

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, August 9, 2006
7:00 PM

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

MEMBERS ABSENT: None

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

CONSIDER THE MINUTES

Hamilton moved to approve the July 12, 2006 minutes which was seconded by Hardy and passed with a vote of 4-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 725 HOUSTON STREET IN THE R-1 SINGLE-FAMILY RESIDENTIAL AND TNO, TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICTS, TO ALLOW A REDUCTION IN THE MINIMUM TEN (10) FOOT REAR YARD SETBACK FOR A PROPOSED DETACHED GARAGE. (APPLICANT/OWNER: JEFF AND PAMELA ALGER)

Frazzell presented the Staff Report with a recommendation for approval of the Exception with three conditions.

Jeff Alger, 725 Houston, stated his request to rebuild the detached garage in the existing location. He stated he was available to answer any questions.

Jackson closed for Public Hearing and opened for Board discussion.

Hardy explained he could support the request based on the fact the proposed garage was virtually the same as what currently exists.

Hamilton said she could support the request as the applicant has taken steps to consciously design the proposed garage to be sensitive to the Traditional Neighborhood Overlay District.

Jackson stated he did not want to see the second floor of the garage turned into a second dwelling unit.

Emig stated that the garage should not be serviced with water. Alger commented the garage would only be serviced with heat.

The Board made the following Findings of Fact for the Exception at 725 Houston St.:

A. The property complies with all applicable requirements of these regulations, other than the one for which an Exception is being requested.

B. Surrounding properties are single-family, owner occupied residences with similar detached garage

structures located off of the alley. The proposed reduction in the rear yard setback should not adversely affect adjacent properties or the surrounding neighborhood in general, as the condition currently exists with a dilapidated structure, without known implications on surrounding properties. According to the applicant, rebuilding the structure “will greatly enhance the aesthetic appeal of the property and the surrounding neighborhood.” Lot 103, Ward 5 is located within the Historic Environs of Seven Dolores Catholic Church and the proposal is currently being reviewed by the State Historic Preservation Office to determine if the proposed project will have implications on the historic environs. The proposed rear yard setback reduction is not anticipated to have a substantial adverse effect on adjacent properties.

C. Rebuilding the structure may increase the public health and safety of users of the alley between 7th and 8th Streets by replacing a damaged structure with a new structure which is compliant with current City Building Code requirements. The proposed structure does not encroach into any utility or drainage easements and is not anticipated to adversely impact vision along the alley.

D. Detached garages located on or near the alley is an existing condition throughout the established neighborhood. The applicant is proposing to remove an existing, damaged structure located adjacent to the alley and replace it with a new structure within the same general footprint of the existing structure. The existing structure has been part of the established neighborhood for many years and likely would not require an Exception to continue in the state that currently exists. The applicant has designed the proposed garage to be characteristic of the surrounding traditional neighborhood and although not required, the proposed garage is designed to be sensitive to the TNO, Traditional Neighborhood Overlay District.

Hamilton moved to approve an Exception at 725 Houston Street, to allow a reduction in the minimum ten (10) foot accessory structure rear yard setback for a proposed detached garage in the R-1, Single-Family Residential District with TNO, Traditional Neighborhood Overlay District with the following conditions:

1. All necessary permits shall be obtained.
2. The Exception shall be limited to the application documents and site plan.
3. The structure shall be maintained in good condition.

Hardy seconded which passed with a vote 4-0.

A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR 3228 HIGHLAND CIRCLE IN THE R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT, FOR A PROPOSED GROUP DAY CARE CENTER AT AN EXISTING SINGLE-FAMILY RESIDENTIAL DWELLING. (APPLICANT/OWNER: MICHAEL AND JANICE LIERZ)

A PUBLIC HEARING TO CONSIDER A VARIANCE FOR 3228 HIGHLAND CIRCLE IN THE R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW OFF-STREET PARKING WITHIN THE HIGHLAND CIRCLE FRONT YARD AND A REDUCTION OF THE MINIMUM 10,000 SQUARE FOOT LOT AREA FOR A PROPOSED GROUP DAY CARE CENTER AT AN EXISTING SINGLE-FAMILY RESIDENTIAL DWELLING. (APPLICANT/OWNER: MICHAEL AND JANICE LIERZ)

