

**MINUTES**  
**MANHATTAN BOARD OF ZONING APPEALS**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**Wednesday, March 9, 2011**  
**7:00 PM**

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

MEMBERS ABSENT: Ricci Dillon.

STAFF PRESENT: Chad Bunger, AICP, CFM, Planner II; Ashley Myers, Planning Intern

**CONSIDER THE MINUTES**

Hardy moved to approve the February 9, 2011 minutes which was seconded by Lavis and passed with a vote of 4-0.

**CONSIDER A REQUEST FOR A 180 DAY EXTENSION FOR APPROVED EXCEPTIONS TO REDUCE THE MINIMUM REAR YARD SETBACK FOR DECKS GREATER THAN 30 INCHES IN HEIGHT ABOVE THE GRADE ON WHICH THEY ARE LOCATED FOR LOTS 12A AND 12B TO LOT 20A AND 20B, KIMBALL TOWNHOMES ADDITION; A REDUCTION OF THE MINIMUM REAR YARD SETBACK FOR A PRINCIPAL SINGLE-FAMILY ATTACHED RESIDENTIAL STRUCTURE (LOT 12A, KIMBALL TOWNHOMES ADDITION); AND TO ALLOW AN INCREASE OF THE MAXIMUM THIRTY-FIVE (35) PERCENT LOT COVERAGE TO UP TO FORTY-FIVE (45) PERCENT FOR LOTS 12B TO 20B, KIMBALL TOWNHOMES ADDITION FOR THE PURPOSE OF CONSTRUCTING SINGLE-FAMILY ATTACHED RESIDENCES WITH DECKS IN THE R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: BAYER CONSTRUCTION, OWNER: BAYER CONSTRUCTION AND APLETECH CONSTRUCTION, INC.).**

Hamilton moved to approve the 180 day extension, which was seconded by Hardy and passed with a vote of 4-0.

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE AT 2438 VAUGHN DRIVE TO ALLOW FOR THE CONTINUED USE OF AN EXISTING RESIDENTIAL BUILDING AS A FINANCIAL OFFICE FOR THE MERCY REGIONAL HEALTH CENTER HOSPITAL. (APPLICANT/OWNER: MERCY REGIONAL HEALTH CENTER)**

Myers presented the Staff Report with a recommendation of approval for the Condition Use request.

Aistrup opened the Public Hearing.

No one spoke.

Aistrup closed the Public Hearing and opened Board Discussion.

Hamilton said she can support this application with no problem and will give them another 2 years.

Hardy said the Staff Report deals with issues that were faced in the past, thus he can approve it.

The Board made the following findings of fact for the Extension of a Conditional Use at 2438 Vaughn Drive.

**A. Compliance with all applicable regulations:**

A Conditional Use Permit was sought and approved in 2000 for Mercy Regional Health Center to construct an addition to their existing facility. That permit was amended in 2005. An Exception was sought and approved in 2005 to reduce the minimum side yard setbacks to six (6) feet along the west property line and nine (9) feet along the east property line for the existing structure at 2438 Vaughn Drive. The 2005 Conditional Use was extended in February of 2007 and again in March of 2009 to allow the Accounting Department to temporarily remain in the residential structure at 2438 Vaughn Drive.

The subject site otherwise complies with all existing regulations, aside from the Conditional Use application in question.

**B. Probable effect on adjacent properties:**

The Conditional Use has been at the subject site for several years, and during that time, there have been no recorded complaints against it. The subject site has not been associated with any increase in light, noise, or traffic during the eleven (11) years it has been used as a temporary office. Therefore, minimal negative impacts are anticipated on its surrounding neighborhood if the requested Conditional Use Permit is approved. The subject site is perceived as consistent with the character of its established neighborhood because it is maintained as a single-family home and has not been shown to have caused adverse effects to adjacent properties during the years it has been occupied by the Accounting Department and used as an office.

