131-03

RESOLUTION NO. 131-03

A RESOLUTION AMENDING AND SUPERCEDING RESOLUTION NO. 138-02 FOR CONDITIONAL USE CASE NO. CON2002-00021, WHICH PERMITS A RURAL HOME OCCUPATION FOR VEHICLE REPAIR ON 5.01 ACRES ZONED "RR" RURAL RESIDENTIAL, LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 17.C OF THE ZONING REGULATIONS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, DECEMBER 12, 1984 AND SUBSEQUENTLY AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF SEDGWICK COUNTY, KANSAS.

SECTION I. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita Sedgwick County Unified Zoning Code, a Conditional Use amending and superceding Conditional Use Case No. CON2002-00021 for the land legally described herein is approved as follows:

Case No. CON2002-00055

A Conditional Use permitting a rural home occupation for vehicle repair on property described as:

> That part of the Southwest Quarter of Section 1, Township 26 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, described as: Beginning at a point on the West line of said Southwest Quarter with an assumed bearing of North 00 degrees 00'00" East, on said line a distance of 1800.00 feet north from the Southwest corner of said quarter; thence continuing North 00 degrees 00'00" East, on said West line, a distance of 420.00 feet; thence North 86 degrees 44'10" East, parallel with the South line of said Southwest Quarter, a distance of 569.50 feet; thence South 00 degrees 00'00" West parallel with said West line, a distance of 420.0 feet; thence South 86 degrees 44'10" West, parallel with said South line, a distance of 569.50 feet to the point of beginning, subject to a road right-of-way on the West, containing 5.01 acres more or less. Generally located on the east side of north 135th Street West, north of 69th Street North and K-96 (7260 North 135th Street West); within the Colwich area of influence.

The Conditional Use is subject to the following conditions:

1. The rural home occupation shall be for the uses permitted under "vehicle repair, limited", as defined by the Wichita-Sedgwick County Unified Zoning Code, only.

2. The rural home occupation and all associated storage shall take place in the designated 30x60 foot garage only; no associated storage or activity shall take place in other buildings or outdoors.
3. Storage, outdoor (as that term is defined in the Unified Zoning Code, Article II, Section II-B.12.r) of vehicles, equipment, parts, waste, waste containers, or any other associated item is prohibited. The outdoor parking (as that term is defined in the Unified Zoning Code, Article II, Section II-B.10.a) of operable vehicles associated with the conditional use shall be permitted, so long as the number of vehicles parked outside at any one time shall not exceed six (6) in number and are parked within the fenced enclosure provided therefor. All inoperable vehicles, and any operable vehicles that would exceed the number permitted to be parked outside, shall be maintained inside the designated and approved 30' x 60' garage.
4. Non-resident additional employees shall be limited to a maximum of two.
5. The applicant shall have the proposed building inspected by county code enforcement and the county fire department to ensure that it meets all applicable codes, policies and standards. These inspections shall be completed and approved prior to operation of the Conditional Use.
6. The applicant shall develop a hazardous material waste storage and disposal plan to meet all applicable codes, policies and standards. This plan shall include the safe storage of all commercial waste; the prevention of any commercial waste from entering the application area septic tank, lateral field, or soil, to include floor drain waste from the proposed building; and the safe containment of any spilled commercial waste. This plan shall be approved by KDHE prior to operation of the Conditional Use.
7. The applicant shall submit the "Regulated Waste Activity Notification" form to the Kansas Department of Health and Environment, and obtain a regulated waste license from the Kansas Department of Health and Environment.
8. Development and maintenance of the site shall be in conformance with the approved site plan.
9. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

SECTION II. That upon the taking effect of this Resolution, the notation of such Conditional Use shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION III. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

Commissioners present and voting were:

DAVE UNRUH	aye
TIM R. NORTON	aye
THOMAS G. WINTERS	aye
CAROLYN McGINN	aye
BEN SCIORTINO	aye

DATED this 4th day of June, 2003.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

Jim R Norton

TIM R. NORTON, CHAIRMAN
Second District

CLERK OF SEDGWICK COUNTY SEDGWICK COUNTY KANSAS KANSAS

ATTEST:

