

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, September 13, 2017**  
**7:00 PM**

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton, Vice Chairperson; and La Barbara Wigfall

MEMBERS ABSENT: Angie Danner; Brandi Nelson

STAFF PRESENT: Carol Davidson, Senior Planner; Chris Kutz, Planner; and Annapurna Singh, Planning Intern

**CONSIDER THE MINUTES OF THE AUGUST 9, 2017, BOARD OF ZONING APPEALS MEETING.**

Hamilton moved to approve the August 9, 2017 minutes which was seconded by Wigfall and passed with a vote of 3 – 0.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE REDUCTION OF THE FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TWELVE (12) FEET FOR A PROPOSED PRIVACY FENCE ALONG BUENA VISTA DRIVE TO SCREEN A PROPOSED PARKING LOT FROM ADJACENT RESIDENTIAL PROPERTIES; AN EXCEPTION TO ALLOW FOR PARKING IN THE FRONT YARD SETBACK WITHIN A PROPOSED PARKING LOT ABUTTING BUENA VISTA DRIVE; AN EXCEPTION TO ALLOW FOR A REDUCTION OF THE FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO ZERO (0) FEET FOR A PROPOSED PRIVACY FENCE ADJACENT TO AN UNDEVELOPED SIXTY (60)-FOOT PUBLIC RIGHT-OF-WAY; AND AN EXCEPTION TO ALLOW FOR PARKING IN THE FRONT YARD SETBACK WITHIN A PROPOSED PARKING LOT ABUTTING AN UNDEVELOPED SIXTY (60)-FOOT PUBLIC RIGHT-OF-WAY LOCATED WITHIN THE C-1, RESTRICTED BUSINESS DISTRICT, LOCATED AT 1133 COLLEGE AVENUE. (APPLICANT/OWNER: MANHATTAN MEDICAL CENTER, INC./BOB DIEBALL)**

**FILE NO. EXC-17-070**

Kutz presented the staff report, which recommended approval for the two (2) Exceptions along the undeveloped right-of-way with three (3) conditions of approval, and recommend denial for the two (2) Exceptions along Buena Vista Drive.

Hardy opened the public hearing.

Bob Dieball, applicant, discussed the proposed addition to Building E, which would require the removal of 70 stalls and create a need for the facilities to have parking elsewhere on the Manhattan Medical Center campus. That new parking would have to be gained wherever they could find it on the land within the subject site. He also stated the addition could take out more than 70 stalls based on turn lanes or drive aisles for the parking lot, but this was not determined at the time. He said it could be 80-90 stalls removed for the new building. He said the 11 stalls that are within the front yard setback along Buena Vista Drive could be important to the facility's older patients who need to be closer to the proper building. He reiterated they are trying to maximize their available space and are pursuing the Exception requests to satisfy this.

Wigfall asked Dieball if there was going to be any removal of existing trees within the proposed parking lot. Dieball said he expects there will be some tree removal, but some will be replaced, as shown in the site plan submitted with the application.

Hamilton asked Dieball if he had a sense for how full the parking lot gets between Buildings G and E. Dieball said it gets "very full." He said there seems to be an excess of ADA stalls that face Building G. The stalls are required due to there being an ambulatory surgery center in the urology suite. He also stated the addition to Building E may contain an ambulatory surgery center, which would also require additional ADA parking spaces.

Hamilton asked if the new parking area would allow vehicular traffic to flow around Building G. Dieball said the proposed parking lot would not connect to the parking area to the west of Building G due to an elevation change.

Jim Morrison, corporate secretary and legal advisor for Manhattan Medical Center, said he believes the Manhattan Medical Center has taken actions to limit access to the campus from Buena Vista Drive, such as prohibiting access along the rights-of-way. He said Manhattan Medical Center did not want traffic entering and leaving from Buena Vista Drive. He said he does not want access to the campus from the undeveloped right-of-way, and he believed this setback reduction was appropriate. He said the foot traffic along the undeveloped right-of-way was not generated by people accessing the Manhattan Medical Center. He stated he understood the parking lot entering the neighborhood can create issues. He said Manhattan Medical Center does not want its patients or employees to park along Buena Vista Drive and enter through that street. He said the proposed parking plan was "solid" and "not done with any cavalier attitude about the neighborhood." He added Manhattan Medical Center "would be and could be good neighbors and that this is not a severe encroachment nor harm to the quality and expectation of a quiet neighborhood." He said the proposed parking plan was an improvement over the existing rental houses on the site. He said his comments were in response to City staff that was trying to "cut a line a little too fine."

Wigfall asked Morrison if Manhattan Medical Center had looked at the drainage impacts of the proposed parking area. Morrison said engineering work had been done, and City Administration had looked at it and deemed it satisfactory to standards.

Hamilton asked if the overgrown vegetation along the undeveloped right-of-way was being maintained. Morrison said it “looks like a jungle” and showed a picture to showcase this existing vegetation. Hamilton said the fence was a good idea, and important for the Manhattan Medical Center to have a continued fence around its parking area. She asked if there was any discussion about landscaping in between the proposed fence and public rights-of-way. He said any plantings and other landscaping would be determined once it is known where the fence will be located.

Ben Eckhart, 1121 Hylton Heights, said it is quite unusual for him to agree with the City. He said he disagrees with the setback reduction along Buena Vista Drive. He also said he has a problem with giving Exceptions to all applications. He recognized Manhattan Medical Center could build a parking lot on the current residential properties, but he wished they would abandon this process. He disagrees with removal of any of the houses.

Mary Molt, 1122 Hylton Heights, said she agrees with the City’s assessment that the Exception request to reduce the front yard setback along Buena Vista Drive is not appropriate. She said it was unfortunate that a business’s dream is going to “squelch” the dreams of some of the property owners along Buena Vista Drive. She said the neighborhood is a nice area and an affordable place to live. She believed the rules of a 25-foot setback should stay the way as they are.

