

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, January 14, 2009**  
**7:00 PM**

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

MEMBERS ABSENT: Calvin Emig

STAFF PRESENT: Chad Bunger, Planner; Anne Antonini and Stephanie Dikeman, Planning  
Interns

**CONSIDER THE MINUTES**

Hamilton moved to approve the December 10, 2008 minutes which was seconded by Wigfall and passed with a vote of 4-0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR AN APPROVED EXCEPTION TO ALLOW A REDUCTION OF THE MINIMUM FOURTEEN (14) FOOT FRONT YARD SETBACK ALONG N. 4<sup>TH</sup> STREET TO SIX (6) FEET FOR THE RELOCATION OF THE EXISTING HOUSE AT 402 N. BLUEMONT AVENUE; AND 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 FIFTY (50) FEET TO THIRTY-TWO (32) FEET IN THE R-2/TNO, TWO-FAMILY RESIDENTIAL DISTRICT WITH TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/OWNER: CITY OF MANHATTAN)**

Hamilton stated that the request was standard and routine, and that she could support it.

Hamilton moved to approve a 180 Day Extension for an approved Exception to allow a reduction of the minimum fourteen (14) foot front yard setback along N. 4<sup>th</sup> Street to six (6) feet for the relocation of the existing house at 402 N. Bluemont Avenue; and 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 fifty (50) feet to thirty-two (32) feet in the R-2/TNO, Two-Family Residential District with Traditional Neighborhood Overlay District.

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

**A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO ALLOW**

**A REDUCTION OF THE ONE-HUNDRED (100) FOOT LOT DEPTH REQUIREMENT TO NINETY (90) FEET FOR A PROPOSED SINGLE-FAMILY HOME IN THE R-3/M-FRO, MULTIPLE-FAMILY RESIDENTIAL DISTRICT WITH A MULTI-FAMILY REDEVELOPMENT OVERLAY. (OWNER/APPLICANT: WILLIAM MCNALLY AGENT: HERITAGE BUILDERS, INC. – RONALD DECHANT).**

Anne Antonini presented the staff report, which recommended approval of the Variance with six (6) conditions.

Hamilton asked Antonini for clarification on one of the proposed conditions, which addressed City inspection of the subject site. The condition would grant permission for the City to inspect the site upon receipt of a complaint related to occupancy. Hamilton asked if the City typically had trouble obtaining access to properties to investigate complaints.

Antonini provided clarification, that property owners with complaints against them must grant the City permission to enter to inspect complaints, and that the proposed condition would simply be a recognition of an agreement between the City and the property owner that permission would be granted upon receipt of complaint.

Hamilton asked if this type of condition would become common in future City Administration recommendations.

Antonini and Bunger addressed this issue. Antonini stated that the subject site's neighborhood was extremely close to campus and predominantly renter-occupied; and that it was City Administration's contention that future owners of the subject site could convert the property into a duplex, without the City's knowledge, which would be in violation of the Zoning Regulations.

Bunger further stated that the original version of the site plan for the subject site showed a total of six bedrooms, which raised the City's concern regarding future conversion into a duplex.

Wigfall asked Antonini a question regarding the proposed use of the subject site.

Antonini provided further information.

Hardy expressed that the proposed condition was not typical, and there was some discussion of it as a viable option for the Variance. The consensus was that it was within the Board's scope of authority and was reasonable.

Bunger provided explanation for the conditions.

Hamilton stated that her interpretation of the conditions was that they were mainly directed towards future owners of the subject site. She asked for clarification on the proposed condition that the Zoning Department inspect the subject site prior to issuance of an Occupancy Permit.

Antonini and Bunger provided information and clarification on the City's inspection process.

Hardy opened the Public Hearing.

Applicant Ron DeChant spoke to the request and stated that he and the property owner would happily honor the conditions proposed.

Property Owner William U. McNally echoed that sentiment.

