CITY OF EAST POINT
PLANNING & ZONING COMMISSION

July 19, 2012 - 7:00 P.M.
Official Meeting Minutes

Jefferson Station
1526 East Forrest Avenue
4th Floor Conference Room
East Point, Georgia 30344

Board Members:

Commissioner Shean **ATKINS**, Chair

Commissioner Linda **SHELDON**, Co-Chair

Commissioner Joel **TUCKER**, Provisional Chair

Commissioner Dr. Lydia **WARES**

Commissioner Gregory **FANN -** Absent

Commissioner Matthew **MALLORY** - Absent

Commissioner William **BRYANT**

Commissioner Davita **WASHINGTON**

Commissioner Karen **RENÉ**

Also Present:

Ms. Linda **DUNLAVY**
City Attorney

Ms. Regina **CARTER**
Senior Planner

Ms. Keyetta **HOLMES**
Senior Planner

James **HAMMOND**
Videographer

Richard **RANDOLPH**
City Engineer

APPEARANCES

APPLICANT(S): Page

Allen Freeman - Case No. 2012Z-011-06

Newell Recycling, LLC - Case No. 2012V-005-06
Attorney Representation for Applicant:
Wilson Brock & Irby, L.L.C.
Harold Buckley, Jr., AICP
Larry M. Dingle
2849 Paces Ferry Road
Atlanta, Georgia 30339
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ldingle@wbilegal.com

City of East Point (Text Amendment)
Amend Part 10, Chapter 2, Article F
10-2172 & 10-2173
Harold Buckley, Jr., AICP
Larry M. Dingle

City of East Point (Text Amendment)
Amend Part 10, Chapter 2
General Provision 10-2044.D.3.a
Harold Buckley, Jr., AICP
Larry M. Dingle

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(Whereupon the City of East Point, State of Georgia Planning & Zoning meeting for July 19, 2012 was called to order by Chair, Shean Atkins.)

I. <u>CALL TO ORDER</u>: Good evening. I'm Shean Atkins, Chair of the East Point Planning & Zoning Commission and today is July 20th, I believe.

COMMISSIONERS: No. It's the 19th.

COMMISSIONER ATKINS: See. I said I believe so I don't believe in myself so the day is July 19th and it is our regularly scheduled Planning and Zoning Commission meeting. Commissioners, at this time, I'll ask Staff to do Roll Call for quorum, please.

II. <u>ROLL CALL</u>:

(Whereupon Keyetta Holmes, City of East Point Planning & Zoning Senior Planner, sounds the Roll Call.)

MS. HOLMES: Commissioner René.

COMMISSIONER RENÉ: Here.

MS. HOLMES: Commissioner Wares.

COMMISSIONER WARES: Present.

MS. HOLMES: Commissioner Tucker.

COMMISSIONER TUCKER: Here.

MS. HOLMES: Commissioner Fann.

COMMISSIONER FANN: (No response.)

MS. HOLMES: Commissioner Atkins.

COMMISSIONER ATKINS: Present.

MS. HOLMES: Commissioner Mallory.

COMMISSIONER MALLORY: (No response.)

MS. HOLMES: Commissioner Sheldon.

COMMISSIONER SHELDON: Present.

MS. HOLMES: Commissioner Bryant.

COMMISSIONER BRYANT: Present.

MS. HOLMES: Commissioner Washington.

COMMISSIONER WASHINGTON: Present.

MS. HOLMES: Mr. Chair, you have a quorum.

COMMISSIONER ATKINS: Thank you. In lieu of a prayer, this Body recognizes a Moment of Silence so at this time, we will have a Moment of Silence.

III. <u>MOMENT OF SILENCE</u>:

(Whereupon a moment of silence is recognized.)

COMMISSIONER ATKINS: Thank you. If you would all please stand and join me in the Pledge of Allegiance.

IV. <u>PLEDGE OF ALLEGIANCE</u>:

(Whereupon the Pledge of Allegiance is sounded.)

COMMISSIONER ATKINS: Commissioners, at this time, you have an agenda before you and I will entertain a motion to adopt the agenda as it is printed before us.

V. <u>ADOPTION OF AGENDA</u>:

COMMISSIONER WARES: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Wares.

COMMISSIONER WARES: So moved.

COMMISSIONER ATKINS: Is there a second?

COMMISSIONER BRYANT: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Wares and seconded by Commissioner Bryant that we adopt the agenda as printed. All in favor sound I.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The agenda is adopted. Commissioners, you should also have your June 21st meeting minutes. Those were sent out in our origin package and at this time, I will entertain a motion to approve our June 21st, 2012 meeting minutes.

VI. <u>APPROVAL OF MEETING MINUTES</u>:

COMMISSIONER BRYANT: Mr. Chairman.

COMMISSIONER ATKINS: Yes, Commissioner Bryant.

COMMISSIONER BRYANT: I make a motion that we adopt the June minutes.

COMMISSIONER WASHINGTON: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Bryant and seconded by Commissioner Washington that we approve the June 21st, 2012 meeting minutes. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. We have approved the June 21st, 2012 meeting minutes. The next Agenda Item is New Business.

