

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

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

MEMBERS ABSENT: None

STAFF PRESENT: Steve Zilkie, Senior Planner, AICP; Chad Bunger, Planner; Anne Antonini, Planning Intern

**CONSIDER THE MINUTES**

Hamilton moved to approve the March 12, 2008 minutes which was seconded by Wigfall and passed with a vote of 5-0.

**A PUBLIC HEARING to consider a CONDITIONAL USE to allow the renovation of an existing single-family dwelling unit to a two-family dwelling unit, located within a R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay, in which one or both of the dwelling units is greater than six-hundred (600) square feet in floor area and where one or both of the dwelling units has more than two bedrooms. The property is located at 1011 Humboldt Street (Applicant/Owner: Kevin Vavroch and Tracie Rome).**

Bunger presented the Staff Report with a recommendation for approval of the Conditional Use with four (4) conditions.

Hardy asked Chad for clarification on one of the proposed conditions. The Staff Report recommended that as a condition of approval, the State Historic Preservation Office must find that the subject property will have no adverse effects on adjacent properties on the National Historic Register. The findings had come back from the State Historic Preservation Office that there would be no such effects. Hardy wanted to know if it was still necessary to include the aforementioned condition.

Bunger said that it was no longer necessary.

Hamilton asked if the proposed condition, "All applicable permits shall be obtained," included a provision specifying that an Occupancy Permit must be obtained.

Bunger said that the proposed condition did thus specify. He stated that because of the nature of the improvements the applicant would be undertaking to renovate the basement unit, building permits would be necessary. He further stated that a Certificate of Occupancy would be required with the Building Permit.

Hamilton asked how the City would ensure that egress windows would be added to the subject property

Chad explained that the windows would be required before Code Services would issue a Certificate of Occupancy for the property, which would occur prior to the basement unit being occupied.

Hardy opened the public hearing.

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

Emig stated that he appreciated the time and effort spent crafting the Traditional Neighborhood Overlay District and Multi-Family Redevelopment Overlay District. He stated that the structure had historically been a two-family dwelling unit, and that it was within an acceptable limit of the maximum unit size. He said that for these reasons, he could support the request.

Hamilton said that she could support the request. She stated that she appreciated the fact that there would not be any changes to the exterior of the building, and that the backyard would be maintained. She stated that the increase in potential occupants at the subject property would be minimal.

The Board made the following findings of fact for the Conditional Use at 1011 Humboldt Street:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The proposed Conditional Use complies with all applicable regulations, except for Section 411-(A)(1)(c), which is that the proposed two-family dwelling will consist of... “one of the dwelling units is greater than six-hundred (600) square feet in floor area and the other dwelling unit has more than two bedrooms.” If the floor area of the proposed basement unit was reduced to 600 square feet in floor area or less, the proposed two-family dwelling unit would be a permitted use.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and adjacent properties to the north and east are located in the R-M/TNO, Four-Family Residential District with a Traditional Neighborhood Overlay District. Properties to the south of the subject site are zoned C-1, Restricted Business District and face Poyntz Avenue. The subject site and adjacent properties to the east, south and west are all located within the Historic Environs of the Women’s Club House and Fitz House. The proposal is being

reviewed by the State Historic Preservation Office to determine if proposed project's effects on the listed historic properties or its environs."

Properties located in the 900 and 1000 block of Humboldt Street are a mix of single, two-family and multi-family dwellings. There are also non-residential uses in the area, including a non-profit organization and a church parsonage and parking lot are also located in the 900 block of Humboldt Street. Based on the number of dwelling units listed by the County Appraiser and the mailing address for the property owner, these two blocks meet the intended density of the RM, Four-Family Residential District, which is a maximum of four dwelling units per 9,000 square feet. The proposed two-family dwelling would meet the neighborhood character of single-family, two-family and multi-family rental units.

The subject site had been a two-family dwelling from 1972 to 1997. The Polk Directory showed that three (3) to seven (7) residents lived in the two-family dwelling in those twenty-five (25) years. According to the application materials, in 1998, the owner at the time, renovated the structure and converted the two-family dwelling to a single-family rental unit. Historically, this residential property has been used as a rental unit. Converting the subject site from the present single-family rental unit back to a two-family dwelling unit that was present in the house from 1972 to 1997 should not adversely affect the surrounding properties.

Up to four (4), unrelated persons could live in each dwelling unit, or a total of eight (8) for the two-family dwelling unit. However, based on the size of both units and the number of total bedrooms, it is more realistic that a total of 6 unrelated persons could live in the two-family dwelling structure, if the office space was converted to a bedroom. Minimal adverse affects are anticipated by the increased intensity of two (2) people.

The applicants have stated that no major renovations will be made to the exterior of the house. The existing house is similar in character to other houses throughout the neighborhood.

### 3. **DOMINATION BY USE OVER NEIGHBORING PROPERTIES:**

- A. **Location, nature, and height of physical improvements:** The existing three (3) bedroom, single-family dwelling is a permitted use in the RM/TNO District. The proposed basement dwelling is approximately 716 square feet in floor area. If the basement dwelling could be reduced in size to 600 square feet or less, the two-family dwelling unit would be permitted without the need for a Conditional Use. Based on the minor increase in floor area (116 square feet) above the permitted limit (600 square feet), and the fact that the surrounding area is a mix of low and medium density residential uses in a medium density R-M District, the proposed use should not dominate over neighboring properties.

The height of the two-story structure is similar to adjacent properties and does not dominate adjacent uses of the neighborhood. No change to the exterior is proposed and is historically part of the neighborhood as a two-story building.

- C. Landscaping and screening:** Landscaping and screening are not required with the proposed two-family dwelling. If more than six (6) cars use the parking area, the area is required to be screened with six (6) foot sight obscuring screening.
4. **ADEQUATE PROVISION OF PARKING AND LOADING:** The two-family dwelling requires a minimum of two (2) off-street parking spaces per unit off the alley in the RM/TNO. Surfacing may consist of compacted gravel, as proposed. Screening of the parking area is only required for more than six (6) parking spaces. Five (5) parking spaces are proposed to be provided, which exceeds the minimum requirements.
  5. **ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:** Storm water drainage flows to the south towards the alley and existing utilities are serving the property. Adequate drainage and public utilities are provided for the proposed use.
  6. **ADEQUATE PROVISION OF ACCESS:** The subject site faces Humboldt Street, and will gain access for parking from alley. No curb cut is proposed off Humboldt Street. Adequate access is provided for the proposed use.