With no further comment, Hardy closed the Public Hearing and opened for Board Discussion.

Hamilton expressed that she had no problem approving the Variance request, with the word "may" in Condition 3 changed to "shall," as recommended by City Administration.

Wigfall stated that she appreciated that the applicant had abided by the setback requirements in his proposal, considering the space constraints present at the subject site.

The Board made the following Findings of Fact for the Variance at 1127 Pomeroy:

- A. CONDITIONS UNIQUE TO THE PROPERTY:** The subject site is part of the Coronado Addition, which was platted in 1947. At that time, the 1941 Manhattan Zoning Regulations were in effect. The regulations did not contain minimum standards for lot depth. Minimum lot depth standards were adopted with the 1969 Zoning Regulations. At this time, the subject site was zoned R-1, Single Family Residential

District and became subject to its one-hundred (100) foot lot depth requirement.

Coronado Addition lots typically range in depth from eighty-seven (87) to ninety-two (92) feet. The dimensions of the subject site are typical of lots within the Coronado Addition. The subject site is sixty-three (63) feet wide and ninety-one (91) feet deep, with a total area of 5,804 feet. Only one of the twenty-eight (28) lots within the Coronado Addition meets or exceeds the current minimum one-hundred (100) foot lot depth requirement. All other improved properties within the subdivision have depths of less than one-hundred (100) feet, and are thus legally nonconforming lots.

There was a previous, single-family home on the subject site that was part of the established neighborhood. It was substantially damaged by fire in February, 2007 and subsequently demolished sometime between October 15 and December 12, 2008. According to the Zoning Regulations:

*“In the event that any improvement described in Section 8-301 is damaged or destroyed, by any means, to the extent of fifty (50) percent or more of its total market value, such improvement shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that the improvements located on a lot which does not comply with the applicable lot size requirements shall maintain side yards in accordance with Section 8-201 in the case of residential property” (Section 8-303(A)).”*

This means that the subject site must now meet the one-hundred (100) foot minimum lot standard before any improvements can be constructed. Since the property owner cannot feasibly acquire more land at the rear of the subject site, the minimum lot depth cannot be met, and a Variance is required.

**B. PROBABLE EFFECT ON ADJACENT PROPERTIES:** Adjacent properties to the east, west, and south of the subject site along Pomeroy Street and on Ratone Street are also part of the Coronado Addition and are zoned R-3/M-FRO, Multiple-Family Residential District with a Multi-Family Redevelopment Overlay. They consist of single-family, two-family and multiple-family dwellings. Most of these structures are renter occupied, and contain between one (1) and three (3) dwelling units. Properties to the north of the subject site along Pomeroy are also part of the Coronado Addition and are zoned R-3/M-FRO, Multiple Family Residential District with a Multi-Family Redevelopment Overlay. They consist of a mix of single-family homes containing between one (1) and three (3) units, and larger multiple-family residential structures.

Because what is currently proposed is similar to the previous improvements to the subject site, and because the previous improvements were part of the established neighborhood, the applicant’s proposal is not anticipated to have any negative impacts on the properties surrounding the subject site. Instead, it is anticipated that allowing the subject site to return its pre-fire condition will have a positive impact on the established neighborhood. Currently the subject site is a vacant lot. The proposed single-family home will be an improvement to the subject site, and will be more

compatible with the surrounding neighborhood than the vacant lot. It will also comply with the design standards of the Multi-Family Redevelopment Overlay District, which ensures the architectural design is compatible with the character of Manhattan's older neighborhoods.