Mike Perl, 2424 Buena Vista Drive, said he and some other neighbors do not consider the Manhattan Medical Center a good neighbor. He said the neighborhood asked them to put up a fence around the parking lot so employees or patients could not easily park along Buena Vista Drive. He said the minimum front yard setback requirement is to help protect neighbors. He said homes across the street are now going to look at a fence and parking lot as opposed to existing homes. He said Manhattan Medical Center has many options for additional parking, but the proposed parking lot and Exception requests are the “cheapest.” He cited an example of the Mayo Clinic in Rochester, Minnesota. He said the Manhattan Medical Center could tear down some of its own buildings and build taller to accommodate more parking.

Gwyn Riffel, 1117 Hylton Heights, said this neighborhood is unique and historic. He said the houses that are going to be removed are important because they are historic and affordable. He did not understand why Manhattan Medical Center wanted to remove the homes for a surface parking lot. He said City Administration was correct and that allowing the Exception request along Buena Vista Drive would have an adverse effect. He closed by saying he hopes the Board follows the City Administration’s recommendations.

Earl Baugher, 2415 Buena Vista Drive, said he agrees with what neighbors stated earlier. He said he has lived in the neighborhood for a long time and would hate to see it disrupted by what is proposed with the Exception requests.

Chris Stewart, 400 Cherry Circle, said he was there to represent his mother-in-law who lives at 2407 Buena Vista Drive. He said he was unsure how the proposed parking would be used, either by employees or patients. He said he was confused on why the facility needed more parking. He said he used to live in one of the homes that is going to be demolished, and he

does not remember the existing parking area ever being full. He said the parking lot encroaching into the setback would be disruptive to the neighborhood and affect the neighborhood's home prices.

Hardy closed the public hearing.

Hamilton thanked people for attending. She appreciated what neighbors have to say about any proposal. She said she agrees with the neighbors that a fence and parking lot located 12 feet from the property line is a big difference from 25 feet, but as a Board member, she has to weigh the application against the standards for Exceptions. She said City Administration has done a good job of explaining that two of the four standards were not met. She said she is willing to allow the parking abutting the undeveloped right-of-way. She understands the Manhattan Medical Center wants as much parking as it can get, but that goal appears to have no end. She said if the parking is for employees, then employees can park further away which would allow patients to park closer. She applauded the Buena Vista Drive residents for fighting to save their neighborhood, but she believed this would not be the neighborhood's last battle.

Wigfall also applauded the neighborhood for attending the meeting. She said she appreciates that the existing trees are to remain along Buena Vista Drive to soften the proposed fence. She said she agrees with the City Administration's recommendations.

Hardy said he supports City Administration's recommendations as well. He said neighborhood input helps the Board make a decision as it lets them know how strongly people feel about the application and if the application satisfies one of the standards. He said it is the Board's duty to grant Exceptions if applications meet the standards.

Hamilton asked what regulations are in place to protect residential properties from lighting from nearby commercial uses. Kutz alluded to Section 4-201(E)(2) of the Manhattan Zoning Regulations that states certain measures shall be taken to prevent exterior light fixtures from casting light upon property in a residential district.

Hamilton made a motion to approve an EXCEPTION to allow for a reduction of the front yard setback from twenty-five (25) feet to zero (0) feet for a proposed privacy fence adjacent to an undeveloped sixty (60)-foot public right-of-way; and an EXCEPTION to allow for parking in the front yard setback within a proposed parking lot abutting an undeveloped sixty (60)-foot public right-of-way located in the C-1, Restricted Business District located at 1133 College Avenue with the following conditions of approval:

1. The Exceptions shall be limited to the proposed parking lot submitted with the application; however, the parking spaces within the front yard setback adjacent to Buena Vista Drive shall be removed and the fence must be held to the minimum required twenty-five (25)-foot front yard setback requirement along Buena Vista Drive.
2. The proposed fence along the property line abutting the undeveloped sixty (60)-foot right-of-way shall be placed on the property line or within the subject site.
3. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed 3 – 0.

Hamilton made a motion to deny an EXCEPTION to allow for a reduction of the front yard setback from twenty-five (25) feet to twelve (12) feet for a proposed privacy fence along Buena Vista Drive; and an EXCEPTION to allow for parking in the front yard setback within a proposed parking lot abutting Buena Vista Drive. The reasons for the denial are the off-street parking spaces are not required based on City of Manhattan parking regulations and the encroachment increases the disruption of uses into the Buena Vista Drive neighborhood. These two (2) Exception requests do not meet two (2) of the four (4) standards (Section 14-605(B) and Section 14-605(D) of the Manhattan Zoning Regulations).

Wigfall seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the EXCEPTIONS at 1133 College Avenue:

**PRESENT USE:** Single-family detached dwellings

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site meets all other applicable bulk regulations and uses expect for the Exception requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The effect of the encroachments into the front yard setback will be a mix of adverse and negligible based on the proximity to a respective right-of-way. The adjacent properties will experience a disruption of the neighborhood with the intrusion of parking. Some of this adversity cannot be contained due to the zoning and property lines. It is within the rights of the property owner (Manhattan Medical Center, Inc.) to develop the lot in which it sees fit as long as it conforms to the zoning regulations. However, the Exception requests do further increase the hardship placed on the Buena Vista Drive neighborhood as dwelling units and the surrounding land are developed into a surface parking lot.

The impact of the parking lot on the Buena Vista Drive neighborhood became apparent during the Manhattan Urban Area Planning Board meeting in July 2017. After hearing input from the public, the Planning Board recommended denial of a rezoning request for the residential lot to the west of the proposed parking area (2408 Buena Vista Drive). The applicant then withdrew the rezoning request and subsequently submitted a site plan for the revised parking area to the Board of Zoning Appeals, which is a part of this Exception request.

To limit further adverse impacts on the adjacent properties, City staff recommended removal of the eleven (11) proposed spaces in the front yard setback along Buena Vista Drive and move the six (6)-foot tall privacy fence back to the minimum required front yard setback of twenty-five (25) feet for the R, Single-Family Residential District. This recommendation occurred during the administrative review of the application in mid-August. The intent of the recommendation was to soften the intrusion of the off-street parking serving the Manhattan

Medical Center campus into the neighborhood. It also stemmed from an analysis of the Manhattan Medical Center parking, which showed it did not need the parking spaces within the front yard setback to meet the minimum off-street parking requirements. While the area is zoned appropriately for off-street parking, City Administration believed the impact on the neighborhood could be detrimental if it is allowed to further encroach towards Buena Vista Drive. Despite the recommendation from City staff, the applicant elected to move forward with the application as submitted.