Hamilton moved that the Board grant a Conditional Use to allow the renovation of an existing single-family dwelling unit to a two-family dwelling unit, located within a R-M/TNO, Four-Family Residential District with Traditional Neighborhood Overlay, in which one or both of the dwelling units is greater than six-hundred (600) square feet in floor area and where one or both of the dwelling units has more than two bedrooms with the following conditions:

1. The building floor plan shall be constructed as proposed in the site plan and application documents.
2. All applicable permits shall be obtained.
3. The site shall be developed as proposed in the site plan and application documents and shall be maintained in good condition.

Emig seconded the vote, which passed unanimously with a vote of 5-0.

**A PUBLIC HEARING to consider a request to AMEND a CONDITIONAL USE to remove a residential dwelling and replace it with a proposed professional office in an office/residential mixed use structure in the C-1, Restricted Business District. The property is located at 1025-1031 Poyntz Avenue (Applicant: Robert Shivley).**

Antonini presented the Staff Report with a recommendation for approval of the Conditional Use with four (4) conditions.

Hardy stated that he assumed that the proposed condition regarding State Historic Preservation Office Approval would be removed because the State Historic Preservation Office had already made positive findings.

Antonini said yes.

Hardy opened the public hearing.

Robert Shivley, applicant, explained the history of the property and provided information on the proposal. He stated that he had withdrawn his request that the Board consider approving the Conditional Use Permit with a condition that he would not have to amend the permit to return 1029 Poyntz to a residential unit. He further stated that he understood the reasons for requiring him to do so, and said that he supported the removal of the condition requiring him to amend the Conditional Use Permit in order to convert the units to uses permitted by right in the C-1, Restricted Business District.

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

Hamilton expressed that the Board has been supportive of mixed uses. She explained the motivation to create the condition in the original Conditional Use Permit that all dwelling units be maintained in a manner compatible with the commercial uses at the subject property. She expressed concern that the absence of a condition specifying a standard of maintenance could result in incompatibility with the uses at the subject property. She asked that a similar condition be added to the Conditional Use Permit Amendment.

Bunger asked the Board if he was correct in his understanding that they felt that conditional residential uses in the C-1 Restricted Business District had the potential to negatively impact the permitted commercial uses.

Hamilton stated that in the discussions for the original Conditional Use Permit, the Board examined both the impacts of the residential units on the commercial units, and the commercial units on the residential units. She said that because the residential uses were the conditional uses, the matter before the Board at that time was to examine their impact on the permitted commercial uses. She further stated that the normal configuration of mixed residential and commercial buildings was to have the commercial uses on the first floor, and the residential uses above the commercial uses. She explained that that configuration alleviated some of the issues associated with locating the two uses on the same floor. She expressed concern that removing the condition specifying maintenance of the residential units would remove the protection it gave to mixed use structures in the C-1, Restricted Business District.

Bunger asked the Board if they felt it would be helpful to create an additional condition that the residential uses be properly maintained.

Hamilton concurred. She stated that the condition should specify that the residential units be maintained in a manner consistent with uses in the C-1, Restricted Business District.

Bunger provided information on permitted uses in the C-1, Restricted Business District.

Zilkie expressed that it was his understanding that it was the owner's responsibility to ensure his or her property is properly maintained. He stated that the focus of the Conditional Use Permit was to examine the effects of the proposed use on its surrounding area.

Hamilton restated her concern that removal of the condition from the original permit would remove protections of the compatibility of the mix of uses within the property.

Bunger stated that it was City Administration's understanding that the condition in the original permit that "The residential uses must remain as proposed and must be maintained in a manner in keeping with the commercial uses" mandated that the approved ratio of residential and commercial uses remain constant. He stated that City Administration recommended that the condition be changed to allow the applicant to modify the configuration of uses at the subject property without having to reappear before the Board.

Aistrup explained that under the current Conditional Use Permit, if the applicant wanted to change another residential use into a commercial use, they would have to come before the Board again in order to do so.

Emig stated that the original Conditional Use Permit contained the language mandating the configuration of uses in order to ensure that adequate parking remained available at the site. He asked that the Board not include the third proposed condition, that "Permitted uses in the C-1, Restricted Business District shall be allowed without an amendment to the Conditional Use Permit," because of his concerns that this condition would not ensure adequate parking at the subject property. He said that he could support the application.

Aistrup stated that he supported that the third proposed condition be stricken.

Zilkie explained City Administration's position regarding the third condition. He explained that it is the opinion of City Administration that the Board does not have the authority to determine whether a use that is permitted by right in a zoning district is allowed. He stated that if the uses at the subject property change in the future, City Administration would determine whether parking requirements were met.

Aistrup asked for clarification about why it was necessary for the applicant to come before the Board to convert the residential unit to a commercial use. He asked if this is because of the condition from the original Conditional Use Permit.

Zilkie stated that it was.

Hamilton stated that at the hearing for the original conditional use permit, there was neighborhood concern regarding parking and traffic generated by the mixed use.

Zilkie stated that the focus of the hearing was supposed to be on the residential units, because they are conditional in the C-1 restricted business district. He stated that it was unusual to require applicants to apply for Conditional Use Permits for permitted uses.

Hamilton asked if the condition mandating a static ratio of uses was removed, would all of the units be able to be converted to commercial uses without appearing before the board. She then asked if issues such as parking would then be determined by City Administration.

Zilkie said yes.

Aistrup asked if the applicant desired to convert all of the uses at the subject property to commercial uses, and it was determined that there was not adequate parking, would the applicant then have to come before the Board to request an Exception.

Zilkie said yes.

Emig stated that the Board that decided on the original Conditional Use Permit in 2004 was of the contention that if the property converted to all commercial uses, there would be inadequate parking, and that it was the mix of uses that allowed adequate parking. He stated that it is his belief that if the owners of the subject property converted one (1) additional residential unit to a commercial use, that there would not be adequate parking. He further stated that he would not support an Exception for this property if it converted to a mix of uses that would create a parking requirement it could not meet.

Hardy concurred.

Hamilton said that the condition mandating a static mix of uses would be unnecessary because the Exception process would take care of the parking issue.

Emig asked Zilke if this understanding was correct.

Zilke said that City Administration would evaluate each use on the subject site in order to determine its total parking requirement. He said that if a change in uses resulted in a parking requirement the applicant could not meet, they would be back before the Board to apply for an Exception.

Hamilton said that she was amenable to City Administration's logic that permitted uses ought not require Conditional Use Permits.

Hardy said that he could support the application with the third condition because there are adequate measures in place to ensure that the subject site will have adequate parking.