A PUBLIC HEARING TO CONSIDER AN EXCEPTION FOR 3228 HIGHLAND CIRCLE IN THE R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT, TO ALLOW A REDUCTION IN THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK FOR AN EXISTING FENCE. (APPLICANT/OWNER: MICHAEL AND JANICE LIERZ)

Frazzell presented the staff reports and recommended approval for the Conditional Use Permit with six conditions, approval for the Variance with three conditions, and approval for the Exception with one condition.

Mike and Jan Lierz, 3228 Highland Drive, explained their requests are to allow a traditional day care to be operated out of their home for four to six children. They explained because they do not reside in the house, the proposed operation could not be classified as a Day Care Home, according to the Zoning Regulations. The proposed operation was classified as a Group Day Care Center based on the definitions in the Zoning Regulations. The Group Day Care Center classification has caused confusion and concern within the neighborhood. They went on to address the identified neighborhood concerns related to loss of green space, the existing fence, and amount of parking.

Hardy agreed the classification was confusing as the licensing information provided identified the proposed day care operation as a Day Care Home but zoned as a Group Day Care Center. He asked if any modifications would be made to change the appearance of the lot from its current appearance.

Mike Lierz, 3228 Highland Circle, responded saying the lot would remain in appearance as if they did reside in the house.

Emig asked about the age range of the children, and asked if the children would be allowed to play in the front yard.

Jan Lierz, 3228 Highland Circle, stated the ages would range between infant to six years old, and said the children would not be allowed to play in the front yard as it was not safe.

Emig asked about the neighbors in the submitted petitions. He said those that were in opposition could have been in opposition due to symantecs between the zoning and licensing definitions.

Mike Lierz, 3228 Highland Circle, stated they attempted to contact the neighbors within 200-feet and didn't go out any further.

Judy Nichols, 1513 Highland Drive, said she lives across the street and previously had concerns about parking, green space, and potential for commercial use. She said she was comfortable with the responses given by the Lierz and supported the request.

Eddie Braddock, 1515 Highland Drive, said he lives across the street to the west and his previous concerns have been resolved, provided conditions are added. He said the public hearing notice gave an impression of a large day care. He stated the proposed number for the application was acceptable. He said he didn't want to see a 40-s.f. sign. He said parking should be adequate and didn't want to see a parking area elsewhere on the lot. He said he would prefer to not see parking along the east side of Highland Drive. He suggested that the Conditional Use Permit be limited to the Lierz's and lost if the property was sold. He said he was in support of the application if the conditions were added.

Donna McCallum, 3217 Highland Circle, stated she was a representative of the neighborhood in opposition and that she had been in the neighborhood for 35-years and that it is a stable neighborhood. She stated she was concerned with traffic and safety of the children. She said there are no sidewalks along Highland Drive, and if children were to walk to the park, they would have to walk in the street.

Hamilton commented that the petition submitted in opposition addressed three concerns, one of which

was not safety. She said the submitted concerns were addressed by the applicants, and asked if McCallum was still concerned with the issues.

McCallum responded that she did not see that there was adequate parking without having to park on the street.

Lisa Braddock, 1515 Highland Drive, stated for the record she was in support of the proposed day care. She said she did not vote previously as she did not know more about the proposal.

Emig asked Braddock what the general consensus was of the neighborhood.

Lisa Braddock stated she spoke with four people in opposition to the request and said that they had similar concerns which have now been addressed.

Jackson asked Braddock if she thought those in opposition really understood the request, if they would change their mind as it appears the request may not be as bad as possibly presumed.

Lisa Braddock stated that some may be afraid of change to the neighborhood and stated five to seven children should not have an adverse effect to the neighborhood.

Erick Slaytn, 3229 Highland Circle, said he lives directly across the street said his biggest concern was the parking. He said approximately six to eight cars are permanently parked on Highland Circle.