**C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:**

The strict application of the Zoning Regulations would not allow the applicant to develop the subject site. Prior to a house fire in February of 2007, there was a single-family home on the nonconforming lot similar to what the applicant proposes. Because of the fire damage, this structure was demolished in the fall of 2008. By demolishing the structure on the improved nonconforming lot, the Zoning Regulations require that any future improvements to the subject site shall conform to all regulations for its zoning district. No viable option exists for the applicant to acquire the necessary ten (10) feet of lot depth to meet the requirement. If the proposed Variance is denied, the property owner cannot build on the lot. This is an unnecessary hardship to the owner, which is created by the unique condition of the property, which was not created by the owner. The subject site previously had a permitted single-family use that met all applicable Zoning Regulations at the time it became nonconforming and was similar to what is proposed; and all other lots in the surrounding neighborhood contain structures similar to or more intense than what is currently proposed.

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

The Variance request should not have any adverse effects to the public health, safety, and welfare. The Variance will allow the owner to construct a permitted single-family dwelling that will be constructed to current Building Code requirements on the improved nonconforming lot. This new structure will not impact any existing easements.

**E. RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the regulation for minimum lot depth is to ensure that each zoning lot has adequate space to: contain a permitted use, provide adequate off-street parking areas, provide sufficient open space for required front, side and rear yards, and to provide adequate separation from adjacent properties. The subject site has adequate depth to ensure that this intention is met. The proposal for the subject site shows a front yard setback that meets the fourteen (14) foot setback requirement for the M-FRO District. Its rear yard is proposed to exceed the twenty-five (25) foot rear yard setback requirement, at thirty-nine (39) feet. Adequate space for the proposed three (3) parking stalls is provided, which will exceed the zoning requirement of two (2) spaces for a single-family residential unit. In the R-3, M-FRO District, there is an eight (8) foot side yard requirement. The proposal for the subject site shows side yards of nine (9) and sixteen and a half (16 ½) feet. The building design shown on the site plan submitted with the application meets the M-FRO, Multi-Family Redevelopment Overlay District's Building Design Standards, which require that two (2) architectural

features be incorporated into the street-facing façade of the proposed site, and thirty (30) percent of the total surface area of each building façade be brick or stone.

Hamilton made a motion to approve a Variance to allow a reduction of the minimum required one-hundred (100) foot lot depth to ninety (90) feet at 1127 Pomeroy Street with the following conditions:

1. Site improvements and modifications shall be completed as shown on the site plan and application documents.
2. All applicable permits shall be obtained.
3. No more than four (4) unrelated people shall live in the proposed single-family dwelling.
4. Property owner shall allow City Administration to inspect the property before a Certificate of Occupancy is issued.
5. Property owner shall allow City Administration to inspect the property for compliance with the Manhattan Zoning Regulations relating to the number of permitted occupants if City Administration receives information of a possible violation of such Regulations.
6. The Finding of Facts and Board of Zoning Appeal's final decision shall be filed on the property with the Riley County Register Deeds by the applicant prior to a building permit being issued for the proposed dwelling.

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

**A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW FOR A TEMPORARY DRIVEWAY AND ADDITIONAL PARKING AREAS TO BE LOCATED ON GRAVEL FOR A PERIOD OF TWO YEARS; A REDUCTION OF THE MINIMUM FRONT YARD SETBACK ALONG ENOCH LANE FROM THIRTY-FIVE (35) FEET TO THIRTY (30) FEET FOR AN EXISTING BUILDING; AND A REDUCTION OF THE MINIMUM TWENTY (20) FOOT SIDE YARD SETBACK TO THREE (3) FEET, IN THE I-2, INDUSTRIAL PARK DISTRICT. (APPLICANT/ OWNER: GTM SPORTSWEAR, INC. AGENT: SLOAN, MEIER, HANCOCK, P.A. – JEFF HANCOCK )**

Stephanie Dikeman presented the staff report, which recommended approval of the Exceptions with six (6) conditions.

Hardy asked Dikeman for clarification on how the application met the hardship standard that all Exceptions must meet.

Dikeman provided clarification.

Hamilton asked Dikeman whether another form of parking lot surfacing, asphalt millings, would satisfy paving requirements or create a suitable surface for future building in the parking lot area.

