

MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Wednesday, September 12, 2012
7:00 PM

MEMBERS PRESENT: Joe Aistrup, Chairperson; Harry Hardy, Vice Chairperson; Connie Hamilton; Catherine Lavis; and Bruce Kent.

MEMBERS ABSENT: None

STAFF PRESENT: Chad Bunger, CFM, AICP, Planner II;

CONSIDER THE MINUTES OF THE AUGUST 8, 2012, BOARD OF ZONING APPEALS MEETING.

Hamilton moved to approve the August, 8, 2012 minutes, which was seconded by Kent and passed with a vote of 4-0.

A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FOR A PROPOSED BUILDING ADDITION TO THE EXISTING HOUSE FROM TWENTY-FIVE (25) FEET TO TWENTY (20) FEET AT 2228 ALTA DRIVE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/ OWNER: MORRIS AND JEAN OLSON).

Bunger presented the staff report. The City Administration recommended approval of the request for Exception with two (2) specific conditions of approval.

There were no public comments so Aistrup ensured that the property owner was present for the meeting. This was followed by the board discussion. Hardy suggested that he can support the request based on the staff report and in the light of the fact that there were several similar projects in the past. Hamilton and Lavis shared the same opinion.

The Board made the following findings of fact for the Exception at 2228 Alta Drive.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations, other than for what the Exception requests are for.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties to the south, east and west are zoned R-1, Single-Family Residential District. Properties to the north along Tiana Terrace are zoned R-2, Two-Family Residential District and Snowbird PUD, Residential Planned Unit Development. The R-2 District and PUD District properties consist of single-family attached homes. Other properties are single-family homes.

Minimal adverse impacts on adjacent properties are anticipated from the Exception request. The proposed covered porch will be in character with a number of houses along Alta Drive, Tiana Terrace and the surrounding neighborhood. The applicant has provided several photos of homes in the area that have similar covered front porches in the area. Some of these homes abide by the required front yard setback. The property at 2235 Alta Drive was approved for a front yard setback reduction to construct a similar covered porch. The subject site is seeking a similar setback of twenty (20) feet as the property owners of 2235 Alta Drive.

The subject site does not have a sidewalk located in the front yard along Alta Drive, so visually, the five (5) foot encroachment should be visually unnoticeable.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Negative effects on the public health, safety and general welfare should be minimal. The proposed covered porch will be in character with a number of properties in the neighborhood. The building addition will not encroach into any visual triangles created by the street or be built in utility easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the front yard setback regulation would not allow the applicant to construct the covered porch as proposed. The building is setback approximately twenty-eight (28) feet from the front property line along Alta Drive. The applicant could construct a gabled roof line that would cover approximately three (3) feet of the existing concrete patio and steps leading to the front door of the home. The applicants have stated “the addition of a roof over the deck will provide a welcomed level of shade to the west side of our home in the summer months and a level of protection and safety during times of snow, rain and ice.” The three (3) foot deep roof will most likely not provide the desired cover of the front door for the stated purpose

The proposed addition should improve the character of the house, will not be out of character with neighboring properties and should not impact adjacent properties or the general public.

Considering all of these factors, it appears that the strict application of the front yard setback regulation is unreasonable for this situation.

Hardy moved to approve the Exception to allow for the reduction of the minimum required front yard setback along Alta Drive from twenty-five (25) feet to twenty (20) feet for a building addition to the existing single-family home at 2228 Alta Drive in the R-1, Single-Family Residential District, with the following conditions:

1. The Exception shall apply to the proposed building addition as described in the application documents and shown on the site plan.
2. All applicable building permits shall be obtained.

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

A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK ALONG ALTA DRIVE FROM TWENTY-FIVE (25) FEET TO TWENTY (20) FEET FOR A BUILDING ADDITION TO THE EXISTING SINGLE-FAMILY HOME AT 2235 ALTA DRIVE IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/ OWNER: BRADLEY AND SUSAN SCHOEN).

Bunger presented the staff report briefly. The City Administration recommended approval of the request for exception with two (2) specific conditions of approval.

With no questions from the Board for City staff, Aistrup opened the public hearing. Property owner Schoen expressed his views on the request and appreciated the City Staff and the Board's efforts. With no more public comments Aistrup closed the public comment section for Board discussion.

The Board made the following findings of fact for the Exception at 2235 Alta Drive.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site currently complies with all applicable regulations, except for what is being requested by the Exception. An Exception was approved in April, 1999 to allow for a reduction of the front yard setback along Tiana Terrance for the existing house that was constructed into the setback and for a proposed building addition into the same front yard setback (*see attached*). The subject site

complies with all applicable regulations other than for what the Exception is being requested.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties to the south, east and west are zoned R-1, Single-Family Residential District. Properties to the north along Tiana Terrace are zoned R-2, Two-Family Residential District and Snowbird PUD, Residential Planned Unit Development. The R-2 District and PUD District properties consist of single-family attached homes. Other properties are single-family homes.

Minimal adverse impacts on adjacent properties are anticipated from the new Exception request. The original Board findings stated that the proposed covered porch will be in character with a number of houses along Alta Drive, Tiana Terrace and the surrounding neighborhood. At the time of the original application in 2011, a property owner along Alta Drive, who did not give his name or address, said that he supported the proposed addition because it would improve the curb appeal of the house and the surrounding neighborhoods. The subject site does not have a sidewalk located in the front yard along Alta Drive, so visually, the five (5) foot encroachment should be visually unnoticeable.

The request to increase the encroachment by two (2) feet should similarly have minimum impacts on the surrounding adjacent property

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Negative effects on the public health, safety and general welfare should be minimal. The proposed covered porch will be in character with a number of properties in the neighborhood. The building addition will not encroach into any visual triangles created by the street or be built in utility easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The Board originally found that strict application of the original proposal was unreasonable because it would only allow for a two (2) foot deep addition to the front façade of the house along Alta Drive, which would not provide adequate cover of the front porch and steps leading to the front door of the house.

The Board also found that the proposed addition should improve the character of the house, will not be out of character with neighboring properties and should not impact adjacent properties or the general public, which supports the finding that the strict application of the front yard setback was unreasonable in this situation.

The altered construction plans shows an accurate width and depth of the building addition, including roof overhangs and eaves. The new building plans adequately cover the front porch and steps, which was the original intent of the Exception request. The roof eaves and overhangs could be reduced by approximately two (2) feet to meet the approved Exception; however the addition would not match the rest of the home. The house currently has approximately eighteen (18) inches of roof overhang and eaves around the building. Requiring the strict application of approved Exception may have an adverse impact of the

visual appearance of the house and also not meet the original intent of the building addition, which is to fully cover the front porch. Considering these factors and the minimal additional encroachment into the front yard setback beyond what was already approved, the strict application of the regulation is unreasonable.