Adjacent properties to the general south, east, and west of 2438 Vaughn Drive are located in the R, Single-Family Residential District. These properties are older, single-family homes, some of which are owner-occupied and some of which are renter-occupied.

North of the subject site is the Mercy Regional Health Center, which is zoned R-1, Single-Family Residential District. Since the subject site is also owned and operated by the Mercy Regional Health Center, and because the subject site has been operating as its Accounting Department for the past six (6) years, it is perceived as compatible and is not anticipated to have negative effects on the Health Center.

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

**1. Location, nature, and height of physical improvements:**

The structure at 2438 Vaughn Drive is an existing single story, single-family residential building located on a rectangular lot with an approximate area of 7,840 square feet. Seven (7) administrative personnel will temporarily occupy the facility during normal business hours of 8:00 AM to 5:00 PM, Monday through Friday, for approximately two (2) years.

Once integration of services with Via-Christi is completed, the applicant does not foresee needing 2438 Vaughn Drive as office space; thus the structure will be reverted back to a residential use.

**2. Landscaping and screening:**

The applicant has maintained the landscaping at the subject site in a manner consistent with its surrounding residential neighborhood. Perennial plants, groundcover, and shrubs were placed around the perimeter of the house along with an existing tree. There are existing wooden fences along the east and western property lines, and there is an ADA handicap ramp along the front, south side of the property. A large wooden deck has also been added to the rear, north side of the property.

**D. Adequate provision of parking and loading:**

Adequate parking is provided for the proposed use. Mercy Regional Health Center clients will not be visiting or utilizing the subject site, which was and shall remain for use by office staff only. One (1) ADA parking space is provided on the property's driveway from Vaughn Drive. According to documents submitted by the applicant, all other Accounting Department employees are using and will continue to use Mercy Regional Health Center's off-street parking facilities, and on-street parking for the temporary Accounting Department facility is not allowed along Vaughn Drive (as conditioned by the previous Conditional Use Permits).

**E. Adequate provision of drainage, and other public utilities:**

Adequate utilities, including electric, gas, cable, and telephone services are available. Storm drainage flows to City storm drains located on Vaughn Drive.

**F. Adequate provision of access:**

Adequate provisions for access are available for the proposed temporary office. The subject site has frontage along Vaughn Drive. The front driveway on Vaughn Drive will provide

parking for one car. The Mercy Health Center of Manhattan will provide additional parking for hospital personnel in its off-street parking lot, which has access from College Avenue and Kimball Avenue.

Hardy made a motion to approve an extension of a Conditional Use Permit to allow for the continued use of an existing residential building at 2438 Vaughn Drive as a financial office for the Mercy Regional Health Center Hospital with the following conditions:

1. The Conditional Use at 2438 Vaughn Drive shall be for a temporary accounting office for two (2) years from the date of the Notice of Decision, at which time the use shall cease, unless the applicant submits an application for a Conditional Use to extend the temporary occupancy. The application shall be submitted and considered by the Board of Zoning Appeals prior to the date on which the temporary use expires.
2. The temporary office shall only be used by hospital personnel and shall be limited to seven (7) employees.
3. Off-street parking shall be provided on the Mercy Regional Health Center's parking lot, except that the existing driveway off 2438 Vaughn Drive shall accommodate one (1) ADA accessible off-street parking space.
4. On-street parking for the temporary office shall be prohibited along Vaughn Drive.
5. Temporary office hours shall be limited to normal business hours from eight (8) a.m. to five (5) p.m., Monday through Friday.
6. Landscaping shall be maintained as proposed in the landscape plan and maintained in good condition.
7. The residential building with structural improvements shall be maintained in good condition.