Dikeman stated that asphalt millings would not satisfy paving requirements or provide a suitable building surface.

Hamilton asked Dikeman for clarifications on fencing requirements in the zoning district of the subject site.

Dikeman provided clarification.

Wigfall asked Dikeman how many parking spaces the applicant's proposal would create.

Dikeman provided the figure.

Hardy opened the public hearing.

Property Owner, Dave Dreiling, spoke to the request.

Wigfall asked Dreiling about current and future parking demand at the subject site.

Dreiling provided that information, expressing that parking demand at the subject site currently exceeded supply, and that problem would be exacerbated with proposed future additions unless the parking area could be increased as proposed in the Exceptions.

Wigfall asked Dreiling whether GTM provided separate parking for customers and employees.

Dreiling stated that it did.

Wigfall asked Dreiling for clarification on whether the proposed Exceptions were for the employee or customer parking areas.

Dreiling provided clarification, stating that the Exceptions were for employee parking areas.

With no one else wishing to speak to the request, Hardy closed the Public Hearing and opened for Board Discussion.

Hamilton expressed that she thought the applicant's request was well thought out, and that she had no problem approving the proposed Exceptions.

Wigfall concurred. She stated that the applicant's proposed use of gravel was appropriate and presented a viable alternative for future expansion, and commended the applicant for working with the City and working within zoning regulations.

The Board made the following findings of fact for the Exceptions at 520 McCall Road and 701 Enoch Lane.

**A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site currently complies with all applicable regulations, other than that for which the Exceptions are requested. It should be noted however, that if the parking was requested as a permanent condition rather than a temporary one, the owner would be required to conform to the minimum landscaping requirements for off-street parking as set forth by the Zoning Regulations. Because such conditions are only temporary, no landscaping is required and a Variance is not necessary. If the owner wishes to make this a permanent condition, a Variance request would need to be brought before the Board for approval or the minimum landscaping requirements would need to be provided.

**B. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

**Gravel Parking Area**

Off-street parking and drives and aisles are required to be paved surfaces because they control dust and soil erosion, while making buildings more handicapped accessible. The gravel parking area being requested may generate an increased amount of dust and erosion, which could have a potential impact on surrounding properties. The property immediately to the south, 601 E. Poyntz Avenue, has a hotel located along its southern boundary line. The proposed gravel parking would be approximately 87 feet north of the building, separated by a paved parking lot on the hotel's property. Located to the west of the subject site at 600 McCall Road, separated by Enoch Lane, is triangular shaped lot. The proposed gravel area would be around 700 feet from the commercial building located on the site. The gravel area and building are separated not only by Enoch Lane, but a large open area and paved parking lot. The property immediately north of the west half of the proposed gravel parking area is a vacant lot. The property immediately to the west is owned by GTM. All surrounding properties are zoned either C-5, Highway Service Commercial District or I-2, Industrial Park District.



Considering all facts, the gravel parking area should have minor impacts on adjacent properties. The gravel parking could however provide adequate parking for GTM Sportswear Employees, which could possibly lessen the congestion caused by the on-street parking along Carlson Street.

**Front Yard Setback**

The proposed reduction of the front yard setback is not anticipated to have any adverse effect on neighboring properties. It is only because of the zoning change and dedication of the road right of way with the proposed Final Plat that the Exception from the front yard setback requirement is being sought. The existing structure has been in its current state without any known problems.

**Side Yard Setback**

The proposed reduction of the side yard setback is not anticipated to have any adverse effect on neighboring properties. The lot located immediately to the north of the proposed gravel area is currently a vacant lot. There would be approximately five (5) feet of open space separating the property to the north and the gravel parking area.

**C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Exceptions for the subject site are not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare, and no public easements are affected. However, as mentioned previously, gravel parking presents the opportunity for increased dust in the surrounding area, but the proposed designated gravel parking will address the current need for orderly parking in the area.

