

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, July 9, 2008
7:00 PM

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

MEMBERS ABSENT: Joe Aistrup

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Chad Bunger, Planner; Rob Ott, City
Engineer; Stephanie Dikeman, Planning Intern

CONSIDER THE MINUTES

Connie Hamilton motioned for approval of the minutes of the June 11, 2008 Board of Zoning
Appeals meeting.

La Barbara Wigfall seconded the motion, which passed unanimously.

**TABLE a PUBLIC HEARING to consider a request for a VARIANCE to reduce the
required minimum lot depth of one-hundred fifty (150) feet for a proposed lot in the C-1,
Restricted Business District. The property is located at 2040 Fort Riley Boulevard.**

Hamilton moved to table the public hearing to consider a request for a Variance to reduce the
required minimum lot depth of one-hundred fifty (150) feet for a proposed lot in the C-1,
Restricted Business District. The property is located at 2040 Fort Riley Boulevard.

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

**A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of
the minimum fourteen (14) foot front yard setback along N. 4th Street to six (6) feet for the
relocation of the existing house on the property due to the proposed improvements at the
intersection of the N. 4th Street and Bluemont Avenue. The property is located at 402
Bluemont Avenue and is zoned R-2/TNO, Two-Family Residential District and Traditional
Neighborhood Overlay District.**

Chad Bunger presented the City Staff Report with a recommendation for approval with three (3) conditions for the Exception Request and two (2) conditions for the Variance request.

Emig asked Bunger for clarification about the Section 106 review mentioned in the staff report and asked if it was available to be viewed. Bunger responded by saying that the Section 106 review is still in draft form and is not ready for public viewing. Bunger asked Ott for clarification.

Ott explained why the Section 106 review is not yet finalized.

Emig asked Ott if the stone house on the subject property is on the National Register or if it had been nominated. Ott responded that to his knowledge it is neither on the National Register nor been nominated.

Emig asked whether there is a stipulation that if a house is moved from its original site location or positioned differently on the lot, if that disqualifies it to be on the National Register.

Ott responded that a representative from State Historic Preservation Office (SHPO) would support the nomination for placing the stone house on the National Register if the house stayed on the current lot.

Hamilton asked Ott to confirm that the board is being asked to make possible the option of moving the stone house to another location on the current lot.

Ott responded with a yes and presented more details about how they plan to move the house.

Emig asked if the contractor the City has been in touch with to move they stone has suggested a price.

Ott said he has a quote but it is not yet for public release. He further clarified the process leading up to moving the stone house.

Emig asked if the other two properties affected by this project have been acquired yet.

Ott responded with a no.

Hamilton asked for clarification on how the width, depth and square footage was calculated.

Bunger used a site plan to further clarify the confusion.

Emig voiced concerns about loss of trees.

Harry Hardy opened the public hearing.

Linda Glasgow, President from Manhattan Riley County Preservation Alliance, 2236 Snowbird Drive, expressed that it makes her sad to have the stone house moved. She asked several

questions about the future of 4th Street. She also asked for clarification on whether the board is to determine whether this project is feasible.

Hardy explained that this process gives the city authority/approval if they should proceed further, given the exception and variance are passed.

Glasgow asked if there has been any consideration to remove the wood addition.

Ott pointed out that the wood addition houses the only bathroom and kitchen and the stone house would then have to undergo extensive renovation.

Glasgow asked if there was any consideration for the stone building to become something other than a house.

Bunger responded that the current zoning is residential which restricts the use.

Ott asked Bunger if it was possible for someone to apply for a zoning change for the lot.

Bunger responded that it is possible to propose for new zoning and it has not been considered.

Glasgow expressed that she wants the house preserved and she thinks it would be nice to have the option to be able to move the house back on the lot.

Emig asked if the Riley County Preservation Office would have interest in the stone house and has any further discussion about the preservation of the house taken place.