VII. NEW BUSINESS:

COMMISSIONER ATKINS: New Business for our first case is 2012 "Z" as in zebra-001-06. Staff, would you please sound this case.

MS. HOLMES: Application 2012Z-011-06. Applicant is Allen Freeman. Location is 1662 Ware Avenue. Applicant is seeking a rezoning from R1-A to C1 for a commercial office complex.

COMMISSIONER ATKINS: Okay. This particular Agenda Item we did advertise it and there was a glitch in advertising so I guess my question to the attorney is that there was an advertisement. Do we even need to have a public hearing on this or should we go ahead and I'll entertain a motion for this Case Number?

ATTORNEY LINDA DUNLAVY: Because the advertisement was incorrect in terms of the identiy of the property, it is my opinion that we don't need to move further with a public hearing on this item.

COMMISSIONER ATKINS: Okay. So having heard that permission, at this time, I will entertain a motion for this particular Agenda Item. I believe that when we spoke with the applicant, because the glitch in the advertisement was not of the fault of the applicant, we had agreed that we would defer so I will entertain a motion.

COMMISSIONER SHELDON: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Sheldon.

COMMISSIONER SHELDON: I make a motion to defer Case Number 2012Z-011-06 for our August meeting.

COMMISSIONER ATKINS: Okay. Is there a second?

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: It's been moved and properly seconded that we defer Case Number 2012 "Z" as in zebra-011-06. Is there any discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Seeing none, Commissioners, all in favor sound aye.

COMMISSIONERS: Aye

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. This Case Number is deferred to our August meeting. Staff, would you please sound the next Agenda Item.

MS. HOLMES: Case Number 2012V-005-06. Applicant is Wilson Brock & Irby for Newell Recycling, LLC. Location is 0 Martin Street. Application seeks a variance to reduce the rear yard setback to zero feet and remove detention pond fence requirement.

COMMISSIONER ATKINS: Commissioners, this Agenda Item, as well as the next Agenda Item, which is also the same applicant, requires a public hearing. And so at this time, I will entertain a

motion to open up the public hearing.

COMMISSIONER ATKINS: So moved.

COMMISSIONER ATKINS: Is there a second?

COMMISSIONER BRYANT: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Sheldon and seconded by Commissioner Bryant that we open the public hearing for Case Number 2012 "V" as in Victor-005-06. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now open. Before we start with our public hearing, I will review our rules for public hearing.

(Whereupon the rules for the City of East Point Public Hearing are read into the record.)

COMMISSIONER ATKINS: Public hearings before the Planning & Zoning Commission shall be conducted in accordance to Section 10-2219 of the East Point Zoning Code and Development Regulations as follows: Persons both favoring and opposing the proposed case will be provided an opportunity to address the Commission. The applicant for the zoning case or the applicant's designated representative, if any, will be entitled to speak first followed by other speakers in favor of the proposal for a total of fifteen (15) minutes. Those who opposed the proposed zoning case

will then be permitted to speak for a total of fifteen (15) minutes. By majority vote, the Commission may increase the total time for speakers provided that each side is given the same amount of time. If there's more than one speaker for a side, the Chair or the presiding officer may limit the time allotted to each individual speaker other than the zoning applicant. The zoning applicant may reserve a portion of his or her allotted time for rebuttal. Speakers must adhere to the rules of decorum. Prior to speaking, each speaker shall identify him or herself and State his or her current address. Each speaker shall speak only to the merits of the proposed zoning decision under consideration, shall address remarks only to the Commission and shall refrain from making personal attacks on any other speaker. The presiding officer may refuse a speaker the right to continue, if after first being cautioned, the speaker continues to violate the rules of decorum. Ladies and gentlemen, those are the rules for our public hearing. All of the next Agenda Items do require a public hearing and the same rules will apply. At this time, Staff, do we have any proponents for Case Number 2012 "V" as in Victor-005-06?

MS. CARTER: I'm sorry. We do not. We only have just the applicant.

COMMISSIONER ATKINS: Just the applicant.

MS. CARTER: I do not have any other speaker cards.

COMMISSIONER ATKINS: Okay. Will you go ahead and please state your full name and your address.

(Whereupon Applicant's Attorney, Harold Buckley, Jr. approach the podium.)

MR. HAROLD BUCKLEY, JR.: Good evening Commissioners. My name is Harold Buckley. My address is 2849 Paces Ferry Road in Atlanta. I am here before you tonight on behalf of Newell Recycling who's the applicant in this case which addresses variances requested for property located on Martin Street. Now, at the outset, I would like to say that we applied for two variances in our application but during the course of the City's review, we have determined that only one variance is necessary. We asked for a variance to remove the detention pond fence requirement and we asked for a setback variance to reduce the rear yard setback. Public Works, Alex Mohajer has determined that the fence variance is not necessary so we have sent a written communication to the Planning Staff requesting denial of that portion of our application -- the withdrawal, withdrawal -- I'm sorry, that portion and we're still requesting the rear yard setback. Before I start my time presentation, what I would like to do, if you would indulge me -- 'cause I've handed you quite a bit of information. I'd just like to tell you what I've given you. I've given you a binder with twelve (12) exhibits in it. Under **Tab 1**, you have a site plan of the property showing the area that is affected by the variance request highlighted in yellow. I have **Tab 2**, which includes language regarding permitted uses in I1 Zoning District. Under **Tab 3**, I have a summery of Newell's financial payments and community participation over the last year in the City of East Point. Under **Tab**