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

**Gravel Parking Area**

As mentioned previously, the applicant is seeking to use gravel as opposed to a paved surface for two years because this portion of the site “will likely be used in the future for expansion of the GTM Sportswear facility...”. The applicant has explored other options, including asphalt millings, yet has determined this would not be a suitable material for what will likely become a future building area. Applying strict application of the regulation would be unreasonable, because the applicant would be required to pave the proposed parking area, only to remove it a few years later for likely building expansion. The applicant even states that the growth of GTM Sportswear, “...has created a situation where building expansions are nearly continuous...”.

**Front Yard Setback**

The strict application of the thirty-five (35) foot setback regulation in the I-2, Industrial Park Zoning District would not allow the Final Plat of GTM Sportswear Addition, Unit Five to be filed with the Register of Deeds as designed because it does not meet all applicable regulations, as required by the Manhattan Subdivision

Regulations. The Final Plat is required to dedicate twenty-five (25) 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 building will encroach into the required thirty-five (35) foot front yard setback of the I-2 Zoning District. The existing building could be relocated on the site or removed entirely to adhere to the front yard setback requirements of the I-2 Zoning District. Both of these options appear to be unreasonable considering that no additions or expansions are proposed for the existing building. The Final Plat will provide the needed r-o-w to the public if Enoch Lane is needed to be improved in the future.

### **Side Yard Setback**

The proposed reduction of the north side yard setback is required to allow the proposed gravel parking area to conform. The reduction of the side yard setback is only temporary and is needed for driving aisles to be appropriately sized and for the parking area to meet the current demand of vehicles in an orderly fashion. The strict application of regulations would require the applicant to provide a twenty (20) foot side yard setback which would then delete an entire row of proposed parking. The Exception would only be for duration of the gravel parking area on a temporary basis.

Aistrup made a motion to approve an EXCEPTION to allow for temporary off-street parking and driving aisles on gravel surface for a period of two years located at 520 McCall Road; and a reduction of the minimum front yard setback along Enoch Lane from thirty-five (35) feet to thirty (30) feet for an existing building located; and a reduction of the minimum twenty (20) foot side yard setback to three (3) feet for the temporary gravel off-street parking and driving aisles with the following conditions:

1. Concrete curb stops shall be installed for all off-street parking stalls to clearly designate the areas appropriate for the temporary gravel off-street parking spaces.
2. The temporary gravel off-street parking and driving aisles shall conform to the requirements of Article VII, Off-Street Parking and Loading, and minimum side yard setbacks, within two years of the date of approval of the Exceptions.
3. The temporary gravel off-street parking and driving aisles shall only be located on the areas designated by the site plan.
4. The Exception for the minimum thirty-foot (30) foot front yard setback located at 701 Enoch Lane is for the existing building as shown on the site plan and described in the application documents.
5. The reduction of the side yard setback shall only apply to the proposed temporary gravel off-street parking and driving aisles as shown on the site plan.
6. The temporary gravel off-street parking and driving aisles shall be maintained in good condition to prevent blowing dust.

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

**A PUBLIC HEARING TO CONSIDER A REQUEST FOR AN EXCEPTION TO ALLOW AN INCREASE IN THE MAXIMUM STRUCTURE HEIGHT OF THIRTY (30) FEET TO THIRTY-FOUR (34) FEET, FOR A PROPOSED TWO-STORY BUILDING; AND A REDUCTION OF THE MINIMUM TWENTY-FIVE (25) FOOT FRONT YARD SETBACK TO A MINIMUM OF TEN (10) FEET ALONG CLAFLIN ROAD FOR PROPOSED OFF-STREET PARKING, ALL ASSOCIATED WITH AN EXPANSION OF THE MANHATTAN MEDICAL CENTER CAMPUS. (APPLICANT/ OWNER: MANHATTAN MEDICAL CENTER --RICK G. FULTON, PRESIDENT AGENT: WDM ARCHITECTS - LES MOCK ).**