Hardy moved to approve the Exception to allow for the reduction of the minimum required front yard setback along Alta Drive from twenty-five (25) feet to twenty (20) feet for a building addition to the existing single-family home at 2235 Alta Drive in the R-1, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall apply to the proposed building addition as described in the application documents and shown on the site plan.
2. All applicable building permits shall be obtained.

Kent seconded the motion, which passed by a vote of 4-0.

A PUBLIC HEARING FOR A VARIANCE TO ALLOW TWO (2) GROUND IDENTIFICATION SIGNS ALONG CASEMENT ROAD AT THE MANHATTAN BROADCAST COMPANY, 2414 CASEMENT ROAD, IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/ OWNER: MANHATTAN BROADCASTING COMPANY – RICH WARTELL).

A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SIGN SETBACK ALONG CASEMENT ROAD FROM FIFTEEN (15) FEET TO TWO (2) FEET FOR A NEW AND EXISTING GROUND IDENTIFICATION SIGN AT THE MANHATTAN BROADCAST COMPANY, 2414 CASEMENT ROAD, IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT. (APPLICANT/ OWNER: MANHATTAN BROADCASTING COMPANY – RICH WARTELL).

Bunger presented the staff reports for both the items together. The City Administration recommended approval of both items, with 2 specific conditions of approval for the Variance and 3 specific conditions of approval for the Exception.

Hamilton asked if there are any signs allowed in the R-1 District, to which Bunger clarified that upto forty (40) square feet ground identification signs are allowed. Aistrup and Bunger

generally discussed the situation of the microphone art work being considered as a sign. Aistrup expressed his concern regarding the precedent that this situation of two signs would set. Bunger responded by saying that this is a very unique case considering the fact that the use of the property is very different from any other non-conforming use in a residential district.

Aistrup opened the public comment section. Rich Wartell, the General Manager of Manhattan Broadcasting generally discussed the company's rationale behind locating the signs on site.

With no more public comments Aistrup closed the public comment section for Board discussion.

Lavis appreciated the company's decision to retain the trees on site. Hardy appreciated the staff report's details and suggested that based on the facts laid out in the staff report he can support the request. Hamilton agreed and suggested the inclusion of the Wartell's discussion on the minutes.

The Board made the following findings of fact for the Variance at 2414 Casement Road.

PRESENT USE: a legally non-conforming radio broadcasting studio

CONDITIONS UNIQUE TO THE PROPERTY: The subject site is a large lot with the legally nonconforming use of a radio broadcast station on it. The radio station building was constructed in 1970. At that time it was outside of the City limits. In 1982, the subject site and surrounding areas to the east and south were annexed into the City and zoned R-1, Single-Family Residential District. At that time, the radio broadcast studio became legally nonconforming to the Zoning Regulations. In 2011, the applicant applied for Conditional Use to modify "grandfathered" use to allow for the recent building addition.

At the time the subject site was annexed into the City, for whatever reason, it was rezoned as an R-1 District. The most appropriate zoning district for the specific use, under today's Zoning Regulations, would be the C-2, Neighborhood Shopping District or C-5, Highway Commercial District. The broadcast studio would be a Conditional Use in the C-5 District. This would allow for the radio broadcast station to exist and expand as needed, within the framework of the C-2 or C-5 District. The C-2 District limits the number of ground or pole signs to only one (1) sign. However, a total of two (2) ground or pole signs are permitted when the site fronts onto more than one (1) street, which this subject site does (Casement Road and East Butterfield Road). The C-5 District has no limitation on the number of any type of signs.

In addition to unique condition of the subject site and the use upon it, the Manhattan Broadcasting Company has a unique sign type with a logo displayed on a large ball on top of a

cylindrical base throughout the region. This type of sign is an iconic symbol of the radio station and lends to the purpose of the signs, to identify the new entrance of the business. The sign base and ball was inadvertently installed after confusion of the sign type and the process that the Board of Zoning Appeals was going through. The structure was presented to City Administration as being a piece of art, on which no logos or words would be installed upon it. However, it does clearly identify the location and use of the property, which meets the definition of a sign as stated in the Zoning Regulations, Article XVI:

“Any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

The ball sign was installed before the correct determination was made.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property and surrounding properties are R-1, Single-Family Residential District. Also in the area are properties that are zoned R-2, Two-Family Residential District. To the west of the subject site, across Casement Road is the Butterfield PUD and the Kingdom Hall Addition PUD. The Butterfield Addition is a single-family residential development and the Kingdom Hall PUD is a church. The area is mostly single-family residential district, with the exception of the subject site and the R-2 Districts in the area.

The subject site is a very large site with approximately 3.59 acres of area. The signs will be approximately near the center of the street frontage along Casement Road, or roughly 170 feet from the intersection of East Butterfield Road and Casement Road to the south and 180 feet to the adjoining property line to the north. The location of the signs should not impact adjacent property owners to the north and south.

The current right-of-way of Casement Road is eighty (80) feet in width, which is wider than a typical residential street. To the west, across Casement Road, is a church. The church has a similar ground sign at the intersection of Butterfield Road and Casement Road. The church's sign does conform to the required sign setback. This property should not be adversely impacted by the proposed and existing signs. Both signs will be perpendicular to the street and church building to the west, which will limit its impact on adjacent properties.

Currently, large grass ditches are on both sides of the Casement Road surface. These ditches are within the road right-of-way and are approximately twenty-eight (28) feet wide. Visually, the grass ditches offer vegetative buffer between the road and adjacent properties and the location of the signs. Casement Road is scheduled to be widened to accommodate an increase in the number of lanes on the collector street in the extended future.

To the east of the ditch is a row of mature deciduous trees that are approximately ten (10) feet from the front property line on Casement Road. According to the applicant, they desire to keep mature trees. The location of the proposed signs is a function of the trees and the desire to preserve them. If the signs were to be located at the required fifteen (15) foot sign setback,

they would be blocked by the trees, requiring one (1) or more of the trees to be cut down. Cutting one (1) or more trees would change the character of the subject site and may impact the adjacent properties by reducing the number of matures on the subject site.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The Manhattan Broadcasting Company has a wide variety of guests and clients that visit their site for business calls and guest appearances on the various radio stations broadcasted from the studios in the building. Some of their guests are regular visitors, other are infrequent or first time visitors.

