

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, March 10, 2010
7:00 PM

MEMBERS PRESENT: Joe Aistrup, Vice Chairperson; Connie Hamilton; Ricci Dillon;; and Catherine Lavis.

MEMBERS ABSENT: Harry Hardy, Chairperson

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II. Savannah Benedick, Planning Intern

Chairman Hardy was absent from the meeting. Vice-Chairman Aistrup ran the meeting.

CONSIDER THE MINUTES

Hamilton moved to approve the February 10, 2010 minutes which was seconded by Lavis. The motion passed with a 4-0 vote.

CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTIONS to reduce the minimum rear yard setback for decks greater than 30 inches in height above the grade on which they are located for Lots 12A and 12B to Lot 20A and 20B, Kimball Townhomes Addition; a reduction of the minimum rear yard setback for a principal single-family attached residential structure (Lot 12A, Kimball Townhomes Addition); and to allow an increase of the maximum thirty-five (35) percent lot coverage to up to forty-five (45) percent for Lots 12B to 20B, Kimball Townhomes Addition for the purpose of constructing single-family attached residences with decks in the R-2, Two-Family Residential District. (Applicant: Bayer Construction, Owner: Bayer Construction and AppleTech Construction, Inc.).

Hamilton motioned to approve the request. Dillon seconded the motion, which passed with a 4-0 vote.

TABLE the PUBLIC HEARING to consider an EXCEPTION to allow for a reduction of the minimum fourteen (14) foot front yard setback to three (3) feet along N. 9th Street to construct a proposed privacy fence for the property located at 901 Leavenworth Street in the R-M/TNO, Four-Family Residential District and the Traditional Neighborhood Overlay District (Applicant/Owner: Melvin Watson).

Hamilton motioned to table the item until the April 14, 2010 Board of Zoning Appeals meeting. Dillon seconded the motion, which passed with a 4-0 vote.

REMOVE from the TABLE and conduct a PUBLIC HEARING to consider an

EXCEPTION to allow a reduction of the minimum fourteen (14) foot front yard setback requirement to two (2) feet along Leavenworth Street for the construction of a proposed five (5) foot tall fence; to allow a reduction of the minimum fourteen (14) foot front yard setback requirement along Leavenworth Street to five (5) feet for an existing six (6) foot tall fence; and to allow a reduction of the minimum fourteen (14) foot front yard setback requirement along Leavenworth Street to nine (9) feet for the existing house. No addition or modifications are proposed for the existing house; that Exception is to allow for clear title of the property. The Exceptions are for a property at 223 N. 14th Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. (Applicant/Owner: Fred and Katherine Hasler).

Hamilton motioned to remove the item from the table. Lavis seconded which passed on a 4-0 vote.

Benedick presented the staff report, recommending approval of the Exception request.

Hamilton asked whether there is a regulation that allows screening multiple family units in residential areas and whether this multiple family unit is a legally nonconforming use. Bunger stated that the apartment was probably a nonconforming use and that when the apartment was established at that time, screening of the parking lot was not required.

Aistrup opened the Public Hearing.

Katherine Hasler, co-owner of the property, spoke on behalf of the request. She stated that the staff report explains the request and did not have any additional comments.

Hamilton stated that she admires the effort put into the property and commended the property owners on their proposal of a see-through design for the proposed fence. Hamilton expressed concern that the proposed fence should be maintained as a see-through screening fence rather than a privacy fence. Hasler agreed with Hamilton's statement.

With no other comments from the public, Aistrup closed the Public Hearing.

Lavis clarified that screening does not necessarily include landscaping.

Dillon stated that she finds the type of fence to be appropriate and did not see any issues.

Hamilton stated that it would be necessary to include the importance of the see-through design for the proposed fence in the conditions on the staff report. Aistrup agreed with Hamilton's suggestion.

The Board made the following findings of fact for the Exception at 223 N 14th Street:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: According to the Riley County Appraisers Office, the two-story house was built in 1910, prior to the adoption of the City of Manhattan Zoning Regulations in 1926. The north façade of the house along Leavenworth Street is setback approximately nine (9) feet from the front property line. This is a

legally nonconforming improvement because of the time of construction.