Glasgow responded that the Preservation Alliance has not discussed any topics related to the future of the stone house other than they would like to see it preserved.

Emig asked if Glasgow as the president of the Alliance in regards to what the board is being asked to vote on

Glasgow responded that she supports the option to preserve the house.

Wigfall voices concern about if the house is moved, the nomination chances are decreased.

Glasgow responded that moving the house further back on the lot would preserve its eligibility.

Hardy's main concern was if moving the lot would reduce the chance of the house being on the National Register.

Ott explains how streets are widened and the process the City undergoes.

Emig asked about the size of the round-a-bout.

Ott provided a background of the project.

Debbie Nuss, Member of the Preservation Alliance Board, 1419 Humboldt, reiterate stance to preserve house and considered all options available.

Dixie West, 1014 Houston, voiced a concern about parking.

Ott explains the parking configuration and four (4) parking spots would be available.

Kathy Dzeuالتowski, 100 South Delaware, believed that the city caused hardship for the latest owners of the stone house. She expressed her concern of how serious the city is about preserving the stone house and would like to see the house kept where it is and the round-a-bout be moved or redesigned.

With no further public comments, Hardy closed the public hearing and opened Board discussion.

Emig stated that there are a lot of issues and some of the issues presented were not applicable to the request. He further stated that he struggles with the request, because moving the house might not even be feasible and because of the ambiguity of 4th Street's future.

Hamilton stated that she appreciated Emig's comments and struggles. She would like to preserve the options for this house and likes that keeping it on its current lot would still qualify it to be nominated for the Register. She feels the request for the exception and variation are reasonable and is prepared to support it, if the staff report will include that moving the house and keeping it on the lot helps maintain the possibility of the house being on the Register.

Wigfall agrees with Hamilton and supports keeping the options open. She felt the City is doing research to find out what is possible and feasible. She supports the request to keep the options open.

Hardy again voices an initial concern was if moving the house would jeopardize the house's eligibility being nominated for the Register. He supports the request.

Bunger suggests a location in the staff report for Hamilton's request.

Hamilton also suggests incorporating it into the Strict Application and Unique Conditions sections.

The Board made the following findings of fact for the Exception at 402 Bluemont Avenue:

- 1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The current house is located two (2) feet from the west property line, nine (9) feet from the front property line along Bluemont Avenue and eleven (11) feet from the N. 4th Street front property line, which does not conform with the R-2/TNO, Two-Family Residential District with Traditional Neighborhood Overlay District minimum side yard and front yard setback requirements. These conditions are generally considered legally nonconforming improvements since the structure was built in 1871, prior to the adoption of the City's

Zoning Ordinance in 1926. The construction date for the wood addition cannot be determined by historic building records, but is assumed to be a legal nonconforming improvement based on the age of the structure and interior improvements. The proposed lot configuration will not conform to the minimum lot area or lot width. Companion Variance request has been submitted to address these conditions. The proposed location of the structure will comply with all applicable regulations except for what the Exception is being requested.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the east, south and west are zoned R-2/TNO, Two-Family Residential District with Traditional Neighborhood Overlay District. To the north of the subject site is a fifteen (15) foot alley and properties zoned R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay District. To the southeast are the Walgreens Planned Unit Development (PUD) and the Manhattan Marketplace PUD. Further to the east along Bluemont Avenue and Tuttle Creek Boulevard are properties zoned C-5, Highway Service Commercial District.

The house has been a part of the neighborhood since the City of Manhattan was originally platted and has also been identified as a contributing property to the Multiple Property Listing for Late Nineteenth Century Vernacular Stone Houses. The proposed relocation of the house will preserve the historic nature of the property and its importance to the neighborhood and community. The proposal will also allow intersection improvements to be completed, which should improve a traffic conditions along Bluemont Avenue and N. 4th Street. The new location of the house will not be out of character with the neighborhood. The house is currently located eleven (11) feet from the N. 4th Street property line. The house located directly north of the subject site (401 Vattier) is located approximately five (5) feet from the N. 4th Street front property line. This structure was built in 1961. No documentation can be found to determine if the site (401 Vattier) is legally nonconforming. The house located at 822 N. 4th Street was built in 1900, according to the Riley County Appraisers, and is located approximately nine (9) feet from the N. 4th Street property line. This is presumably, a legal nonconforming improvement as the result of the older structure being built prior to adoption of Zoning Ordinances in Manhattan.