4, I have a noise study that Newell commissioned in 2010. Under **Tab 5**, I have an elevation of our fence that we're proposing as part of this development. Under **Tab 6**, I have details about tree landscaping that we are proposing. Under **Tab 7** and **8**, we have photographs of a fence on the next door neighboring property along Martin and Bayard Streets. Under **Tab 9**, we have support letters which were requested at the workshop from Newell affiliate companies that own properties, in a better -- abutting this property. We also have under **Tabs 10** and **11** photographs of the property showing the topography on it and the sloping conditions and then under **Tab 12**, we have a copy of language from the Zoning Ordinance defining the term "accessory use." So I just wanted to you know what you have before you as we start to discuss this case.

COMMISSIONER ATKINS: Mr. Buckley,if I could please request -- you went through that rather quickly because you know it better than we do.

MR. HAROLD BUCKLEY JR.: Yes.

COMMISSIONER ATKINS: So if yourself going to cover any of these items in your presentation, would you mind referencing this or that --

MR. HAROLD BUCKLEY JR.: Absolutely.

COMMISSIONER ATKINS: -- so that we can turn to that particular section.

MR. HAROLD BUCKLEY JR.: Absolutely.

COMMISSIONER ATKINS: All right. Thank you.

1 MR. HAROLD BUCKLEY JR.: At the outset, I'd like to say that
2 up until this point, our communications have been regarding very
3 high level policy and legal principles that impact this variance
4 application. I've received preliminary feedback that some of those
5 points may not have been well received by this Body and I certainly
6 want to say that if cause ed any offense in making those points, I
7 certainly did not intend to do that and I really simply just want to
8 explain the foundation of our application. Let me orient you to the
9 site. On this areal photo before you -- and you have -- I don't think
10 you have a copy of this. I'll orient you up here. You have have two
11 properties outlined in white. The property that's at the northern
12 most edge is the subject to this application is the Martin Street
13 property. It is currently undeveloped and not being used. The
14 property to the south along the railroad tracks is the location of
15 Newell's existing recycling center and it is the subject of the next
16 zoning application and then another contiguous property, which is
17 not the subject to any variance, is here and you have a support letter
18 from Newell for that property. The question before you in terms of
19 whether we're entitled to a variance, it is pretty, you know, straight
20 forward. In order to show that we are entitled to a variance, we
21 have to show you that either we are in harmony with the general
22 purpose and the intent of the zoning ordinance or we have to show
23 that we have an unnecessary hardship based on the site's, size,
24 shape and topography. I think, although I am prepared to discuss
25 the hardship in size, shape and topography criterion, I think that the

main thing we want to look at is the purpose and intent of the zoning ordinance because the purpose of any zoning ordinance is to allow different uses to coexist within the same community where they may not be entirely compatible and that's what we're looking at in this application because when you look at Martin Street, the area to the north of Martin Street is residential in character. You have a park across the street from the property and you have other residential properties on that side of the street and to the south, you have primarily industrial uses so what you're looking at is a street that forms the boundary between an industrial area and a residential area and that's very important. Now, if I can refer you to our site plan and you have a copy of a black and white site plan that shows an area that you're looking at in this application under **Tab 1**. What we're proposing for this property is a storage facility that has two components. You have a component that deals with the temporary storage of automobiles and those automobiles would be taken from customers like Title Max. Where a loan has been made, the borrower has not been able to pay. Title Max has taken possession of the cars temporary and if the borrower is able to redeem the title to those cars that are brought to the site, they will be taken off the site and returned to that person and they will continue using that car the way it was before. If they're not able to redeem it, it goes onto this side of the property and we'll talk more about what happens on that side in our next presentation. But the second component involves storage at the back of the property and the reason I oriented you to the

residential industrial boundary that is Martin Street is because -- the reason we oriented our development this way is across the street, you have a City park and the City park has a pretty significant parking area along Martin Street. When you look at our auto storage component visually, it will appear to be a parking lot that's very similar to what you see across the street and we put the component that's most dissimilar to what you see in the residential area in the back so that you minimize the proximity between that use and the residential. Now, if you will look along Martin Street frontage, we are proposing significant improvements to that in terms of a fence and also landscaping. If you look at **Tab 6**, you'll see the type of landscaping we're proposing. We're proposing an Arbor Vitae Cypress Tree. The Arbor Vitae is going to be at a height -- planted a height of 10 feet at planting and it will be in clusters of two trees. Between those clusters, he will have a distance of about 15 feet at planting and basically what you will see in the gap in that landscape buffer is a decorative fence. I presented that to you last week as a fence with concrete columns 18 inches wide and a decorative metal panel between them. You gave us feedback on that fence. We have made improvements to it that you will see in the fence elevation under **Tab 5**. We're now proposing stone columns that are 30 inches wide. They are almost twice as wide as they were before. They'll reflect the character of the retaining wall and when those trees grow to full maturity, they will grow to a height of 30 to 40 feet and a width of about 10 feet so the gap between those trees will go down

to about 6 feet at maturity. So you really will see a lush green screening with a decorative fence behind it along our boundary against the residential area. Now, one of the things that was written in the Staff report, in the conclusion, was that our proposed use was an expansion of existing nonconforming use. Now there wasn't very much information or detail about the nature of that expansion so what I would do is ask for a little more information about that and I way I can be responsive to concerns that the Staff has and I'll reserve the rest of my time for rebuttal.