City Administration also recommended the applicant do further analysis of parking for the Manhattan Medical Center campus to determine if the proposed addition to Building E would increase the need for more parking spaces. Based on what was submitted with the application, a proposed 24,000-foot addition to Building E would not increase the need for more parking on the site from a standpoint of what is required by the City regulations (*This analysis conducted by City Administration can be found in the agenda packet given to the Board*). The applicant did not submit a new parking analysis to the City at the time of public notice on August 23.

The proposed parking abutting the underutilized sixty (60)-foot public right-of-way will have less of an impact on adjacent properties compared to the parking along Buena Vista Drive. There is a residential property to the south of the parking and right-of-way, but the applicant is proposing to put a six (6)-foot tall sight obscuring fence along the property line. This would help protect the neighboring property from the encroachment into the setback. The width of the right-of-way (60 feet) also creates a buffer between the two properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The impacts of the Exception requests on the public health, safety, morals, order, convenience, prosperity and general welfare are minimal. The parking and fence do not impede any vision clearance triangles and are not placed over any drainage or conservation easements. The property lines abutting the rights-of-way of Buena Vista Drive and the undeveloped sixty (60)-feet are also platted as no access, which helps prohibit points of conflict between vehicles and pedestrians entering and exiting the parking area in the future. These no access property lines also prohibit motor vehicles from driving through the Buena Vista neighborhood to enter the parking lot and Manhattan Medical Center campus.

The proposed eight (8) off-street parking spaces and fencing that are against the undeveloped right-of-way eliminate the entire setback but cause minimal public impact. The right-of-way has become a desire path for pedestrians as shown by the erosion from foot traffic. The applicants are softening the impact of this Exception request for the parking in the front-yard setback by installing the fencing. It should be noted fencing is not required when it is abutting public right-of-way or more than twenty-five (25) feet from residential property. However, the neighborhood requested the fence to be installed, and the applicant is satisfying this wish.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** Strict application of the regulations would not allow for the nineteen (19) off-street parking spaces nor the fencing to be placed on the site within the two setbacks. Since the Manhattan

Medical Center campus features adequate parking, as it is shared between the zoning lots, it is reasonable to strictly apply the regulations. However, since the sixty (60)-foot right-of-way is undeveloped and has no logical connection to other public rights-of-way to the east, it can be anticipated the off-street parking and fencing abutting this stretch of land will have little to no public gain or loss. Also, access is prohibited along the property line adjacent to this right-of-way as shown in the final plat. This means this property line and yard along the right-of-way is more of a side or rear yard in nature. Therefore, strict application against this area can be deemed unnecessary considering the circumstances.

Although the eight (8) spaces against the undeveloped right-of-way are within reason, the eleven (11) parking spaces and fence in the front yard setback along Buena Vista Drive are not necessary when considering the facts. The parking area for the entire Manhattan Medical Center campus has 722 parking stalls over the fourteen (14) acres. It is required to have 670 based on the combined square footage of the buildings on the campus (*see Section 7-102(E)(8) of Manhattan Zoning regulations for more about computation of parking stalls*). When factoring in the potential of the Building E Addition at 24,000 square feet – 80 percent of which is anticipated to be used for off-street parking calculations – the site still features forty-four (44) more spaces than required if all seventy-four (74) spaces on the proposed parking lot were provided. If the eleven (11) spaces along Buena Vista Drive were not to be approved, the site would have thirty-three (33) more spaces than required. In other words, the parking within the front yard setback is not required for the Manhattan Medical Center to meet its minimum parking standards. Therefore, a viable alternative to the front yard setback encroachment – to not provide these specific parking spaces – is present.

**Table 1 - Off-Street Parking Analysis, Manhattan Medical Center**

	<b>Total</b>	<b>C-1</b>	<b>PUD</b>
Current parking	722	341	381
After boundary adjustment (44 stalls)	722	385	337
Estimated loss from Building E addition	70	70	-
Added parking on residential lots	62*	62	-
<b>Total parking</b>	<b>714</b>	<b>377</b>	<b>337</b>
(shortfall)/excess	<b>44</b>	<b>(47)</b>	<b>91</b>
Added parking in front yard setbacks	19	19	-
Parking spaces in Buena Vista Drive setback	11	11	-
Parking spaces in undeveloped right-of-way setback	8	8	-
Added parking w/o front yard setback parking	43	43	-
<b>Total parking w/o setback parking</b>	<b>695</b>	<b>358</b>	<b>337</b>
(shortfall)/excess	<b>25</b>	<b>(66)</b>	<b>91</b>

*\*New parking area shown in site plans show 74 spaces. However, 12 existing spots are to be removed due to the new configuration. This results in a net gain of 62 spaces from the proposed parking area.*

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR OFF-STREET PARKING IN THE FRONT YARD; AND AN EXCEPTION TO ALLOW FOR A REDUCTION IN THE FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO SEVEN (7) FEET FOR AN EXISTING BASKETBALL COURT WITHIN THE R-M/UO, FOUR-FAMILY RESIDENTIAL DISTRICT WITH UNIVERSITY OVERLAY, LOCATED AT 1224 FREMONT STREET. (APPLICANT: BRENT BOWMAN, BBN ARCHITECTS, INC.; OWNER: DR. DOUG BURTON)**

**FILE NO. EXC-17-077**

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR THE EXISTING SIGMA CHI FRATERNITY HOUSE LOCATED IN THE R-M/UO, FOUR-FAMILY RESIDENTIAL DISTRICT WITH UNIVERSITY OVERLAY, LOCATED AT 1224 FREMONT STREET. (APPLICANT: BRENT BOWMAN, BBN ARCHITECTS, INC.; OWNER: DR. DOUG BURTON)**

**FILE NO. CUP-17-076**

Kutz presented the staff report for the Exceptions with recommendation of approval and four (4) conditions of approval as well as the Conditional Use with recommendation of approval and four (4) conditions of approval.

