

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, October 11, 2006**  
7:00 PM

MEMBERS PRESENT: Chuck Jackson, Chair Person, Harry Hardy, Connie Hamilton, Kate Watson

MEMBERS ABSENT: Calvin Emig

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

**CONSIDER THE MINUTES**

Hardy moved to approve the September 13, 2006 minutes which was seconded by Watson and passed with a vote of 4-0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION AT 2917 WAYNE DRIVE IN THE R-S, SINGLE-FAMILY RESIDENTIAL SUBURBAN DISTRICT, TO ALLOW A REDUCTION OF THE MINIMUM SIXTY (60) FOOT FRONT YARD SETBACK TO THIRTY-EIGHT (38) FEET FOR A PROPOSED DETACHED GARAGE. (APPLICANT/OWNER: LARRY AND CHRISTY WAGNER)**

Frazzell presented the Staff Report with a recommendation for approval of the Exception with two conditions at 2917 Wayne Drive.

Hamilton asked about the front yard setback regulations if the garage was attached and about what constitutes an attached garage. Frazzell informed Hamilton of the front yard setback regulations but added Code has the requirements for attachment.

Watson asked if detached structures that were inline with the house were common throughout the subdivision or just around this property. Frazzell stated that an onsite visit though the subdivision gave him the notion that this type of detached structure was not uncommon, but noted this subdivision wasn't annexed until 1998 and these structures could have been present before regulations were in place.

Jackson opened for public hearing

Christy Wagner, 2912 Wayne Dr., stated that there is a large front yard at the property and that proposed structured would not have an adverse effect on neighborhood.  
Jackson closed for Public Hearing and opened for Board discussion.

Hardy supported the Exception request based on the staff report and noted that he felt like this type of structure was common to the area and agreed with the location of the structure in order to save existing trees.

Hamilton supported the Exception request based on the staff report and commenting on the hassle to move existing A/C units and commended applicant on the desire to keep existing trees.

Watson supported the Exception request based on the staff report and no negative feedback from surrounding properties.

The Board made the following findings of fact for the Exception at 2917 Wayne Drive:

A. The property is compliant with all applicable requirements of the regulations other than the one for which an exception is being requested.

B. Properties adjacent to the west and east are large lots containing single-family homes with general front yard setback distances of thirty (30) feet. To the north is Wayne Drive with a general sixty (60) foot right-of-way width. Further to the north are single-family homes located on large lots, with general front yard setback distances of thirty (30) feet. To the northeast is a single-family home with a detached garage parallel with the front façade of the residential structure. To the south are single-family homes and a large tract of land containing Anthony Middle School. The proposed detached garage will be set back the same distance as the existing house and will not impede into any right of way or into the vision triangle. The proposed location for the accessory structure is generally consistent with the surrounding neighborhood and the extent of the proposed garage should not have an adverse effect on surrounding properties.

C. A five (5) foot utility easement crosses the south portion of the property in an east to west direction. The proposed garage will not encroach on any public rights-of-ways, any drainage or utility easements and should not pose any threat on the public's health, safety, or general welfare.

D. Section 7-102 (C)(3) of the Manhattan Zoning Regulations requires that 75% of the required front yard must be maintained as landscaped open space. The proposed detached garage and accompanying concrete driveway will reduce the landscaped open space to 82%. On the west side of the existing house is the air conditioner units and a large mature tree. To require strict application of the regulations will either require the air conditioner units to be relocated or the large tree to be removed. Although the size of the lot would allow for the proposed detached garage to be built to the required sixty (60) foot setback, the applicants wish to save a tree which would have to be removed if the exception were not granted. The proposed accessory structure is not uncharacteristic from what currently exists throughout the established neighborhood. Given the proposed location for the accessory structure is consistent with the front yard setback of the existing residence, the minimum landscape open space can be retained, and the proposed location should not have an adverse impact on the general public or neighborhood at large; strict application of the regulations is unreasonable and unnecessary when all facts and circumstances are considered.