COMMISSIONER ATKINS: Thank you Mr. Buckley.

MS. HOLMES: Time remaining is 6 minutes and 31 seconds.

COMMISSIONER ATKINS: Okay. And Staff has already said that there were no other proponents -- well, they had no cards, no speaking cards but I will just ask if someone has come in since that statement has been made. Are there any other proponents for this Case Number?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Are there any other proponents for this zoning case?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Seeing none, I will ask for any opponents for this zoning case. Are there any opponents for this zoning case?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Any opponents?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Seeing none, at this time, Commissioners, I'll entertain a motion to close the public hearing.

COMMISSIONER SHELDON: Motion to close the public hearing.

COMMISSIONER WARES: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Sheldon seconded by Commissioner Wares that we close the public hearing for Case Number 2012 "V" as in Victor-005-06, 0 Martin Street is the location for this Case Number. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now closed for this Case Number. Staff, would you please sound your recommendation.

MS. CARTER: Staff recommends denial of the Variance Part 1 and Part 2, for the applicant did not represent a hardship for Category A nor B. It appears to Staff that this is an expansion of a nonconforming use and the Planning Commission is not permitted to vary such uses.

COMMISSIONER ATKINS: Commissioners, you've heard Staff's recommendation of this. At this time, I will entertain a motion.

MR. HAROLD BUCKLEY JR.: What --

COMMISSIONER ATKINS: We will have -- because the public hearing is closed, one of the Commissioners will have to ask the question and so -- then you will have an opportunity to respond to their questions but the public hearing is officially now closed.

COMMISSIONER SHELDON: Mr. Chair.

COMMISSIONER ATKINS: Yes.

COMMISSIONER SHELDON: Motion to deny for discussion.

COMMISSIONER TUCKER: Second.

COMMISSIONER ATKINS: Okay. There's been a motion to deny and a second. Any discussion?

COMMISSIONER SHELDON: Mr. Chair.

COMMISSIONER ATKINS: Yes.

COMMISSIONER SHELDON: Could we have a discussion regarding the expansion of nonconforming use and your observations to that extent on this particular variance request, not the Central Avenue one but on this particular one?

MS. CARTER: In the Work Session on last Thursday, the question was asked, and you can correct me if I'm wrong, exactly what they were doing on that property. Mr. Buckley's engineer or the representative firm -- Newell was not present -- he couldn't or he said that he did not want to go in a discussion, for he may give the wrong information. So as far as Staff is concerned, they were some questions for us as to the bins --

COMMISSIONER SHELDON: Uh-uh.

MS. CARTER: -- -- if they could be turned in opposite

direction such that you would need that turn around on the -- facing -- I can't remember -- the Central Avenue property instead of spacing the Martin Street. Also, what exactly is going in those bins? Are they coming from the actual cars themselves that are coming to the property or are they coming from the Central Avenue property to the Martin Street property? If they're coming off the I2 nonconforming use to a I1 use, then it is extending to -- over -- one property over to the next property, which has two different legal names. I think that was the only question because in Work Session, I did not feel as though it was explained to the Body --

COMMISSIONER SHELDON: Uh-uh.

MS. CARTER: -- as to exactly what's being done on that property.

COMMISSIONER SHELDON: And recycling in the City of East Point is an I2 -- is only allow an I2 and this is an I1 piece of property, I'm I correct?

MS. HOLMES: It is I2 with a Special Use Permit.

COMMISSIONER SHELDON: Okay. Right and so -- but this is an I1 -- this is zoned I1 at this point and is essentially a grandfathered nonconforming use?

MS. HOLMES: That's correct.

COMMISSIONER SHELDON: Right. So my question is this: Is this a new activity that the company has not been performing on this property up to this point and if so, what is that activity? I understand that this particular variance request on the Martin Street property

is -- all you're talking about is storage of vehicles that are in tact, is that correct?

MR. HAROLD BUCKLEY JR.: That's correct.

COMMISSIONER SHELDON: Okay. So with regard to this particular variance request, you not only responded to our concerns about the fence but the issue here, in terms of the setback, has to do with the storage of vehicles not any recycling activity?

MR. HAROLD BUCKLEY JR.: Well, I hear you asking three questions.

COMMISSIONER SHELDON: Okay.

MR. HAROLD BUCKLEY JR.: I'll address them in time.

COMMISSIONER SHELDON: Good.