Wigfall asked if the proposed security gate would connect to a fence near the northeast corner of the subject site. Kutz said he would let the applicant answer the question.

Hardy opened the public hearing.

Patrick Schaub, representing the applicant, said the gate on the northeast corner of the subject site would be three (3)-feet tall and match the gate to the north across the alley. He said the gate is meant to protect the parking area due to its proximity to Aggieville. He said the property owner has worked hard to be a good neighbor and provide adequate screening from neighboring properties. He said the reason for the addition above the kitchen is to free up some space in existing rooms.

Hamilton asked about the material of the fencing along the eastern property line. Schaub said it would be an aluminum slat fence.

Hardy closed the public hearing.

Hamilton said she could support the request because it was not expanding the footprint or occupancy. She said it has been nice to see homes updating but not expanding. She believed the renovations would make the corner of N. Manhattan and Fremont more attractive and improve the safety for the residents.



Wigfall commended the applicants for retrofitting a facility in the community. She said the application has accomplished this by meeting their own needs and being sensitive to the neighbors.

Hardy supported the comments by his fellow Board members.

Wigfall made a motion to approve the EXCEPTION to allow for off-street parking in the front yard; and an EXCEPTION to reduce the front yard setback from twenty-five (25) feet to seven (7) feet for an existing basketball court located within the R-M/UO, Four-Family Residential District with University Overlay located at 1224 Fremont Street, with the following conditions of approval:

1. The Exceptions shall be limited to the basketball court and parking stalls shown in the application.
2. The basketball court shall be maintained in good condition.
3. The landscaping screening shall be maintained in good condition.
4. All applicable permits shall be obtained.

Hamilton seconded the motion, which passed 3 – 0.

Wigfall made a motion to approve the CONDITIONAL USE to allow for an existing Sigma Chi fraternity house located in the R-M/UO, Four-Family Residential District with University Overlay located at 1224 Fremont Street, with the following conditions of approval:

1. All applicable permits shall be obtained.
2. The Conditional Use shall be limited to the existing Sigma Chi fraternity house and renovations as outlined in the application.
3. The Sigma Chi fraternity house and surrounding landscaping shall be kept in good condition.
4. The concurrent Exception to allow parking in the front yard shall be approved.

Hamilton seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the EXCEPTIONS at 1224 Fremont Road:

**PRESENT USE:** Sigma Chi fraternity house

### **STANDARDS FOR AN EXCEPTION**

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site meets all other applicable bulk regulations except for these Exceptions requested. The use, a fraternity house, is a Conditional Use in the R-M/UO, Four-Family Residential District with University Overlay. A concurrent application for the Conditional Use is to be considered by the Board of Zoning Appeals.

The twenty (20) parking spaces accessed via the alley to the north are angled at about 60 degrees,

meaning they are required to have a minimum alley offset of one (1) foot, per the standards outlined by the City Engineer. Each of the twenty (20) spaces complies with this requirement. The stall lengths and drive aisle widths shown in the submitted site plan located in the east parking area also meet City Engineer standards.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The off-street parking is not expected to have an adverse effect on adjacent properties. The existing parking stalls, which are believed to have been on the site since the house was rebuilt in the 1980s, are placed in a suitable place considering the layout of the site and relationship to adjacent properties. There is a public alley in between the subject site and the adjacent property to the north to help buffer the two uses. The north adjacent property also features off-street parking abutting the alley with a short steel picket fence along the property line. This allows both parking areas to face one another and lessen the impact of both on the residential aspects of each of the properties.

The basketball court is adjacent to the right-of-way, which creates a public buffer between the use and adjacent properties to the west. The application also proposes a line of hedges, which will measure four (4) feet in height when mature, to help screen the basketball court from properties to the west of the subject site. This helps lessen the impact of the existing legal nonconformity.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The impacts of the Exception requests on the public health, safety, morals, order, convenience, prosperity and general welfare would be minimal. Both the parking and basketball court are outside of any conservation and drainage easements and do not impede vision clearance triangles. The applicants are also taking measures to reduce the impact of the encroachments into the setbacks through screening. The basketball court will also have similar screening hedges to soften its impact on the public right-of-way of N. Manhattan Avenue.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the regulations would force the removal of the thirteen (13) off-street parking spaces within the front yard. This would not allow the use of a fraternity house at its current size (60 occupants, one housemother) to exist on the subject site. Without the nonconforming parking spaces, the large house on the site would be forced to reduce its number of residents by about seventeen (17). The other option would be to require an Exception for a reduction in the required off-street parking with its current number of residents (61), which could increase the potential of parking on streets or in City Park by the fraternity residents. These options appear to create negative impacts on the community.

Strict application would also require the removal of the full-sized basketball court from the site. The alternative would then become building a smaller area for playing basketball. However, considering the neighborhood and adjacent uses (Aggieville, City Park), the recreational use on the site fits the nature of the area. Therefore, there is no public gain or loss by removing the basketball court from the site. The applicants are also renovating the court to make it more aesthetically pleasing and usable by residents.

Finally, the existing legal nonconformities are not being expanded. The requested Exceptions – for the off-street parking in the front yard as well as the basketball court – are to clear the uses of the nonconformity status and clear title. Since the impact of the existing conditions will not be intensified and have existed in some form since the original home was built in the 1950s, it is unnecessary to strictly apply the regulations.

The Board made the following findings of fact for the CONDITIONAL USE at 1224 Fremont Road:

**PRESENT USE:** Sigma Chi fraternity house

### **STANDARDS FOR A CONDITIONAL USE**

**A. Compliance with all applicable regulations:** The existing structure on the subject site complies with applicable bulk regulations of the R-M/UO, Four-Family Residential District with University Overlay. However, a portion of the off-street parking (13 total) is within the front yard to the west. These parking spaces existed on the subject site since the house was reconstructed in 1982. There is also an existing basketball court on the west side of the property that is within the front-yard setback of twenty-five (25) feet. Concurrent Exceptions are being requested with the Conditional Use application for the nonconformities. All other applicable regulations are compliant.