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

**A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE TO ALLOW THE EXPANSION OF AN EXISTING CONCRETE READY-MIX PLANT AT 704 S. 4<sup>TH</sup> STREET IN THE LM-SC, LIGHT MANUFACTURING – SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: MIDWEST CONCRETE MATERIALS)**

**A PUBLIC HEARING TO CONSIDER AN EXCEPTION TO ALLOW AN INCREASE OF THE MAXIMUM HEIGHT OF FIFTY (50) FEET TO NINETY (90) FEET FOR A PROPOSED EXPANSION TO AN EXISTING CONCRETE READY-MIX PLANT IN THE LM-SC, LIGHT MANUFACTURING-SERVICE COMMERCIAL DISTRICT. (APPLICANT/OWNER: MIDWEST CONCRETE MATERIALS)**

Aistrup asked Bunger to present the Conditional Use and Exception requests at the same time.

Bunger presented the Staff Report for the Conditional Use and Exception requests recommending approval for both.

Hardy said he is having a hard time reconciling the increase in dust, traffic, and other impacts with the fact that the neighbors along Pottawatomie Avenue did not complain against this proposal.

Hamilton acknowledged an increase of truck traffic with heavy loads will impact roads. Were these concerns addressed by the City Engineer? Bunger said there is a committee called the Development Review Committee, which looks over all BZA applications. The engineers had no issue with the project.

Hamilton asked if there were any concerns regarding the new 4<sup>th</sup> Street redevelopment area and this proposal increasing noise, light, etc? Bunger said, the proposal was discussed at the Review Committee, but there are no trees which exist that could completely screen it and it seemed unfeasible. Also, the use will be there regardless if the request is approved.

Hamilton said she would like more about concerns and the redevelopment area reflected in the Staff Report for the proposal. Thus she is reluctant to proceed without these worries addressed.

Aistrup said the area was rezoned in the late 1980s and the land use changed then. Now in 2011, the land use is changing again and the concrete batch plant now seems to be out of place. And it is not the highest, best use for sales and property tax purposes for the City. This happens sometimes with encroachment. It is an unpleasant fact, but it happens and maybe the concrete plant should be elsewhere. He also, would like this type of information discussed in the Staff Report.

Hardy said there seems to be several gaps in the Staff Report. He would like the City to consider what is there now and what will be there in the future. Most likely the dust will blow to the north into the redevelopment area. Bunger said that the applicant could speak to the various questions, but in his time working with the City, the land use there has not changed and is not likely to change. However, it does depend on the 4<sup>th</sup> Street redevelopment project; redevelopment south of Ft. Riley Boulevard is not likely.

Aistrup said the fact that the proposal includes a portable dive is a good thing for this proposal because it can be moved if need be. The property is important because it sits at the juncture of Ft. Riley Boulevard and S. 5<sup>th</sup> Street.

Hardy said the picture Bunger showed looking to the property from the train depot was good for visualizing the project.

Hamilton asked if the portable unit is moved to a job site, if the regulations will still be in effect. Bunger said if the unit was moved offsite within the City, the applicable zoning regulations of the new site would be in effect.

Aistrup opened the Public Hearing.

Matt Eichman, applicant, said the proposed portable unit would be screened behind the existing plant. The 90 foot unit is necessary because nothing exists less than 50 feet. He noted that the new technology utilized by the new unit would actually decrease the dust and noise because the old plant is over 30 years old and worn out. He does not foresee using the existing plant at a steady level, but instead demand decreasing, thus decreasing the amount of product. The existing plant will be used in a decreased capacity, especially in the winter because it has hot water and heating. He does not see an increase in truck traffic, because the use is already there. KDHE regulates air permits, but the plant has current dust levels so low, they do not have to report them. The new unit would have an integral dust collector, which will decrease the amount of dust. Finally, he held a community meeting, but no one attended.

Hardy thanked Eichman for clarifying the application, and said the new equipment will improve the site and environmental factors.

Hamilton would like to suggest as a condition of approval the requirement that the concreted block screening wall be maintained in good shape if not improved. Eichman said the wall is there, not because of a requirement, but instead as an inventory site. The blocks are made out of recycled or waste concrete and people buy them in bulk, not just one or two. So, it could be hard to keep constantly 6 feet tall, but would be open to requiring 3 blocks tall. Each block is 26 inches tall, so 3 blocks tall would work. Any higher requirement could hurt inventory.