The proposed relocation of the house will improve the separation of the stone house from the two-family structure to the west. Currently, the two (2) buildings are separated by approximately eight (8) feet. The proposed building location will increase the separation to twelve (12) feet, which should improve the conditions of light and air for both properties as well as improve fire protection in the case of an emergency and results in a conforming side yard setback for the stone house. Based on these factors, it is anticipated that adjacent properties will experience minimal adverse effects from the granting of the Exception and the proposed location of the house.

3.EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed Exception should not adversely affect the public's health, safety, morals, order, convenience, prosperity, or general welfare. The proposed location of the house will not encroach into the public right-of-way or affect vision clearance along N. 4th Street. The proposed placement of the house will also not encroach into any utility or other easements. The new site of the house should not adversely affect pedestrians using the existing sidewalk along N. 4th Street. The planned six (6) foot distance from the inside edge of the sidewalk will provide adequate space for pedestrians who use the sidewalk. By granting the Exception request, the public's safety will be improved with the construction of the round-a-bout, which should create a safer driving environment at the intersection.

4.THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the minimum front yard setback would not allow the existing house to be moved within the subject site. The existing house is thirty-eight (38) feet wide, including roof eave overhang and gutters. The subject site, which is designated as being in the R-2/TNO District, is required to follow a minimum fourteen (14) foot front yard setback along N. 4th Street and a six (6) foot side yard setback along the west property line. The width of the house is too large for the fifty (50) foot wide lot. Based on the fact that the Bluemont Avenue and N. 4th Street round-a-bout is needed to address traffic safety concerns, the only options for the stone house would be to demolish, or remove it from the subject site. The effort is to preserve the historic context of the house and the property to the greatest extent possible. Considering these facts and circumstances, it would be unreasonable to strictly apply the minimum front yard setback of the R-2/TNO District.

Hamilton motioned for approval of an Exception to allow a reduction of the minimum fourteen (14) foot front yard setback along N. 4th Street, to six (6) feet for the relocation of the existing house at 402 Bluemont Avenue in the R-2/TNO, Two-Family Residential District with Traditional Neighborhood Overlay District, with the following conditions:

1. The Exception shall be limited to the proposed location of the house as outlined in the application documents and shown on the applicant's site plan.
2. All applicable permits shall be obtained.
3. The Variance to reduce the minimum lot area and lot depth shall be granted.

Staff Report Prepared by: Chad Bunger, Planner

Wigfall seconded the motion, which passed with a vote of 3-1, with Emig casting the dissenting vote.

The Board made the following findings of fact for the Variance at 402 Bluemont Avenue:

- 1. CONDITIONS UNIQUE TO THE PROPERTY:** The circumstances surrounding the dedication of a portion of the site to the N. 4th Street and Bluemont Avenue intersection improvements; the reconfigured front property lines resulting from the intersection improvements; and the proposal to relocate the stone house and addition on the site are all unique conditions to the property. KDOT has determined that the traffic volume and roadway design in the area requires that the intersection at N. 4th Street and Bluemont Avenue be improved and has provided the City with a grant to create a safer traffic environment. The City and its consulting engineering firm have determined that a four-lane round-a-bout would be the most appropriate improvement for the intersection. The planned intersection improvements have required the City to purchase property or additional right-of-way (r-o-w) on all four corners of the intersection. The result of the dedicated r-o-w for the subject site is a unique curved lot with front property lines that do not meet at a point of a clear intersection and a reduction of lot area and lot width. The unique front lot lines creates the narrower than required lot width for the R-2/TNO District.