**B. Probable effect on adjacent properties:** There would be no adverse effect on adjacent properties if the Conditional Use was approved. The existing house on the subject site is not changing the size of its building footprint or its number of residents. The number of residents and size of the house were appropriate when the use of a fraternity house was permitted, and not a Conditional Use, in its zoning district at the time of reconstruction in the early 1980s.

The subject site is in a transitional area from the Aggieville business district to City Park. The adjacent land uses are multi-family dwelling units. There are three (3) single-family homes to the west of the subject site, but the overall character of the neighborhood along Fremont Street near the subject site is mostly apartment-based. This falls in line with the R-M/UO, Four-Family Residential District with University Overlay zoning on the north side of Fremont. The Conditional Use of the fraternity meets the type of the neighborhood in which it sits.

The applicants held a neighborhood meeting, as required for Conditional Use applications, on July 27, 2017 at the Sigma Chi fraternity house. Patrick Schaub of BBN Architects, representing the applicants, hosted the meeting but no one attended.

**C. Domination by use over neighboring properties:**

- 1. Location, nature, and height of physical improvements:** The proposed physical improvements to the Sigma Chi fraternity house are not expanding the existing building's footprint. The proposed addition is a second-story addition located directly above the existing kitchen. There will be a roof added to protect a new exit stairway

from the basement on the west side of the north wing. There will also be an accessibility ramp installed on the southeast corner of the building. All additions to the structure will be “designed to blend with the existing architecture,” as stated in the application documents.

The parking areas will undergo resurfacing and restriping as part of this project. The twenty (20) angled parking spaces to the north and the entire east parking area, with twenty-six (26) perpendicular parking spaces, will be resurfaced and restriped. The number of parking stalls will not be increased from its current number.

Four (4) new light poles will be installed on the corners of the east parking area. Per Manhattan Zoning Regulations, the lighting must be directed away from residential properties and public rights-of-way so not to interfere with neighboring uses.

2. **Landscaping and screening:** Landscaping and screening will be added to the subject site to help protect adjacent properties from the proposed Conditional Use. A planted hedge, which will reach a mature height of four (4) feet, is proposed for the west edge of the existing basketball court. A similar hedge is proposed in between the east parking area and south property line. The purpose of these sight-obscuring hedges is to lessen the impact of the encroachments into the setback.

The applicant has also proposed to “cleanup and enhancement of the existing planting areas.” However, the mature trees on the site will remain. Any modifications to the foundation plantings will be to improve the current look.

**D. Adequate provision of parking and loading:** The subject site features adequate parking for the Conditional Use. This is due to both of the existing number of off-street parking stalls and resident capacity at the fraternity house not expanding. Currently, there are sixty (60) residents and one (1) housemother living in the house. The site, meanwhile, features forty-six (46) parking stalls. Based on the Manhattan Zoning Regulations, fraternities shall have “*at least one (1) parking space for each occupant for the first twenty (20) occupants, or a total number of spaces equal to seventy-five percent (75%) of the total occupants, whichever is greater*” (Section 7-103(A)(4)). In this case, the seventy-five percent (75%) of total occupants (45.75) is higher. Therefore, the forty-six (46) off-street parking stalls meet the minimum requirement for this use.

However, several of the parking stalls are within the front yard on the northwest side. A concurrent Exception to allow for this off-street parking is a part of this application.

Loading is adequate since the site has direct access to an alley connecting to N. Manhattan Avenue and N. 12th Street. A new access control gate is proposed at the entrance of the east parking area, but this will not affect loading. There is also a sidewalk proposed near the first floor kitchen to help with deliveries and access to this portion of the building.

**E. Adequate provision of drainage, and other public utilities:** There is currently adequate provision of drainage and other public utilities for the existing fraternity house. Since no changes

are going to be made to the number of residents or intensity of the Conditional Use, the current provisions will remain adequate.

**F. Adequate provision of access:** The subject site gains vehicle access from the alley in between Fremont Street and Laramie Street. Both parking areas, the one along the north property line and the other on the east side of the subject site, gain access to the alley. A gate is proposed to be installed at the entrance off the alley into the east parking area.

Pedestrians access the site via a sidewalk perpendicular to the Fremont Street right-of-way as well as the parking areas. Both of these are adequate for the Conditional Use.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED FRONT YARD SETBACK FROM SIXTY (60) FEET TO TWENTY-FIVE (25) FEET FOR AN ACCESSORY STRUCTURE ASSOCIATED WITH AN EXISTING SINGLE-FAMILY RESIDENCE ON A CORNER LOT LOCATED WITHIN THE R, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED AT 407 EHLERS ROAD. (APPLICANT/OWNER: BRETT AND HILARY ESRY)**

**FILE NO. EXC-17-079**

Singh presented the staff report, which recommended approval for the Exception with three (3) conditions of approval.

Hardy opened the public hearing.

Brett Esry, applicant, stepped to the podium to answer any questions from the Board. The Board did not have any further questions.

Hardy closed the public hearing.

Wigfall said she does not have a problem the request. She appreciated the vegetation did a great job of screening the subject site.

Hardy said this property is unique due to its topography.

Hamilton mentioned a similar case that was also unique due to topography and vegetation.

Hamilton made a motion to approve an EXCEPTION to allow for a reduction of the front yard setback from sixty (60) feet to twenty-five (25) feet for a shed, to be located within an R, Single-Family residence at 407 Ehlers Road with the following conditions of approval:

1. The Exception shall be limited to the shed as proposed in the application.
2. The shed shall be maintained in good condition.
3. All applicable permits shall be obtained.