Linda Harrold, 3225 Highland Circle, said there are cars permanently parked on Highland Circle and that there is not enough room for more than one car to pass if there is parking on both sides of the street.

David Gevock, 3224 Highland Circle, stated that he was guilty for the cars parked on the street as the vehicles might be related to his roofing company. He said he talked with Mike Lierz about the options of the house, as he did not want to see the house turned into a rental. He said he did not think the day care would be an issue and supported the request.

Jackson closed the Public Hearing and opened for Board Discussion.

Hardy said he could support the request as day care is an issue which has to be faced. He applauded the applicant for maintaining the home and keeping it aesthetically residential, and for addressing the neighborhoods concerns. He stated that it is always helpful for applicants to talk with the neighbors. He said that safety is a concern, and trusts the applicant will take the necessary precautions. He said he could support the Conditional Use Permit, the Variance, and the Exception with the conditions outlined in the staff report.

Hamilton stated she appreciated the concerns of the neighbors and said this was the first day care that was not trying to attain as many children as possible. She said the number was small with a target for six children. She said they have better than average space for parking and liked the fact that the house can return to a single-family home. She said she could support the request.

Emig stated that the applicant is able to provide something that is in short need within the city and that he could support the requests.

The Board made the following Findings of Fact for the Conditional Use Permit at 3228 Highland Circle:

A. An existing fence which is parallel with Highland Drive, north of the single-family residence, encroaches into the minimum twenty-five (25) foot front yard setback. An Exception has been requested to reduce the minimum front yard setback from twenty-five (25) feet to twenty (20) feet to allow the existing fence to remain in its current position. Lot 28 currently complies with all lot size and bulk regulations for a single-family residential use, other than the encroachment into the Highland Drive front yard. 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. Properties to the north, south, west, and east are all within the R-1, Single-Family Residential District, and are primarily owner occupied. Highland Drive, a local street, is to the west of Lot 28 and provides a road connection between Dickens Ave. and Claflin Rd. Highland Circle is a local cul-de-sac street, perpendicular to Highland Drive. If the proposed Conditional Use Permit is approved, an increase in traffic can be expected in the morning and late afternoon hours along both Highland Drive and Highland Circle. An existing wood privacy fence encloses the functional rear yard and will provide screening of the outdoor play area. An outdoor play area will create noise associated with children playing. The noise impact is not anticipated to be substantially different than what could be expected from a day care home, which could be permitted as a home occupation in a single-family residential neighborhood. Signage was not proposed with the application and would be required to meet the sign regulations for residential districts outlined in Section 6-201 of the Manhattan Zoning Regulations. An identification and bulletin board sign would be allowed in the residential district to have a maximum gross surface area of forty (40) square feet. A day care home, which could be permitted as a home occupation in the single-family residential district, would be limited to a nameplate sign which has a maximum gross surface area of two (2) square feet. It is recommended that if the Conditional Use Permit is approved, to maintain the neighborhood character, signage be limited to that which would be allowed for a home occupation day care home. As part of the application documents, the applicants submitted a petition which was signed by nine neighbors in support of their requests. The intensity of the proposed conditional use is not anticipated to cause substantial injury to the value of other property in the neighborhood.

C. The house located on Lot 28, Westwind Addition, Unit 2 has existed since 1972, as a single-family residence. No physical 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 Variances. The increase in traffic associated with the proposed use should not dominate the streets or surrounding neighborhood and is not anticipated to have any greater impact than a day care home, which would be permitted in the R-1, Single-Family Residential District as a home occupation.

1. The existing residential structure currently meets the bulk regulations of the R-1 zoning district. Existing physical improvements include a 7-foot by 6-foot wood deck attached to the northwest portion of the house, and a five-foot high, wood privacy fence which encloses the functional rear yard. The fence is approximately 20-feet from the west property line, 2-feet from the north property line, 0-feet from the east property line, and approximately 56-feet from the south property line. No physical improvements are proposed to the existing house or lot at this time.