In 2008, the applicants applied for an Exception to construct a new driveway in the front yard area along Leavenworth Street in order to access a new two-car, detached garage. The proposed driveway was nineteen (19) feet wide; however the TNO Traditional Neighborhood Overlay District requires that “All new driveways that are located in a front yard shall be single-wide and no greater than ten (10) feet in width.” The Exception request was approved by the Board of Zoning Appeals.

The recently constructed six (6) foot tall fence located to the west of the site runs parallel to the rear yard property line and does not comply with the front yard setback regulations for accessory uses. The existing fence also encroaches two (2) feet into the vision clearance triangle and will need to be altered to comply with the vision clearance triangle regulation. The applicant constructed the fence without knowledge of the noncompliance.

Other than the legally nonconforming setback, the recently constructed nonconforming fence, and the proposed fence, the property complies with all applicable requirements of the Zoning Regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property and all properties to the north, west and south are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. To the east, across N. 14th Street is the City Park, which is zoned R-3, Multiple-Family Residential District. The neighborhood is a mix of owner occupied, single-family houses, and single-family, two-family and multiple-family rental units. A twelve (12) unit, multi-family apartment building is located directly west of the subject site.

According to the applicants, the proposed fence “will not be a solid privacy-type fence, but rather a see through design and will blend naturally into the surrounding area.” The location of the proposed and existing fences relative to the property line is similar to nature of other fences in the neighborhood: the property to the northwest, located on the corner of N. 15th and Leavenworth, has a wooden fence on the property line running along N. 15th Street. Several other properties in the area also have fences that do not comply with the setback regulations for accessory uses (see attached map).

The location of the proposed fence has brought concern to City staff, because the setback of the fence will potentially disrupt the north building line along Leavenworth Street. The buildings to the west of the site along Leavenworth follow a consistent building setback of approximately thirty (30) feet. Although the fence would disrupt this building line, the orientation of the subject site is east-west rather than north-south, unlike the properties located to the west. Because of this orientation, the current setbacks of the residential structure and the existing fence are less than the required setback for the R-1/TNO, Single-Family Residential and Traditional Neighborhood Overlay District. Therefore, the existing building setback of the subject site is already inconsistent with this building line along Leavenworth Street. Due to the fact that the house was built in 1910, prior to the adoption of the City of Manhattan Zoning Regulations in 1926, the setback is considered to be a grandfathered nonconformity.

The applicants have expressed concern that the adjacent multiple-family apartment building

located to the west generates a high volume of foot traffic during late-night hours. The proposed fence is intended to be a security device to mitigate any disruptive activities during high traffic hours. The multiple-family apartment building also generates activities that are disruptive to the subject property, such as an excess of vehicle traffic and a large parking lot that is out of conformity with the residential character of the front yards in the area. As the applicant stated, "Cars parallel park directly next to the sidewalk along Leavenworth and fill the space between the sidewalk and the building, making an obstruction much worse than the fence we are proposing."

The existing fence was constructed "in order to screen the vehicles parked at the apartment complex next door," as the applicant has stated. Additionally, the applicant stated that "because these vehicles already interrupt the consistent appearance of the residential neighborhood, we feel this screen will not negatively impact the view down Leavenworth." The existing fence is intended to be a screening device to improve the view to the west of the subject site.