MR. HAROLD BUCKLEY JR.: In terms of what this application is addressing, this application is not addressing a use. The application has nothing to do with the use. It's only asking for a setback reduction for a development of this property. So the use is a storage facility and I've got before me a board showing excerpts from your I1 zoning regulations and if you look at the bottom of that board, you will see that warehousing and storage is specifically permitted as a use under I1. What we're proposing is a storage facility which is at permitted use under your I1 regulations and that's there. In terms of expanding a nonconforming use across the property line, this is -- because it is a permitted use, it is a separate stand-alone use that is a allow under the zoning ordinance. So it is -- we -- not only are we not expanding a legally nonconforming use,

we're only asking for what the zoning ordinance says we should do under our current zoning. Now, in terms of the relationship between these uses, once cars come onto this property and once materials come on for storage, at the end of their storage period, the cars will either leave the site and be returned to their owners or they will to be taken to this side of the property for processing. Now, if you look at the board in front of me, what you will also see highlighted in the permitted by one uses is the processing of machines. Once we take these cars across the property line, what we will do is put them in this new service building. It will have three service bays with a lift. The cars will be put up on the lift and the fluids will be removed from them. We will also remove the batteries from them and we will also remove the catalytic converters from them. None of that activity has anything to do with recycling. This is processing of machines. Recycling involves taking a material and changing it from it's existing state and purpose and converting it to a new product. These cars are not going to be converted into new products. The batteries in the catalytic converters we're taking out, they will be taken off site for resale as used parts. We are not changing them into new products. These cars, when they leave the site -- 'cause once we do that processing, they will be taken from this site and we will did done with them here. They will look exactly the way they did when they came to our facility. So not only is this a permitted I1 use but this -- on the Central Avenue side is a permitted I1 use as well. So, you know, and it's not an expansion of a legally nonconforming use. And

then finally what I will say is that, you know, when you look at your definition of accessories, which I have put in **Tab 12** of your binder, what it says is that an accessory use is a subordinate use that is incidental to a principle use that is located on the same lot and that last part of the definition -- in order to be accessory, it has to be on the same lot. If we were to come to you -- and let's say this was all virgin land -- and we wanted to put a warehouse on this site and we wanted to put the required parking on the adjacent site and we tried to tell you that the parking was allow because it was accessory to the warehouse use, I suspect that what the City would say is that doesn't work because it's not on the same property and that you don't get credit for parking if it's not located on the same property because it is an accessory use and the same goes for any other scenario that you could come up with. So not asking for anything that we're not allow to have under the current I1 zoning. In fact, both of these properties were down zoned from I2 and this proposal represents an attempt by Newell to operate as required by the City under the new I1 zoning.

COMMISSIONER SHELDON: And this is not an activity that you're doing now? This will be a new activity?

MR. LARRY M. DINGLE: Let me try to help you understand.

COMMISSIONER SHELDON: And I'm only entered in this one piece of property.

MR. LARRY M. DINGLE: This piece of property here.

COMMISSIONER SHELDON: Yes.

MR. LARRY M. DINGLE: Yes, ma'am.

COMMISSIONER SHELDON: On Central Avenue.

MR. LARRY M. DINGLE: Exactly. And what I want to respond to is that that was, at one point in time, as Mr. Buckley said, the old General Chemical site abdomen it was zoned I2. It had a contamination issue which we've litigated on behalf of the City of East Point back in 1995 and then once that property was -- this issue was settled, this property was torn down and actually the soils had to be remediated and that's why you have an undeveloped site from that. When that happened, just so we're clear -- when that -- the buildings and so forth were taken down, any nonconforming status or use-rights with respect to the Martin Street property were also destroyed because that's one way you get rid of the nonconforming use. So we're not asking for any rights under that particular theory. So what Mr. Buckley is saying is that if ever used independently of an issue of none conformity is something that the code allows on the property as I1. So what we're doing is only storing here on the I1 and that's a permitted use.

COMMISSIONER SHELDON: Right.

MR. LARRY M. DINGLE: And one thing that he's further saying is that in terms of goals of objectives of a zoning ordinance, balancing the interest of the property owner's right to use his property and balancing the interest of the government to protect neighboring properties, that by moving this facility back --

COMMISSIONER SHELDON: Uh-uh.

MR. LARRY M. DINGLE: -- we're really trying to achieve that

objective and we're consistent with our concept of harmonizing our efforts there.

COMMISSIONER SHELDON: I hear you. And is this a building or is this just a parking area?

MR. LARRY M. DINGLE: This is a parking area only.

COMMISSIONER SHELDON: So it will be a lot --

MR. LARRY M. DINGLE: Yes, ma'am.

COMMISSIONER SHELDON: -- that's marked and pave?

MR. LARRY M. DINGLE: Yes, ma'am. It has to be paved.

COMMISSIONER SHELDON: Okay.

COMMISSIONER ATKINS: I guess those were probably my questions also. I just want to make sure that I am clear. So you touched on a point of when the buildings were torn down through some litigation and from this, I guess, behind **Tab No. 4**, this aerial view, it seems that there's nothing currently on the site as it relates to a development -- developed real estate. Is that correct?