Aistrup asked the rest of the Board what the Board's threshold for granting parking Exceptions has been historically. He expressed the Board's support of decreased parking.

Emig explained that it would depend on whether the application would meet the threshold for granting Exceptions, and the Board would have to determine that it would have minimal adverse effects on surrounding properties.

Hardy stated that if the applicant wanted a combination of uses that would require more parking spaces than are at the subject property, they would have to appear before the Board for an Exception.

Wigfall stated that the market will determine the mix of uses at the subject property, and as that is yet unknown, the discussion should be constrained to the matter at hand. She stated that she was comfortable with the Staff Report as written, and did not feel that any changes were required to it.

The Board made the following findings of fact for the Conditional Use at 1025-1031 Poyntz Avenue:

**1. COMPLIANCE WITH ALL APPLICABLE REGULATIONS:**

The subject property complies with all applicable provisions of the Zoning Regulations, except for those requiring a Conditional Use.

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

The subject property and the adjacent properties to the east and west are located within the C-1, Restricted Business District. To the west of the subject property, across 11<sup>th</sup> Street, is City Hall and a Fire Station. To the northwest, diagonally from the subject property and across the intersection of 11<sup>th</sup> Street and Poyntz Avenue, is City Park. Directly north of the subject property and across Poyntz Avenue at 1026 Poyntz is a service station, which is a non-conforming use within the C-1 District, and two single-story professional office buildings at 1014 and 1018 Poyntz. Directly to the east of the subject property at 1009 and 1019 Poyntz are two single-story professional office buildings.

Properties south of the subject property, across the alley, are zoned R-1/TNO, Single Family Residential District with a Traditional Neighborhood Overlay. These properties consist of single-family structures, three of which are currently used as single-family dwelling units, and two of which have been converted to rental units. The two properties directly south of the subject property and across the alley, 113 11<sup>th</sup> Street and 1024 Houston, are single-family homes. 1024 Houston is a multi-family property consisting of four (4) dwelling units. 1006 Houston is a duplex.

The subject property is within the 500-foot environs radius of the Fitz House at 1014



Houston Street, which is a single-family home on the National Historic Register. The applicant's proposal has been sent to the State Historic Preservation Office, and is currently under review.

With the proposed change in composition of the subject property, there should be minimal impact on surrounding properties: There may be a slightly higher intensity of use during the day than currently, but there may also be a decrease in intensity of use during nights and weekends. There will be no change to the existing building. All parking and green space areas will remain unchanged. With the conversion of 1029 Poyntz from a three-bedroom residential dwelling unit to a law office, there may be a slight increase in the number of automobiles parked on the property during daytime hours, as well as more automobiles accessing the site. There may also be a corresponding decrease in automobile activity at night.

**3. DOMINATION BY USE OVER NEIGHBORING PROPERTIES: (SITE PLAN)**

The proposed change in use for the subject property is minor, and there is no change to the physical scale of the development. Therefore it should not dominate over neighboring properties. The C-1 District, which extends along either side of Poyntz Avenue from 6<sup>th</sup> Street to 17<sup>th</sup> Street, is intended to allow for a mix of professional offices, banks, government buildings, churches, funeral homes, and residential dwellings. The proposed change is consistent with the mix of uses along the Poyntz Avenue corridor. It is not unique within the C-1 District for an office and residential use to be located within the same structure.

**4. LOCATION, NATURE, AND HEIGHT OF PHYSICAL IMPROVEMENTS:**

There are no physical improvements proposed to the subject property.

**5. LANDSCAPING AND SCREENING:**

There are no changes proposed to the subject property. Existing landscaping conforms to the conditions of the previous Conditional Use Permit.

**6. ADEQUATE PROVISION OF PARKING AND LOADING:**

There is currently adequate provision of parking and loading for existing conditions at the subject property. The Zoning Regulations require at least one (1) off-street parking space for each 300 square feet of floor area for business and professional offices, and 3.5 (three and a half) off-street parking spaces for each three-bedroom dwelling unit. Currently there are 1137 feet of office space at the subject property, which require four (4) parking spaces, and three (3) three-bedroom dwelling units, requiring an additional 10.5 parking spaces, for a total requirement of 14.5 spaces. The subject property has a total of fourteen (14) spaces.

Under the proposed change in use, there would be an additional 953 square foot office on the property which would require three (3) parking spaces, increasing the total required spaces for the office uses to seven (7); and the number of dwelling units would decrease to two (2) three-bedroom apartments. Instead of being subject to the parking regulations for

three bedroom multiple-family dwelling units, they would become subject to the parking regulations for two-family dwelling units. Two-family dwelling units require two (2) parking spaces per unit. This means that four (4) off-street parking spaces would be required for the residential uses on the subject property. The new total parking requirement for the subject property under the applicant's proposal would be eleven (11) parking spaces. The existing fourteen (14) spaces at the subject property exceed this requirement.

There is also an ADA requirement to have one van-accessible handicapped parking stall for every twenty-five (25) parking stalls. Currently, one of the fourteen (14) existing spaces is designated as a van-accessible handicapped parking space. This satisfies the ADA requirement.

**7. ADEQUATE PROVISION OF DRAINAGE, AND OTHER PUBLIC UTILITIES:**

Adequate public utilities are currently provided to the site and no physical modifications are proposed. Therefore the existing drainage pattern will not be altered. The subject property has adequate drainage and public utilities for the proposed use.

**8. ADEQUATE PROVISION OF ACCESS:**

The subject property has two points of automobile access. The parking area west of the building has access from a driveway from 11<sup>th</sup> Street and from the alley south of the property. The parking area south of the building is also accessible from the alley. Subdivision regulations require each zoning lot to have direct access to a public right-of-way. The 11<sup>th</sup> Street driveway satisfies this requirement.

Emig moved that the Board grant approval to an Amendment to the Conditional Use Permit to remove a residential dwelling unit and replace it with a proposed professional office in an office/residential mixed use structure in the C-1, Restricted Business District with the following conditions:

1. Landscaping shall be maintained in accordance with the original Conditional Use Permit.
2. Permitted uses in the C-1, Restricted Business District shall be allowed without an amendment to the Conditional Use Permit.
3. New residential uses at the subject property shall require an Amendment to the Conditional Use Permit.

Aistrup seconded the motion, which passed with a vote of 4-1, with Hamilton casting the dissenting vote.

Hamilton stated that she was in support of the applicant's proposal, but that she wanted there to be a condition of approval that would stipulate the maintenance of the residential units at the subject property.