When the building was constructed in 1970, the entrance was been at the southwest corner of the building. The building addition to the north side of the building, which was constructed in part for security reasons, has caused confusion for returning and new visitors as to where to park and enter the building. The need for the two (2) signs in their proposed and current location is to better identify the new building entrance and driveway along Casement Road, a busy arterial road.

There is a row of mature trees located along Casement Road that visually obstruct the view of the building from the roadway. The applicant has a desire to maintain the mature trees and have proposed the two (2) signs in that regard. The two (2) signs will adequate identify the new entrance from both directions when traveling along Casement Road. The trees to the south of the driveway obstruct seeing the ball sign, but not the proposed ground sign. Likewise, the trees to the north of the driveway will most likely block the readability of the new ground sign, but the ball sign is clearly visible. Considering the purpose and intent of the signs, including the desire to preserve mature trees on the subject site, restricting the applicant to just one (1) of the signs appears to be a hardship to the applicant in this rare situation.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal affects on the public health, safety and order is anticipated from the two (2) signs. The presence of the signs will improve the identification of the new front door to the business and the off-street parking lot associated with it. This should improve traffic safety along Casement Road by reducing the amount of erratic driving of visitors to the radio stations that are unfamiliar with the business.

The signs are located to be outside the fifteen (15) foot vision clearance triangle that is created by the intersection of the driveway with Casement Road. The sign will not impact existing utility easements.

RELATIONSHIP TO INTENT OF REGULATIONS:

The regulations regarding the total number of signs for a property in the residential district is to help reduce possible sign proliferation, visual clutter and create a uniformed character in the residential neighborhood. The radio station is a unique, legally nonconforming use on a very large lot in the R-1, Single-Family Residential District. The new building addition and the daily functions of the radio station require appropriate identification of the business, new driveway and parking lot.

Both signs comply with the height and gross sign area for properties in residential districts.

Because of the mature trees that line Casement Road, the signs are to be at least two (2) feet from the front lot line. A similar ground sign is located across Casement Road for a church. The radio station has a ball sign near the other driveway off of East Butterfield Road. The proposed signs will not be out of character with the surrounding properties.

Considering these facts and circumstances, it appears that the intent of the regulation to limit the number of ground signs is met in this particular situation.

Hardy moved to approve the Variance to allow two (2) ground identification signs along Casement Road at the Manhattan Broadcasting Station, 2414 Casement Road, in the R-1, Single-Family Residential District, with the following conditions of approval:

1. The Variance shall only apply to the two (2) signs listed in the application documents and shown on the site plan.
2. All required permits shall be obtained.

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

The Board made the following findings of fact for the Exception at 2414 Casement Road.

PRESENT USE: a legally non-conforming radio broadcasting studio

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The application documents of the June, 2011 Board of Zoning Appeals requests states that the radio station building was built in 1970. At that time it was outside of the City limits. In 1982, the subject site and surrounding areas to the east and south were annexed into the City and zoned R-1, Single-Family Residential District. In 2004, the subject site and surrounding areas to the east were platted into their current configuration with the Hackberry Addition. Because the radio broadcast studio existed prior to being annexed and rezoned from its County zoning designation to R-1, Single-Family Residential District, it is deemed a legally nonconforming use.

In 2003, the property owner was granted Exceptions to allow a reduction in the minimum required twenty-five (25) foot front yard setback for a proposed fence, a reduction in the minimum required fifteen (15) foot front yard setback for a proposed ground sign along East Butterfield Road, and to allow off-street parking within the minimum required twenty-five (25) foot front yard setback. In 2005, Exceptions to allow a reduction in the minimum required twenty-five (25) foot front yard setback for a proposed fence and off-street parking for the existing legally nonconforming commercial use was approved.

As mentioned, a ground sign currently exists on East Butterfield Road. Section 6-201(C)(1) of the Sign Regulations allows only one (1) nameplate, identification or bulletin board per zoning lot. However, section 6-103 (H) states that on corner and through lots, each lot line that abuts a street or highway shall be considered a separate street frontage. On corner and through lots,

restrictions that are phrased in terms of "signs per zoning lot" shall be deemed to permit the allowable number of signs to face each street or highway that abuts the lot. The presence of a sign along Casement Road is permitted.

The Manhattan Broadcasting Company has a unique sign type with a logo displayed on a large ball on top of a cylindrical base throughout the region. The ball and post were recently installed near the main entrance of the building, but no logo is displayed upon the ball. The sign base and ball was inadvertently installed after confusion of the sign type and the process that the Board of Zoning Appeals was going through. The structure was presented to City Administration as it being an art piece. However, it does clearly identify the location and use of the property, which meets the definition of a sign as stated in the Zoning Regulations, Article XVI:

“Any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

In addition, the structure is used as a sign throughout the region to advertise various radio stations of Manhattan Broadcasting Company; the only difference is that no logo is currently present on the new sign base. A Variance is required to allow two (2) identification sign types Casement Road.

The site complies with all applicable regulations, other than the Exception request.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject property and surrounding properties are R-1, Single-Family Residential District. Also in the area are properties that are zoned R-2, Two-Family Residential District. To the west of the subject site, across Casement Road is the Butterfield PUD and the Kingdom Hall Addition PUD. The Butterfield Addition is a single-family residential development and the Kingdom Hall PUD is a church. The area is mostly single-family residential district, with the exception of the subject site and the R-2 Districts in the area.

The subject site is a very large site with approximately 3.59 acres of area. The signs will be approximately near the center of the street frontage along Casement Road, or roughly 170 feet from the intersection of East Butterfield Road and Casement Road to the south and 180 feet to the adjoining property line to the north. The location of the signs should not impact adjacent property owners to the north and south.

The current right-of-way of Casement Road is eighty (80) feet in width, which is wider than a typical residential street. To the west, across Casement Road, is a church. The church has a similar type sign at the intersection of Butterfield Road and Casement Road. The church's sign does conform to the required sign setback. This property should not be adversely impacted by the proposed and existing signs. The ground sign to the north of the driveway will be perpendicular to the street and church building to the west, which will limit its impact on adjacent properties.

Currently, large grass ditches are on both sides of the Casement Road surface. These ditches are within the road right-of-way and are approximately twenty-eight (28) feet wide. Visually, the grass ditches offer vegetative buffer between the road and adjacent properties and the location of the signs. Casement Road is scheduled to be widened to accommodate an increase in the number of lanes on the collector street in the extended future.

To the east of the ditch is a row of mature deciduous trees that are approximately ten (10) feet from the front property line on Casement Road. According to the applicant, they desire to keep the mature trees. The location of the proposed signs is a function of the trees and the desire to preserve them. If the sign was to be located at the required fifteen (15) foot sign setback, they would be blocked by the trees, requiring one (1) or more of the trees to be cut down. Cutting one (1) or more trees would change the character of the subject site and may impact the adjacent properties by reducing the number of matures on the subject site.