The City and local interest group's effort to preserve the stone house is a unique condition to the subject site. Although the properties at all four corners of the intersection will have similar curved front property lines, the subject site will be the only property impacted in such a way that the lot area and lot width is reduced to the point that the lot is still buildable in an effort to maintain the stone house on site. The properties at the northeast and southeast quadrants of the intersection are large zoning lots that will maintain adequate lot width and lot depth after the construction of the intersection improvements. Due to the configuration of the lot in the southwest quadrant of the intersection, the property is being rendered unbuildable as a result of the intersection improvements. The house on this property will be removed to provide for landscaping and open space associated with the intersection. The community's effort to maintain the stone house on the subject site creates an improvement on a legally nonconforming lot. By granting the Variances of the lot area and lot width requirements, the City can have clear and marketable title of the property and the stone house can be preserved in context with the neighborhood and maintain the possibility of the stone house being listed on the National Register of Historic Places.

- 2. PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and properties to the east, south and west are zoned R-2/TNO, Two-Family Residential District and Traditional Neighborhood Overlay District. To the north of the subject site is a fifteen (15) foot alley and properties zoned R-1/TNO, Single-Family Residential District with Traditional Neighborhood Overlay District. To the southeast are the Walgreens Planned Unit Development (PUD) and the Manhattan Marketplace PUD. Further to the east along Bluemont Avenue and Tuttle Creek Boulevard are properties

zoned C-5, Highway Service Commercial District.

Minimal adverse impacts on the adjacent properties are anticipated. The purpose of the Variance requests and the companion Exception request are to preserve the existing stone house by moving it on the subject site. The house has been a part of the neighborhood and Ward 3 since the City of Manhattan was originally platted. The subject site has also been identified as a contributing property to the Multiple Property Listing for Late Nineteenth Century Vernacular Stone Houses. The proposed relocation of the house will preserve the historic context of the property and its importance to the neighborhood and community, while improving traffic conditions along Bluemont Avenue and N. 4th Street. Other options were developed by the parties in the Section 106 review process. However, these options do not preserve the historic value of the house on the subject site as well as the proposal to maintain the house on the reduced lot size. If other options, besides this proposal, were chosen, the site would become an unimproved nonconforming lot owned by City that would be dedicated for landscaping and open space associated with the intersection improvements.

Relocating the stone house on the subject site will help maintain the character of property and the neighborhood. The proposed relocation of the house will also improve the separation of the stone house from the two-family structure to the west. Currently, the two (2) buildings are separated by approximately eight (8) feet. The proposed building location will increase the separation to twelve (12) feet, which should improve the conditions of light and air for both properties as well as improve fire protection in the case of an emergency and conform to the minimum six (6) foot side yard setback requirement.

3. **UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** The unnecessary hardship is created by the dedication of the right-of-way (r-o-w) for the N. 4th Street and Bluemont Avenue intersection improvement. The r-o-w dedication results in the house being located within the new r-o-w. Because of the unique curved front lot lines of the subject site and the approximately 1,800 square feet of existing area that is being dedicated as r-o-w, the historic stone house will need to be relocated on the improved nonconforming lot, moved to another lot or demolished. Granting the Variances for the reduction in lot area and lot width will give the City the ability to relocate the house on the same lot and give the City and future owners' clear title. The clear property title gives the City the ability to market the property as a single-family home, which is the ultimate intent of the proposal.
4. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Variance should not adversely affect the public's health, safety, morals, order, convenience, prosperity, or general welfare. Both Variance requests are a result of the

City proposal to preserve the context of the stone house on the subject site and improve traffic safety conditions at the N. 4th Street and Bluemont Intersection.

