

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, July 11, 2007
6:15 PM

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

MEMBERS ABSENT: None

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Chad Bunger, Planner, Anne Antonini,
Planning Intern.

WORK SESSION

The Board of Zoning Appeals held a work session to review legal issues concerning cases and situations that the Board faces on a regular basis. Assistant City Attorney, Katie Jackson, provided the Board members with issues dealing with communicating with the public and applicants and conflicts of interests.

CONSIDER THE MINUTES

Hardy moved to approve the June 13, 2007 minutes which was seconded by Watson and passed with a vote of 5-0.

A PUBLIC HEARING to consider a EXCEPTION to allow a reduction of the minimum front yard setback of twenty-five (25) feet to four (4) feet along Hudson Avenue for an existing fence in the R, Single-Family Residential District. The property is located at 3517 Amy Lane.

Bunger provided the staff report recommending approval with one (1) condition.

Hamilton and Hardy asked if the EXCEPTION request pertained to only the twenty-one (21) feet within the front yard setback and not the stone fence along the west edge of the property or other parts of the fence. Bunger responded that the request only dealt with the fence within the front yard setback.

Hamilton opened the public meeting.

David Brown, applicant, spoke about the request to allow the existing fence on the subject property. Mr. Brown explained the situation requiring the privacy fence and the error in placing the fence in the front yard set back.

With no questions from the Board, Hamilton closed the public hearing.

Hamilton stated that she could support the request, but felt that vegetation and topography issues and the historic placement of similar fences in similar locations along Hudson Avenue made for more compelling arguments to “the strict application” standard then presented in the staff report.

Hardy agreed with Hamilton and could support the request with the modifications to the staff report.

Watson asked for the record what kind of notice is given to neighbors around the subject site. Bunger responded that a public notice letter is sent to property owners within a 200 foot boundary around the site; a public notice is advertised 20 days prior to the hearing in the Manhattan Mercury and a public notice sign posted on the subject site.

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

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The property currently complies with all applicable regulations except for what the Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: Lot 70, Denholm Subdivision, Unit 3 and part of Lot 11, Sheffield Place Addition is a corner lot with two (2) front yards along Amy Lane and Hudson Avenue. The house is situated on the subject property with the front entrance and driveway access off of Amy Lane. The area to the west of the house, along Hudson Avenue, is utilized as a side yard. The rear of the house faces to the south, this area of the property is utilized as the rear yard.

The subject property and properties to the north and east are zoned R, Single-Family Residential District. Properties to the west are zoned R-1, Single-Family Residential District, and R-2, Two-Family Residential District. Properties to the south of the subject property are zoned R and R-1. The fence is a six (6) foot tall solid plastic fence that transitions to a four (4) foot tall split-rail fence. The entire fence is made out of white, plastic materials. Similar fences in size and location can be found throughout the neighborhood and surrounding areas.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

The proposed location for the fence will not affect the Amy Lane and Hudson Avenue thirty foot vision clearance triangle. The proposed fence will not encroach into the eight (8) foot utility easement that is located between Lot 70, Denholm Subdivision, Unit 3 and part of Lot 11, Sheffield Place Addition, all of which is on the subject property.

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

The corner lot has frontage along Amy Lane and Hudson Avenue, with two minimum front yard setbacks of twenty-five (25) feet. Along Hudson Avenue, (the functional side yard) the existing house is located thirty-nine (39) feet from the property line, fourteen (14) feet from the building setback. A fence along this portion of the lot would be required to be a minimum of twenty-five (25) feet from the property line and could be a maximum of fourteen (14) feet from the western façade of the house. Due to the unique topography of the property, the amount of heavy vegetation and large trees on the property and the area and the presence of similar fences in similar location along Hudson Avenue, the applicants chose to place the fence in its existing location. Requiring the strict application of the regulations is unreasonable and unnecessary when all facts and circumstances are considered.

Hardy moved that the Board grant an EXCEPTION at 3517 Amy Lane, in the R, Single-Family Residential District, to reduce the minimum twenty-five (25) foot front yard setback along Hudson Avenue to four (4) feet for an existing six foot tall fence with the following conditions:

1. The fence shall be maintained in good condition.

Emig seconded the motion, which passed 5-0.

A PUBLIC HEARING to consider a EXCEPTION to allow an increase of the maximum thirty-five (35) percent lot coverage to up to forty-five (45) percent in the Kimball Townhomes Addition for the purpose of constructing single-family attached residences with decks. The property is generally located west of the intersection of Newfoundland Drive and Kimball Avenue, more specifically for single-family attached residential lots along the west side of Newfoundland Drive.

Antonini provided the staff report recommending approval with conditions.

Hamilton asked Antonini to clarify the definitions and purpose of the common areas versus the conservation easements. Antonini stated that the conservation easement was developed to provide adequate storm water drainage and to preserve the existing trees within the conservation easement. The common areas are open lands devoted as green space for the residences of the subdivision.

Watson asked which areas would be at risk if the subdivision was replatted to bring the lots into conformity. Antonini responded that the platted common areas would most likely be sacrificed if the subdivision was replatted for zoning conformity. Antonini added that the common areas, due to their topography are difficult to develop into residential lots.