MR. LARRY M. DINGLE: That's correct. And that's exactly why we can't contend that we have any rights under that -- under any nonconforming right because they would destroy when the buildings themselves and the use was destroyed.

COMMISSIONER ATKINS: Okay. So there's nothing currently on the site and so there's really no use on the site currently and this is 0 Martin Street that I'm talking about, right.

MR. LARRY M. DINGLE: Yes, sir.

COMMISSIONER ATKINS: Okay. I just wanted to make sure

of that. Okay. Commissioners, are there other questions?

COMMISSIONER SHELDON: Mr. Chairman.

COMMISSIONER ATKINS: Commissioner Sheldon.

COMMISSIONER SHELDON: I would like to withdraw my motion for denial on this particular piece of property on -- this is Application Number 2012V -- let me make sure I get the right one here. Okay, 2012V-005-06 --

COMMISSIONER ATKINS: Okay.

COMMISSIONER SHELDON: -- or do I need to reconsider?

COMMISSIONER ATKINS: Commissioner Sheldon has opted to withdraw her motion to deny. Commissioner Tucker, do your second --

COMMISSIONER TUCKER: I'll withdraw my second.

COMMISSIONER SHELDON: We haven't vote so --

COMMISSIONER ATKINS: Okay. Yeah. So Commissioner Sheldon has withdrawn her motion to deny. Commissioner Tucker has withdrawn his second. So Commissioners at this time, I will entertain another motion.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Is -- are there any other questions about what has been presented by the applicant?

COMMISSIONER RENÉ: I do.

COMMISSIONER ATKINS: Commissioner René, I thought you may have had a question. Put your microphone on.

COMMISSIONER RENÉ: My question is regarding the

fence --

MR. HAROLD BUCKLEY JR.: Yes.

COMMISSIONER RENÉ: -- that you have, I think, in **Tab 5**.

MR. HAROLD BUCKLEY JR.: Yes.

COMMISSIONER RENÉ: Can you explain just a little bit more in detail because the other one that you had, you had a hard copy photo of a commercialized fence and you said that the improvements for this will be the columns, that you'll make this stone instead of, I guess, metal.

COMMISSIONER ATKINS: I think that was concrete on that one, is what I believe.

MR. HAROLD BUCKLEY JR.: That was the concrete material.

COMMISSIONER RENÉ: The other one that you had that we were shown in the Work Session was more of a commercial grade -- oh, that's it right there.

MR. HAROLD BUCKLEY JR.: Yes.

COMMISSIONER RENÉ: That's it right there. So can I ask you -- the only difference that you're making in this is the stone columns?

MR. HAROLD BUCKLEY JR.: Well, there are a couple of differences that we have made. Number one, we did change from a concrete material to a stone material to reflect the character of the existing retaining wall.

COMMISSIONER RENÉ: Uh-uh.

MR. HAROLD BUCKLEY JR.: But the second change we made

was to make the columns more substantial. The photograph that we showed you had columns that were 18 inches wide so they were thin columns. They're made of concrete material and it did lend itself to more of a commercial -- more of a Spartan look than what we're proposing now. The difference is not only that we're redoing them in stone but we're increasing the size of them so that they're now, instead of 18 inches wide, 30 inches wide so that they have not only more of a consistent aesthetic but they have more of a visible impact because they're larger columns.

COMMISSIONER RENÉ: Now, will this fence be high enough that the community can't see over into --

MR. HAROLD BUCKLEY JR.: The fence will be 8 feet tall because that is what is permitted under your code. The decorative metal panels will be at a height of 7 feet 8 inches and then the columns will be at a height of 8 feet. And the reason you want that vertical articulation is because it adds more visual interest to the fence. Then it is just one solid plane at the top. Now, bear in mind, in addition to this fence, we're gonna have our Arbor Vitae trees which will start at a height of 10 feet the day we plant them but once they reach maturity, those trees will grow to a height of 30 to 40 feet and they will spread so they will tremendously enhance not only the effectiveness of that visual screen but also the aesthetic of the the screen.

COMMISSIONER ATKINS: Any other questions?

COMMISSIONER RENÉ: No.

COMMISSIONER ATKINS: I'm getting down to the nitpicking details of the fence and so I have a question about the fence. I appreciate the wider columns and the stone facade on the columns to contextually blend in with the raw that's currently there and I believe that you mentioned in Work Session that the fence there be did somewhere east of the City. What is -- so the fence -- the actual material and all would be the exact same. What is that material?

MR. HAROLD BUCKLEY JR.: These are decorative metal panels and they are processed panels with a decorative pattern and in addition, that enhances the vertical articulation I was talking about between the panels and the top of the column. But on the panels themselves, you don't just have a flat surface. You have a textured surface that adds to the aesthetic of the fence. So it really will, between those columns, enhance the visual value of our screening.

COMMISSIONER ATKINS: Okay. All right. I don't believe that there's a motion on the floor and I believe that we need a motion and a second for continued discussion so I need a motion and a second for us to continue to discuss this Case Number.

COMMISSIONER SHELDON: Mr. Chair.

COMMISSIONER ATKINS: Commissioner Sheldon.