5. RELATIONSHIP TO INTENT OF REGULATIONS: The intent of the minimum lot area and lot width requirements is to provide adequate space to construct a home and to minimize any adverse impacts on adjacent properties. The reduced subject site as a result of the r-o-w dedication creates a lot that is approximately 300 square feet smaller than the minimum 6,000 square feet of lot area in the R-2/TNO District. The relatively small deviation from the minimum lot area requirement is created by the unique condition of the dedication of land to the intersection r-o-w and should not adversely impact adjacent property owners. Because of the uniqueness of the situation and the relative small difference between the proposed lot area and the required lot area, the Variance request meets the general intent of the lot area regulations.

Although the proposed site does not meet the minimum lot width requirement, which is defined by the Zoning Regulations as “The distance on a horizontal plane between the side lot lines measured at right angles to the lot depth at the established front building line” (Section 16-201), the site does have adequate width at the site of the relocated house. Because of the curved front lot lines, the lot width is thirty-two (32) feet. However, the width at the new location of the house is (50), which provides adequate area and separation from adjacent properties, as intended by the Zoning Regulations.

Hamilton motioned for approval of a VARIANCE to allow a reduction of the minimum required lot area of 6,000 square feet to 5,700 square feet; and a reduction of the minimum lot width of 50 feet to 32 feet for the property at 402 Bluemont Avenue in the R-2/TNO, Two-Family Residential District with Traditional Neighborhood Overlay District, with the following conditions:

1. The Variances shall be limited to the subject site as outlined in the application documents and shown on the applicant’s site plan.
2. The Exception to reduce the minimum front yard setback along N. 4th Street shall be granted.

Wigfall seconded the motion, which passed with a vote of 3-1 with Emig casting the dissenting vote.

REMOVE from the TABLE and conduct a PUBLIC HEARING to consider a request for a VARIANCE to not provide sight obscuring screening of not less than six (6) feet in height for purposes of screening outside storage at 902 Fair Lane in the LM-SC, Light Manufacturing Service Commercial District, generally for that part of the outside storage

along Fair Lane.

Emig moved to remove the item from the table and conduct the public hearing to consider a request for a Variance to not provide sight obscuring screening of not less than six (6) feet in height for purposes of screening outside storage at 902 Fair Lane in the LM-SC, Light Manufacturing Service Commercial District, generally for that part of the outside storage along Fair Lane.

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

A PUBLIC HEARING to consider a request for a VARIANCE to not provide sight obscuring screening of not less than six (6) feet in height for purposes of screening outside storage at 902 Fair Lane in the LM-SC, Light Manufacturing Service Commercial District, generally for that part of the outside storage along Fair Lane.

Steve Zilkie presented the staff report, and recommended approval with three (3) conditions.

Hardy opened the public hearing.

Applicant R. Kent Cormack supports City Staff recommendations.

Hamilton asks Cormack if there is any problem with conditions.

Applicant states he is fine with all conditions.

With no additional comments, Hardy closed the public hearing and opened for Board discussion.

Hamilton states the city handled this situation in a good faith effort and is glad everything is ironed out. She supports the request.

The Board made the following findings of fact for the Variance at 902 Fair Lane:

- 1. CONDITIONS UNIQUE TO THE PROPERTY:** The property is a corner lot with three street frontages: Fort Riley Boulevard, S. 9th Street, and Fair Lane, a public alley, which is a right-of-way other than a street. The site has no access to Ft. Riley Boulevard and cannot be accessed from Ft. Riley Boulevard. Access rights were acquired as a part of the Ft. Riley Boulevard street improvement. A concrete building is located on the site, providing a place of business for organ repair and antique restoration, which screens a portion of the western side of the outdoor storage area. The outdoor storage area is on the east side of the site and is currently enclosed by a six foot high chain link fence, on which there is a green slat screening on the Ft. Riley Boulevard frontage and along the majority of S. 9th Street frontage with an angled section of fence at the intersection of S. 9th Street and the alley unscreened. The zoning district in which the property is located was rezoned from I-3, Light Industrial District, to LM-SC, Light Manufacturing-Service Commercial District. Screening of outdoor storage is required in both zoning districts.