2. No additional landscaping is proposed or required. An existing 5-foot high wood privacy fence

currently screens the functional rear yard from surrounding properties.

D. Off-street parking is proposed on the existing 18-foot wide by 30-foot long driveway. Typical parking stalls have an 18.5-foot depth and 8.5-foot width. The existing driveway would allow enough space for two typical parking stalls. An additional two vehicles could be parked in the garage. As proposed in the application documents, day care service would be provided to an average of five to seven children with one employee. 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 three (3) 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 Highland Drive and Highland Circle. Adequate off-street parking is currently available on Lot 28 for the proposed intensity of the proposed use.

E. No changes are being proposed which would alter the current drainage of Lot 28. Public utilities are adequately served and no additions or modifications are proposed at this time.

F. Lot 28 is a corner lot, with an existing single-family home which faces to the south. Primary entrance into the house and driveway access is from the south, off of Highland Circle. Highland Circle is a cul-de-sac street, accessed by Highland Drive, a local road which connects Dickens Ave. with Claflin Rd. On-street parking is allowed along both Highland Drive and Highland Circle. No improvements have been proposed to the existing residential structure and provisions for ADA accessibility have not been provided or proposed at this time.

Hardy moved to approve a Conditional Use Permit at 3228 Highland Circle in the R-1, Single-Family Residential District, for a proposed Group day care center at an existing single-family residential dwelling with the following conditions:

1. The Group day care center shall be as proposed in the application documents and site plan.
2. The Group day care center shall be limited to a maximum of seven (7) children as outlined in the application documents.
3. Signage for the Group day care center shall be limited to a nameplate sign as outlined in 6-201(D)(1) of the Manhattan Zoning Regulations.
4. The Group day care center use shall be limited to the applicants.
5. All applicable licenses and permits shall be obtained and maintained.
6. A Variance for lot area shall be approved.

Emig seconded which passed with a vote 4-0.

The Board made the following Findings of Fact for the Variances at 3228 Highland Circle:

1. Lot 28 meets the lot area requirements for a single-family residential use, but does not meet the requirements for a Conditional Use Permit. The lot size was not created by the applicants, and the lot can not be increased in size to meet the lot area requirements for the proposed Condition Use. Lot 28 is a corner lot with two front yards. To meet the off-street parking requirements for a Group day care center, a minimum of three 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.

2. No physical improvements are requested for the Conditional Use Permit. The existing physical condition of the lot will be maintained as it has existed since the lot was platted in 1969. Allowing off-

street parking to be located within the front yard setback on the existing driveway will allow the minimum parking requirements to be met without requiring additional physical improvements to the lot. The proposed Variances should not have an adverse impact on adjacent properties.

3. Lot 28 is approximately 9,500 square feet in lot area. A Conditional Use Permit in the R-1 District requires a lot area of 10,000 square feet. Requiring strict application of the lot area requirements would require Lot 28 to continue as a single-family residential use, and would not allow for the proposed Conditional Use Permit. The applicants did not create the physical conditions of the lot which require the Variances. As proposed, three (3) off-street parking spaces are required for the proposed Group day care center use. The existing garage, not located within the front yard setback, could provide for two off-street parking spaces, presumably for employee use. An additional two off-street parking spaces could be obtained on the existing driveway, located within the front yard setback off of Highland Circle. Requiring strict application of the regulations will require either a Variance to the off-street parking requirement, or a new off-street parking area to be constructed somewhere else on Lot 28, presumably within the functional rear yard.

4. The proposed reduction in lot area is not expected to have any adverse impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare. Adequate off-street parking can be provided on the existing driveway. An eight (8) foot utility easement located along the north portion of Lot 28 will not be impacted by the proposed Variances. Similarly, the vision clearance triangle at the street intersection of Highland Circle and Highland Drive will be maintained.

