

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, May 9, 2007
7:00 PM

MEMBERS PRESENT: Chairperson Connie Hamilton; Calvin Emig; Kate Watson;
La Barbara J. Wigfall; and, Harry Hardy.

MEMBERS ABSENT: None

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Chad Bunger, Planner

CONSIDER THE MINUTES OF THE APRIL 11, 2007 BOARD OF ZONING APPEALS MEETING.

Hardy moved to approve the April 11, 2007 minutes which was seconded by Watson and passed with a vote of 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM 25 FOOT FRONT YARD SETBACK TO 20 FEET FOR EXISTING ROOF OVERHANG IN THE FRONT; AND, A REDUCTION OF THE MINIMUM 8 FOOT SIDE YARD SETBACK TO 2 FEET FOR AN EXISTING ATTACHED CARPORT ON THE SOUTH SIDE OF THE DWELLING. NO ADDITIONS ARE PROPOSED. THE EXCEPTIONS WILL ALLOW THE OWNER TO HAVE CLEAR TITLE TO THE PROPERTY AT 2005 GLADIOLA COURT. (APPLICANT/OWNER: JEFF HEWINS)

This item was tabled at the April meeting to re-advertise the side yard Exception. Hardy moved to remove the item from the table and conduct the Public Hearing. Wigfall seconded the motion and passed with a vote of 5-0

Zilkie presented the staff report recommending approval with conditions.

Hamilton opened the public hearing.

An audience member asked if the proposed Exception to allow the 8 foot side yard setback to be reduced to 2 foot would run the entire length of the affected side yard or just the length of the building.

Zilkie responded that the proposed Exceptions would only apply to the existing building. There is a current issue of a foundation for a storage shed that straddles the property line. This

issue is separate from the proposed Exceptions and will be addressed by the Zoning Enforcement if need be.

There were no other public comments and the public hearing was closed.

Hardy commented that he could support the application to allow the applicant to have a clear title to the property.

The Board concurred that they could support the application.

The Board made the following findings of fact for the Exceptions:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property is in compliance with all applicable regulations, except for the proposed setback reductions for clear title.

An ongoing condition, separate from the application, is an existing foundation, which extends over the property line from Lot 2 onto Lot 1 to the south. A foundation and storage shed were placed over the common lot line of property to the south by the applicant, and the shed, but not the foundation, was moved to conform to the accessory structure requirements according to the applicant's site plan. The foundation encroaches into the 3 foot side yard and over the common lot line. The applicant will need to address the accessory foundation separately from the current application.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The existing house was built in 1976 and the carport addition was built in 1983. The existing house and carport encroachments have been part of the established order of the neighborhood for 31 and 24 years, respectively. The current property owner purchased the house in 1993. The encroachments have not resulted in any known adverse affects on adjacent property.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The house and carport encroachments do not extend into public easements or vision clearance triangle and the public is not impacted by the encroachments, which have been part of the established neighborhood from 24 to 31 years.

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

It is unreasonable to remove the house and carport encroachments, which were not created by the applicant. The property owner did not own the house when the house was originally constructed in 1976 and the front yard setback encroachment was created, as well as when the carport addition was added to the south side of the house in 1983. The current owner purchased the house in 1993. The setback regulations are intended to provide open yards in front and along the sides of homes. Without the Exceptions for the existing house and carport, the applicant cannot have clear and marketable title to Lot 2. It would be unreasonable for the owner to remove the encroachments.

Hardy moved that the Board approve the reduction of the minimum 25 foot front yard setback to 20 feet for an existing portion of the house and roof overhang, and a reduction of the minimum 8 foot side yard setback to 2 feet for an existing carport addition at 2005 Gladiola Court, with the following condition of approval:

1. The front yard and side yard setback reductions shall be limited to the existing house and carport according to the applicant's site plan.

Wigfall seconded the motion, which passed 5-0.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM 25 FOOT FRONT YARD SETBACK TO APPROXIMATELY 10 FEET ALONG S. DELAWARE FOR A PROPOSED GARAGE ADDITION; AND, AN EXCEPTION FOR A REDUCTION OF THE MINIMUM 8 FOOT SIDE YARD SETBACK TO 5 FEET ON THE NORTH SIDE OF THE HOUSE AND TO 4 FEET ON THE SOUTH SIDE OF THE EXISTING HOUSE FOR EXISTING ROOF OVERHANGS, FOR PROPERTY LOCATED AT 304 S. DELAWARE AVENUE. (APPLICANT/OWNER: BEN BRUNNER).

Hamilton stepped down due to a conflict of interest as she resides in the subject neighborhood and Hardy assumed the role of Board Chairperson.

Zilkie presented the staff report recommending approval with conditions. Zilkie commented that the staff did not give the public notice sign to the applicant in a timely manner. The public notice sign was present on the subject site approximately seven days before the meeting date, not the required 20 days. Zilkie mentioned that it was up to the Board to decide if the application should be tabled, but he felt that tabling the item would be unreasonable to the applicant because of an error by the staff.