The existing house was constructed in 1910 before the current setback regulations were put in place, and the existing nine (9) foot setback has not caused any adverse effects on adjacent properties to date. Based on these circumstances, minimal adverse effects are anticipated on adjacent properties from the granting of the Exception requests for the proposed and existing fences, and for the existing house.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed fence and the existing house would be outside of any drainage easement or utility easement, and will not obstruct any vision clearance triangles. The existing fence, however, encroaches approximately two (2) feet into the vision clearance triangle of the intersection of the driveway and sidewalk at the west corner of the driveway (confirmed on-site). City Staff has informed the applicants that they will need to remove the portion of the fence that encroaches into the vision clearance triangle or seek a Variance to allow the fence to remain in its existing location. The applicants have confirmed that they will be removing the encroaching portion of the fence within 30 days of the March 10, 2010 BZA meeting and will not apply for a Variance. Once this portion of the fence is removed, the fences and existing house are not anticipated to have any negative impacts on the public health, safety, morals, order, convenience, prosperity, or general welfare.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the TNO, Traditional Neighborhood Overlay District Standards would require that the fences be setback a minimum of fourteen (14) feet from the property line to the north. The applicant has stated that "installing the [proposed] fence fourteen (14) feet back from the property line will result in a backyard space of unusable proportions." If the fence were to be setback to the minimum setback requirement, there would be no use for the fence and the applicant would not be inclined to build it, primarily due to the small dimensions of the backyard area.

The setback of the existing garage is approximately seventeen (17) feet from the north property line. The installation of the existing fence at the required fourteen (14) foot setback would mean that only three (3) feet of the fence would screen the large parking lot to the west. The fence would not properly screen this parking lot if it were in compliance with the zoning regulations.

The strict application would also require the existing house to be a minimum of fourteen (14) feet from the front yard property line to the north. Requiring the applicant to comply with this regulation means that the existing house would have to be demolished and reconstructed at the fourteen (14) foot setback, which would be unreasonable. Additionally, the encroachment was not created by the current property owner, who purchased the house in 2006.

Both fences are intended for privacy and mitigated disruption. Excess foot and vehicle traffic are anticipated to occur during certain times of the day, particularly because of the adjacent multiple-family apartment building with a large parking lot in the front yard. Without the ability to construct the fences within the minimum setback requirement, the intended uses would not be achieved. Based on these facts and circumstances, the strict application of this regulation is unreasonable.

Hamilton motioned to approve an Exception, as corrected, to allow a reduction of the minimum fourteen (14) foot front yard setback requirement to two (2) feet along Leavenworth Street for the construction of a proposed five (5) foot tall fence; to allow a reduction of the minimum fourteen (14) foot front yard setback requirement along Leavenworth Street to five (5) feet for an existing six (6) foot tall fence; and to allow a reduction of the minimum fourteen (14) foot front yard setback requirement along Leavenworth Street to nine (9) feet for the existing house at 223 North 14th Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District with the following conditions:

1. The Exception shall be for the proposed and recently constructed fences as provided in the application documents and site plan.
2. The proposed and recently constructed fences shall be maintained in good condition, and the proposed fence along Leavenworth shall be maintained as a see-through design.
3. The portion of the existing fence that encroaches into the vision triangle will need to be removed within 30 days of the March 10th, 2010 Board of Zoning Appeals meeting.

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

A PUBLIC HEARING to consider a VARIANCE to allow reductions of minimum lot area associated with Lots 1, 2, and 3, and a reduction of minimum lot depth for Lot 3, all in the proposed Final Plat to be known as the Junghans Addition, which is located in the LM-SC, Light Manufacturing-Service Commercial District. More specifically, proposed Lot 1: to allow a reduction of the minimum 20,000 square foot lot area to 17,745 square feet; proposed Lot 2: to allow a reduction of the minimum 20,000 square foot lot area to 17,830 square feet; and, proposed Lot 3: to allow a reduction of the minimum 20,000 square foot lot area to 7,996 square feet and, to allow a reduction of the minimum 100 foot lot depth to 93 feet. (Owner: Quik Shop – Greg Junghans and Greg and Patricia Junghans Applicant: SMH Consultants – Jeff Hancock).

A PUBLIC HEARING to consider an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback associated with Lots 1 and 3; to allow an increase in the maximum lot coverage associated with Lots 1 and 2 and to allow a reduction of the minimum ten (10) foot alley setback on Lot 3, all in the proposed Final Plat to be known as the Junghans Addition, which is located in the LM-SC, Light Manufacturing-Service

Commercial District. More specifically, proposed Lot 1: to allow a reduction of the minimum twenty-five (25) foot front yard setback along S. 4th Street to twenty-two (22) feet for an existing building and an increase of the maximum lot coverage from fifty (50%) percent to fifty-five (55%) percent for an existing building; proposed Lot 2: to allow an increase in the maximum lot coverage of fifty (50%) percent to sixty-four (64%) percent for an proposed building; and, proposed Lot 3: to allow a reduction of the minimum twenty-five (25) foot front yard setback to three (3) feet along S. 3rd Street for an existing building and to allow a reduction of the minimum ten (10) foot alley setback to five (5) feet for an existing building on Lot 3 (Owner: Quik Shop – Greg Junghans and Greg and Patricia Junghans Applicant: SMH Consultants – Jeff Hancock).