Don Brace

DON BRACE, County Clerk

APPROVED AS TO FORM:

RobertWParnacott

ROBERT W. PARNACOTT,
Assistant County Counselor

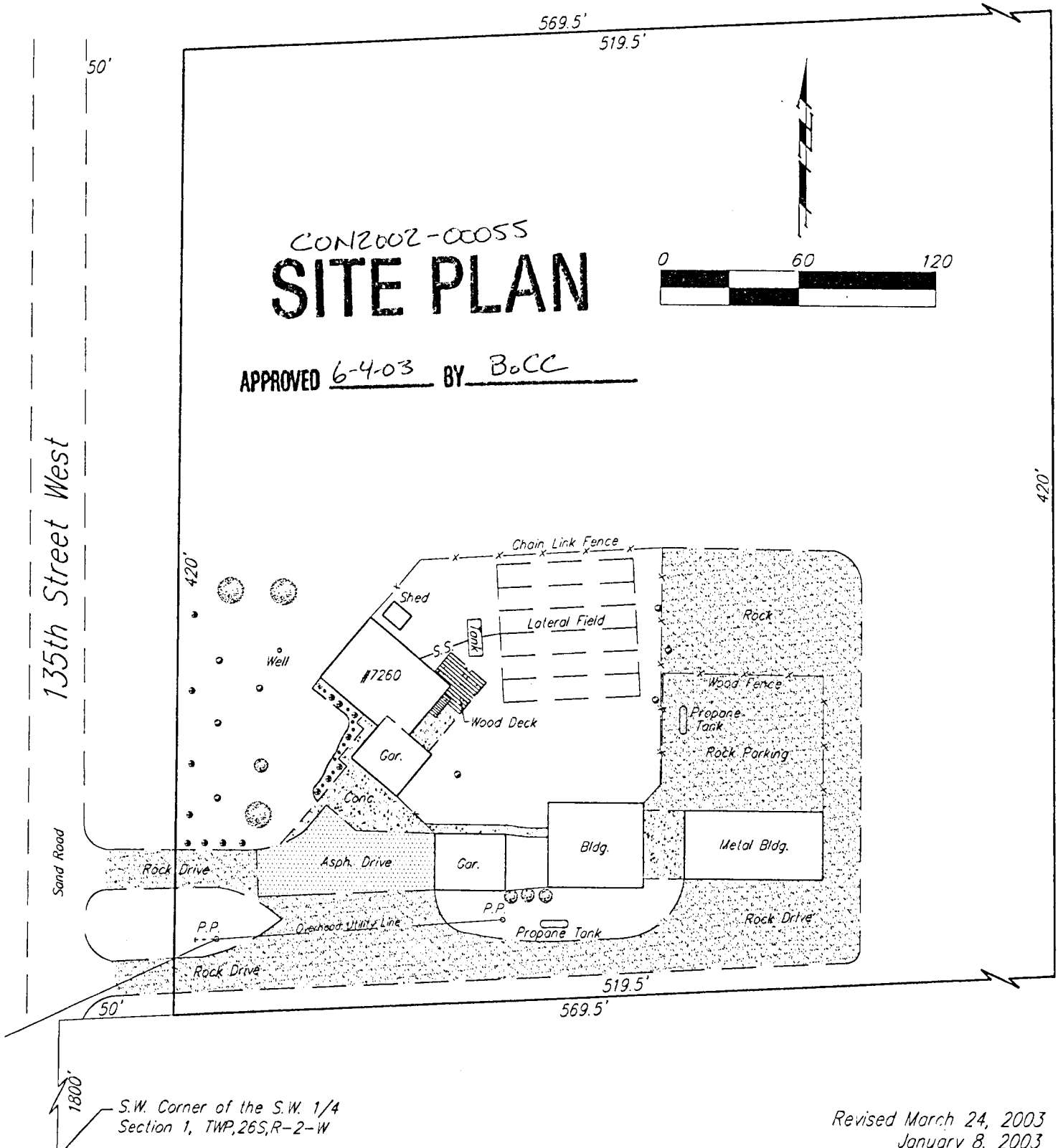
BAUGHMAN COMPANY, P.A.
ENGINEERING, SURVEYING & PLANNING
316/262-7271 • FAX 316/262-0149 • 315 ELLIS • WICHITA, KANSAS 67211

EXHIBIT

CON2002-00055

SITE PLAN

APPROVED 6-4-03 BY BoCC



Revised March 24, 2003
January 8, 2003
Drawing File: F:\MISC\STEVEJETT.dwg-L.D.W.