COMMISSIONER SHELDON: I make a motion that we approve this variance request. Oh, what's the number again? 2012V-005-06.

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: It's been moved by Commissioner

Sheldon that we approve Case Number 2012 "V" as in Victor-005-06 and seconded by Commissioner Wares. Any discussion, further discussion?

COMMISSIONER BRYANT: Commissioner -- Mr. Chairman.

COMMISSIONER ATKINS: Yes, Commissioner Bryant.

COMMISSIONER BRYANT: I would just like to state that I can appreciate Mr. Buckley for reaching out to the President of the East Washington Neighborhood Association, Mr. Barlow. He did state to me that you did reach out to him and we can appreciate that.

MR. HAROLD BUCKLEY JR.: Okay, thank you.

COMMISSIONER ATKINS: Any other questions about this Case Number?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Any other questions?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Commissioners, there's a motion for approval on the floor. It's been properly seconded. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. This Agenda Item is approved.

COMMISSIONER SHELDON: One additional thing. Did we acknowledge that the motion for the fence around the retention pond

1 would have been withdrawn? I'm not sure we did that.
2 COMMISSIONER ATKINS: We did not and so we did not
3 articulate that or we did not separate those two out.
4 COMMISSIONER SHELDON: Do we need a motion to accept
5 the withdrawal?
6 MS. CARTER: Mr. Chair.
7 COMMISSIONER ATKINS: Yes, Staff.
8 ATTORNEY LINDA DUNLAVY: It probably would be best to
9 dot your I's and cross your T's on this so make two separate motions
10 with respect to it.
11 COMMISSIONER ATKINS: Okay.
12 COMMISSIONER SHELDON: Mr. Chair.
13 COMMISSIONER ATKINS: So having said that, because we
14 just approved this entire case which included the fence, do we need
15 to go back to perfect the record to withdraw that and then separate
16 these two variances?
17 ATTORNEY LINDA DUNLAVY: Yes.
18 COMMISSIONER ATKINS: Okay.
19 COMMISSIONER SHELDON: Well, we need to do it right.
20 COMMISSIONER TUCKER: Mr. Chair.
21 COMMISSIONER ATKINS: Yes.
22 COMMISSIONER TUCKER: I have a motion.
23 COMMISSIONER ATKINS: Okay. Commissioner Tucker.
24 COMMISSIONER TUCKER: I think my motion is to -- are we
25 doing a substitute?

COMMISSIONER ATKINS: No, it wouldn't be a substitute. Do we need to repeal? No?

ATTORNEY LINDA DUNLAVY: (Nods head for no.) Just make a motion.

COMMISSIONER SHELDON: Just make a motion to accept the withdrawal of the application for a variance regarding the detention pond and site the --

COMMISSIONER ATKINS: The Case Number?

COMMISSIONER SHELDON: Yes. I think.

ATTORNEY LINDA DUNLAVY: I think what you need to do is you need to move to amend your motion --

COMMISSIONER SHELDON: Okay.

ATTORNEY LINDA DUNLAVY: -- and then make it a two-part motion. One, to accept the withdrawal with respect to the detention pond fence, two, to approve the application for the rear yard setback.

COMMISSIONER ATKINS: Okay.

COMMISSIONER SHELDON: May I.

COMMISSIONER ATKINS: Yes, Commissioner Sheldon.

COMMISSIONER SHELDON: Mr. Chair, I would like to make -- I would like to amend my previous motion which I realize has already been passed on Application Number 2012V-005-06 to separate the two variance requests first to approve the setback request and second to accept the withdrawal of the request for a variance regarding the fence around the retention pond.

COMMISSIONER ATKINS: Okay.

COMMISSIONER TUCKER: Second.

COMMISSIONER ATKINS: Okay. It's been moved and properly seconded that we amend the motion. All -- is there any discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes it have. Okay. So we should be good. Thank you.

MS. CARTER: Case Number 2012 "V" as in Victor-006-06. Applicant is Wilson Brock & Irby for Newell Recycling. Property location is 1645 Central Avenue. The applicant is seeking a variance to reduce the rear yard setback from 30 feet to 0. This is to reduce the south and north side yard setback to 0 feet -- from 8 feet to 0. This application requires a public hearing.

COMMISSIONER ATKINS: Commissioners have heard that, at this time, I will entertain a motion to open the public hearing for Case Number 2012 "V" as in Victor-006-06.

COMMISSIONER TUCKER: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Tucker.

COMMISSIONER TUCKER: I move to open a public hearing on Case Number 2012V-006-06.

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: It's been moved and properly seconded that we open the public hearing for this Case Number. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now open. We will now hear from the applicant. Please state your full name and your address.