Bunger presented the staff reports, recommending denial of the Variance requests, recommending denial of the Exceptions to allow an increase of the maximum lot coverage for the proposed lots, and recommending approval of the Exceptions to allow a reduction of the minimum front yard setbacks for the existing buildings.

Aistrup opened the public hearing.

Jeff Hancock, SMH Consultants, spoke on behalf of the requests. Hancock explained that if the Variances are not approved, the building footprint will be the same but the buildings will be on one lot instead of three separate lots. Hancock stated that the net effect will be the same regardless of whether the Variances are approved. Hancock also explained that the lot coverage results will be the same as well. Hancock spoke about the future concerns of parking and that the current parking meets the standards; if issues arise in the future regarding the parking, the applicant could address those issues by requesting to rezone. Hancock stated, in terms of hardship, that this is a very unusual lot and it would be difficult for Mr. Junghan to sell the tract as a whole if it were not split into three lots. Hancock explained that the current lot configuration would not be usable for anybody in the future, and that it would make sense to subdivide them.

With no other comments from the public, Aistrup closed the Public Hearing.

Dillon proposed to discuss the existing Exception requests before discussing the proposed requests. Aistrup explained that the existing setbacks have to be addressed by City Staff, however the question is whether the lot configurations would change these Exceptions. Hamilton asked whether the setbacks have been grandfathered. Bunger stated that they are technically grandfathered but that if the lot was vacant, the setback would need to follow the twenty-five (25) foot requirement. Bunger explained that he is slightly certain that the grandfathering only applies to residential uses. Dillon expressed concern about Lot 3 being much less than the required 20,000 feet and that if the existing building were to burn down, any proposed building would either be very small, or need BZA approval for exceeded lot coverage.

Bunger explained that Code Services recently expressed concern about lot lines being too close to buildings and the fire hazards that could arise. Bunger explained that Code Services has requested that buildings too close to lot lines need to be built with fire resistant materials and meet all fire code requirements. Bunger identified that Lot 3 is very small and concerns have arisen from the city regarding fire safety.

Hancock contended that Mr. Junghans has a specific type of business that would work much better with the proposed lot configuration.

Aistrup explained the purpose of zoning and that it was created to restrict property owners from being able to do certain things. Aistrup further explained that the question at hand, primarily for the Variances, is whether the property owner is creating the hardships him/herself or if there is some existing condition that creates the hardship. Aistrup stated that he has not heard a compelling hardship and that the property owner's proposal is solely based on economic interests.

Hamilton agreed with the stated concerns. Hamilton stated she appreciates the existing conditions of the railroad and the lot conditions, but cannot support the proposed lot configurations. Hamilton stated that she feels the applicant is asking too much from the Board. Hamilton stated that she stands by the City's recommendations for approval of the existing setbacks, and denial of the proposed conditions.

The Board made the following findings of fact for the Variances and Exceptions at the proposed Junghans Addition:

VARIANCES:
CONDITIONS UNIQUE TO THE PROPERTY:

The subject site does have unique characteristics compared to other properties located in the LM-SC, Light Manufacturing-Service Commercial District. Although being located along a railroad is not a unique condition compared to other properties in the LM-SC District, the subject site did have a significant amount of land acquired by the Union Pacific railroad in 1902 for railroad right-of-way. By having the Union Pacific Railroad purchase the land, the subject site has less lot area and lot depth compared to other lots in Ward 1 and in the immediate area.