Hamilton said with the neighboring redevelopment site and the train depot, she would like the 6 foot tall wall along Fort Riley Boulevard. Eichman said he is okay with that.

Aistrup added the wall should be 6 foot tall in some variety.

Hamilton said she would like a condition added to the conditions of approval for the Conditional Use Permit stating the site would be in continual compliance with all local, state, and federal regulations. The applicant is already doing it, but this would give the City authority to enforce them.

Kathy Dzewaltowski, is a concerned citizen in Manhattan and said there is a dramatic, huge difference between 90 feet and 50 feet. She is wondering if this is the impression the City should have for the gateway of Manhattan. Not that long ago there was a grain silo and other uses, which were deemed unsightly by the City and the redevelopment project happened. She is not sure this is the best location for the project. Although, she is happy the business is doing well in the economy.

Aistrup closed the Public Hearing.

Aistrup said on today's front page of the newspaper there was a picture of the south end development, which makes him think about what Kathy was talking about—the gateway to Manhattan. However, the City did not purchase the property. He is satisfied by the applicant's comments and the fact this new equipment will essentially replace aging

machinery. There may be some added traffic, but the need is there even without the structure. He can support both the Exception request and the Conditional Use Permit request.

Hardy had some concerns to begin with, but Eichman did a good job explaining the requests. He was worried about the South End Redevelopment and the surrounding neighborhood; however, Eichman addressed the concerns and the current structure has been there for a long time. Additionally, the structure is portable, which assures him the structure will not always be here. There should be less dust because of the newer technology. And the traffic should be kept the same. Finally, with the modifications to the Staff Report, he can support he requests.

Hamilton said that Hardy and Aistrup covered her concerns. She would like Eichman's explanations to be reasons, not just discussion. In addition, she would like to add a condition that the stone wall be maintained at least 6 feet and the property shall have continued compliance with all state and federal regulations. However, the Staff Report does not give a good basis why the structure shall be 90 feet rather than 70. The new, more efficient equipment is good for the Eichman's business.

Lavis agrees with want Eichman said, but needs it all in writing.

The Board made the following findings of fact for the Conditional Use at 701 S. 4<sup>th</sup> Street.

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

**A. Compliance with all applicable regulations:** The use on the property has existed since 1925 when it was established by previous owners. Up until 1989, the subject site had been zoned for heavy industrial uses, including concrete ready-mix plants. On December, 5, 1989, the subject site and surrounding properties were rezoned from I-4, Heavy Industrial District to the new LM-SC District, which was created to accommodate existing industrial uses and allow for anticipated highway and service commercial uses along the newly constructed Ft. Riley Boulevard. The LM-SC District requires any expansion or modification of a legally nonconforming uses concrete ready-mix plan to be approved for a Conditional Use permit. Based on historical information about the subject site, including the Polk Directory, City Administration's opinion is that the use is legally nonconforming.

The existing concrete ready-mix structure is approximately seventy (70) feet tall. The height of the existing ready-mix structure is a legally nonconforming condition created when the property was rezoned from I-4 District to LM-SC District. The I-4 District has no height limitations.

The proposed structure is approximately ninety (90) feet tall. The LM-SC District limits the height of structures to fifty (50) feet. The applicant has requested an Exception to increase the maximum building height to ninety (90) feet. Other than this issue, the property complies with all applicable regulations.

**B. Probable effect on adjacent properties:** The subject site and surrounding properties are zoned LM-SC, Light Manufacturing-Service Commercial District, which consists of a mix of

warehouses, industrial uses and highway service and commercial uses. To the southwest of the site are properties zoned R-1, Single-Family Residential District, and consist of large lot, single-family homes. To the north of the subject site, north of Ft. Riley Boulevard, the land is zoned PUD, Downtown Entertainment District Commercial Planned Unit Development. The land zoned PUD to the north of the subject site will be the new convention center, hotel and Discovery Center. Immediately to the north of the subject site is the Union Pacific Railroad line that travels along the property line. Immediately to the south of the subject site is the Manhattan levee system and Linear Trail.