Wigfall seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the EXCEPTION at 407 Ehlers Road:

**PRESENT USE:** Single-family detached dwelling unit

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The subject site meets all other applicable regulations except for the Exception requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** Due to the dense tree coverage, the proposed shed is not visible from either the street or the adjacent properties. These site factors limit any adverse effect on adjacent properties. The tree coverage is dense enough to cover the view of the shed even in winter after most of the foliage is lost. Also, the neighboring property is about twenty (20) feet lower than this property hence the shed will have limited visibility from the neighboring property. Since the shed is likely to be nearly invisible from the adjacent properties or the street it will not have an adverse effect on adjacent properties.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** There should be no adverse impact of the shed on public health, safety, morals, order, convenience, prosperity or general welfare as it will not be visible from the street or adjacent properties. It also does not obscure vision clearance triangles or lie within any easements.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The proposed location of the shed is clear of trees and other vegetation and is relatively flat. The strict application of these regulations would mean placing the shed either to the northeast or behind the house. In both the cases the ground has a steep slope (approximately twenty (20) degrees). The land is covered with trees and ground vegetation and is not vehicle accessible in current conditions. In order to make it accessible and suitable for putting up a shed, trees would need to be removed, grading to take place, and landscaping to be installed. These alternatives seem unreasonable when more suitable conditions exist elsewhere on the subject site.

The presence of a drainage ditch also limits where the shed can be placed. The ditch helps direct storm water from the site and “can carry significant runoff in a storm,” according to the applicant as stated in the application. Besides, this alternative does not allow the applicant to meet the sixty (60) feet front yard setback requirement.

Cutting down trees, clearing ground vegetation or interfering with topography will not result in any gain for either the community or the property owners. In fact, it will cause a detriment to the natural habitat of the area. Thus, the strict application of zoning regulations is unreasonable in this case.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR A PROPOSED GROUP DAY CARE CENTER WITHIN**

**THE PROPOSED FIRST CHRISTIAN CHURCH LOCATED IN THE R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT, LOCATED TO THE WEST OF GRAND MERE PARKWAY AT THE INTERSECTION OF GRAND MERE PARKWAY AND GRAND CHAMPIONS DRIVE. (APPLICANT: BEN DUERFELDT; OWNER: FIRST CHRISTIAN CHURCH)**

**FILE NO. CUP-17-078**

Kutz presented the staff report, which recommended approval for the Conditional Use with three (3) conditions of approval.

Hamilton asked to clarify if the hours of operation or number of children to be cared for at the day care were to change, would the applicant have to request a modification to the Conditional Use. Kutz confirmed this was correct.

Hardy opened the public hearing.

Richard Gallagher, representing the applicant, said the group day care has been a part of First Christian Church's plans for the site from the very beginning. He said they have worked with the architect and construction firm to meet the requirements of a day care. He reiterated the number of children to be cared for at the site would be forty-nine (49).

Hardy closed the public hearing.

Wigfall said the plan was ambitious but well planned.

Hamilton said the use of a group day care center is good for this area as it develops.

Wigfall made a motion to approve the CONDITIONAL USE to allow for a group day care center within a proposed building for First Christian Church located in the R-1, Single-Family Residential District located west of Grand Mere Parkway at the intersection of Grand Mere Parkway and Grand Champions Circle, with the following conditions of approval:

1. All state and local licenses shall be obtained and maintained.
2. The Conditional Use shall be limited to the proposed group day care center as stated in the application.
3. All applicable permits shall be obtained.

Hamilton seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the CONDITIONAL USE at First Christian Church on Grand Mere Parkway:

**PRESENT USE:** Sigma Chi fraternity house

**STANDARDS FOR A CONDITIONAL USE**

**A. Compliance with all applicable regulations:** The proposed Conditional Use complies with

applicable regulations of the R-1, Single-Family Residential District. The site plan submitted with the application demonstrates the proposed church, which will house the group day care center, meets the bulk regulations.

**B. Probable effect on adjacent properties:** The adverse effect of the Conditional Use on adjacent properties will be minimal because the hours of operation are during the day and within a building that is set back from Grand Mere Parkway more than 160 feet.

As required for Conditional Use applications, the applicants held a neighborhood meeting on July 17, 2017 at Manhattan Fire Station #5. Two people attended, but no issues or concerns were raised, according to the meeting summary provided by the applicants.

An increase in noise and traffic is expected from the Conditional Use during the week, but this is anticipated since the site is currently undeveloped. As previously mentioned, the hours of operation and set back of the building to the property line would decrease the impact of such changes.

Anticipated future effects on adjacent properties can also be garnered by looking at two plans with policy direction. The Grand Mere Community Master Plan, which was completed in early 2000, details residential neighborhoods, the golf course, and commercial amenities along Kimball Avenue and Marlatt Avenue. However, it does not describe a use such as group day care center. The Manhattan Urban Area Comprehensive Plan, though, does allow for “complementary neighborhood-scale supporting land uses” through its Residential Low to Medium Density (RLM) policies. A group day care center fits this type of land use. In the Future Land Use Map, the subject site is planned for residential low to medium density. Therefore, the group day care center meets the anticipated neighborhood-scale supporting land use.

**C. Domination by use over neighboring properties:**

- 1. Location, nature, and height of physical improvements:** The Conditional Use will be within the proposed church facility, using classrooms and other available rooms to operate with a capacity of forty-nine (49) children and twenty-five (25) employees. The group day care center will not alter the layout of the approved use of a church on the subject site.

On the site and landscape plan, there is a proposed playground located to the northwest of the proposed building. This area is set back about 288 feet from Grand Mere Parkway right-of-way and 130 feet from the north property line. It is situated in between the parking area and proposed building.

A monument sign is shown on the site plan, located north of the proposed driveway onto the site. A sign permit has not been issued for this sign, but a monument sign is a permitted on premise sign in the R-1, Single-Family Residential District. As shown in the site plan, the monument sign is set back from the front property line eighteen (18) feet, which is three (3) feet beyond the minimum required front yard setback.



- 2. Landscaping and screening:** The subject site features the appropriate amount of landscaping and screening for the Conditional Use based on the Manhattan Zoning regulations.

The parking stalls closest to the south, west, and north property lines are screened by a rockery wall. The adjacent land around the subject site is undeveloped and not annexed into the City, so no screening is required at this time. However, the rockery wall being installed at this time would be beneficial to potential dwelling units or any other uses built on this land, if it were to be developed.