**A PUBLIC HEARING to consider a EXCEPTION to allow an increase in the maximum**

**structure height of thirty (30) feet to thirty-four (34) feet, for a proposed two-story building; a reduction of the minimum twenty-five (25) foot front yard setback to a minimum of ten (10) feet along Claflin Road for proposed and existing off-street parking; and a reduction in the required number of off-street parking spaces from 365 parking spaces to 353 parking spaces, all associated with an expansion of the Manhattan Medical Center campus. The Manhattan Medical Center is located south of Claflin Road at 1133 College Avenue (Applicant: Les Mock, WDM Architects, Owner: Manhattan Medical Center – Rick G. Fulton, President).**

**A PUBLIC HEARING to consider a VARIANCE to not provide sight obscuring screening for portions of the property associated with a new medical office building and existing Building E in the Manhattan Medical Center campus at 1133 College Avenue. (Applicant: Les Mock, WDM Architects, Owner: Manhattan Medical Center – Rick G. Fulton, President).**

(Considered together)

Bunger presented the Staff Reports with a recommendation for approval of the Exceptions with two (2) conditions, and a recommendation of approval of the Variance with three (3) conditions.

Wigfall asked for clarification on the type of screening specified in the variance request.

Bunger provided clarification.

Hardy opened the public hearing.

Les Mock stated that he was available for any questions the Board might have.

David Rintau provided the Board with handouts of pictures he had taken of the subject property. He claimed that the utility company had clear-cut an area around power lines on the subject property in July, and not during the December ice storm as City Administration had previously stated. He expressed his concerns about the lack of screening at the subject property, and he expressed his feelings that the Medical Center's expansion would be an intrusion into the adjacent neighborhood. He stated concerns about drainage and storm runoff issues arising from an increase in paved surfaces at the subject property. He asked the Board to eliminate the proposed southern parking area at the subject property.

Hamilton asked Rintau whether the proposed screening would be adjacent to his property.

Rintau said it would not.

Hamilton asked Rintau whether an alternative type of screening could be provided at the subject property.

Rintau stated that improvements at the subject property were intrusive to him at the present time. He then gave some brief history and descriptions of these improvements. He then reiterated his request that the Board not approve the parking.

Hamilton asked Rintau whether he knew of any screening that could mitigate the impact of the proposed improvements on the stream that runs between the subject property and his property.

Rintau stated that he did not, and reiterated his opinion that the southern parking area was unnecessary.

Emig commented on three photos. He asked Rintau if there was any time that the existing parking lot at the medical center was full.

Rintau stated that the lot was never full, and he provided information on the existing utilization of the parking lot, and gave projections of what he felt the parking lot utilization would be after the medical center expanded.

Wigfall asked if other neighbors also had concerns about screening at the subject property.

Rintau said that other neighborhood residents did not share his concerns, because most of them were renters. He then provided information about tree clearing that the utility company had performed in the easement between his property and the subject property, and the negative affect this had on the easement to provide natural screening between the subject property and his property.

David Redman gave a brief history of the subject property, which is the former site of Cedar Acre Park. He expressed concerns about the applicant's proposal. He stated that he was concerned about traffic stemming from the added parking area, and echoed Rintau's desire for the Board to eliminate the proposed southern parking area. He also stated that he was concerned about increased risk of flooding created by the addition of impervious surface at the subject property. He then requested that the Board not approve the southern parking area.

Bob Diebold provided information on drainage and the current parking situation at the subject property. He stated that a drainage study had been performed and approved by the City. He explained the storm water retention and drainage system the facility would provide with the proposed improvements. He provided clarification on the current parking conditions at the medical center, and provided information on the variables that the medical center had considered when designing the proposed parking lot. Diebold is the facilities manager for Manhattan Medical Center.

Hamilton stated that she felt that the applicant's site plan showed an excessive amount of parking.

Diebold stated that this was not the case; that the proposed uses at the subject property require the proposed increase in parking. He stated that the Medical Center had considered plans with less parking, but that they were not feasible because they would create poor parking circulation. He responded to suggestions by the Board for alternate locations for the parking lot, but he stated that the area's topography made their suggestions unfeasible.

Bunger provided clarification on the public road right of way, and how it impacted natural screening between the subject property and adjacent properties.

Redman asked Diebold about the Medical Center's storm water management plan. He asked whether permeable concrete could be used in the southern parking area.

Diebold explained that permeable concrete had not been proven to be an acceptable paving material in Manhattan. He provided more information on the storm water management plan in response to questions from Redman.

Redman expressed that he was concerned about run-off from the subject property.

Bunger explained that the City Engineer had reviewed that storm water drainage analysis for the subject site and had given his approval.

Rintau stated that he was concerned about parking at the subject property.

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

Emig stated that storm water runoff was not under the Board's jurisdiction, or within the parameters of the applications. He expressed that the Board should focus on the Exception and Variance requests.

Hardy agreed with Emig and stated that the Storm Water Drainage Plan for the subject property had been approved by the City's Engineering Department.

Hamilton pointed out that the Board did not have the authority to approve any further reductions in parking from what was advertised for the hearing.

Hardy moved that the Board take a ten (10) minute recess.

Hardy called the meeting back to order.

Hardy stated that the Board should not consider approving a further reduction in parking for the subject property because it was not advertised, and therefore the public did not have an opportunity to become aware of it or make comments. He stated that the Zoning Ordinance

did not grant the Board the authority to consider issues that were not advertised for the general public. He stated that the Board did have the authority to request that the applicant redesign the parking configuration with fewer spaces, and then come back before the board with the modified site plan.

Aistrup said that he could support the Exception for an increase in height at the subject property.

Hamilton expressed that she had concerns regarding intrusion into the adjacent residential neighborhood. She contended that the applicant did not need to add thirty-six (36) stalls to the subject property. She asked if the applicant was willing to reconfigure the parking lot. She further stated that she agreed with Aistrup regarding the Exception for an increase in height at the subject property. She stated that she was also willing to accept the front yard exception. She stated that she would not support the Variance from screening.

The applicant stated that he was willing to reconsider the parking lot design.

Hamilton stated that she was willing to support the other exception requests for the subject property. She stated that if the applicant did not redesign the parking configuration, screening would need to be provided.

Wigfall concurred with the need for natural screening at the subject property. She expressed that she had no problem with the proposed front yard setback exception or height exception. She also expressed concern about the number of parking stalls proposed at the subject property.