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: Minimal affects on the public health, safety and order is anticipated from the two (2) signs. The presence of the signs will improve the identification of the new front door to the business and the off-street parking lot associated with it. This should improve traffic safety along Casement Road by reducing the amount of erratic driving of visitors to the radio stations that are unfamiliar with the business.

The signs are located to be outside the fifteen (15) foot vision clearance triangle that is created by the intersection of the driveway with Casement Road. The sign will not impact existing utility easements.

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

The radio broadcasting business is a legal nonconforming use to the R-1, Single-Family Zoning District. It is evident that the use has needs which are unique and not customarily found in a residential district. The radio business has a number of clients and guests who are visitors to the subject site. The applicant's have determined that it is important for their new business entrance and driveway to be well identified for these guests and have proposed the following signs.

The strict application requires that the existing and proposed signs be located at least fifteen (15) feet from the front property line along Casement Road. Because of the existing row of mature trees that are approximately ten (10) feet from the front property line, a sign setback a minimum of fifteen (15) feet would be block by the trees and be ineffective for the intended purpose. The trees could be removed in the area to allow for the driving public to view the signs. The application documents state that removing the trees "would be unacceptable to the applicant and neighboring property owners."

Considering the needs of the unique business, the fact that radio broadcast station sits on such a large lot, the presences of mature trees and a large grass ditch along Casement Road and the minimum impacts that the proposed signs will have on adjacent property, the strict application

of the minimum required sign setback appears to be unreasonable.

Hardy moved to approve the Exception to allow for the reduction of the minimum required sign setback along Casement Road from fifteen (15) feet to two (2) feet for a new and existing ground identification sign at 2414 Casement Road in the R-1, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall only apply to what was stated in the application documents and shown on the site plan.
2. The Variance to allow two (2) identification signs on Casement Road shall be approved.
3. All applicable permits shall be obtained.

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

A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FOR AN EXISTING DETACHED GARAGE FROM THREE (3) FEET TO ZERO (0) FEET AT 1010 CLAFLIN ROAD IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT (APPLICANT: SMH CONSULTANTS, INC. – JEFF HANCOCK OWNER: ELMER AND ROXIE BLAKENHAGEN).

A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SIDE YARD SETBACK FOR AN EXISTING SINGLE-FAMILY HOUSE FROM EIGHT (8) FEET TO SEVEN (7) AT 1016 CLAFLIN ROAD IN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT (APPLICANT: SMH CONSULTANTS, INC. – JEFF HANCOCK OWNER: MARCIA E. ALLEN TRUST).

Bunger presented the staff reports for both the items together because they both pertain to replatting the property to be approved by the MUAPB. The City Administration recommended approval of both items, with one (1) specific condition of approval for the Exception at both the properties.

Hamilton suggested mentioning in the staff report that the detached garages on these properties are illegally non-conforming as it is. Aistup opened the public hearing for public

comments. With no public comments Aistrup closed the public comment section for Board discussion.

The Board made the following findings of fact for the Exception at 1010 Claflin Road.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations, other than for what the Exception requests are for.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the east, north and west are zoned R, Single-Family Residential District. To the south are properties zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. To the west and southwest are properties zoned R-3, Multiple-Family Residential District and R-3/M-FRO, Multiple-Family Residential District and Multi-Family Redevelopment Overlay District.

The impacts on the adjacent properties should be minimal. According to the Riley County Appraiser's Office, the detached garage was built in 1943. The house most impacted by the garage's location is immediately to the north. This house was built in 1939. It does not appear that the location of the detached garage has adversely impacted the neighboring property. There are significant trees, vegetation and a wood screening fence that separates the house from the detached garage.

The detached garage is behind the existing house and not be easily seen from either of the streets. No additions have been proposed with the Exception request. It is merely to bring the subject into conformance with the Zoning Regulations so a concurrent plat can be forwarded to the Manhattan Urban Area Planning Board for consideration.

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

No impacts on the public health, safety or general welfare is anticipated from approved the Exception request. The detached garage is not located within any specific utility easements and is outside of any vision triangles.

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

The strict application of the accessory setback requirement would be that the detached garage be moved or reduced in size to provide the three (3) feet setback in order the subject site to comply with the Zoning Regulations. This would allow for the concurrent plat of the Allen-Blankenhagen Addition to be considered by the Planning Board.

Considering that the detached garage was built in 1943 and has not impacted adjacent property owners or the general public, and that the Exception request is to bring the property into conformance to allow for concurrent plat to be considered, the strict application appears to be

unreasonable.

Kent moved to approve the Exception to allow for the reduction of the minimum required side yard setback for an existing detached garage from three (3) feet to zero (0) feet at 1010 Claflin Road in the R, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall apply only to the existing detached garage as outlined in the application documents and shown on the site plan.

Hardy seconded the motion, which passed by a vote of 4-0.

The Board made the following findings of fact for the Exception at 1016 Claflin Road.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations, other than for what the Exception requests are for.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and properties to the east, north and west are zoned R, Single-Family Residential District. To the south are properties zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. To the west and southwest are properties zoned R-3, Multiple-Family Residential District and R-3/M-FRO, Multiple-Family Residential District and Multi-Family Redevelopment Overlay District.

According to the building permit, the house was built in 1956. The site plan drawn for the building permit shows that a nine (9) foot setback was suppose to be provided for both side yards. It is unknown how the house came to sit approximately seven (7) feet from the west property line. No complaints are on file with the Community Development Department for the property. It is evident that the existing location of the house has not had an adverse impact on adjacent properties.

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

No impacts on the public health, safety or general welfare is anticipated from approved the Exception request. The existing house is not located within any specific utility easements and is outside of any vision triangles.

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

The strict application of the side yard setback requirement would be that the house be moved or portion of the roof overhang be removed to provide the necessary eight (8) feet setback in order for the subject site to comply with the Zoning Regulations. By conforming to the regulations, this would allow for the concurrent plat of the Allen-Blankenhagen Addition to be

considered by the Planning Board.

Considering that the house was built in 1956 and has maintained in this condition since, has not impacted adjacent property owners or the general public, and the Exception request is to bring the property into conformance to allow for concurrent plat to be considered; the strict application appears to be unreasonable.

Kent moved to approve the Exception to allow for the reduction of the minimum required side yard setback for an existing single-family house from eight (8) feet to seven (7) feet at 1016 Claflin Road in the R, Single-Family Residential District, with the following conditions of approval:

1. The Exception shall apply only to the existing house as outlined in the application documents and shown on the site plan.