WICHITA–SEDGWICK COUNTY
W-SC
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. _____

STAFF REPORT

Colwich April 29, 2003
MAPC May 8, 2003

CASE NUMBER: CON2002-00055

APPLICANT/AGENT: Stephen and Alice Jett (Owners/Applicants); Kaplan, McMillan, & Harris c/o Bob Kaplan (Attorney)

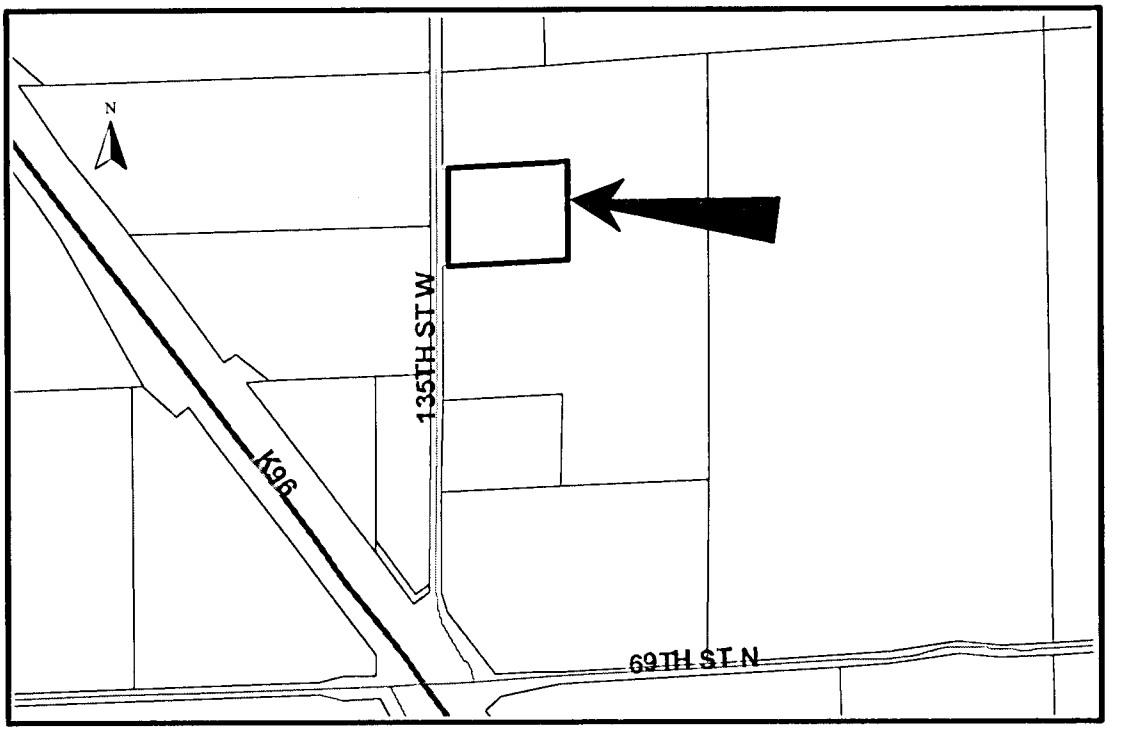
REQUEST: Amendment to Conditional Use (CON2002-21) to allow outdoor parking/storage of vehicles for a vehicle repair rural home occupation

CURRENT ZONING: "RR" Rural Residential

SITE SIZE: 5.01 acres

LOCATION: On the east side of north 135th Street West, north of 69th Street North and K-96 (7260 North 135th Street West); within the Colwich area of influence

PROPOSED USE: Rural home occupation for vehicle repair, amendment to allow outdoor vehicle parking/storage



BACKGROUND: The applicant requests an amendment to allow outdoor vehicle parking/storage in association with a rural home occupation Conditional Use (CON2002-21) for vehicle repair (see "Attachment B"). The Unified Zoning Code (UZC) differentiates between "parking" and "storage" of vehicles based on the length of time the vehicles are in one location. Vehicles in one location for 72 hours or less are "parked", while vehicles in one location for more than 72 hours are "stored."