However, these unique conditions do not fully attribute to the circumstances that require the need for the Variances. The property owner, through the action of replatting the site into the Junghans Addition, creates the need for the Variances for lot area and lot depth, as well as the companion Exceptions and Variation associated with the Final Plat. The proposed Final Plat will create three (3) separate lots, none of which meet the minimum lot area requirement for lots abutting a railroad in the LM-SC District. Proposed Lot 3 does not meet the minimum lot depth required by the LM-SC District. Even if the subject site consisted of typical, 50 foot by 150 foot Ward lots, the proposed Lot 3 would still have a lot area that would be over 6,000 square feet less than the minimum 20,000 square feet required by the LM-SC District and not meet the minimum lot depth of 100 feet.

The unique conditions of the subject site do not prevent the property owner from utilizing the land. Currently there are two (2) existing buildings on the two (2) zoning lots that the owner uses as office and warehouse space. The subject site has enough land area to add onto an existing building or construct a third building. The existing configuration of the two (2) zoning may need to be replatted into one (1) lot to meet building code requirements. Based on the proposed 160 foot by 70 foot building and if the subject site was platted into one (1) lot, only an Exception for lot coverage would be needed for the new and existing buildings. The purpose of the plat is to allow the property owner the ability to sell the land and buildings (existing and proposed) separately in the future. The application documents states "If the variance is not

granted the owner may be left with a property condition that at some point in the future is not desirable from the perspective of marketability.”

There appears to be no unique condition to the subject site that requires the proposed Variances that are not created by actions of the property owner.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject site and the properties to the immediate north, east, south and west are zoned LM-SC District. The area consists of industrial and warehouse uses to the south and west along the railroad right-of-way and service commercial and retail businesses to the north and along Fort Riley Boulevard.

The development of the subject site to include three separate buildings (2 existing buildings and the proposed building) should not adversely impact adjacent properties. The subject site, in its existing configuration, has sufficient area for the existing buildings and could accommodate a third, large building. The subject site also has adequate area to provide for the required off-street parking of the existing and proposed warehouse uses. The proposed building that is 160 foot by 70 foot would require the subject site to be replatted into one (1) lot to meet the building code requirement of building separation from a property line. Because of the size of the proposed building and the two (2) existing buildings on the subject site, an Exception would also need to be approved to allow the maximum 50% lot coverage in the LM-SC District to be exceeded.

As stated in the application documents, the purpose of the proposed subdivision is so that the property owner can sell the individual lots and buildings in the future. The potential for adverse impacts on the adjacent properties occurs if the uses of the three (3) proposed lots change. The proposed lots may not have adequate area to accommodate additional off-street parking for more intense commercial or industrial uses. The additional parking demand may result in congestion on the adjacent public streets and the alley due to the lack of parking on the three (3) lots. Any change in use must conform to the off-street parking requirements prior to occupancy or the Board of Zoning Appeals (BZA) must first approve a reduction of the off-street parking requirement. Likewise, if the use on proposed Lot 2 would change from a warehouse use to a more intense commercial or industrial use, the traffic generated on the lot may be too great for the fifteen (15) foot wide alley to accommodate.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS: As stated, the Variance requests arise from a desire to subdivide the subject area into three (3) lots so that the property owner can sell the individual buildings and land in the future. The applicant documents state that “If the variance is not granted the owner may be left with a property condition that at some point in the future is not desirable from the perspective of marketability. This may result in a less than desirable tenant in the neighborhood who cannot use the total of the property to its full potential. The property owner will be required to sell three individual buildings on one parcel in a part of the community where it would be difficult to utilize such a property because the use as the buildings currently exists is unique.”

The subject site is currently being used as office and warehouse space. The combined area of the two (2) zoning lots would allow for a third building to be constructed. The subject site may need to be platted into one (1) lot so that the new building meets the building code requirements for

separation distance between property lines. The proposed 160 foot by 70 foot building would require an Exception to increase the lot coverage above the maximum fifty (50%) percent requirement of the LM-SC District. Because there are viable options to the subject site in its current configuration or by reconfiguring the two (2) zoning lots without needing a Variance, there appears to be no hardship to the applicant by strictly enforcing the minimum lot area or lot depth requirements of the LM-SC District. The marketability of the property and the desirability of future tenants is an economic consideration for the property owner and does not constitute a hardship.