Hardy seconded the motion, which passed by a vote of 4-0.

A PUBLIC HEARING FOR A VARIANCE TO NOT PROVIDE THE REQUIRED PAVING OF A TRAVELWAY OR DRIVEWAY AT 2151 FT. RILEY BOULEVARD, IN THE I-3, LIGHT INDUSTRIAL DISTRICT (APPLICANT/ OWNER: JIM MATHEWSON).

Bunger presented the staff report briefly. The City Administration recommended denial of the request for Variance and recommended the following conditions of approval if Board was inclined to approve the Variance:

1. All applicable permits shall be obtained for the remodeling of the new building.
2. The gravel driveway/travelways and parking areas shall be maintained in good condition.
3. Any future development on the subject site shall fully conform to all applicable regulations of Article VII, Off-Street Parking and Loading.

With no questions from the Board for City staff, Aistrup opened the public hearing. Property owner Schoen expressed his views on the request and appreciated the City Staff and the Board's efforts. With no more public comments Aistrup closed the public comment section for Board discussion. Applicant and Owner Jim Mathewson generally discussed with the Board his reasoning and problems that led to the Variance application. In summary, the applicant suggested that the required paving of the driveway would cause him a tremendous financial burden.

Myron Calhoun who lives immediately east of 2151 Ft. Riley Boulevard requested the board to deny the Variance. He presented several photographs suggesting that trash and construction debris from the concerned property has been continuously being dumped into his property. He said that this has been going on since 1999. In summary he stated that if the Variance is denied, the property owner might consider maintaining his property. Mathewson responded to Calhoun and said that all the trash and debris was cleaned at some point of time and that what Calhoun claims to be his property was actually a part of the subject site and said that he owns the property up to the wildcat creek. Mathewson also argued that dumping the concrete debris prevents soil erosion. At this point Aistrup suggested that this discussion was not relevant to the case under consideration and urged to move forward with relevant facts pertaining to the case.

Kent enquired if Mathewson was a partner of the Cats Corporation prior to 2005, to which Mathewson said yes. Bunger clarified that the issue of dumping brought up would be between the two property owners, however even though unrelated to this case, the City has some concerns about the issue because it seems to be happening in the flood plain and flood way.

Aistrup opened the Board discussion. Hamilton state that the City Staff has done a good job at analyzing the case and that even though she understands the financial hardship to the applicant, she would follow the staff's recommendation because it appears that the hardship has resulted from the property owner's own actions. Lavis stated that she agreed with Hamilton's comments. Kent and Aistrup also expressed that they agree with the facts laid out in staff report.

The Board made the following findings of fact for the Variance at 2151 Ft. Riley Boulevard.

PRESENT USE: Construction businesses and self-storage units.

CONDITIONS UNIQUE TO THE PROPERTY: The location of the subject site, being an industrial zoned site that is south of the Union Pacific Railroad, with no other adjacent properties within the City limits appears to be unique to this area and the I-3, Light Industrial District. There are two (2) large residential/agricultural lots immediately to the south and east of the subject site that lie outside of the City limits. These properties are zoned County G-1, General Agricultural District.

Prior to the subject site being used for offices and storage buildings for construction businesses and the self-storage units, the subject site was a lumber yard/hardware store. It is evident when reviewing the annual Polk Directories that the lumber yard was established prior to the adoption of the Zoning Regulations that established the requirement for paved

driveways and travelways in 1968. The presence as gravel parking and travel surfaces appears to be a unique condition of the property because of how long it has been in this condition on the subject site.

However, Section 7-101 states:

Applicability. In any zoning district, all structures built and all uses established hereafter shall provide accessory off-street parking in accordance with the following regulations. When an existing structure or use is expanded, accessory off-street parking shall be provided in accordance with the following regulations for the total area or capacity of the whole structure or use as enlarged. All parking spaces and lots, including those that are principal uses rather than accessory uses, shall comply with the standards established in the following regulations.

The construction of the self-storage units on the west side of the subject site would have required a paved driveway to the units. It is unclear how these units were constructed without the required paving. No final copies, correspondence or BZA actions have been found to clarify why the paving was not provided.

The gravel area leading to the proposed storage building on the east side of the subject site would have been permissible under Section 7-102(E)(3)(b). The remodeling of that building to provide for tenant space of other businesses is considered to increase the capacity and intensity of that structure, thus requiring the paving to be provided. Although the gravel driveway for the use appeared to be a unique condition because it was present before the regulations required paving, the recent construction on the subject site would require the needed for paving.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site is zoned I-3, Light Industrial District. To the north, along Ft. Riley Boulevard is properties zoned C-5, Highway Commercial District and I-3 District. To the west are properties zoned PUD, Commercial Planned Unit Development. The east, south and west property lines of the subject site make up the City limits. The areas outside of the City limits are zoned G-1, General Agriculture.

The largest complaint of adjacent property owners that could arise by not providing the required paving would be from the generation of dust and the spread of gravel onto the roadway. There are few neighboring properties that would be impacted by the dust. There is a residential property immediately to the east that is located outside of the City limits. This property is closest to the new building that houses the tenants.

The spreading of gravel should be mitigated by the fact that the entrance into the subject site off of Ft. Riley Boulevard is paved. Any gravel from the subject site should not find its way onto Ft. Riley Boulevard.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

There does not appear to be an unnecessary hardship by requiring the paving of

driveway/travelways for the self-storage units or the new building that has the tenant space, other than the concern for the financial limitations of doing so. There is evidence that the gravel parking and driveways/travelways was present when the subject site was used as a lumber yard prior to the adoption of the paving regulation. The gravel parking and driveway/travelway areas were allowed to exist until areas of the subject site were developed upon or a building was enlarged. Likewise, paving would not have been required for the new storage building.

However, commercial and industrial uses across the City are required to pave parking and driveways/travelways for areas devoted to customers or tenants. It is unclear as to how the self-storage units were allowed to be constructed without the required paving. It appears that there was a misinterpretation or lack of enforcement of the requirements in this circumstance. Although this is an inconvenience, it does not appear to constitute an unnecessary hardship to the applicant. The regulations were in effect at the time of the construction and the paving should have been provided.

The applicant was informed on the building permit that any changes to the use of the structure, including renting the space out would necessitate a meeting with the Community Development Department. This meeting would have informed the applicant of the requirements pertaining to the paving. The applicant did not inform the City; include building code officials, of the remodel project and change of use of the storage building to tenant space.

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

The proposed Variance would not impact the public health and safety. The gravel driveway/travelways meet the standards for emergency access. The gravel is adequate for large emergency vehicles to travel on safely.