Hardy moved to approval of an EXCEPTION for 2917 Wayne Drive, to allow a reduction of the minimum sixty (60) foot front yard setback to thirty-eight (38) feet for a proposed detached garage in the R-S, Single-Family Residential Suburban District with the following conditions:

1. All applicable permits shall be obtained.
2. The Exception shall be limited to the detached garage as proposed in the site plan and application documents.

Hamilton seconded which passed with a vote 4-0

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION AT THE NORTHWEST CORNER OF HAYES DRIVE AND MCCALL RD. IN THE C-5, HIGHWAY SERVICE COMMERCIAL DISTRICT, TO ALLOW A REDUCTION IN THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO TEN (10) FEET ALONG HAYES DRIVE FOR OFF-STREET PARKING RELATED TO A PROPOSED RESTAURANT. (APPLICANT/OWNER: RON OBERG/BBC, LLC.).**

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

Watson asked about the orientation of the proposed restaurant, the status of the rezoning effort, and the access driveways. Frazzell indicated that the restaurant would face south, the rezoning was in the second reading stage, and both driveways had previously been approved. Watson then asked about the required and proposed number of parking spaces, noting by her calculations the applicant did not meet the required amount. Frazzell responded that City Administration figured up the number of off street parking stalls required by Building Code and that the applicant was providing more than was required.

Watson asked if there was off street parking available at the site. Frazzell responded no.

Hamilton indicated that the number of ADA stalls did not match in both site plans that were provided for them and questioned if the city staff was comfortable with their understanding of the site plan. Frazzell commented that his conclusions were drawn from the design occupancy that was provided to him and reaffirmed that the applicant was providing more parking than was required.

Watson asked about the property line location with regards to Hayes Dr. and if there was going to be sidewalks present at this location to accommodate the long range transportation plan. Frazzell indicated that he was not sure of exact location of the property line, but the staff report addressed the question of adverse effects on surrounding properties and was found to suitable. Also the long range transportation plan was not consulted when reviewing this proposed Exception.

Jackson opened for public hearing.

Ron Oberg, 1245 Brackenct Court, Wichita Ks, stated that he has looked at many different site plans and different parking requirements and decided on this particular plan. Also that 43 stalls, including two ADA stalls, are present on the given site plan and this number is based on the business that the Hutchinson, KS restaurant receives and the square footage of the building and not the seating. Applicant also stated that he would like more stalls but lot size would not allow it.

Watson asked Oberg if he had considered angle parking stalls and if this would minimize the encroachment of the front yard setback. Oberg stated that they had, but replied the need for more room in the back of the restaurant and that angle parking would cause the loss of approximately five stalls.

Jackson closed for Public Hearing and opened for Board discussion.

Watson stated her concerns about traffic flow and her thoughts that more parking stalls cause more fender benders. She also stated that if the site plan would have been laid out to meet just the required number of stalls it could have lessened the encroachment of the front yard setback and save some on site green space.

Hamilton stated that she felt the larger number of stalls and reduced front yard set back would lessen the number of fender benders.

Hardy agreed with Hamilton stating that by only approving the minimum you would increase the accident risk between customers backing out of parking stalls and customers in the drive through due to the confined space.

Hamilton also stated her disappointment with the city staff on not providing the board with firm numbers of stalls and reasons why the city requires less then the provided amount.

Frazzell explained that code services determined design occupancy and that's where the minimum number of parking stalls was derived from.

Hardy commended the applicant for addressing parking concerns by requesting more than the required amount. Hardy also expressed his support of the Exception.

Hamilton expressed her concerns with the reduction of the green space that is present at the location, but commended the applicant on only encroaching one front yard setback to allow full green space in the other front yard.

Jackson expressed his support for the Exception and commended the applicant on trying to maximize the number of parking stalls on his lot so customers will not park in surrounding lots.

Watson readdressed her concerns with the unclear numbers and that she wished the rezoning was settled before the applicant brought it to the board. She also stated that more parking would increase density and congestion in this area and she did not support the Exception.

Hamilton expressed her support of the Exception, stated that the encroachment into the Hayes Dr. front yard setback makes sense and would increase the safety within the lot. She also stated her concern about the intrusion into the green space but understood the reasoning for it.