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

Use of the alley as direct access for proposed Lot 2 would be out of character for the immediate area and may impact the public safety. Other developments in the LM-SC District, located between Ft. Riley Boulevard and the railroad, use the named alley as secondary access. These developments still maintain direct access from a local, side street. The purpose of the minimum lot area of 20,000 square feet along a railroad in the LM-SC District is to discourage the use of the alley as direct access. The alley is approximately fifteen (15) feet in width and is inadequate for two-way traffic (The City Engineer requires a minimum street width of 25 feet. Manhattan Fire Code requires a minimum width of 20 feet for fire access). Because the LM-SC District permits such a wide variety of service commercial, retail and industrial use (*see attached District regulations*); granting approval of the Variance would create the potentially unsafe condition of using the narrow alley as direct access to Lot 2. The proposed use of Lot 2 as warehouse space should not generate a significant amount of traffic. However, the use of the proposed building could be changed to any use permitted in the zoning district, some of which would generate enough vehicle and large truck traffic to cause congestion on the fifteen (15) foot wide alley.

The use of the named alley as direct access does occur further to the west, between S. Manhattan Avenue and S. Delaware Avenue. Alley access is due to a former railroad which occupied Ft. Riley Boulevard. Lots between the parallel railroads had no other means of access other than the alley. The longest span between the local side streets in this area is four (4) typical City blocks. No other solution is feasible, but to give these properties direct access to the named alley because of the restricted access along Ft. Riley Boulevard. These properties are primarily zoned I-3, Light Industrial District or C-5, Highway Service Commercial District.

A change in use of the existing or proposed buildings may require additional off-street parking than exists and is proposed with the new building. The lack of off-street parking with a change in use on the subject site may adversely affect the public street and alley, which may result in congestion on the public street or alley. Any change in use must conform to the off-street parking requirements prior to occupancy or a reduction of the off-street parking requirement for the change in use must first be approved by the BZA.

RELATIONSHIP TO INTENT OF REGULATIONS: The LM-SC, Light Manufacturing-Service Commercial District, requires a minimum lot area of 20,000 square feet for all lots that abut a limited access arterial, a railroad, or that obtain access exclusively from an alley. The minimum lot area requirement for lots abutting a railroad was intended to limit the number of lots that could gain direct and legal access from the Fair Lane alley. Because the width of the alley (15 feet) is inadequate for two-way traffic (The City of Manhattan requires a minimum street width of 25 feet. Manhattan Fire Code requires a minimum width of 20 feet for fire

access) and that the Zoning District allows such a wide variety of uses, including service commercial and industrial uses; permitting direct and legal access from the named alley is a large concern. Granting the Variance for Lot 2 would create a condition inconsistent with the need to provide direct access from a public street, rather than an alley, and does not meet the intent of the lot area regulation.

The intent of the regulations for minimum lot depth and also minimum lot area is to ensure that properties are developed at a density that is consistent with the intent of the zoning district. This is accomplished through adequate front, rear and side yard setbacks and the assurance that adequate space is available for appropriate structures and off-street parking. The existing and proposed buildings on proposed Lots 1 and 2 require companion Exceptions because maximum lot coverage of fifty (50%) percent is exceeded. The companion Exceptions for the existing building along S. 3rd Street are due to the fact that the building was built before the LM-SC District was created, which currently, required a minimum twenty-five (25) foot front yard setback and a ten (10) foot alley setback. A new building on proposed Lot 3 would meet the minimum setback and lot coverage of the LM-SC District and provide adequate parking for a commercial or industrial use.

Considering the design of the proposed subdivision, the number of companion Exceptions being requested for the proposed lots and that proposed Lot 3 may not be large enough to redevelop upon in the future; the Variances to reduce the minimum lot area for the three (3) lots and the Variance to reduce the minimum lot depth for proposed Lot 3 does not meet the intent of the regulation.