Watson asked what other notifications were given to the public other than the sign? Zilkie responded that a notice of public hearing was sent to all owners within 200 feet of the subject property. Emig commented that a public notice was also published in the Manhattan Mercury. A letter from a nearby letter was given to the Board members stating her issue with the sign and her support of the project.

Wigfall asked what the typical setback of the houses' façade line in the neighborhood were? Does this proposed project match the character of neighborhood? Zilkie stated that the project would match with the neighborhood relative to other properties in the area.

Watson asked what effects would the extended building footprint and roof line have on drainage to the property and house since it was presented that rain runoff had caused the need for the new construction. Zilkie directed the question to the applicant's contractor.

Hardy opened the public hearing.

Russell Weisbender, the contractor for the applicant, spoke on behalf of the proposed project. He responded to Watson's question that there is currently a drainage tube that is under the sidewalk and driveway that is located east of the construction site and drains water away from the house. The reason for the construction was not due to water damage. The garage floor was built using suspended concrete slabs that are over a basement family room. This concrete floor has weathered years of weight, oils and road salts to the point where it is no longer structurally safe to park vehicles on. The floor has been deemed structurally safe to carry its own load and load typical of a residential living space.

Watson asked what changes to the current roof line will be made. Weisbender responded that the roof line will be continued through the expansion project.

There were no other public comments and the public hearing was closed.

Watson stated that based on the staff and the applicant's presentation, she could support the project.

Wigfall stated that this project gives a viable solution to a terrible problem and that happened without fault to the owners.

Hardy stated that he could also support the application.

The Board made the following findings of fact for the Exceptions:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The property complies with all applicable requirements of the Zoning Regulations, other than the ones for which an Exception is being requested

PROBABLE EFFECT ON ADJACENT PROPERTIES: Minimal impact on adjacent properties to the north and south is expected. The front yard is below street grade and heavily landscaped along the southern and northern boundary lines, which should reduce the physical encroachment of the garage expansion on views along the street. Property to the west is separated from the front yard reduction by the existing house. Property to the north and south are front yard and the garage expansion should be buffered by landscaping and slope. To the east is S. Delaware Avenue, a 100 foot right-of-way and the fenced rear yard of property along the eastern edge of S. Delaware Avenue.

Reduced side yard setbacks for existing overhang should not adversely affect property as the improvements have been part of the neighborhood since 1959 and no adverse comments about the overhangs are of record.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Adverse impact on the public is not

expected. No vision triangle or public easements are encroached upon and no public views are impeded as the site is below street grade and on a hill. Replacing the existing garage with an extension of the garage into the front yard eliminates the existing garage floor from bearing the weight of a vehicle and an adverse affect on future owners.

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

Application documents indicate structural problems with the existing garage floor result in water leaks into the basement, which is below the existing garage floor. An evaluation of the existing garage floor revealed that although the existing garage floor was not failing it was no longer safe to support a vehicle's weight in the west half of the existing garage. It may be cost prohibitive and unreasonable to require the garage floor to be reconstructed. The placement of the house and slope of the yard, as well as existing improvements, prohibits a reasonable location for an alternative location for a garage.

The garage addition will be a greater distance from the curb-line of the street than would commonly be expected in a residential neighborhood due to the width of S. Delaware Avenue, which was platted in the late 1870's. S. Delaware functions more as a local street. A local residential street right-of-way is 60 feet in width One hundred (100) foot right-of-ways are reserved for arterial width streets. If the garage addition was located along a local street, the garage addition would be approximately 25 feet from the curb-line. S. Delaware Avenue is a 100-foot wide right-of-way and the garage addition will be approximately 50 feet from the western curb-line of S. Delaware Avenue.

The property owner did not own the house when it was originally constructed in 1959. Minimum side yard setback was 6 feet when the house was built. The building plan indicates setback was measured to the foundation, rather than the roof overhang. The zoning regulations did not exempt roof overhang from meeting the setback requirements. It is unreasonable for the owner to remove the roof overhang encroachments, which were not created by the applicant. The setback regulations are intended to provide open yards free of principal structure. The side yards are open, but for the roof overhangs, which were created in 1959. Without the Exceptions for the existing roof overhangs, the applicant cannot have clear and marketable title to the property.

Emig moved that the Board grant an Exception of the minimum 25 foot front yard setback to 10 feet for a proposed garage addition along S. Delaware Avenue; and an Exception of the minimum 8 foot side yard setback 5 feet on the north side of the existing house for roof overhang and from 8 feet to 4 feet on the south side of the existing house for roof overhang, with the following condition of approval:

1. The front yard and side yard setback reductions shall be limited to the proposed garage addition, which shall be built as proposed, and for the existing north and south roof overhangs, according to the applicant's site plan.

Wigfall seconded the motion, which passed 4-0.

Hamilton rejoined the Board.