5. The intent of the regulation regarding minimum lot size for conditional uses is to ensure that adequate light and space are provided between permitted and more intensive uses. The intent of the regulation limiting parking within the front yard setback is to prevent the required front yard from becoming dominated by pavement and preserving landscape open space. In this case, Lot 28 is a platted corner lot bound by existing platted lots and street rights-of-way, preventing the lot from expanding in lot size. The existing driveway associated with a single-family residential use is allowed to have off-street parking within the required front yard setback. In this case, utilizing the existing driveway could satisfy the off-street parking requirements for the proposed Group day care use without the need for creating additional parking areas on other portions of the lot. The reduction in lot area from 10,000 square feet to 9,500 square 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.

Hardy move to approve VARIANCES at 3228 Highland Circle in the R-1, Single-Family Residential District to allow off-street parking within the Highland Circle front yard, and a reduction of the minimum 10,000 square foot lot area to 9,500 square feet, for a proposed Group day care center with the following conditions:

1. The Variances shall be limited to the proposed Group day care center as outlined in the application documents and site plan.
2. The Variances shall be limited to the applicants.
3. A Conditional Use Permit for a Group day care center shall be approved.

Emig seconded, which passed with a vote 4-0.

The Board made the following Findings of Fact for an Exception at 3228 Highland Circle:

A. As a single-family residence, the property currently complies with all applicable regulations other than the one for which the Exception is being requested. Concurrently, a Conditional Use Permit and

Variations have been proposed to allow a Group day care center to be located at the existing single-family residence.

B. Surrounding Lot 28 are single-family homes in the R-1, Single-Family Residential District, which are primarily owner occupied. According to the applicants, the fence existed in its present location when the applicants purchased the home in 1987. The present location of the fence has had no known implications on adjacent properties throughout the time it has been present. The present location of the fence is not out of character of the surrounding neighborhood and allowing the fence to continue in its present location should not adversely impact the surrounding neighborhood.

C. Approximately seven (7) feet of the north portion of the fence is within a utility easement which crosses Lot 28, west to east. The location of the fence within the easement has existed prior to 1987 when the applicants purchased the home, and has not had an adverse effect on the public health, safety, or general welfare. The existing fence does not affect the rights-of-ways along Highland Drive or Highland Circle and does not affect the vision clearance triangle.

D. The condition requiring the Exception is an existing condition which was not created by the applicant. The fence has existed in its present location prior to 1987 and has had no known implications to the surrounding neighborhood. The present encroachment would not have been identified had the applicant not requested a change in use. The fence is not out of character of the surrounding neighborhood and its presence does not have an adverse impact on the public rights-of-ways. When all facts and circumstances are considered, requiring strict application of the regulations is unreasonable and unnecessary.

Hardy moved to approve an EXCEPTION to allow a reduction in the minimum twenty-five (25) foot front yard setback to twenty (20) feet for an existing fence located at 3228 Highland Circle, in the R-1, Single-Family Residential District with the following conditions:

1. The Exception shall be for the existing fence, which shall be maintained in good condition.

Emig seconded, which passed with a vote 4-0.

TABLE REQUESTS FOR VARIANCES TO ALLOW A REDUCTION IN THE MINIMUM 15,000 SQUARE FOOT LOT AREA TO 7,500 SQUARE FEET; A REDUCTION IN THE MINIMUM 100-FOOT LOT WIDTH TO 50- FEET; ALLOW PARKING IN THE REQUIRED FRONT YARD ALONG 15TH STREET, FOR A PROPOSED OFFICE BUILDING TO BE LOCATED ON AN EXISTING LOT IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT/OWNER: TIM CLARK)

TABLE REQUESTS FOR AN EXCEPTION TO ALLOW A REDUCTION IN THE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK TO FIVE (5) FEET FOR A PROPOSED ACCESSORY STRUCTURE ASSOCIATED WITH A PROPOSED OFFICE BUILDING IN THE C-1, RESTRICTED BUSINESS DISTRICT. (APPLICANT/OWNER: TIM CLARK)

Hardy moved to Table the requests for Variations and Exceptions until September 13, 2006.

Hamilton seconded, which passed with a vote 4-0.

Respectfully Submitted,

Jeremy Frazzell, Planner

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