The existing outdoor storage of caps and toppers has existed on the site since November 2005. The consideration of the Variance to not require screening of the outdoor storage area, as reflected in the Board of Zoning Appeals' Minutes of May 10, 2006, and, as modified for June 14, 2006, generally reflect a discussion to support the request to not require screening, but with some hesitation to deny the request. City Administration conceded it would consider screening options; however, the only alternatives are those described in the definition of Screening in the Manhattan Zoning Regulations. City Administration did not contact the applicant after the meeting as the Variance was denied and the applicant partially screened the outdoor storage area based on an understanding that the alley area did not require screening.

2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal negative effects are expected on adjacent property, with respect to outdoor storage of caps and toppers. The area has been unscreened in total, or in part, for several years and no complaints have been filed. Outdoor storage of other materials or products may have an adverse affect and there is no basis to assume otherwise.
3. **UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** It may be a hardship on the applicant to screen the remainder of the outdoor storage area, based on the unique conditions and history of the property described above. The applicant screened those parts of the outdoor storage area, which the applicant understood were be required to be screened and left the remainder unscreened based on discussion the June 14, 2006, Board of Zoning Appeals meeting, regardless of the Board of Zoning Appeals decision to deny the request.
4. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal negative impact is expected on the public for outdoor storage associated with the caps and toppers. Limited public view is along the alley. However, there may be adverse impacts on the public if other materials or products are stored outdoors in the storage area and the area remains partially unscreened.
5. **RELATIONSHIP TO INTENT OF REGULATIONS:** The LM-SC District allows a broad mixture of land uses including light manufacturing uses (processing, fabrication, assembly), warehousing and distribution, highway commercial and retail services (automotive shops, appliance sales and service, etc.), industrial services (welding shops, general contractors, etc.) and others. The outdoor storage of materials associated with the permitted uses of the LM-SC District in the storage yard on the east side of the site are associated with a permitted use within the LM-SC District. While the outdoor area is well maintained, the Zoning Regulations require outdoor storage be screened by sight obscuring screening no less than six feet in height. To not require screening could allow additional items to be displayed on the site; however, the storage of caps and toppers has

not created an adverse affect on adjoining properties or the public for the time the area has remained unscreened, or partially screened. The intent of the screening regulation is to screen from view the outdoor storage and display items associated with the permitted and conditional uses within the LM-SC District. While the intent of the regulation would not be met by allowing the partially unscreened area to remain as is, and contrary to a previously denied Variance, the history and modified facts are inclined to support a Variance to not require screening on those parts of the fence, which are unscreened.

Emig motioned for approval of a Variance to not require sight obscuring screening for a portion of the outdoor storage area at 902 Fair Lane, with the following conditions of approval:

1. The Variance shall only apply to the fencing, which is currently unscreened.
2. The existing screened portions of the outdoor storage area shall remain screened based on the requirements of the Manhattan Zoning Regulations.
3. Any change in storage in the outdoor storage area from the current materials and products to other materials or products shall require the entire outdoor storage area to be screened, as required by the Manhattan Zoning Regulations.

Wigfall seconded the motion, which passed unanimously with a vote of 4-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback requirement to ten (10) feet for construction of a proposed privacy fence at 220 Brooklawn Drive, in the R-1, Single-Family Residential District.

Stephanie Dikeman presented the staff report, and recommended approval with two (2) conditions.

Hardy opened the public hearing.

Applicant Cynthia Alvarez was present, but had no comments.

With no additional comments, Hardy closed the public hearing and opened for Board discussion.

Hamilton was willing to support the proposal, but had concerns about fences wanted only for private use of the yard. She did state she appreciated the modest area the fence will enclose.

Hardy shared the same concerns as Hamilton, but supported the use of landscaping and trees to buffer the fence.