Minimal adverse impacts on adjacent properties are anticipated from approving the Conditional Use. The site has been used as a concrete ready-mix plant since the 1920's and 1930's. The surrounding area has historically been an industrial area for the City of Manhattan. An increase in noise, traffic and dust is anticipated by the establishment of the portable concrete ready-mix plant. The Environmental Protection Agency (EPA) and Kansas Department of Health and Environment (KDHE) regulate particulate emission and air quality created by the concrete ready-mix plant. KDHE also regulates water quality controls for the use. The applicant has provided information regarding their continued compliance with the State and Federal regulations regarding environmental impacts from the concrete ready-mix plant.

The applicant has stated that the proposed expansion of the concrete ready-mix plant is to supplement the existing ready-mix plant on the site. The existing plant is thirty (30) years old and requires a lot of maintenance. The new plant will allow the site to maintain its existing capacity by using a more efficient system for the high usage times of the year and use the older plant for the winter months, which it is designed for. Because of this, impacts on adjacent properties by noise, dust and truck traffic is not anticipated.

As part of the Conditional Use application, the applicant held a neighborhood meeting on January 18, 2011. No one attended the meeting. The applicant has stated in the written materials that "several individuals called in with their support of the project and the South Manhattan Neighborhood Association representative called to state that they do not see any adverse affect to them."

The subject site is within the 500 foot environ of the Train Depot, which is listed on the State and National List of Historic Places. The Historic Resource Board (HRB) reviewed the application for the Conditional Use and Exception request. The HRB review found that the requests meet *The Standards and Guidelines for Evaluating the Effect of Project on Environs* and will not encroach upon, damage or destroy any listed historic property or its environs (*see attached*). The State Historic Preservation Office is in the process of reviewing the requests. The Conditional Use should be conditions on the approval of the request by the State Historic Preservation Office.

**C. Domination by use over neighboring properties:** The immediate area is a mix of warehouse and industrial uses. To the southwest are single-family homes along Pottawatomie Avenue. The existing use has been on the subject site for several decades. The existing use,

existing structures and the proposed portable concrete ready-mix plant should not dominate the use of neighboring properties.

**1. Location, nature, and height of physical improvements:**

The existing structures on the building consist of the single-story business office, a large equipment storage building, warehouse, a permanent concrete ready-mix plant, fuel storage and retaining walls for various aggregate materials. The existing concrete ready-mix plant is approximately seventy (70) feet and is a legally nonconforming condition created when the site was rezoned from I-4, Heavy Industrial District to LM-SC, Light Manufacture-Service Commercial District.

The height of the proposed portable ready-mix plant will be ninety (90) feet tall. An Exception has been applied for to increase the maximum height from fifty (50) feet to the proposed height. The height of the proposed structure should not dominate over the neighboring properties. The structure will be located to the southwest of the existing ready-mix plant near the center of the subject site, which is separated by over ninety (90) feet of distance to all property lines. Over 300 feet separates the proposed structure to the west property line, which is closest to the residential uses in the area. The properties to the north and immediately to the west are warehouse and industrial uses. The proposed Conditional Use should not dominate over these properties.

**2. Landscaping and screening:**

A large concrete block wall screens the activities of the subject site from properties to the north of the rail road track. A chain link with no screening is located along the south property line. The fence is located at the toe of the levee system, which rises approximately fourteen (14) feet above the subject site. A grass lawn area is located at the southwest corner of the subject site at the intersection of S. 4<sup>th</sup> Street and Pottawatomie Avenue. The remainder of the site is either concrete or gravel areas.

**D. Adequate provision of parking and loading:** Eighteen (18) off-street parking spaces are available for customers to the west of the office building. Other areas throughout the site are available for the parking of employee vehicles and equipment. Public parking spaces are located to the south of the site. It appears that these spaces are also used by the employees of MCM.