EXCEPTIONS:

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The existing buildings along S. 3rd Street is approximately three (3) feet from the front property line and encroaches into the minimum twenty-five (25) foot front yard setback required in the LM-SC District. The existing building is also located approximately five (5) feet from the property line along the alley, which encroaches into the minimum ten (10) foot alley setback required in the LM-SC District. The building was constructed in approximately 1948. The Zoning Regulations in effect at that time did not require buildings in the “F” Heavy Industrial District to have front yard or side yard setbacks. The existing building appears to be legal nonconforming with the current building setbacks requirements. Exceptions have been applied for to address the existing condition of the setbacks.

The existing building along S. 4th Street is approximately twenty (24) feet from the front property line. This building was constructed in 1993. The building was required to have a minimum of a twenty-five (25) foot setback. The building was constructed in the wrong location. An Exception has been applied to address the existing condition.

The proposed subdivision will create three (3) lots. These lots do not meet the minimum 20,000 square foot lot area requirement for lots abutting a railroad in the LM-SC District. Proposed Lot 3 does not meet the minimum one-hundred (100) foot lot depth requirement for the LM-SC District. Variances have been applied for to address the issues with the proposed lots. The existing building on proposed Lot 1 does not meet the maximum fifty (50%) percent lot coverage. An Exception has been applied for to address this issue. A new building is proposed to be constructed on Lot 2. The building will be approximately 11,200 square feet in area, with a

lot coverage of sixty-four (64%) percent. An Exception has been applied for this condition. The new building will have eleven (11) off-street parking spaces located to the north of the structure. The proposed Junghans Addition designates Lot 2's point of access from the named alley, which designates that property line as its front. An Exception has been requested to reduce the front yard setback from twenty-five (25) feet to seven (7) feet for the proposed off-street parking.

The Manhattan Urban Area Subdivision Regulations requires that "All lots located on a subdivision plat shall directly abut, and be served directly by a public street or travel easement" (Subdivision Regulations Section 10-103). The Manhattan Urban Area Planning Board will need to approve a subdivision regulation variation to approve Lot 2's access from the named alley instead of street.

PROBABLE EFFECT ON ADJACENT PROPERTIES:

The subject site and surrounding properties to the north, east, south and west are zoned LM-SC, Light Manufacturing-Service Commercial District. The area consists of industrial and warehouse uses to the south and west along the railroad right-of-way and service commercial and retail businesses to the north, along Fort Riley Boulevard.

Existing Conditions

The Exception requests for the existing buildings are to address existing conditions. No additions or modifications are proposed to these buildings. The existing building along S. 3th Street was building in 1948. The Zoning Regulations in effect at the time did not require setbacks for structures in the "F" Heavy Industrial District. The building has been a part of the area for over 60 years. The building along S. 4th Street encroaches one (1) foot into the twenty-five (25) foot front yard setback. It appears that this existing building was constructed in the wrong location in respect to the front lot line. The proposed Exception for this structure will correct the situation.

Proposed Conditions

The need to increase the maximum fifty (50%) percent lot coverage on proposed Lots 1 and 2 to fifty-five (55%) percent and sixty-four (64%) percent, respectively, is because the lots are smaller than permitted in the LM-SC District and the size of the new building. If proposed Lot 1 met the minimum lot area of 20,000 square feet required by the district, the existing building would comply with the lot coverage requirement. The 70 foot by 160 foot building proposed on Lot 2 would not meet the maximum lot coverage requirement if the lot complied with the lot area. The Exception request is a function of both the relatively small size of Lot 2 and the size of the new building. The subject site, as a whole, has adequate area for the existing buildings and would allow for a third structure. If the two (2) zoning lots were combined into one (1) lot, the proposed 70 foot by 160 foot building would still require an Exception to allow an increase in the maximum lot coverage to fifty-six (56%) percent. The existing and proposed uses should not adversely impact the adjacent properties. The main cause of the need for the lot coverage Exception is the design of the proposed Junghans Addition. The impacts of the Variances for lot area and lot depth for the subdivision have been addressed in that staff report.