Watson asked if the developer had considered reducing the number of lots to bring the subdivision into conformity. Antonini that responded that the discussion had not been had with the staff.

Hamilton opened the public hearing.

Greg Fief, the applicant's representative, spoke about the request. Fief provided information concerning the impracticality of building on the common areas. The expense for grading and retaining walls was not economically feasible to develop the current common areas. Feif also commented that the target market is toward empty-nesters that desire less yards on individual lots.

Wigfall asked what the plan was for the common areas, were they to be left in their natural states or seeded. Neil Horton, applicant, stated that each common area would be seeded, landscaped and maintained by the home owners association.

Hamilton suggested applying a condition of approval that restricted the development of the three common areas shown on the plat. The applicant stated that he was comfortable in the recommendation.

With no other comments, Hamilton closed the public hearing.

Hardy stated that he could support the request with the addition of the restriction on the common areas.

The applicant asked if the restriction would allow the placement of an allowed subdivision sign. Hamilton felt that the restriction would allow the sign.

Emig asked what type of landscaping and irrigation would be placed in the common areas. The applicant stated that native grasses and stone landscaping were proposed to avoid the need for an irrigation system.

Watson asked how many lots would be eliminated if the subdivision was replatted to conform to the zoning regulations. The applicant stated that the calculations have not been done.

Watson had referenced standards 14-605-D-1,2, & 3 in her discussion and stated that she could not support the request based on those standards and on the number of requests previously brought before the Board for exceptions of the zoning regulations for this property.

Emig asked if infrastructure and utilities for the lots in question have been installed. The applicant responded that the interior road and all infrastructures have been installed for all lots.

The Board discussed the merits of the request based on previous requests granted for this

property and the need to redesign each unit or replat the entire subdivision.

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

COMPLIANCE WITH ALL APPLICABLE REGULATIONS:

The subject property complies with all other applicable zoning regulations for properties in R-2 Districts, aside from the matter at hand, and the two (2) regulations for which Exceptions have previously been granted.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

Minimum impact is anticipated. The drainage easement to the West of the proposed properties and the relative isolation of the development will lessen any negative affects in increasing the allowable lot coverage. The easement, located at the rear of the properties in question, is an area approximately one hundred twenty (120) feet in width, owned by Bayer Construction. It is heavily wooded and provides screening for the nearby Four Winds Village Addition. Other surrounding properties are separated from the Kimball Townhomes Addition by public street and common area. The development would not cause an adverse affect on nearby properties, and would instead function as an asset because it would provide a more seamless transition between the single-family attached homes in Four Winds Village and the single-family detached homes in Wyndham Heights.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:

No negative effect on the public is expected as no part of the building footprints in question encroach on any public easement. The development would not cause any adverse affect to the community if developed as proposed, and it is in keeping with the intentions of the Comprehensive Plan and recent development patterns.

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

The property owner acquired the property many years ago as a location to process crushed rock, and prior to 2005 it was zoned I-5. The owner opted to rezone this land as R-2 for the proposed development, though he could have also had it rezoned as a Planned Unit Development (PUD). He believes, "if it were zoned as a PUD, we would have had less flexibility over the designs for the individual houses." If he had opted to zone this parcel as a PUD, he likely would have been able to avoid having to apply for the Exceptions. In the Request for Exception, the applicant states, "Because of the amount of emphasis placed on addressing the topographical conditions at the site, bulk regulation standards were overlooked. The strict application of the Regulations would require the land to be re-platted, and/or for the housing units to be redesigned. A re-platting would reduce the common area and cause the houses to be spread further apart, though there would still be the same number of houses and

they would be the same size. The developer believes the common area to be an asset to the plan and to the community, and would like to avoid reducing it.” The applicant further states that “the entire Kimball Townhomes development has an average lot coverage of thirty-two (32) percent, including the lots in question. This is less than the thirty-five (35) percent maximum. This figure excludes the three common areas, which total over 53,000 square feet according to the final plat. Including those common areas brings the average lot coverage for the development down to twenty-one (21) percent. The development as presently designed would result in a gain to the general welfare of the community because of the natural open space it preserves.”

Emig moved to grant an Exception to allow a ten (10) percent increase to the maximum thirty-five (35) percent lot coverage regulation, for an allowed lot coverage of up to forty-five (45) percent for lots 12B to 20B in the Kimball Townhomes Addition with the following conditions:

1. The lot coverage for each lot from 12B to 20B shall not exceed forty-five (45) percent.
2. A building permit shall be obtained.
3. The first building permit shall be obtained within 180 days of the date of approval and each subsequent permit must be obtained within 180 days of the previous permit.
4. Tracts A-C, labeled as Common Areas, may not be developed for residential purposes. Ground signs permitted in the R-2, Two-Family Residential District, shall be allowed.

Wigfall seconded the motion, which passed 4-1. Watson voted against the request.

ADJOURNED

Respectfully submitted,

Chad Bunger, Planner

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