**E. Adequate provision of drainage, and other public utilities:** Public utilities and drainage is adequate for the existing site. The site is currently served by existing utilities. The site has several storm water filters to control the storm water runoff quality from the site. The KDHE regulates the storm water runoff quality from the site.

The site is within the 1000 foot buffer of the levee system, which requires all construction that requires foundations to receive a permit from the U.S. Army Corps of Engineers. The foundation for the proposed ready-mix will be required to receive such a permit before a

building permit can be obtained.

**F. Adequate provision of access:** The main access to the site is from an extension of S. Pottawatomie Avenue. This area is the main truck entrance to the site. Secondary access is from S. 4<sup>th</sup> Street, a dead street to the west of the subject site. Access is adequate for the subject site.

Hardy made a motion to approve a Conditional Use to allow the expansion of an existing concrete ready-mix plant at 701 S. 4<sup>th</sup> Street in the LM-SC, Light Manufacturing – Service Commercial District, with the following conditions:

1. The Conditional Use Permit shall only apply to the existing concrete ready-mix plant and the proposed expansion on the site as outlined in the application documents and site plan.
2. Future expansions shall require a new Conditional Use Permit.
3. The Exception request to increase the maximum height from 50 feet to 90 feet shall be approved.
4. The State Historic Preservation Office shall find that the proposed expansion of the concrete ready-mix plant meets The Secretary of Interior’s Standard for Rehabilitation.
5. A six (6) foot tall sight obscuring screening shall be maintained.
6. All applicable Federal and State permits shall be obtained
7. All applicable permits shall be obtained.

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

Hamilton then spoke about the Exception Request. She requested the word “application” be added to the last sentence of the Strict Application paragraph in the Staff Report.

Hardy said when looking at the facts, the regulation seems unreasonable.

Hamilton said the fact the property is in legal non-conforming use helps minimize the industrial impact on the surrounding neighborhood. Holding the structure to 50 feet, when the site already has a 70 foot structure would be unreasonable.

The Board made the following findings of fact for the Exception at 701 S. 4<sup>th</sup> Street.

**COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** The use on the property has existed since 1925 when it was established by previous owners. Up until 1989, the subject site had been zoned for heavy industrial uses, including concrete ready-mix plants. On December, 5, 1989, the subject site and surrounding properties were rezoned from I-4, Heavy Industrial District to the new LM-SC District, which was created to accommodate existing industrial uses and allow for anticipated highway and service commercial uses along the newly constructed Ft. Riley Boulevard. The LM-SC District requires any expansion or modification of a legally nonconforming uses concrete ready-mix plan to be approved for a Conditional Use Permit. Based on historical information about the subject site, including the

Polk Directory, City Administration's opinion is that the use is legally nonconforming.

The existing concrete ready-mix structure is approximately seventy (70) feet tall. The height of the existing ready-mix structure is a legally nonconforming condition created when the property was rezoned from I-4 District to LM-SC District. The I-4 District has no height limitations.

Other than the nonconforming condition of the existing ready-mix plant and the need for the Conditional Use request, the subject site complies with all applicable regulations.

**PROBABLE EFFECT ON ADJACENT PROPERTIES:** The subject site and surrounding properties are zoned LM-SC, Light Manufacturing-Service Commercial District, which consists of a mix of warehouses, industrial uses and highway service and commercial uses. To the southwest of the site are properties zoned R-1, Single-Family Residential District, and consist of large lot, single-family homes. To the north of the subject site, north of Ft. Riley Boulevard, the land is zoned PUD, Downtown Entertainment District Commercial Planned Unit Development. The land zoned PUD to the north of the subject site will be the new convention center, hotel and Discovery Center. Immediately to the north of the subject site is the Union Pacific Railroad line that travels along the property line. Immediately to the south of the subject site is the Manhattan levee system and Linear Trail.