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

The proposed development and the Exception requests should not have an adverse impact on the public health, safety or welfare. The Exceptions are to address existing conditions on the subject

site or issues created by the smaller than required lots in the proposed subdivision. The staff report for the lot area and lot depth Variances addresses the impacts of those issues on the public health, safety and welfare. The applicant and the City Engineer have discussed that the proposed development will need to address stormwater runoff issues. These issues will be addressed through the building permit process.

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

Existing Conditions

No reasonable solution is available to correct the issues with the front yard and side yard setbacks of the existing buildings. The Subdivision Regulations require that all subdivisions comply with the Manhattan Zoning Regulations (Section 10-107(A)). The Exceptions are to address existing conditions and would give the property owner clear title of the properties.

Proposed Conditions

The Exception request to exceed the maximum lot coverage requirement in the LM-SC District is created by the property owner's desire to subdivide the subject site so that he can sell the individual lots and buildings in the future. The size of the proposed building also contributes to the need for the Exception. The property owner was aware that the proposed subdivision would require the stated Variances and Exceptions because the proposed lots did not conform to the LM-SC District regulations. If the property owner would not subdivide the subject site and keep it in its current state or plat the two (2) zoning lots into one (1) lot, the Exception for the lot coverage issue on proposed Lot 1 would be eliminated.

The proposed building is too large for the existing subject site or proposed Lot 2. In order to meet the building codes requirements for separation distances between the building and a platted lot line, the subject site would need to be combined through a Final Plat to eliminate all existing platted lot lines. If this was to occur, the lot coverage of the new building (11,200 square feet) was combined with the lot coverage of the existing buildings (combined total of 12,960 square feet), would be approximately fifty-five (55%) for the entire subject site.

Because the property owner is creating these conditions when other alternatives are available to eliminate the need for most of the described Exceptions and all of the Variances and still be able to fully utilize the subject site, it appears that strictly applying the regulations for this proposed development is reasonable and necessary.

Hamilton motioned to approve the Exception to allow a reduction of the minimum twenty-five (25) foot front yard setback along S. 4th Street to twenty-two (22) feet for an existing building at 615 S. 4th Street and recommends approval of the Exception to allow a reduction of the minimum twenty-five (25) foot front yard setback to three (3) feet along S. 3rd Street and to allow a reduction of the minimum ten (10) foot alley setback to five (5) feet for an existing building at 612 S. 3rd Street, both of which are located in the LM-SC, Light Manufacturing – Service Commercial District with the following condition:

1. The Exceptions shall be limited to the existing buildings as shown on the application site plan and described in the application materials.

Dillon seconded, which passed with a vote of 4-0.

Hamilton motioned to deny the Variances to allow reductions of minimum lot area associated with Lots 1, 2, and 3, and a reduction of minimum lot depth for Lot 3, all in the proposed Final Plat to be known as the Junghans Addition, which is located in the LM-SC, Light Manufacturing-Service Commercial District. More specifically, proposed Lot 1: to allow a reduction of the minimum 20,000 square foot lot area to 17,745 square feet; proposed Lot 2: to allow a reduction of the minimum 20,000 square foot lot area to 17,830 square feet; and, proposed Lot 3: to allow a reduction of the minimum 20,000 square foot lot area to 7,996 square feet and, to allow a reduction of the minimum 100 foot lot depth to 93 feet for an existing building at 612 S. 3rd Street, of which are located in the LM-SC, Light Manufacturing – Service Commercial District for the reasons stated in the staff report.

Dillon seconded, which passed on a vote of 4-0.

Hamilton motioned to deny the Exceptions to allow an increase of the maximum lot coverage from fifty (50%) percent to fifty-five (55%) percent for an existing building on proposed Lot 1 and to allow an increase in the maximum lot coverage of fifty (50%) percent to sixty-four (64%) percent for an proposed building on proposed Lot 2, all for the proposed Junghans Addition in the LM-SC, Light Manufacturing – Service Commercial District for the reasons stated in the staff report.

Dillon seconded, which passed on a vote of 4-0.

Aistrup adjourned.

Respectfully Submitted,

Savanah Benedick, Planning Intern