The Board made the following findings of fact for the Exception at 2917 Wayne Drive:

A. The property currently complies with all applicable regulations other than the one for which the Exception is being requested.

B. In general, McCall Rd. between Tuttle Creek Boulevard and Hayes Drive is becoming more commercial than industrial. Limey Pointe, a Commercial Planned Unit Development located at the northeast corner of Tuttle Creek Blvd. and McCall Rd., will relocate displaced restaurants and other commercial uses along present Third Street for the downtown redevelopment project. Limey Pointe is proposed to generally follow the C-5, Highway Service Commercial District permitted uses. Adjacent to the subject property to the west is Waste Management, which is located in the C-6, Heavy Commercial District. Waste Management is anticipated to move in the near future to an alternative location by the airport. McCall Rd. is adjacent to the south with an approximate 130-foot right-of-way, followed by the Wal-Mart Commercial Planned Unit Development. Southeast is two lots zoned C-5 District, containing a mixture of commercial uses. To the East is Hayes Dr. with an approximate 80-foot right-of-way, followed by self storage and light manufacturing uses permitted within the I-2, Industrial Park District. To the north is a lot zoned C-6 District which contains a warehouse building previously used as a gymnastics facility and currently used by Kansas State University for educational purposes. The proposed use and reduction in setback along Hayes Drive is not anticipated to have an

adverse effect on surrounding properties.

C. Maintaining a minimum front yard setback prevents front yards from becoming dominated with pavement and prevents vehicles from encroaching onto public rights-of-ways. Open drainage channels are located along the east and south property lines, providing drainage of the neighborhood to the north and west. The reduction in the front yard setback should not adversely impact the location or operation of the existing drainage swales or future improvements. Hayes Drive has a right-of-way of 80 feet. The proposed reduction is not anticipated to have an adverse impact on future road improvements along Hayes Drive. The proposed setback reduction will allow vehicles to safely back within the proposed off-street parking area. No adverse effects are anticipated on the general public with the proposed setback reduction.

D. Parking requirements for the restaurant use are based on Section 7-103(B)(11) of the Manhattan Zoning Regulations which states: "Establishments providing for the sale and consumption of food and/or beverages, and refreshments: At least one (1) parking space for each three (3) customers based upon the maximum design occupancy. In addition, there shall be one (1) parking space for each employee as related to the work shift when the maximum number of employees are present." City Administration determined the maximum design occupancy based solely on interior fixed seating, to be approximately 84, with 78 customers and 6 employees. Given the design occupancy, thirty-four parking spaces would be required. The applicant has proposed additional parking based on additional interior seating, seasonal outdoor seating, and past experience. City Administration recommends twenty-six (26) feet of backing space, when a ninety degree parking configuration is utilized in a parking area. The proposed reduction would allow the recommended backing distance to be attained without having vehicles encroach upon the drive-thru lane. To require strict application of the regulations would require the vehicles to utilize the drive-thru lane for backing, require the drive-thru lane to be abandoned, or require the off-street parking to be reduced. When all facts and circumstances are considered, requiring strict application of the regulations in this case is unnecessary and unreasonable.

Hardy moved to approve the EXCEPTION for a reduction in the minimum twenty-five (25) foot front yard setback to ten (10) feet along Hayes Drive for off-street parking related to a proposed restaurant with the following conditions:

1. The City Commission shall approve second reading of an Ordinance to rezone the property from C-6, Heavy Commercial District to C-5, Highway Service Commercial District prior to issuance of any building permits.
2. The Exception shall be limited to off-street parking as identified in the site plan and application documents.
3. The Exception shall be limited to the proposed restaurant use as outlined in the application documents.
4. Any landscaping located in the public right-of-way shall meet the City Forester's specifications and; all landscaping shall meet the requirements as cited in 7-102(E)(2).
5. Landscaping shall be planted within the first planting season, and shall be maintained in good condition.
6. The access drive onto McCall Rd. shall be approved by the City Engineer prior to issuance of any permits.
7. All applicable permits shall be obtained.

Hamilton seconded which passed with a vote 3-1

With no further business, Jackson closed the Public Hearing.

Respectfully Submitted,

Derek E. Clark, Planning Intern

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