The proposal is contrary to the public order of public parking lots and driveways throughout the City. Commercial and Industrial uses throughout the City are required to provide paved parking and travel areas for the public. Areas used for the storage of equipment and service vehicles used in connection with the business are not required to be paved. The area leading to the new building on the east side of the subject site was not required to be paved when it was originally constructed because it was described as storage for the business. At the time that the building was remodeled to provide tenant space for other construction businesses, a paved driveway/travelway was required.

The self-storage units were required to be paved at the time that they were constructed. It is unclear as to how the driveway to these units was not provided with the public permit or the certificate of occupancy.

RELATIONSHIP TO INTENT OF REGULATIONS:

The intent of the regulation to provide for paved parking areas, driveways and travelways is to create a uniform, quality hard surface that will provide for the travel and parking of client, customer and employee vehicles, including parking spaces meeting the American with Disabilities Act, provide for adequate driving surfaces for emergency vehicles and reduce the

amount of dust, dirt, and rocks that may cause traffic hazards in the parking lot and on the public streets.

At the time of the site inspection, the existing gravel parking and travelways were well maintained with no visible potholes. The Fire Department has stated that the gravel areas meet their standards for the driving surfaces for emergency vehicles.

The gravel driveway and parking areas do produce dust that can impact driving both on the subject site as well as traffic on Ft. Riley Boulevard. The dust produced from the gravel driving areas can also adversely impact adjacent properties owners.

The driveway is not uniform and consistent with similar commercial and industrial uses throughout the City. As Section 7-101 requires, when an existing structure, that has a parking or driveways/travelways that are not paved, is expanded, the off-street parking regulations and standards are applied. The purpose of this Section is to require nonconforming parking areas and lots to come into conformance at the point that a building is expanded or enlarged. The remodel of the new building on the east side of the subject site requires that the driveway/travelway to that area be paved. The self-storage units on the west side of the subject site originally should have provided paved driving areas. It is unclear as to how this paving was not provided. This does not eliminate the need for the paving now or in the future.

Hamilton moved to deny the Variance to not provide the required paving of a travelway or driveway at 2151 Ft. Riley Boulevard in the I-3, Light Industrial District. The applicant shall provide City Administration with a detailed paving plan of the area to determine conformance with Article VII, Off-Street Parking and Loading.

Kent seconded the motion, which passed by a vote of 4-0.

A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO AS CLOSE AS ZERO (0) FEET ALONG N 8TH STREET, N. 9TH STREET, LEAVENWORTH STREET AND HUMBOLDT STREET FOR A PROPOSED THREE (3) FOOT TALL STONE WALL AT THE 1ST PRESBYTERIAN CHURCH, 801 LEAVENWORTH STREET, IN THE R-M/TNO, FOUR-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT. (APPLICANT/PROPERTY OWNER: 1ST PRESBYTERIAN CHURCH – LOREN REISWIG, PRESIDENT)

Bunger presented the staff report. The City Administration recommended approval of the request for Exception with four (4) specific conditions of approval of which one has already

been met. Kent asked Bunger to briefly explain why the local historic society had a complaint regarding the project. Bunger explained that the society felt that the proposed material (concrete block) used for the façade was not compatible with other stone walls in the area particularly, the Ulrich House. Having no further questions from the Board for Bunger, Aistrup opened the public hearing.

Loren Reiswig, President of 1st Presbyterian Church expressed his excitement about the project and discussed how the project would be useful for the entire community and not just the church. Hardy suggested that he is willing to support the project based on the findings in the staff report.

The Board made the following findings of fact for the Variance at 2151 Ft. Riley Boulevard.

PRESENT USE: First Presbyterian Church

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The subject site complies with all applicable regulations, other than for what the Exception requests are for. The applicant received an Exception in May, 2012 to construct a trash enclosure in the front yard setback along N. 9th Street, south of the mid-block alley.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District. At the intersection of N. 8th Street and Humboldt Street is property zoned C-1, Restricted Business District. The subject site is within the 500 foot historic environs of the Women's Club House, Ulrich House and First Congregational Church historic properties.

The proposed wall should not adversely impact adjacent properties. There are several properties in the surrounding neighborhood that have fences located in similar location along the front lot lines. Many of these fences are picket, chain link or wooden screening fences that are taller than thirty-six (36) feet in height. Two (2) properties along Humboldt Street have short (less than 16 inches) retaining walls located at the front lot lines. Most of these fences on neighboring properties did not seek Exceptions from the Board of Zoning Appeals. The one exception is the property immediately west of the subject site along N. 9th Street. The property was approved for a five (5) foot tall screening fence to be located three (3) feet from the front property line. The Board had concerns of an original plan to construct the fence at the front lot line along N. 9th Street. The physical scale and mass of the fence along the public sidewalk was the Board's main concerns.

The proposed walls should not have comparable concerns, because of the height and style of the wall. The thirty (30) to thirty (36) inch tall wall will maintain an open view along the streets for neighboring properties, vehicles and pedestrians. The applicants have stated in the application documents that "the freestanding wall will be constructed of stone material that

will compliment the stonework on the sanctuary and give the parking a sense of place (much like the stone wall surrounding the KSU campus).”

The Manhattan Historic Resources Board reviewed the project on August 27, 2012. They found that the proposal did not meet the *Standards and Guidelines for Evaluating the Effect of Projects on Environs* and would encroach upon, damage or destroy the listed historic property and its environs because of the proposed materials were incompatible with the historic environs. The Board forwarded a recommendation of denial to the State Historic Preservation Office (*see attached letters*).

EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE: The proposed wall should have minimum impacts on the general public health, safety and welfare. Several properties along N. 9th Street have fences and other structures encroaching into the front yard setback along the streets. The proposed design of the wall, with its stone materials that is complimentary to the stonework of the church buildings should mitigate any affects it would have on the general order along the street.

The proposed height and location of the fence has taken into account for the required vision triangles along the alley and the street. The wall will not encroach into any easements.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED: The strict application of the setback requirements for accessory structures would not allow the wall to be built where it is proposed. The wall, as an accessory use, is required to be setback a minimum distance of twenty-five (25) feet. The subject site is a large zoning lot comprising the entire block between N. 8th Street and N. 9th Street on both sides of the public alley. The wall could be setback to meet the minimum requirements. However, it would substantially cut into the park areas. The intent of the proposed stone wall is to enhance the existing green spaces that are proposed to be improved upon. Separating the park areas by the wall to meet the minimum setback requirements may detract from the overall use of the green spaces, as intended.