A landscape plan submitted with the application shows a mix of shade, ornamental, and evergreen trees planted throughout the site. The shade trees include frontier elms, swamp white oak, Chinkapin oak, Kentucky coffeetree, and bald cypress. As for ornamental trees, the species will be Shantung maple. Evergreen trees (Eastern red cedar species) and shrubs will be placed along the west and north retaining wall to help screen the use further from neighboring properties and land. In addition to these Evergreen trees, there will be a total of forty-eight (48) trees planted throughout the site, ranging from small to large.

All parking stalls are within seventy (70) feet of landscaped open space.

**D. Adequate provision of parking and loading:** The Manhattan Zoning Regulations (Article VII) outline specific off-street parking requirements for “Group day care centers and nursery schools” (7-103(C)(4)). The Conditional Use at the subject site, however, will be sharing the building and parking area with the primary purpose of the building, First Christian Church. Therefore, the parking requirements for the Conditional Use are adequately provided.

**Off-Street Parking – Group Day Care**

<b>Detail</b>	<b>Standard</b>	<b>Parking Spaces</b>
49 children	1 space for each 5 children	10
25 employees during work shift	1 space for each employee	25
	<b>Total parking spaces required</b>	<b>35</b>
	<b>Total parking spaces supplied</b>	<b>102</b>

In addition to adequate off-street parking, the proposed building will be served by a loading and unloading half-circle drive aisle on the west side of the building. This west side of the building serves as the main entrance into the church.

The site plan also shows a drive aisle that accesses five (5) parking stalls, trash receptacle, and loading area to the basement of the church. This aisle is about sixty-two (62) feet from the west property line and driveway onto Grand Mere Parkway. It is anticipated this would be more appropriately used for church functionality and not the group day care center Conditional Use.

**E. Adequate provision of drainage, and other public utilities:** All utilities to the Conditional Use will connect to the existing sanitary sewer and water lines along Grand Mere Parkway. The site features several easements to allow access to utilities on the site.

**F. Adequate provision of access:** Adequate provision of access is provided on the site for the Conditional Use for both pedestrians and vehicles. The subject site is currently undeveloped with no curb cuts or driveways, but the site plan shows a proposed driveway near the south corner of the property that gains access from Grand Mere Parkway for vehicles. The driveway is twenty-four (24) feet wide and increases to a twenty-six (26) foot width between the parking stalls as the driving aisle progress west and towards the main entrance of the church. The twenty-six (26) foot drive aisle width meets City Engineer standards. The median in Grand Mere Parkway will be cut to create access to the driveway into the subject site.

Pedestrians are able to access the subject site via a proposed six (6)-foot wide sidewalk also near the south corner of the property and south of the proposed driveway. The sidewalk connects to the existing sidewalk within the public right-of-way of Grand Mere Parkway and runs north towards the church. The sidewalk then connects to several entrances of the building and runs adjacent to the parking stalls.

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION UNDER THE TERMS OF THE MANHATTAN ZONING ORDINANCE OF THE CITY OF MANHATTAN, KANSAS, TO ALLOW FOR A REDUCTION IN THE MINIMUM FRONT YARD SETBACK FROM TWENTY-FIVE (25) FEET TO TEN (10) FEET FOR A PROPOSED DWELLING UNIT LOCATED IN THE R-1/AO, SINGLE-FAMILY RESIDENTIAL DISTRICT WITH AIRPORT OVERLAY DISTRICT, LOCATED AT 1116 LOCHENSHERE CIRCLE. (APPLICANT: BILL BATESON; OWNER: SBF HOMES, LLC)**

**FILE NO. EXC-17-082**

Kutz presented the staff report, which recommended denial for the Exception.

Hardy opened the public hearing.

Kelly Niemczyk and David Sumner, applicants, stated they were making the request to find a reasonable spot to build the home. Niemczyk addressed a couple points made by Kutz. She said Lochenshere Circle is completely curved, and if the setback was twenty-five (25) feet or not, the curve would hinder the sight line. She said the other houses on the street had bigger lots to build on and did not have a steep drop-off like the subject site. She claimed Lochenshere Circle is a very wide street and twice as wide as other streets in the area. She said issues relating to pulling out of the driveway or parking were irrelevant to the Exception request. She said the Exception request was not related to cost savings, and the property owners could build on the lot, but the home has to meet the HOA guidelines. She added the request was not about cost savings but whether the property and home were going to sell. She mentioned current drainage issues and lack of care for the lot in its current condition. She also said while they requested a reduction to a ten (10)-foot setback, she was looking for the best reduction the Board could give her. She said Kutz told her the request could be modified by the Board. She said the fill dirt would require a compression test, and this would be done once they knew where the setback would be located.

Hardy asked for clarification on her comment that the request was mainly to get “the best we can give you.” He said that is typically not how the Board works and the applicants propose the least minimal intrusion into the setback. Niemczyk said she a reduction to fifteen (15) feet would be acceptable, but twenty (20) feet would not be enough. Sumner said they were asking for anything they could get so it can be a buildable lot. Hardy said he is not a builder, and he is not in a position to say what the exact number of the setback reduction could be.

Hamilton said the Board has a request on the table, and the request has significant problems in meeting the standards for an Exception. She said normally the topography is given consideration by the Board, but she did not understand why the proposed house cannot follow the minimum twenty-five (25) foot front yard setback. She asked if it was not possible or just more difficult to build the proposed home based on HOA standards. Niemczyk said the home is potentially valued at \$400,000+ and has to be a certain size. Sumner said they were trying to maintain a backyard with consideration to the slope in the rear yard. Hamilton said the property has a huge backyard. Niemczyk said the slope is “extremely steep” and the pictures in the City staff presentation did not do it justice. Hamilton asked how big of a backyard are they looking to maintain with the Exception request. Sumner said they are looking to have a backyard about thirty (30) to fifty (50) feet deep.

Wigfall asked if the applicants tried different configurations of the home and if any concessions were given to find a home that fits on the lot. She said the applicants may not have liked these different configurations, but they may have to give up something that allows it to fit on the lot within the standards. Sumner said the drawings in the application show the best what they could come up with.