Emig stated that he agreed with the staff report and application proposal. He said that he was not in favor of having the applicant reconsider his parking figures. He stated that the applicant could arrange to have the power lines at the subject site buried, which would eliminate the need for the utility company to clear-cut trees and remove natural screening. He stated that the application met the conditions for a variance, but that the applicant should provide screening at the proposed southern parking lot. Emig asked the applicant if he could provide this screening. He asked Bunger for clarification on the zoning regulations for screening.

Bunger provided clarification.

Emig suggested that the Board require the applicant to provide screening at the controversial southern parking area. He asked Bunger for clarification on fencing requirements.

Bunger provided clarification.

Hamilton asked Chad whether fencing was required along the southern border of the subject property.

Bunger stated that it was not, but that he had included a condition in the staff report that the applicant provide an earthen berm or other type of natural screening in that area.

Hamilton asked Bunger whether the Board could include a condition of approval that the applicant provide additional vegetative screening.

The applicant was asked back before the Board and asked whether he would be willing to provide a fence at the subject property.

Diebold stated that the medical center could provide a fence.

Hamilton asked if the applicant could modify his parking request

Diebold asked Hamilton what his recourse would be if he modified his proposal, and then found that he needed the parking spaces originally proposed.

Emig stated that if the applicant had needed fewer parking spaces, he would have requested fewer parking spaces in his application.

Hamilton stated that a case could be made for a greater reduction in parking than that proposed by the applicant. She stated that applicants often try to design their parking configurations to meet the required number of spaces under the Zoning Ordinance, whether the spaces were needed.

Wigfall reiterated her opinion that the applicant needed to provide natural screening at the proposed southern parking area.

Hamilton asked whether the applicant was willing to redesign its parking lot with fewer spaces.

Hardy stated that the facts presented indicated that it might not be necessary for the applicant to include all of the proposed parking. He asked the applicant if he was willing to consider redesigning his parking configuration.

Diebold stated that the Manhattan Medical Center Board of Directors had been asked to reduce the number of parking stalls by the Planning Commission, and that they had considered the request, but had concluded that the thirty-six (36) parking stalls in question were needed.

Aistrup asked if the Board could dictate the type of screen provided by the applicant.

Bunger explained how the Zoning Regulations defined screening. He stated that it would be within the Board's authority to limit the types of screening the applicant may provide.

The Board made the following findings of fact for the Exceptions at 1133 Clafin:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The property

currently complies with all applicable requirements of the Zoning Regulations, other than the one for which an Exception is being requested. A portion of the Exception request for the reduction of the front yard setback along Claflin Avenue is for off-street parking built in error with the construction of Building E in 1998 and its expansion in 2001.

## **2. PROBABLE EFFECT ON ADJACENT PROPERTIES:**

### *a. Building Height*

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

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

### *b. Front Yard Setback*

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

With the construction of the new medical office building, the owners would like to keep the new parking stalls along Claflin Road in line with the existing spaces. The new parking stalls are approximately ten (10) feet from the front property line, which is caused by a five (5) foot jog in the property line to the south. The new parking spaces will be approximately the same distance away from Claflin Road



and the sidewalk adjacent to the property. As the applicant states in the Exception request materials, the owners wish to construct the parking spaces as proposed to allow an internal access lane from the new western parking lot to the existing parking lot. If the sixteen (16) parking spaces along Claflin Road were required to meet the minimum front yard setback, the internal access lane could not be installed and would be “potentially hazardous for patients to exit onto Claflin road and re-enter the parking lot to access another building. Furthermore, the proposed location of the new parking spaces will not visually detract from the neighborhood or cause safety concerns. Considering these factors, minimal adverse effects are anticipated for adjacent property owners and the public.

*c. Off-Street Parking*

As stated in the Exception request description, the applicant has proposed to reduce the number of off-street parking required for medical clinic by 12 parking spaces. Based on the total useable floor area for both the upper and lower floors, 365 parking spaces would be required by the Off-Street Parking Regulations. The applicant has proposed to install 353 parking spaces based on the logic that the lower level of the medical office building will be used as a medical imagery center, which would have a lower patient turnover rate when compared to a typical medical clinic. The lower patient turnover rate is created by the fact that the medical imagery procedures take longer to conduct.

During the March 3, 2008 Manhattan Urban Area Planning Board (MUAPB) meeting for the Public Hearing to Rezone and Replat the subject site, residents adjacent to the property expressed their concerns about having an excessive amount of unused parking. These statements were based on the present condition where portions of the existing parking lot west of Building E are unused for a majority of the day. The residents asked that the MUAPB members place a condition of approval on the Rezoning and Final Plat that less parking be installed than would required by the Zoning Regulations to minimize the impacts on the residential neighborhood. The rezoning cannot be conditioned, neither could the plat, but the Manhattan Urban Area Planning Board members did express their support for an Exception request to reduce the required number of parking spaces. An adequate number of parking spaces should be available as the proposed imagery center will generate fewer office visits. Based on these facts, the Exception request should not adversely affect adjacent property owners.

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

**4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND**

## **CIRCUMSTANCES ARE CONSIDERED:**

### *a. Building Height*

Because of the slope of the land in the area, the new medical office building will be constructed into the side of the hill. To create a solid foundation at the southeast corner of the building and to provide access to the lower floor, a retaining wall will be built. This retaining wall affectively lowers the average grade around the building by approximately four feet. If the retaining wall was not installed and the ground was graded to slope gradually away from the building, the tower element and the proposed building would be below the required maximum building height of thirty (30) feet and an Exception would not be needed. However, without the proposed retaining wall, the building would have limited access at the rear of the building for equipment and staff, decreasing the full use of the building. An alternative to the current design would be to eliminate the architectural elements and lower the roof line to meet the Maximum Building Height standards. When considering that the architectural element (the tower) only consumes 20% of the buildings façade, the tower's location on the building and the subject site does not adversely affect surround properties and that it is only four (4) taller than the required maximum building height of thirty (30) foot. It would be unreasonable to remove the element. The applicant states that requiring the height of the building to be lowered so that the roof line meets Zoning Regulations would create a hardship for the owners, because a taller ceiling height is needed for the imagery center due to code requirements pertaining to supporting the weight of medical equipment and heating and air conditioning requirements to control the climate of the medical imagery center. When all facts and circumstances are considered, requiring the strict application for the Maximum Building Height standards is unnecessary.

### *b. Front Yard Setback*

The existing off-street parking spaces that encroach ten (10) feet into the front yard setback along Claflin Road have been present for over ten years. The location of these parking spaces has not created traffic safety issues or complaints. Removal of the existing parking spaces and re-installing them outside of the minimum twenty-five (25) foot front yard setback would disrupt internal circulation of the parking lot and most likely eliminate parking stalls needed to meet the Off-Street Parking Regulations.