A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM 25 FOOT REAR YARD SETBACK TO 21 FEET FOR A PROPOSED SUNROOM ADDITION TO THE REAR OF THE EXISTING RESIDENTIAL STRUCTURE LOCATED AT 1904 STRONG AVENUE. (APPLICANT/OWNER: JOE BRUCKERHOFF)

Zilkie presented the staff report recommending approval with conditions.

Hamilton opened the public hearing.

With no public comments, the public hearing was closed.

Hardy commented that he could support the Exceptions based on the report from the staff due to the fact that the property was zoned into its current situation when it was in the County.

The Board made the following findings of fact for the Exceptions:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: R-1, Single-Family Residential District lot size requirements call for a minimum lot depth of one-hundred (100) feet. The subject property currently has a lot depth of ninety-six (96) feet along the north property line and a lot depth of ninety-five (95) feet along the south property line. The subject property does however comply with the minimum lot area and the other bulk regulations for the zoning district. The subject property currently complies with all applicable regulations other than the aforementioned noncompliance and the one for which the Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: 1904 Strong Avenue, Lot 34 Strong Addition is in the R-1, Single Family Residential District with surrounding properties being single-family homes. The existing residential structure is in character with the rest of the surrounding area. The proposed addition is located in the rear of the lot and is not foreseen to be visible from the road or be out of character with the rest of the neighborhood. The approval to reduce the minimum rear yard setback from twenty-five (25) feet to twenty-one (21) feet for the proposed addition is not anticipated to have an adverse impact on surrounding properties.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed addition will not encroach into the five (5) foot utility easement located along the east property line. The proposed location of the addition will not affect the adjacent rights-of-way or vision clearance triangles. The proposed Exception is not anticipated to have an adverse effect on the public's health, safety, or general welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR

UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

Although Lot 34 is in compliance with the lot area requirements for the R-1 District, lot depth is nonconforming and limits the buildable space available to the east. The Final Plat of Lot 34 was approved when the subdivision was outside of the City in Riley County. Annexation of the subdivision was in 1960. In 1969, Lot 34 was rezoned to R-1 District and the 100 minimum lot depth requirement was applied to the property.

The current lot depth is an average of four and a half (4 ½) shorter in depth than the required minimum 100 foot depth. The proposed Exception is to reduce the minimum rear yard setback by four (4) foot. If the lot was 100 feet in depth, the addition could be constructed without an Exception. The nonconforming condition creates the need for the Exception. The owner did not create Lot 34. Due to the configuration of the lot the request is reasonable, when all facts and circumstances are considered. Requiring strict application of the regulations for the proposed improvements is unnecessary and unreasonable.

Emig made a motion for the Board to approve the exception at 1904 Strong Avenue in the R-1, Single-Family Residential District to allow a reduction of the minimum twenty-five (25) foot rear yard setback to twenty-one (21) feet the purposed addition to the existing house with the following conditions:

1. The Exception shall be limited to the proposed addition as outlined in the application documents and shown on the applicant's site plan.
2. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed 5-0

REQUEST FOR A 180 DAY EXTENSION OF A PREVIOUSLY APPROVED EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM 25 FOOT FRONT YARD SETBACK TO 10 FEET ALONG HAYES DRIVE FOR OFF-STREET PARKING RELATED TO A PROPOSED FREDDY'S FROZEN CUSTARD RESTAURANT ON THE NW CORNER OF HAYES AND MCCALL. (APPLICANT: RON OBERG)

Zilkie provided the Board with information concerning the request for a 180 day extension of a previously approved exception on the subject property. He said that the applicant previously wanted to lease the subject property, but is now in negotiations to purchase the lot. According to the applicant, the purchase date is June 29th. With the purchase negotiations, the building permits could not be obtained as originally planned. Zilkie reported that there does not appear to be any conditions that have changed in the neighborhood since the exceptions were approved.

Watson asked what the red flags located on the subject property along the drainage ditch between the street and the property was for? She wondered if those flags pertained to construction on the site.

Zilkie responded to the questions by speculating that the flags were for surveying work associated with utilities or street improvements along McCall Road.

Watson then asked if the City Engineer was aware of the extension request. Zilkie responded that he had not discussed this matter with the Engineering Department.

Hamilton asked if city projects in the McCall Road and Hayes Drive would have any affects on affects on the exceptions at the subject site. Zilkie answered that any city activities would occur within the road right-of-way and not inside the property lines.

Wigfall asked if all the conditions of approval remained in effect as originally approved. Zilkie answered yes, all original conditions of the Exception remain as approved.

Hardy could support the request to give a 180 extension based on the circumstances.

Hamilton could support the request because of the request coming in a timely manner.

Hardy moved that the Board grant a 180 day extension of a previously approved Exception to allow a reduction of the minimum 25 foot front yard setback to 10 feet along Hayes drive for off-street parking related to a proposed Freddy's Frozen Custard restaurant on the NW corner of Hayes and McCall.

Wigfall seconded the motion, which passed 4-1, Watson opposed. Watson voted against original approval.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Chad Bunger, Planner