Taking into consideration that other properties have fences and walls in similar locations along the front lot line, the intent of the wall and that the height of the fence should not visual impacts the views along the streets, it appears that the strict application of the regulations would be unreasonable.

Hardy moved to approve the Exception to allow for the reduction of the minimum required front yard setback from twenty-five (25) feet to as close as zero (0) feet along N 8th Street, N. 9th Street, Leavenworth Street and Humboldt Street for a proposed stone wall at the 1st Presbyterian Church at 801 Leavenworth Street in the R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District with the following conditions of approval:

1. The Exception shall apply only to the location of the proposed stone wall as described in the application documents and shown on the site plan.
2. The wall shall be constructed as proposed.
3. The wall shall be no more than thirty (30) inches in height above the ground in the thirty (30) foot vision triangle created by the street and alley intersections.
4. The wall and landscape shall be maintained in good condition

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

A PUBLIC HEARING FOR AN EXCEPTION TO ALLOW FOR THE REDUCTION OF THE MINIMUM REQUIRED SETBACK FOR A PROPOSED DETACHED GARAGE FROM FOURTEEN (14) FEET TO ELEVEN (11) FEET AT 1744 LEAVENWORTH STREET, IN THE R-1/TNO, SINGLE-FAMILY RESIDENTIAL DISTRICT AND TRADITIONAL NEIGHBORHOOD OVERLAY DISTRICT (APPLICANT/PROPERTY OWNER: SYLVIA C. AND RICHARD W. BEEMAN)

Bunger presented the staff report and the City Administration recommended approval of the request for exception with three (3) specific conditions of approval.

With no questions from the Board for Bunger, Aistrup opened the public hearing. Property owner Sylvia Beeman briefly discussed why the project was important to them and stated that they intend the project to cause minimum impact to the neighborhood and the environment as a whole and that none of their neighbors have opposed the project. With no more public comments Aistrup closed the public comment section for Board discussion. Hamilton appreciated the City's concern about the garage being used as a dwelling unit in the future and briefly expressed her views regarding the benefits and challenges of the project.

The Board made the following findings of fact for the Exception at 1744 Leavenworth Street.

PRESENT USE: Single-family home

COMPLIANCE WITH ALL APPLICABLE REGULATIONS: The house is located approximately five (5) feet from the front property line along Denison Avenue. The location of the house from the Denison Avenue front property line is a legally nonconforming condition created when the 1926 Zoning Regulations were updated. Other than this issue, the subject site complies with all applicable regulations.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surround properties are zoned R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District. The subject site is also within the 500 foot historical environs of Grimes House and McFarlane-Wareham House historic properties.

The proposed detached garage should have minimum impacts on adjacent properties. The location of the new garage will be in the same location as the existing one. The garage will be approximately two (2) wide at the front property line and 140 square feet larger in area. The increase in the size of the building will generally be toward the interior of the subject site, which will minimize any impacts that it may have on adjacent properties.

The applicants submitted signatures from four (4) neighboring property owners offering their support of the Exception request (*see attached*).

The Manhattan Historic Resources Board reviewed the project on August 27, 2012. They found that the proposal did not meet the *Standards and Guidelines for Evaluating the Effect of Projects on Environs* and would encroach upon, damage or destroy the listed historic property and its environs because of the proposed detached garage design would be incompatible with the character of the historic environs. The Board forwarded a recommendation of denial to the State Historic Preservation Office (*See Attached letter*). The State Historic Preservation Office and has provided their findings as of the date of this staff report.

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

Minimum impacts on the public health, safety and general welfare are anticipated. The existing garage has been a part of the surrounding neighborhood since 1930. The location of the new detached garage is in the same location as the existing garage; so the order of the building line along Denison Avenue will not be impacted.

The garage is proposed to be two-stories that will include a bathroom and separate area with a sink and countertop. These second story amenities are necessary for the space as the applicant's plan to use is as a private art studio. City Administration does not have any concerns with the proposed use of the second floor space by the applicants and does not meet the definition of a dwelling unit, which requires kitchen facilities. However, the space does offer the ability to be converted into a dwelling unit by adding a refrigerator and cooking appliances. If this area was used as a dwelling unit, it would violate the R-1, Single-Family Residential District regulations and Section 3-401(A), which limits the number of principle structures to one (1) for a residential lot. With that, City Administration is recommending a condition of approval that the detached structure shall not be added onto or converted to be used as a dwelling unit. This condition is to place the current and future property owners on notice of the issue and potential violations.

The proposed detached garage will not encroach into any utility easements or vision triangles created by the driveway, the alley and the street.

THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR

UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:

The strict application of the setback of the accessory structure would require that it would need to be moved at least three (3) feet to the east to be setback the minimum fourteen (14) feet. The applicant's provide the following statement in the application documents:

“We could easily shift the proposed structure four feet to the east is not for our desire to preserve the charm, beauty, and privacy of our yard. We think that the alignment of the proposed structure with the western edge of the original house, like the original garage, seems congruent and compatible with the intimate scale of the neighborhood. The requested four foot Exception seems like and unobtrusive request that will preserve a bit of green space, established by previous owners of our house and enhanced by us, that appeals to use and our neighborhood, adds beauty to our yards, and provides cover and food for the birds and other wildlife that delight us all. We also believe that our garage/studio, with the Exception will add value to our property.”

The proposed location of the new garage/studio will be same distance from the Denison Avenue front lot line and alley side lot line as the existing garage. It is evident by the statement, that the applicant's value their existing yard and hope to preserve as much of it as possible with the new garage/studio. The applicant could repair and add onto the existing garage as long as the degree of nonconformity and encroachment did not increase. The application documents state that a Kansas State University structural engineer advised them that the existing structure is “unsound and irredeemable by today's building standards.” Considering this, the applicant's desire to maintain their backyard area and that the proposal will have minimal impacts on the neighborhood, the Exception request appears to be unreasonable in this situation.

Hardy moved to approve the Exception to allow for the reduction of the minimum required setback for a proposed detached garage from fourteen (14) feet to eleven (11) feet at 1744 Leavenworth Street in the R-1/TNO, Single-Family Residential District and Traditional Neighborhood Overlay District, with the following conditions of approval:

1. The Exception shall apply to the proposed detached garage as described in the application documents and shown on the site plan.
2. The detached garage shall not be modified to be used as a dwelling unit. This will result in a violation of Section 4-103(A) and of the R-1, Single-Family Residential District.
3. All applicable permits shall be obtained.