The proposed location of the new off-street parking spaces would be in-line with the existing parking stalls and maintain a visual appearance for the property and provide enough space to construct an access lane between the new parking lot and the existing parking lot to the east. If the parking spaces along Claflin Road were required to meet the Front Yard Setback requirements, the access lane would be eliminated or the new office building would be required to be moved further south to accommodate the access lane. As the applicant has stated, eliminated the access lane "could potential create a hazardous situation where patients would be forced

to exit onto Claflin Road to re-enter the neighboring parking lot.” Requiring a shift of the building to the south would place it closer to the established residential area, which may create a negative impact on adjacent property owners. When all facts and circumstances are considered, it is unreasonable to strictly apply the twenty-five (25) foot setback requirement for off-street parking.

*c. Off-Street Parking*

The applicant has stated that the medical imagery center, proposed for the lower level of the new medical office building, has a slower patient turnover rate than a typical medical clinic because the procedures take longer. The applicants proposed that a ratio of 4.0 parking spaces per 1000 square feet of floor area be applied to the lower level where the imagery center is located. The upper floor and existing Building E would follow the Off-Street Parking Regulation requirements of 5.5 parking spaces per 1000 feet for medical clinics (Section 7-103 (B)(9)).

If the owners were required to install the minimum 365 parking spaces per the Zoning Regulations, additional parking would need to be constructed further south of the building. The area that would be needed to accommodate the additional parking is steep and is part of a drainage easement established with the Final Plat recently approved. The additional parking area would also be closer to the established residential neighborhood. Residents of this neighborhood have voiced concerns about the medical center’s encroachment into the neighborhood and this redesign parking lot may negatively impact the low-density residential character of the area. As proposed, the ratio meets the parking needs of the patients and employees and should not negatively impact the overall parking demands of the medical campus. Considering these facts, requiring the owners to construct 365 off-street parking spaces would be unreasonable.

Connie Hamilton moved to approve an EXCEPTION to allow an increase in the maximum structure height of thirty (30) feet to thirty-four (34) feet, for a proposed two-story building with the following conditions:

1. The Exceptions shall be limited to the proposed medical office building and accessory off-street parking as outlined in the application documents and shown on the applicant’s site plan.
2. All applicable permits shall be obtained.

Aistrup seconded the motion, which passed unanimously with a vote of 5-0.

Connie Hamilton moved to approve an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to a minimum of ten (10) feet along Claflin Road for proposed and existing off-street parking, with the following conditions:

1. The Exceptions shall be limited to the proposed medical office building and accessory off-street parking as outlined in the application documents and shown on the applicant’s site plan.
2. All applicable permits shall be obtained.

Aistrup seconded the motion, which passed unanimously with a vote of 5-0.

Emig moved to approve an EXCEPTION to allow a reduction in the required number of off-street parking spaces from 365 parking spaces to 353 parking spaces, with the following conditions:

1. The Exceptions shall be limited to the proposed medical office building and accessory off-street parking as outlined in the application documents and shown on the applicant's site plan.
2. All applicable permits shall be obtained.

The motion was not seconded, and it died.

Hamilton moved to table an EXCEPTION to allow a reduction in the required number of off-street parking spaces from 365 parking spaces to 353 parking spaces, so that more information on drainage and impact on green space could be provided to the Board.

Wigfall seconded the motion.

Emig asked what information was needed in addition to information about storm water retention.

Aistrup stated that information on the existing ratio of floor area to parking was needed.

Hamilton suggested that additional information be provided regarding the proposed storm water drainage plan.

Wigfall stated that a floor plan of the first floor of the proposed building was needed.

Emig stated that if the applicant assumed a different rate of vacancy, their parking figures might be different.

Hamilton suggested that the Board also table the Variance to not provide sight obscuring screening for portions of the property associated with a new medical office building and existing Building E in the Manhattan Medical Center campus at 1133 College Avenue until the information about the exception could be provided.

Airstup asked the applicant to reconsider the parking ratio used by the applicant to determine their parking requirement.

Wigfall stated that use would factor into the parking requirement for the subject site.

Emig called for the vote to table an EXCEPTION to allow a reduction in the required number of off-street parking spaces from 365 parking spaces to 353 parking spaces, so that more information on drainage and impact on green space could be provided to the Board.

The motion passed with a vote of 4-1. Emig was the dissenting vote.

The Board made the following findings of fact for the Variance at 1133 Claflin:

1. **CONDITIONS UNIQUE TO THE PROPERTY:** The steep, wooded terrain that will be dedicated as a drainage easement makes this southern area of the property unique. Because of the natural and land use restrictions, the area cannot be developed and will most likely remain in its natural state. The wooded areas would typically be considered adequate sight obscuring screening to meet the Use Limitations for the C-1, Restricted Business District. However, a majority of the mature trees in the utility easements that run along the property lines were cut back or removed after the December, 2007 ice storm to give the utility companies access to repair the lines. The tree trimming left a relatively large area clear and reduced the screening in some areas. These areas will remain unscreened for a number of years, but based on the uniqueness of the property and this area, installing a six (6) foot tall privacy fence or additional landscaping would be unnecessary.
  
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:** Minimal adverse effects are anticipated for the residential properties adjacent to the subject site if the Variance is approved. A majority of the residential properties adjacent to the property and next to the wooded area will be separated by distance and the slope of the land. The closest neighbor to the proposed parking lot west of Building E is Lot 5, North Timberlane Addition, which will be approximately 70 feet away from the parking lot. This neighbor will be impacted the most because of the property's proximity to the proposed parking lot and the fact that a large area of tree cover was removed from the utility easement and the unnamed, unimproved road right-of-way that adjoins the properties. This tree cover would have most likely provided adequate screening if it was present. Other properties are 120 to 400 hundred feet away from the new parking lots and should not be impacted by the new parking lot. These lots are downhill from the development area and are adequately screened by the wooded area. Residents in this area may perceive installing the required six (6) foot screening as an adverse effect, because the screening would detract from the wooded open space behind their homes. It may be appropriate to require an earth berm, landscaping or a combination of both to along the southwest corner of the parking lot in question to reduce the noise and glare from the vehicles traffic.
  