**A PUBLIC HEARING TO CONSIDER A REQUEST FOR A VARIANCE TO NOT PROVIDE SIGHT OBSCURING SCREENING FOR PORTIONS OF THE PROPERTY ASSOCIATED WITH A NEW MEDICAL OFFICE BUILDING AND EXISTING BUILDING E IN THE MANHATTAN MEDICAL CENTER CAMPUS. (APPLICANT/ OWNER: MANHATTAN MEDICAL CENTER --RICK G. FULTON, PRESIDENT AGENT: WDM ARCHITECTS - LES MOCK ).**

**(Considered Together)**

Bunger presented the staff reports for the Exceptions and the Variance, which recommended approval of both, with two (2) conditions for the Exceptions and three (3) conditions for the Variance.

Hardy opened the Public Hearing.

Applicant Les Mock spoke to the requested Exceptions and Variance. He stated that there was only one moderate change to his site plan from previously approved Variances and Exceptions.

Hardy closed the Public Hearing and opened for Board Discussion.

Hamilton expressed her appreciation of screening provisions contained in the applicant's proposal. She further stated that she could support the applicant's request, but recommended

the removal of one sentence from the Findings of Fact regarding building height.

The Board made the following findings of fact for the Exceptions at the Manhattan Medical Center at 1133 College Avenue.

**A. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property currently complies with all applicable requirements of the Zoning Regulations, other than the ones for which an Exception is being requested. The existing Building E and the proposed building have a sufficient amount of off-street parking for existing and proposed medical office use.

**B. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

*Building Height*

Minimal adverse effects on adjacent properties are anticipated by allowing the height of the proposed building to exceed the maximum height of thirty (30) feet. Because of the slope of the land that the new building will be constructed on, the proposed medical office will be built into the side of the hill. The tallest portion of the building, which is approximately thirty-seven (37) feet from the finished grade, is located on the North West corner of the building, towards Claflin Avenue and the rest of the Medical Center campus. This corner of the building is approximately eighty (80) feet from Claflin Road and at a lower elevation than the properties to the north of the subject site.

The height of building facades that will be closest to an established residential neighborhood is approximately twenty (20) feet tall on the west side of the building and approximately thirty-five (35) feet on the south side of the building. According to the application materials submitted for the request to Rezone and Replat the subject site, two single-family houses located on the southwest corner of the subject site will remain to act as a buffer between the medical campus and the residential neighborhood (see attached MUAPB minutes). The two-story houses provide adequate screening of the south façade and reduce any adverse affects caused by the thirty-five (35) foot façade. The twenty (20) foot west facing façade should not cause any adverse effects for adjacent properties owners.

*Front Yard Setback*

In 1998, when the accessory parking lot for Building E was constructed, the northern row of parking stalls along Claflin Road were placed into the front yard setback by error caused by staff oversight, with no corrective actions taken place at that time. In 2001, when Building E was expanded and additional parking was added to the west of the building, the thirteen additional parking stalls were placed into the front yard setback. These parking stalls encroach approximately ten feet into the front yard setback along Claflin Road. These parking stalls have been present for a number of years with no safety concerns or complaints from the public. The Board granted an Exception of the minimum twenty-five (25) foot front yard setback for these parking

stalls on April 9, 2008.

The owners would like to keep the new parking stalls along Claflin Road associated with the new medical office building in line with the existing spaces. The new parking stalls are approximately ten (10) feet from the front property line, which is caused by a five (5) foot jog in the property line to the south. The new parking spaces will be approximately the same distance away from Claflin Road and the sidewalk adjacent to the property. As the applicant states in the Exception request materials, the owners wish to construct the parking spaces as proposed to allow an internal access lane from the new western parking lot to the existing parking lot. If the thirteen (13) parking spaces along Claflin Road were required to meet the minimum front yard setback, the internal access lane could not be installed and would require visitors to exit onto Claflin Road and re-enter a parking lot to access another building. Furthermore, the proposed location of the new parking spaces will not visually detract from the neighborhood or cause safety concerns. Considering these factors, minimal adverse effects are anticipated for adjacent property owners and the public.