Scott Payne, 4420 Miller Parkway, said he lives near the subject site. He said one can talk about a buildable lot and a best-case scenario that is going to make the builder the most revenue, but the City and County approved the plans for the lot by the developer. He clarified the HOA limitations on home size. He said if the Exception request was approved, it would be saying the City made a mistake in approving the plans for the lot. He said Lochenshire Circle is curved at the entrance off Miller Parkway, but in front of the subject site, it straightens out. He said the reduction to ten (10) feet would be a safety issue and “eye sore.” He also said the Exception request could also set a precedent for neighboring properties. He said he does not remember seeing any drainage issues on Lochenshire Circle.

Chris Klick, 1129 Lochenshire Circle, mentioned several neighboring properties are owned by families with children. He said he brought a letter signed by existing residents in the neighborhood that stated their opposition to the Exception request (*the letter, signed by four (4) property owners, was given to the Board by Kutz after Klick was done speaking*). He said he was open to a discussion with the builder to find a possible solution as he would like to see the street built out and give the property owner some sort of backyard.

Niemczyk returned to the podium. She said Klick would support her claim the street has plenty of drainage and subsequent mud issues. She reinforced Klick’s comment that the neighboring properties would like to see the street built out, and she was looking for some negotiations on where the setback could be located. She added the subject site is the “worst lot

out there.” She did not think the Exception request would cause a domino effect on the rest of the street.

Hardy closed the public hearing.

Hamilton said this is not a Board that can negotiate this kind of issue. She said if the applicant was serious about negotiating an alternative, the applicant could ask to have the application tabled and come back before the Board with a reduced encroachment or take the decision and submit another application. She said the applicant still has to prove why the subject site cannot work with the constraints and find something that fits. She referenced her own home where she does not have a backyard due to slope. She could not understand the need for a thirty (30) or fifty (50) foot backyard. She did not see the Exception request satisfying the standards.

Hardy said the Board does not play “Let’s Make a Deal.” He said the applicant was aware of the issue ahead of time and should have gone to the neighbors to work out some sort of agreement. He said he cannot support the request because it does not meet the standards. He also did not want to table the item because he was not convinced the solution would be worked out in a month from now.

Wigfall concurred with the comments made by Hamilton and Hardy. She added she thinks there have been some configurations to the home that have not been considered. She said there is an opportunity to find a configuration that fits the standards.

Hamilton made a motion to deny an EXCEPTION to allow for a reduction in the minimum front yard setback from twenty-five (25) feet to ten (10) feet. The Exception request does not meet two (2) of the four (4) standards, Section 14-605(B) and Section 14-605(D), because it may cause adverse effects to the adjacent properties as well as strict application of the regulations being reasonable

Wigfall seconded the motion, which passed 3 – 0.

The Board made the following findings of fact for the EXCEPTION at 1116 Lochenshire Circle:

**PRESENT USE:** Undeveloped lot

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The site is undeveloped, but the site plan submitted with the application shows it meets all applicable regulations except for the Exception requested.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The reduction of the minimum front yard setback from twenty-five (25) feet to ten (10) feet would disrupt the character of the neighborhood and cause adverse effects on adjacent properties. The adverse effects stem from two perspectives: the sight line down the street for existing and potential neighbors would be disrupted, and the separation of structures from the right-of-way would be impacted.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The impacts of the Exception requests on the public health, safety, morals, order, convenience, prosperity and general welfare would be minimally adverse. The proposed location of the home is outside a ten (10)-foot utility easement that runs adjacent to the front property line. It also does not lie within any drainage or conservation easements. Since the subject site is an interior lot, the encroachment does not impede any vision clearance triangles.

The length of the proposed driveway, though, could create the potential of adverse effects on the public. The site plan shows a 17.5-foot driveway, which is shorter than a typical 90-degree parking stall in a parking lot (at least 18.5 feet is required by City of Manhattan Public Works department). This could develop parking of vehicles within the right-of-way portion of the driveway. The size of the driveway also limits the number of vehicles that can be parked on the property relative to neighboring properties.

**THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** Since the site is undeveloped, and the possible lot to build on from a square footage standpoint is large, strict application is reasonable in this situation. However, despite the square footage of the lot being large, the topography of the lot is not conducive to a typical home construction or layout. It is also important to consider the covenants on the lot that determine a minimum floor area for living space as well as the current condition of the fill dirt. Those restrictions limit where a home can be built on the lot and how much is required to go there. The intent of the front yard setback regulation seems to be ignored, though, by the application. Constructing the home on the lot will require significant engineering, but the reasons given by the applicant, such as convenience or costs, are not reasonable to be able to grant the Exception. Homes have been built on slopes in the past, and ensuring the homes are constructed on properly-documented compacted fill or to the original ground is a standard all lots are held to by the City's Code Services department.

Although there are site and deed restrictions, the land is undeveloped and therefore should be held to the regulations as much as possible. The requested front yard setback reduction to ten (10) feet would project farther out than the front façade of neighboring houses, creating a disruption of the neighborhood character. Impacts of the proximity to the right-of-way and street could be adverse to the property owner as well as users of the right-of-way.

A fact to consider is part of the listed standards for Exceptions: "Whether or not the applicant acquired the property with knowledge of the conditions which require the exception and whether or not the consideration for the acquisition took into account such conditions." Acquisition of the property seems to be tied to the Exception request. The need for the Exception seems to be self-created by the applicant, thus showing the applicant considered the conditions that require the Exception.

Another fact to consider is whether there are reasonable alternatives to the Exception request. The site plan submitted with the application shows large side yards and limited rear yard space due to the topography of the site. However, an alternative to the topography is to grade and

engineer the site so that it is structurally sound to build on. This would not be an uncommon solution as it appears to be used by several other properties within a general proximity to the subject site. It also ensures the construction of the home meets building code requirements, a standard applied to all homes in Manhattan.

The intents of the front yard setback regulations are to provide enough space for a use to function on its zoning lot; to allow for a uniform visual look to the neighborhood; to permit adequate line-of-sight down the street; to allow open space for adequate drainage, sunlight, and air for the building; and to provide adequate separation of structures. It seems the Exception request does not meet some of these intentions of the regulations, specifically the uniform visual look and providing enough space for a use to function on its zoning lot.

Hardy adjourned the meeting at 9:06 p.m.

Respectfully submitted by,  
Chris Kutz, Planner