3. **UNNECESSARY HARDSHIP FROM STRICT APPLICATION OF REGULATIONS:** If the strict application of the use limitation was enforced, the applicant would be required to provide sight obscuring screening along all property lines that abut a residential district, including the area in question. Some parts of the area that would be required to be screened are extremely hilly. It is also impractical to strictly enforce the use limitation when the entire area is extremely wooded and the fence would be placed in a drainage easement that restricts the development of the area. Lots furthest from the existing Medical Center campus are 120 to 400 feet away and screened by the slope of the land and the wooded areas. The property that will be

most impacted is Lot 5, North Timberlane Addition, as was described previously. If proper measures are taken to limit the impact on this adjacent property, requiring complete compliance with the Zoning Regulations along the remainder property that abuts residential properties would be an unnecessary hardship.

4. **EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** The proposed Variance should not have an adverse effect on the public health, safety and welfare of the general public. Not requiring the screening to be installed would maintain the current stormwater run-off capacity that the small, natural drainage channel has. Installing a solid fence along the property lines may impede stormwater run-off, and could cause flooding on adjacent properties because the stormwater cannot enter the drainage channel.
5. **RELATIONSHIP TO INTENT OF REGULATIONS:** The intent of the regulation to install sight obscuring screening along property lines abutting residential district is to limit any adverse impacts from the commercial use. Even if mature trees along the property lines were removed or trimmed, the intent is met because the terrain, the wooded areas and the distance from the commercial use to the residential properties, minimizes any adverse impacts on adjacent properties.

Aistrup suggested that the Board approve the Variance for screening with a condition that annual vegetative screening be provided.

Connie Hamilton moved to table the Variance to not provide sight obscuring screening for portions of the property associated with a new medical office building and existing Building E in the Manhattan Medical Center campus at 1133 College Avenue until the information about the exception could be provided

Wigfall seconded the motion, which passed with a vote of 4-1. Emig voted against the motion to table the item.

**A PUBLIC HEARING to AMEND a CONDITIONAL USE to allow for an existing recycling center use in the I-3, Light Industrial District. The amendment is to modify the approved site plan to enclose the east portion of the operation with sight obscuring screening.**

**A PUBLIC HEARING for an EXCEPTION to allow a reduction of the minimum twenty-five (25) foot front yard setback to zero (0) feet along South 9<sup>th</sup> Street for the construction of sight obscuring screening in the I-3, Light Manufacturing District.**

(Considered together)

Bunger presented the Staff Reports with a recommendation for approval of the Conditional Use Permit with five (5) conditions, and a recommendation of approval of the Exception with three (3) conditions.

Hardy opened the public hearing.

Greg Wilson stated that he was available for questions from the Board.

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

Hamilton stated that she could support the applicant's requests.

Hardy stated that he could support the applicant's requests.

The Board made the following findings of fact for the Conditional Use at 625 South 10<sup>th</sup> Street:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The existing building complies with all applicable regulations. The applicant has been informed of zoning violations concerning the lack of screening and storage of equipment and materials in the 9<sup>th</sup> Street road right-of-way. The proposed site plan will correct the compliance issues regarding the screening. However, equipment and materials stored in the South 9<sup>th</sup> Street ROW are a violation currently under enforcement. The proposed screening will not impact the ten (10) foot vision triangle created by the alley intersecting with South 9<sup>th</sup> Street.
2. **PROBABLE EFFECT ON ADJACENT PROPERTIES:**
  - B. NORTH:** Fair Lane, an alley, followed by a lot with a structure used for organ repair and an adjoining vacant lot. Fort Riley Boulevard is further to the north. The lots are all zoned LM-SC, Light Manufacturing Service Commercial.
  - C. SOUTH:** Railroad Right of Way followed by residential properties in an R-2, Two-Family Residential District.
  - D. EAST:** South 9<sup>th</sup> Street, followed by three Community Garden lots, followed by three vacant lots, followed by two lots with trailer houses, followed by South 8<sup>th</sup> Street. The lots are all zoned LM-SC, Light Manufacturing Service Commercial.
  - E. WEST:** South 10<sup>th</sup> Street, followed by three lots owned by Wilson Valley LLC, the same owners of Howie's Recycling. The lots are all zoned I-3, Light Industrial District.

The existing neighborhood generally consists of repair and service commercial uses, Community Garden lots, and several vacant lots. The organ repair and Precision Air

companies to the north and northeast are of a light manufacturing, service character. Additional surrounding properties are either owned by the applicant and used for recycling, light industrial use, are vacant, or used as Community Garden plots. The railroad right of way to the south provides a buffer to the R-2, Two Family Residential District. Because of similar uses and vacant lots, the proposed Conditional Use Amendment should not have any negative effects on adjacent properties, especially since the proposed amendment will address screening issues that will limit any incompatibilities with adjacent properties.

3. **DOMINATION BY USE OVER NEIGHBORING PROPERTIES:** The recycling center has existed since 1993. In past years the Community Development Department has received complaints about blowing trash from the recycling center. The proposed site plan will completely enclose the east end of the property with a solid fence, which should greatly reduce the amount of debris that blows away from the site.

**B. Location, nature, and height of physical improvements:** The existing building is a fabricated metal building which is approximately 30-feet in height, 226-feet in length, and 120-feet in width. Total square footage of the existing building is approximately 27,120 sq. ft. The existing building has three loading doors with a 36-foot wide loading dock pit to the east of the building. The area generally to the south of the loading docks and east of the building addition, up to the east property line, is proposed for outdoor storage. The area of the outdoor storage area is approximately 10,000 square feet. The location of the fence along the Fair Lane alley, extend the fence five (5) feet to west, increase its height to eight (8) feet and re-surface the fence to steel siding, similar to the siding of the existing building. A fifteen (15) foot wide, eight (8) foot tall, swinging gate will be connected to the east edge of the fence along the alley. This gate will then meet a ten (10) foot long fence that will run perpendicular to the building and be constructed at the same height and out of the same materials. At the east side of the property, a new fence is proposed at the 9<sup>th</sup> Street property line. This fence will need a companion Exception to be built as proposed. The fence will be one hundred (100) feet long, eight (8) feet tall and be constructed of similar steel siding. This fence will be connected to the existing concrete fence by a thirty (30) foot long fence to enclose outdoor storage area to the south and will be constructed in the same manner as the other proposed fences. Two swinging gates, covered in the same steel siding, are proposed at the corner of 9<sup>th</sup> Street and the alley. The northern gate will be thirty (30) feet long, with the east gate being (20) feet long. When the loading area is not in use, the east sliding fence will connect to the north fence to enclose the outdoor storage area and loading dock.