CON2002-21 is subject to 9 conditions (see attached Resolution No. 138-02), including Condition #3 which states: "Outdoor storage of vehicles, equipment, parts, waste, waste containers, or any other associated items is prohibited. All vehicles associated with the conditional use shall be stored inside the proposed 30x60 foot building." While the it could be more clearly stated in the resolution, a review of the public record clearly indicates that the intent of Condition #3 is to prevent the outdoor "parking" of any vehicles associated with the vehicle repair business. This is further substantiated by the fact that the UZC expressly prohibits the outdoor "storage" of vehicles in association with a home occupation for vehicle repair; therefore, a specific condition addressing "storage" would not have been necessary.

The applicant has requested that Condition #3 be amended to allow outside parking/storage of a few vehicles awaiting repair within a screened area. The applicant has not specifically proposed any amended wording for Condition #3. Any amendment of the Conditional Use could only permit "parking" of vehicles and not "storage", which is expressly prohibited by the UZC and cannot be allowed by a Conditional Use.

The subject property is a 5-acre unplatted tract located on the east side of north 135th Street West, north of 69th Street North and K-96, within the City of Colwich Zoning Area of Influence. The proposed outdoor vehicle parking area is shown on the attached site plan. The applicant proposes a 3,952 square foot fenced vehicle parking area north of the vehicle repair garage. Depending on drive aisle width, the fenced area could hold approximately 20 cars. The vehicle parking area is proposed to be enclosed by a 6-foot high screening fence and is proposed to be surfaced with rock.

All property surrounding the application area is zoned "RR" Rural Residential. Surrounding the application area to the north, east, and south is one piece of property under agricultural production; further north and south of the site are large-lot single-family residences. To the west of the application area are two large lot single-family residences. These two residences lie within 500 feet of the proposed vehicle storage area and vehicle repair garage.

CASE HISTORY: This property, under the current applicant/owners, sought and received a Conditional Use for a dog-breeding kennel (CU 340) which became effective on March 8, 1991. The Sedgwick County Department of Code Enforcement then revoked CU 340 on October 14, 1991 as a result of failure to comply with the

conditions. The owners filed for reconsideration of the kennel Conditional Use, but were informed on October 18, 1991 that Section 17(C)(8) of the County Zoning Resolution prohibits the refilling of a conditional use permit case within one year following the advertised public hearing date of a similar application. CU 340 for a dog-breeding kennel now remains revoked.

The current Conditional Use, CON2002-21, was recommended for denial by the City of Colwich Planning Commission on May 28, 2002, and was denied by the Metropolitan Area Planning Commission (MAPC) on July 11, 2002. The applicant appealed the MAPC denial of the request, and the Sedgwick County Commission overrode the Colwich Planning Commission and MAPC with a required unanimous vote to approve the Conditional Use request on August 28, 2002.

The agent for the applicant stated, on several occasions, at public hearings that the requested Conditional Use could operate under the prohibition of outdoor vehicle parking. The agent stated that the majority of the business at the application area is rebuilding transmissions that are shipped in, repaired, and shipped out – negating the need for vehicle parking. The agent further stated that, if necessary, vehicles could be transported to an off-site location for parking. The applicant stated that arrangements had already been made for off-site parking.

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	Agriculture, single family
SOUTH:	"RR"	Agriculture, single family
EAST:	"RR"	Agriculture
WEST:	"RR"	Agriculture, single family

PUBLIC SERVICES: The property is located along north 135th Street West, a two-lane, section line, gravel road with a 50 foot half-width right of way adjacent to the application area. No traffic count is available for this section of 135th which dead ends approximately 800 feet north of the application area. The property has one drive entrance onto 135th.