**C. EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Approval of the Exceptions is not anticipated to have an adverse effect on the health, safety, and general welfare of the community. The proposed off-street parking along Claflin Road will not affect the ten (10) vision triangle associated with the private drive.

Currently, there is a sidewalk that runs from the east property line of the site to approximately 70 feet east of the west property line along Claflin Road. The applicant has agreed to extend the sidewalk to the west property line to continue pedestrian and bicycle accessibility as well as replace or repair any sidewalk along the property that is in need of attention.

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

*Building Height*

Because of the slope of the land in the area, the new medical office building will be constructed into the side of the hill. To create a solid foundation at the southeast corner of the building and to provide access to the lower floor, a retaining wall will be built. This retaining wall affectively lowers the average grade around the building by approximately four feet. If the retaining wall was not installed and the ground was graded to slope gradually away from the building, the tower element and the proposed building would be below the required maximum building height of thirty (30) feet and an Exception would not be needed. However, without the proposed retaining wall, the building would have limited access at the rear of the building for equipment and staff, decreasing the full use of the building. An alternative to the current design would be to eliminate the architectural elements and lower the roof line to meet the Maximum Building Height standards. When considering that the architectural element (the

tower) only consumes 20% of the buildings façade, the tower's location on the building and the subject site does not adversely affect surround properties and that it is only four (4) taller than the required maximum building height of thirty (30) foot. It would be unreasonable to remove the element. A taller ceiling height is needed for the imagery center due to code requirements pertaining to supporting the weight of medical equipment and heating and air conditioning requirements to control the climate of the medical imagery center. When all facts and circumstances are considered, requiring the strict application for the Maximum Building Height standards is unnecessary.

#### *Front Yard Setback*

The proposed location of the new off-street parking spaces would be in-line with the existing parking stalls and maintain a visual appearance for the property and provide enough space to construct an access lane between the new parking lot and the existing parking lot to the east. If the parking spaces along Claflin Road were required to meet the Front Yard Setback requirements, the access lane would be eliminated. Eliminating the access lane could potential create a hazardous situation where patients would be forced to exit onto Claflin Road to re-enter the neighboring parking lot. Requiring a shift of the building to the south would place it closer to the established residential area, which may create a negative impact on adjacent property owners. When all facts and circumstances are considered, it is unreasonable to strictly apply the twenty-five (25) foot setback requirement for off-street parking.

Hamilton made a motion to approve an EXCEPTION to allow an increase in the maximum structure height of thirty (30) feet to thirty-four (34) feet for a proposed two-story building; a reduction of the minimum twenty-five (25) foot front yard setback to a minimum of ten (10) feet along Claflin Road for proposed and existing off-street parking; and a reduction in the required number of off-street parking spaces from 365 parking spaces to 353 parking spaces, all associated with an expansion of the Manhattan Medical Center campus in the C-1, Restricted Business District with the following conditions:

1. The Exceptions shall be limited to the proposed medical office building and accessory off-street parking 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 unanimously.

The Board made the following findings of fact for the Variance at the Manhattan Medical Center at 1133 College Avenue.

- A. CONDITIONS UNIQUE TO THE PROPERTY:** The steep, wooded terrain that is dedicated as a drainage easement makes this southern area of the property unique. Because of the natural and land use restrictions, the area cannot be developed and will

most likely remain in its natural state. The wooded areas would typically be considered adequate sight obscuring screening to meet the Use Limitations for the C-1, Restricted Business District. However, a majority of the mature trees in the utility easements that run along the property lines were cut back or removed by the utility companies in the winter of 2007 to gain access to the overhead lines. The tree trimming left a relatively large area clear and reduced the screening in some areas. These areas will remain unscreened for a number of years, but based on the uniqueness of the property and this area; installing a six (6) foot tall privacy fence or additional landscaping would be unnecessary. An additional unique condition to the property is that the Board of Zoning Appeals approved a similar Variance to not provide sight obscuring screening along the south portion of the property on May 14, 2008. Although the building layout and site plan have been changed, the original conditions still exist.