Wigfall expressed concern about the curvature of the street, but stated that since the vision triangles are clear, she can support it.

The Board made the following findings of fact for the Conditional Use at 220 Brooklawn Drive:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site

currently complies with all applicable regulations, other than that for which the Exception is requested.

2. PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site is located within an R-1, Single-Family Residential Neighborhood. The proposed fence should not negatively affect either of the adjacent properties immediately north or west of the subject site. The property located to the west, 225 Brookvalley Drive, should have minimal adverse effects from the fence. The proposed fence would be approximately thirty-six (36) feet from the house on the western adjacent property (225 Brookvalley Drive), and therefore will not reduce the use of their side yard. The neighboring property to the north, 224 Brooklawn Drive, should not be affected since there is twenty-four (24) feet between the house and the proposed fence. The fence would not be out of character for this single-family residential district. There are numerous properties surrounding the subject site which have conforming fenced in rear yards to serve as a useable and private space. However, given the lot's corner configuration of the lot and the placement of the house, the applicant is forced to use the west side yard and southern front yard as their functional rear yard. It is not uncommon in this single-family neighborhood for property owners to fence in their rear yards, and the proposed fenced in area in the only logical space to function as the subject sites rear yard. There are two conforming wooden fences located across the street from subject site, and the property immediately west has a chain link fence, therefore, the proposed fence should have minimal effect on the neighboring properties, or on the neighborhood.

3. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed fence at the subject site would be outside of any drainage easement or utility easement, and is not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare.

The wooden fence is proposed for a location that would be outside the vision clearance triangle at the intersection of Brookvalley Drive and Brooklawn Drive. In residential zoning districts, no wall, sign, vegetation, or obstruction of any kind may be placed within a triangle whose two measured sides are thirty (30) feet along each of the two street rights-of-way that form the intersection. The proposed fence is also outside the ten (10) foot vision clearance triangle created by a driveway on the property immediately west of the subject property. Due to the curvature of the street, the property immediately west of the subject site is already visually limited, therefore the fence will not induce any further obstructions.

The proposed fence is located ten (10) feet from the road right-of-way and the fence will not in any way obstruct the line of sight of anyone utilizing the sidewalk nor users of Brookvalley Drive or Brooklawn Drive.

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

The subject site has a minimal amount of privacy and use because of its corner location and irregular shape. Given the lot configuration, the enjoyment of the functional rear yard is limited due to its small area, which makes it unfeasible for the applicant to locate a fence within the allowable area of its front yard. If the applicant were to follow the front yard setback as set by the City of Manhattan Zoning Regulations, the fence would be located only one and three quarters (1 ¾) feet from the back patio and eliminate the enjoyment of the rear yard (technically the southwest side yard). The applicant wishes to construct a fence so she, her family and their pets can enjoy the privacy and safety of an enclosed yard. Given the irregular shape of the lot, as well as the constricted placement of the house, limiting the construction of the fence to within the set setback requirements is unreasonable.

Wigfall motioned for approval of an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback requirement to ten (10) feet for the construction of a proposed six (6) foot tall wooden privacy fence at 220 Brooklawn Drive, in the R-1, Single-Family Residential District, with the following conditions:

1. The Exception shall be for a proposed fence, which shall be maintained in good condition.
2. The fence shall be constructed as shown on the site plan and the application documents.

Hamilton seconded the motion, which passed unanimously with a vote of 4-0.

A PUBLIC HEARING to consider a request for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback along Enoch Lane for an existing building at 905 Enoch Lane in the C-5, Highway Service Commercial District. No addition or expansion is proposed for the structure. The Exception is to address an existing condition so that the property can be Replatted.

Bunger provided the staff report, which recommended approval with three (3) conditions.

Hamilton asks for clarification of the board's duty.

Wigfall asks if this matter would go before the planning board whether the BZA grants or denies the request.

Bunger responds by saying that it probably wouldn't go before the planning board if denied.

Hardy opened the public hearing.