CONFORMANCE TO PLANS/POLICIES: The "Sedgwick County Development Guide", amended in January 2002, of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as "rural."

The UZC states that home occupations "...are intended to permit residents to engage in home occupations that are compatible with residential land uses and to ensure that home occupations do not adversely affect the integrity of residential and rural areas."

The UZC permits "Automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works, and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts, or equipment" as a rural home occupation. The attached letter from the Office of the County Counselor states that outdoor "parking" of operable vehicles awaiting repairs for 72 hours or less would be permitted by the UZC if the requested amendment of the Conditional Use is approved but that the "storage" of vehicles for more than 72 hours is expressly prohibited and cannot be authorized by an amendment of the Conditional Use.

RECOMMENDATION: The applicant accepted the condition prohibiting outdoor vehicle parking when the Conditional Use permitting vehicle repair as a home occupation was approved. To now deviate from the standards of the Conditional Use would set a precedent for applicants to agree to conditions during the approval process and then incrementally seek to weaken the conditions after the Conditional Use has been approved. The Conditional Use was approved on the premise that the majority of the business at the application area is rebuilding transmissions that are shipped in, repaired, and shipped out, rather than a full-service transmission shop that would more appropriately be located in a commercial area. The conditions of approval reflect this and are intended to mitigate against negative commercial affects in the rural residential area in which the subject property is located. To allow outdoor vehicle parking at this Conditional Use site, regardless of visual screening, could result in increased business activity, traffic, and noise from the application area by making it easier to operate a full-service transmission shop in a residential area. To allow outdoor vehicle parking would allow the Conditional Use to expand from an indoor-only use to an outdoor use, bringing noise and other affects from the commercial activity outdoors. Allowing a screened outdoor parking area large enough for 20 vehicles on a residential property could result in vehicles being "stored" on the property and the property having the appearance of a vehicle salvage yard. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: All property surrounding the application area is zoned "RR" Rural Residential and used for agricultural and residential purposes. Two residences are located less than 500 feet to the west of the proposed outdoor vehicle storage area. The proposed outdoor vehicle storage area would increase the intensity of the commercial operation and would allow a portion of the conditional use to take place outdoors, making the Conditional Use out of character with the surrounding area.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which primarily permits

agriculture and very large lot residential uses. The property has a Conditional Use for vehicle repair, limited as a home occupation. The applicant previously stated that outdoor vehicle storage is not necessary for the Conditional Use business; therefore, the site could continue to be used without the requested Conditional Use amendment.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Conditional Use amendment would subject neighbors directly across 135th to increased commercially generated noise, odors, and traffic. The amendment would allow this increase in noise to take place outdoors, as opposed to the current indoor restriction. The proposed Conditional Use amendment would also subject neighbors to the negative visual affects of stored vehicles.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested Conditional Use Amendment is not in conformance with the Comprehensive Plan. This area is designated as "rural", and therefore not appropriate for the requested increase in commercial intensity or outdoor storage of vehicles.

5. Impact of the proposed development on community facilities: The requested use would impact the dead-end, un-paved North 135th Street West with increased commercial traffic. As a rural residential area, the local infrastructure is not designed or maintained to absorb increased commercial activity.

6. Opposition or support of neighborhood residents: Several neighbors expressed opposition to the original Conditional Use. Staff received the attached letters from three neighbors that oppose the requested amendment.

If after closing the public hearing the planning commission finds the request appropriate, the planning commission motion to approve will need to include findings of fact regarding the UZC Review Criteria that support approval and planning staff recommends that Condition #3 of CON2002-21 be amended to read as follows:

> Outdoor storage of vehicles, equipment, parts, waste, waste containers, or any other associated items is prohibited. Parking of up to three (3) operable vehicles awaiting repair or customer pick-up for a period not exceed 72 hours shall be permitted only within the "rock parking" area illustrated on the approved site plan. The parking area shall be screened on all sides by a minimum 6-foot high solid screening fence or building walls and shall be surfaced with an all-weather surface. Outdoor parking of inoperable vehicles and vehicles in the process of being repaired is prohibited.