- B. PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal adverse effects are anticipated for the residential properties adjacent to the subject site if the Variance is approved. A majority of the residential properties adjacent to the property and next to the wooded area will be separated by distance and the slope of the land. The closest neighbor to the proposed parking lot west of Building E is 1124 Woodland Street, which will be approximately 70 feet away from the parking lot. This neighbor will be impacted the most because of the property's proximity to the proposed parking lot and the fact that a large area of tree cover was removed from the utility easement and the unnamed, unimproved road right-of-way that adjoins the properties. This tree cover would have most likely provided adequate screening if it was present. To address the impacts on the neighbor, the applicant has proposed a six (6) foot tall solid fence along the southern edge of the affecting parking spaces to block light and noise produced by the parking lot. The applicant has also proposed a landscape area to consist of sight obscuring screening with tall evergreen trees and shrubs adjacent to the unnamed public right of way to provide additional screening of the parking lot.

Other properties are 120 to 400 hundred feet away from the new parking lots and should not be impacted by the new parking lot. These lots are downhill from the development area and are adequately screened by the wooded area. Residents in this area may perceive installing the required six (6) foot screening as an adverse effect, because the screening would detract from the wooded open space behind their homes.

**C. UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:**

If the strict application of the use limitation was enforced, the applicant would be required to provide sight obscuring screening along all property lines that abut a residential district, including the area in question. Some parts of the area that would be required to be screened are extremely hilly. It is also impractical to strictly enforce the use limitation when the entire area is extremely wooded and the fence would be placed in a drainage easement that restricts the development of the area. Lots furthest from the existing Medical Center campus are 120 to 400 feet away and screened by the

slope of the land and the wooded areas. The property that will be most impacted is 1124 Woodland Street, as was described previously. The applicant has taken measures, by proposing to install a six (6) foot tall fence and landscape screening to limit the impact on this adjacent property. Requiring the owner to completely comply with the Zoning Regulations along the remainder of the property that abuts residential properties would be an unnecessary hardship considering these areas are naturally screened by trees and terrain.

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

The proposed Variance should not have an adverse effect on the public health, safety and welfare of the general public. Not requiring the screening to be installed would maintain the current stormwater run-off capacity that the small, natural drainage channel has. Installing a solid fence along the property lines may impede stormwater run-off, and could cause flooding on adjacent properties because the stormwater cannot enter the drainage channel.

**E. RELATIONSHIP TO INTENT OF REGULATIONS:**

The intent of the regulation to install sight obscuring screening along property lines abutting residential district is to limit any adverse impacts from the commercial use. The new fence and screening plan in combination with the existing conditions limit the amount of light and noise cast onto adjacent properties. Even if mature trees along the property lines were removed or trimmed, the intent is met because the terrain, the wooded areas and the distance from the commercial use to the residential properties, minimizes any adverse impacts on adjacent properties.

Aistrup made a motion to approve a Variance to not provide sight obscuring screening for portions of the property associated with a new medical office building and existing Building E in the Manhattan Medical Center campus, 1133 College Avenue, in the C-1, Restricted Business District, with the following conditions:

1. Sight obscuring screening of not less than six (6) feet in height shall be provided as shown on the site plan and as described in application documents.
2. The Variance shall be limited to the area south of existing Building E as outlined in the application documents and shown on the applicant's site plan.
3. The sight obscuring screening shall be maintained in good condition.

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

**ADJOURN**

Respectfully Submitted,



Anne Antonini, Planning Intern

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