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

A PUBLIC HEARING FOR A VARIANCE TO ALLOW FOR A BUSINESS TO HAVE

MORE THAN ONE (1) WALL SIGN AND TO ALLOW MORE THAN ONE (1) AWNING SIGN PER STREET FRONTAGE; AND TO ALLOW FOR AN INCREASE IN THE TOTAL SQUARE FOOTAGE OF SIGNAGE ALONG S. 3RD STREET FROM 110 SQUARE FEET TO 300 SQUARE FEET. ALL FOR THE APPLEBEE'S RESTAURANT AT 100 MANHATTAN TOWN CENTER, IN THE C-4, CENTRAL BUSINESS DISTRICT (APPLICANT: BURTON SIGNWORKS, INC. PROPERTY OWNER: URBANCAL MANHATTAN TOWN CENTER, LLC - JOSEPH S. MCCARTHY).

Bunger presented the staff report. The City Administration recommended denial of the request for Variance and recommended the following conditions of approval if the Board was inclined to approve the Variance:

1. The Variances shall apply to the proposed signs as outlined in the application documents.
2. All applicable permits shall be obtained.

Kent asked if north and south end redevelopment had any factors to the decision. Bunger stated that City Administration is reviewing the sign regulations to evaluate if they are in need of being updated. The north and south redevelopment areas are govern by Planned Unit Development. Kent asked if there was an unfair competition between Applebee's and the properties in the redevelopment areas. Again, Bunger said that those areas are governed by a separate set of regulations, but he would not comment if there was a disadvantage to one business or another. Kent asked if there was another avenue for the applicant to appeal the decision. Bunger outlined the applicant's options

Hardy asked if the City Administration's recommendation would change if Applebees proposed only the wall signs. Bunger said that there would be no issues with a wall sign each street frontage façade. The issue arises with the addition of other signs, including the awning signs.

With no further questions from the Board for Bunger, Aistrup opened the public hearing. Hardy suggested recording the fact that the applicant was not present. With no public comments Aistrup opened the Board discussion. Hardy stated that he would support the findings of the staff report.

The Board made the following findings of fact for the Variance at 100 Manhattan Town Center.

PRESENT USE: Applebee's Restaurant

CONDITIONS UNIQUE TO THE PROPERTY: The unique condition of subject site is that it is a part of the Manhattan Town Center. The mall is a unique development to the C-4, Commercial Business District and other commercial districts in the City. This area of the mall along S. 3rd street does not function in similar fashion as other businesses in the Central Business District. The business' door is to the south with a grass lawn area and a large parking lot. This area of the building most closely resembles a store front in a suburban setting. The restaurant does not have a door leading directly onto the street frontage of S. 3rd Street. This façade has four (4) windows into the restaurant. The only business of the Manhattan Town Center that has a similar situation is the Old Chicago restaurant to the north. This situation is also unique compared to other businesses in the C-4 District.

PROBABLE EFFECT ON ADJACENT PROPERTIES: The subject site and surrounding properties are zoned C-4, Central Business District. The site is within the 500 foot environs of the Downtown Historic District. To the south and east is a parking lot and the facade of the Manhattan Town Center. The majority of the mall's façade are blank walls, with no business entrances. To the west are a public parking lot and a pizza restaurant at the corner of S. 3rd Street and Poyntz Avenue.

Minimal impacts on adjacent properties are anticipated by approving the Variance. The proposed signs are part of the corporate logos and imaging package found at other Applebee's restaurants in the nation. These signs will not be out of character with the surrounding neighborhood. The two (2) wall signs on the south façade will not directly impact any adjacent properties. The second, smaller sign that will be located above the business entrance will most likely go unnoticed until you reach the building and enter the business.

The four (4) awning signs should also not impact the adjacent properties. Only the south awning will have a full color logo on it. The other three (3) awnings will have a dark red colored logo on a somewhat lighter shade of red. Each logo on the awning will be approximately thirty-four square feet, or roughly fifty-four percent (54%) of the entire size of the awning. The size and design of the logos on the three (3) separate awnings across the fifty-four foot wide street frontage should not impact adjacent properties.

The subject site is within the 500 foot environ of the Downtown Historic District, which is listed on the State and National List of Historic Places. The Historic Resource Board (HRB) reviewed the application for the Variance request on July 9, 2012. The HRB review found that the requests meet *The Standards and Guidelines for Evaluating the Effect of Project on Environs* and will not encroach upon, damage or destroy any listed historic property or its environs (*see attached*). The State Historic Preservation Office concurred with the Historic Resource Board and determined that the project can proceed.

UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:

The proposed sign package is related to the corporate reimagining of Applebee's restaurants throughout the country. According to the application documents, the current signage and awnings on the subject site is not in accordance to the corporate trademark.

There does not appear to be a unique hardship to the business if the Variance is not approved. The logos on three (3) of the awning could be removed. This would provide for the maximum required number of signs (1 wall sign and 1 awning sign) and reduce the gross area of the signs on the west façade below maximum allowable area of 110 square feet (the total square footage would be approximately eighty (80) square feet). Other options may existing to create one (1) large awning that spans over all of the windows and enlarge the awning logo to be closer to the maximum allowable sign area.

Likewise, a wall sign could be removed from the south façade to bring the proposal into compliance with the Sign Regulations. The wall sign on the door transom could be put on the inside of the door and would comply with the Sign Regulations. The Sign Regulations exempt signs located on the inside of a business from the regulations (Section 6-104(D)(1)).

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

Minimal affects on public health, safety or welfare is anticipated from approving the Variance. The signs are designed to be in character with the surrounding Central Business District. The signage will not distract drivers or pedestrians along S. 3rd Street, Poyntz Avenue, Houston Street or in the Manhattan Town Center parking lot.

RELATIONSHIP TO INTENT OF REGULATIONS:

The C-4, Central Business District is the primary commercial center of the community and is designed to provide a broad range of retail shopping facilities, services and cultural activities. The regulations regarding the total number of signs and the total gross surface area of signage for a business are to help reduce possible sign proliferation, visual clutter and create a uniformed character in the Central Business District. The proposed sign package has twice the allotted number of signs for the business (maximum number of signs per type is 1 or a total of 2 sign types, the proposed signage has 4 signs) and is over one and one half (1.5) the maximum gross surface area (the maximum total size of all signs for the subject site is 110 square feet, the proposed sign sizes are a total of 181 square feet). The Variance request does not meet the intent of the regulations when you consider the number and size of the signs.

Hardy moved to deny the Variance to allow for a business to have more than one (1) wall sign and to allow more than one (1) awning sign in the C-4, Central Business District; and to allow for the increase in maximum gross surface area of all signs from 110 square feet to 182 square feet.

Kent seconded the motion, which passed by a vote of 4-0.

Aistrup adjourned the meeting.

Respectfully submitted by
Jose Abraham, Planning Intern