Minimal adverse impacts on adjacent properties are anticipated from approving the Exception to allow the structure to be ninety (90) feet tall. The immediate area is a mix of warehouse and industrial uses. To the southwest are residential properties. The immediate area has historically been an industrial area of the City. The site has been used as a concrete ready-mix plant for several decades.

The existing concrete plant is approximately seventy (70) feet tall. The proposed structure will be located to the southwest of the existing concrete plant near the center of subject site. The location of the proposed structure will be over ninety (90) feet from the closest property line. The proposed structure will be over 300 hundred feet from the west property line along S. 4<sup>th</sup> Street, which is closest to the residential uses in the area.

As part of the Conditional Use application, the applicant held a neighborhood meeting on January 18, 2011. No one attended the meeting. The applicant has stated in the written materials that "several individuals called in with their support of the project and the South Manhattan Neighborhood Association representative called to state that they do not see any adverse affect to them."

The subject site is within the 500 foot environ of the Train Depot, which is listed on the State and National List of Historic Places. The Historic Resource Board (HRB) reviewed the application for the Conditional Use and Exception request. The HRB review found that the requests meet *The Standards and Guidelines for Evaluating the Effect of Project on Environs* and will not encroach upon, damage or destroy any listed historic property or its environs (*see attached*). The State Historic Preservation Office is in the process of reviewing the requests.

The Exception should be conditioned on the approval of the request by the State Historic Preservation Office.

**EFFECTS ON PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE:** Minimal impacts on public health, safety or welfare should occur by approving the Exception. The Environmental Protection Agency (EPA) and Kansas Department of Health and Environment (KDHE) regulate particulate emission and air quality created by the concrete ready-mix plant. KDHE also regulates water quality controls for the use. The U.S. Corps of Engineers requires a permit to construct the foundation for the proposed structure because of its proximity to the City's levee system.

The site has been used as a concrete ready-mix plant with a similarly sized structure for several decades. Approval of the taller structure should not affect the public order in the area since a seventy (70) foot tall structure already exists on the subject site.

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

The strict application of the height limitation of the LM-SC District would not allow the structure to be taller than fifty (50) feet. The purpose of the ninety (90) foot tall structure is to allow gravity to assist in the concrete making process. The batching area that combines the different aggregates of concrete has to be elevated above the concrete trucks, or at least thirteen (13) feet, so that the materials can be placed into the concrete trucks. Because of this, most ready-mix plants are at least seventy (70) feet in height. Because no other options are available to locate a new portable concrete ready-mix plant on the site because of the height limitations of the District, it appears that the application of regulation to this site is unreasonable.

Hamilton made a motion reluctantly with conditions and changes to the Staff Report. Hamilton added this is for only this proposed plant, not for all of them. Bunger said there is a condition stating the request is for only the location shown on the site plan. Eichman is trying to do everything right; however, this won't improve the look of the area.

Hamilton made a motion to approve the Exception to allow an increase of the maximum height of fifty (50) feet to ninety (90) feet for a proposed expansion to an existing concrete ready-mix plant at 701 S. 4<sup>th</sup> Street in the LM-SC, Light Manufacturing-Service Commercial District with the following conditions of approval:

1. The Exception shall only apply to the proposed portable concrete ready-mix plant as shown on the site plan and outlined in the application documents.
2. The Conditional Use Permit request to expand the nonconforming concrete ready-mix plant shall be approved.
3. The State Historic Preservation Office shall find that the proposed expansion of the concrete ready-mix plant meets The Secretary of Interior's Standard for Rehabilitation.
4. All applicable permits shall be obtained.
5. A six (6) foot tall sight obscuring screening shall be maintained.
6. All applicable Federal and State permits shall be maintained.

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

Aistrup adjourned the meeting.

No applications for the April meeting were submitted, so the next Board of Zoning Appeals meeting will be on Wednesday, May 11, 2011.

Respectfully submitted,

Ashley Myers, Planning Intern

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