For the record, Hardy indicated that nobody was there to speak, including the applicant.

Hardy closed the public hearing.

Hamilton says she can support it and Wigfall agrees.

The Board made the following findings of fact for the Exception at 905 Enoch Lane:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The existing residential use does not comply with the C-5, Highway Service Commercial District regulations. The house was built in 1930 and was annexed and zoned C-5 in 1969, creating a legal nonconforming condition. The property currently complies with all applicable lot dimension and bulk requirements of the Zoning Regulations. The proposed Final Plat would create a condition where the existing house will encroach into the required minimum twenty-five (25) foot front yard setback, the Exception request is addressing.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and immediately surrounding properties to the north, east, south and west are zoned C-5, Highway Commercial District. Other properties in the area are zoned C-6, Heavy Commercial District and I-2, Industrial Park and C-5 to the north, I-4, Heavy Industrial District to the east along U.S. Highway 24, I-3, Light Industrial District, I-2 and C-5 to the south and I-2 to the west. The area consists of a mix of open space, a variety of retail and automotive commercial uses, motels and a variety of industrial uses. The existing house was built in 1930, prior to being annexed into the City limits in 1969. The house and the current use has been a part of the area's commercial and industrial character since it has been developed in the 1970's and 1980's. No additions or expansions are proposed for the house. The need for the Exception is due to the proposed Concurrent Plat of GTM Sportswear Addition, Unit Four, which dedicates thirty feet of r-o-w to the public, resulting in the existing house to be located within sixteen (16) feet of the front property line, thus encroaching into the required twenty-five (25) foot front yard setback. Adverse impacts are not anticipated on adjacent properties based on the fact that additions or expansions are not projected for the house and the proposed Concurrent Plat (which causes the need for Board of Zoning Appeals action) is required to address property line and access issues on adjacent properties.
3. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The Exception should not affect the public health, safety or general welfare. There are no proposed additions or expansion to the existing house. The existing house will not encroach onto the ten (10) foot wide utility easement along Enoch Lane created by the proposed Concurrent Plat.
4. **THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE**

CONSIDERED: The strict application of the twenty-five (25) foot setback regulation in the C-5 Zoning District would not allow the Concurrent Plat of GTM Sportswear Addition, Unit Four to be heard by the Manhattan Urban Area Planning Board as designed. The Concurrent Plat is proposed to address property line issues on Lot 2 and 3 of GTM Sportswear Addition, Unit Two. The Final Plat is required dedicate thirty (30) feet of public right-of-way (r-o-w); creating a new front property line along Enoch Lane. The dedicated r-o-w is required to maintain a consistent r-o-w width for Enoch Lane in the case the public street would need to be widened in the future. The area dedicated to the Enoch Lane r-o-w reduces the lot depth of the subject site, which creates a condition where the existing house will encroach into the required twenty-five (25) foot front yard setback. The existing house could be relocated on the site or removed entirely to adhere to the front yard setback requirements of the C-5 Zoning District. Both of these options appear to be unnecessary considering that no additions or expansion is proposed for the existing house, the house has a part of the commercial and industrial area since it was developed in the 1970's and 1980's and the Concurrent Plat is needed to address property line issues and will provide the needed r-o-w to the public if Enoch Lane is needed to be improved in the future.

Emig motioned for approval of an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback along Enoch Lane for an existing building at 905 Enoch Lane in the C-5, Highway Service Commercial District. No addition or expansion is proposed for the structure. The Exception is to address an existing condition so that the property can be Replatted.

The Exception shall be limited to the proposed fence as shown on the site plan.

1. The Concurrent Plat of GTM Sportswear Addition, Unit Four shall be approved by the Manhattan Urban Area Planning Board.
2. The Exception shall apply to the existing structure as a single-family residential use.

Wigfall seconded, and the motion passed unanimously with a vote of 4-0.

Adjourned.

Respectfully Submitted,

Stephanie Dikeman