. Lewis did not know.

Danner opened the public hearing.

Benedict Eckart, applicant, said the retaining wall was actually a flower bed to protect run off from Kinder Care. Eckart said the surrounding property owners supported the item, which was to provide shade for the existing patio.

Danner closed the public hearing.

Wigfall made a motion to approve the Exception to allow for the increase of the thirty (30) percent maximum lot coverage to approximately thirty-two (32) percent for a proposed aluminum patio cover associated with an existing single family home at 1121 Hylton Heights Road, located in the R, Single Family Residential District with the two (2) conditions of approval.

The board made the following findings of fact for the Exception at 1121 Hylton Heights:

**PRESENT USE:** Single-Family Home

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The site complies with all applicable regulations, other than the Exception request.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The property is located between Claflin Road and Anderson Avenue, in a transitional area between residential and commercial

uses. The majority of the properties along the west side of Hylton Heights Road where the subject site is located are zoned C-1, Restricted Business. The property to the north is Kinder Care daycare and to the south and to the west are commercial properties. Across the street on the east side of Hylton Heights Road and in the adjacent neighborhoods are similar single-family homes also zoned R, Single Family Residential.

The probable effect on adjacent properties is likely to be minimal. The property most affected would be the Kinder Care daycare as the proposed patio cover is along the shared property line. However the patio cover would not extend all the way to the property line. The structure located on the property to the west is situated far enough forward that the structure does not affect the views of the residents. The proposed cover is located at the rear of the house where there are existing trees that provide a buffer between the two properties. With the proposed location at the rear of the house, the distance from the street and existing screening, it is unlikely that the proposed patio cover will have a significant impact on adjacent properties.

The application document states that the property owners “have good neighbor relations with Kinder Care and have contacted all owner/residents on Hylton Heights and they have no objections” though a document of signed signatures reflecting this was not submitted by the applicant.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal affects on the public health, safety and order is anticipated from the patio cover. The proposed patio cover is not located in any easements or in a location to affect pedestrians or motorists. The applicant documents state that the patio cover meets all structural requirements.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The proposed patio cover is located in the rear of the house and will not inhibit the views of any surrounding property owners. In addition, the patio cover would only increase the lot coverage by two (2) percent and still maintain adequate green space on the property.

**STAFF COMMENTS:** City Administration recommends approval of the Exception allow for the increase of the thirty (30) percent maximum lot coverage to approximately thirty-two (32) percent for a proposed aluminum patio cover associated with an existing single family home at 1121 Hylton Heights Road in the R, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall only apply to the existing patio cover as proposed in the staff report.
  2. All necessary building permits shall be obtained.
- Danner adjourned the meeting.

Respectfully Submitted by Amelia Lewis, Planning Intern

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