**C. Landscaping and screening:** Currently there is not any landscaping on the zoning lot and none is required with the proposal. Screening is required around the proposed outdoor storage area and in general will consist of a 140-foot by 100-foot long, 8-foot tall, steel sided fence. New lighting was not proposed



with the application. Lights for the site will be from the existing lighting on the existing building.

4. **ADEQUATE PROVISION OF PARKING AND LOADING:** The proposed site plan and Amendment to the Conditional Use does not impact the existing parking and loading areas. Patron loading/unloading of recyclables will continue to occur on the west end of the property, off of South 10<sup>th</sup> Street. Loading docks for trucks are present on both the east and west side of the building. Existing off-street parking is located along the north portion of the lot and consists of a 90-degree configuration.
5. **ADEQUATE PROVISION OF DRAINAGE AND OTHER PUBLIC UTILITIES:** Adequate sanitary sewer and water services currently exist for the existing recycling center use. The area east of the proposed addition previously contained Community Garden plots, which consisted of pervious material. The proposed addition and outdoor storage area is proposed to be completely paved, which will increase the amount of stormwater runoff from the site. The associated stormwater is not anticipated to be significant and will be diverted to the storm sewer inlets at the northeast corner of South 10<sup>th</sup> Street and Fair Lane and the north end of South 9<sup>th</sup> Street.
6. **ADEQUATE PROVISION OF ACCESS:** Access to the existing recycling center is primarily from South 10<sup>th</sup> Street and Fair Lane. South 9<sup>th</sup> Street is a dead end street to the north and south and does not provide access off of Fort Riley Boulevard. The existing site plan and circulation patterns have been present for nearly a year. The new car and dog wash at the corner of South 10<sup>th</sup> Street and Fort Riley Boulevard has increased traffic in the area, however a majority of the vehicle traffic enters and exits at South 10<sup>th</sup> Street, opposite of the amendment area. The current traffic should not be impacted along the Fair Lane alley by this Conditional Use Amendment.

Hamilton motioned for approval to Amend a Conditional Use to allow for an existing recycling center use in the I-3, Light Industrial District, located at 625 South 10<sup>th</sup> Street, with the following conditions:

1. The Conditional Use Permit shall only apply to the existing recycling center as outlined in the application documents and site plan.
2. All outdoor storage shall be completely enclosed with sight obscuring screening as required by the use limitations outlined in Section 4-303(E).
3. Future expansions shall require a new Conditional Use Permit.
4. The Exception request for the front yard setback along South 9<sup>th</sup> Street shall be approved.
5. All applicable permits shall be obtained.

Emig seconded the motion, which passed unanimously with a vote of 5-0.

The Board made the following findings of fact for the Exception at 625 South 10<sup>th</sup> Street:

1. **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The existing

building complies with all applicable regulations. The applicant has been informed of zoning violations concerning the lack of screening and storage of equipment and materials in the 9<sup>th</sup> Street road right-of-way. The proposed sight plan will correct the compliance issues regarding the screening. Equipment and materials stored in the 9<sup>th</sup> Street ROW is not permitted and Zoning Enforcement is addressing the issue

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

The subject site is zoned I-3, Light Industrial District. To the north, east and west are properties zoned LM-SC, Light Manufacturing-Service Commercial District. To the south of the subject site is the railroad right-of-way and residential properties in the R-2, Two-Family Residential District. The area is a mix of open spaces for the Community Gardens, vacant lots, and service repair businesses which gain access from the Fair Lane alley. The residential neighborhood located to the south of the subject site is adequately buffered from the recycling center by the railroad right-of-way (ROW). The proposed eight (8) foot tall, solid fence along South 9<sup>th</sup> Street is a part of the overall plan to screen the outdoor storage and to a lesser extent reduce the amount of debris that is blown off of the subject site and onto adjacent properties. This should have a positive impact on adjacent properties. South 9<sup>th</sup> Street is a dead-end street to the north and south at the intersection of Fair Lane alley and does not gain direct access from Fort Riley Boulevard. The proposed fence should not impact traffic because of the dead-end street. The fence's location along the front property line should not have a negative impact to adjacent properties to the east. The Community Gardens, located to the east, are open spaces used for gardening during the spring, summer and fall months, no permanent building or tenants are present, other than gardeners tending to their plants.

There have been concerns that parking for the Community Gardens will be lost if the fence is allowed to be constructed as planned. The South 9<sup>th</sup> Street ROW is sixty (60) feet wide, with a twenty-five (25) foot street in the center of the ROW. The fence would be set back approximately fifteen (15) feet from the back of the street curb, leaving adequate space on the street and adjacent areas for parking and access to the Community Gardens.

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

Minimal impacts are anticipated to the general public by reducing the front yard setback to zero (0) feet for the proposed sight obscuring screening. The screening will limit the amount of equipment and storage that can be seen by the public and should reduce the possibility of trash and debris from blowing off of the subject site and onto adjacent properties or the surrounding neighborhood, which should improve the overall order and welfare of the community. The proposed screening will not impact the ten (10) foot vision triangle created by the alley intersecting with South 9<sup>th</sup> Street.

**4. THE STRICT APPLICATION OF THESE REGULATIONS IS UNREASONABLE, OR UNNECESSARY WHEN ALL FACTS AND CIRCUMSTANCES ARE CONSIDERED:** The strict application of the minimum

required front yard setback in the I-3 District, would be to require the proposed fence to be set back a minimum of twenty-five (25) feet from lot lines that abuts South 9<sup>th</sup> Street. Although South 9<sup>th</sup> Street is a designated public street, it functions less as a street and more of a parking lot for both Howie's Recycling equipment and the Community Gardens. South 9<sup>th</sup> Street dead-ends both north and south at the intersection of Fair Lane alley. Because of the restricted access along Fort Riley Boulevard and the removal of the railroad cross, the street has a total length of only 295 feet. Requiring the twenty-five (25) foot setback along a front property line that does not abut a functioning street would be unreasonable.

Emig motioned to approve an Exception to allow a reduction of the minimum twenty-five (25) foot front yard setback to zero (0) feet along South 9<sup>th</sup> Street for the construction of sight obscuring screening in the I-3, Light Manufacturing District for the property located at 625 South 10<sup>th</sup> Street with the following conditions:

1. The Exception shall be limited to the proposed fence as outlined in the application documents and shown on the applicant's site plan.
2. The Amendment to the Conditional Use shall be approved.
3. The fence shall be maintained in good condition.

Wigfall seconded the motion, which passed unanimously with a vote of 5-0.

Adjourned.

Respectfully Submitted,

Anne Antonini