MR. HAROLD BUCKLEY JR.: Good evening, Commissioners. My name is Harold Buckley. My address is 2849 Paces Ferry Road in Atlanta. This is also a case by Newell Recycling and it is on the second property I pointed out to you on the aerial photograph. I think for this application, I gave you a separate binder for this but I really think that you really only need to look at **Tab 1** which is the site plan -- a copy of the site plan for this property and the highlighted areas where the variances would apply that we've requested. Basically, this property is the site of Newell's existing recycling center and you see it here. It has two -- actually three structures on it. You have the existing aluminum processing building that's here. You have two very old warehouses on the south side of the property along the railroad tracks and then you have the area next to the existing aluminum processing building which is currently used for an out door aluminum drying area. And the reason the aluminum storage area -- and the reason we're asking for this

variance is that when you process aluminum in the recycling process, it has to be completely dry. If it is not completely dry, then, you know, bad things happen. The aluminum goes "boom" and that presents a significant impairment to safety on the property. And what we're doing to enhance safety on our site is to add a drying shed that will do nothing more than enclose this storage area which is currently outside. And we're also adding the auto servicing building that we discussed in the last case which would be along here and you see it in your application -- I mean your site plan and, you know, once again, we're talking about being in harmony with the general purpose of the zoning ordinance and also looking at hardship based on size, shape or topography and once again, we -- although we only have to show one, we think we need both. In terms of being in harmony with the zoning ordinance, this property has a different impact which it comes to planning policy 'cause it doesn't abut a residential area. So really when you look at East Point's policies on this issue, we're focussing industrial development and redevelopment in an existing district and on existing industrial sites so we're in harmony with what the City's land-use policies are on that front. When it coming to hardship based on size, shape or topography, as you can see, we have a very unusual shape to our property. It's really sort of houndstooth parabola and I say that because, you know, people have been -- they have been chuckling at me about the parabola but it really does constrain what we can do with our property because we front on Bayard Street and as you can

see, this part of our site narrows considerably from the street. When the add the 40-foot front yard setback that we're required to adhere to and you look at the side yard setbacks, we would have to put our building right smack in the middle of that and we would not be able to access the rest of the property. When you go back to the back, you see those two old warehouses I was talking about and you still have this curve, this narrowing as you get further away from the street and that kind of squeezes our site. So if we were to move our building off of the property line and also the service center, it would put it right in the path of all the trucks trying to deliver materials to these warehouses and that would just take down that part of our operation so that would constitute the hardship for us. It's an unnecessary hardship because as you saw with the letters that I have submit with the Planning Department and given to you tonight, this setback does nothing but protect Newell from Newell. So not only is the hardship because of the shape of the property, but it's an unnecessary hardship because it doesn't do anything really to protect anyone in any meaningful way. So for that reason, we meet the standards for approval of the variance and we would request that you approve that and I'll reserve the rest of my time.

COMMISSIONER ATKINS: Okay. Are there any other proponents for this zoning case?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Any other proponents for this zoning case.

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Seeing none, at this time, I will ask if there are any opponents for this zoning case?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Are there any opponents for this zoning case?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Seeing none, Commissioners, I will entertain a motion to close the public hearing.

COMMISSIONER WARES: So moved.

COMMISSIONER ATKINS: Is there a second?

COMMISSIONER TUCKER: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Wares and seconded by Commissioner Tucker that we close the public hearing for Case Number 2012 "V" as in Victor-006-06. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now closed. Staff, would you please sound your recommendation.

MS. CARTER: Staff recommends denial of the variance request to reduce the south and north side yard setback from 8 feet to 0. It appears to Staff as an extension of the nonconforming use

and the Planning Commission is not permitted to vary such uses.

COMMISSIONER ATKINS: Okay. Commissioners, you've heard the applicant and the presentation of -- and during the public hearing, you've also heard Staff's recommendation. At this time, I'll entertain a motion.

COMMISSIONER SHELDON: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Sheldon.

COMMISSIONER SHELDON: I move for denial of Application Number 2012V-006-06.

COMMISSIONER ATKINS: Is there a second?

COMMISSIONER WASHINGTON: Second.

COMMISSIONER ATKINS: It's been move for denial for this case and a second by Commissioner Washington. Is there any discussion?

COMMISSIONER RENÉ: (Nods head for yes.)

COMMISSIONER ATKINS: Okay. Commissioner René.

COMMISSIONER RENÉ: I have a couple of questions.

VIDEOGRAPHER: Microphone.

COMMISSIONER RENÉ: I have a couple questions. One of my questions is that I see that if you put this all the way to the property line and it's right on the street, if there's an accident or anything, how much of a lead way or -- I don't know. How much of a lead way would that give rescuers to be able to handle that particular situation because you are backing the property line all the way back up?

MR. HAROLD BUCKLEY JR.: Well, actually -- oh, I'm sorry. I don't mean to cut you off.

COMMISSIONER RENÉ: No, go ahead. I'm sorry.

MR. HAROLD BUCKLEY JR.: Actually, 'um, the improvements that we're making to the property are to the -- toward the rear so they would not -- none of the new improvements to our site would be located anywhere near the street. So our access to the site would remain unchanged and the queueing for trucks and other vehicles coming onto the site would remain unchanged. I was just saying that because of the shape of the property and because of the setbacks that apply there at the street, we really couldn't effectively put anything there and so that forced us to push everything back toward the back of the property. To state very quickly, though, when you look at what we're doing, once again, I just wanted to say that this is an I1 use for processing machines. We're enclosing an existing storage area which certainly has benefits to the community because, number one, we're reducing the degree of none conformity by taking an out door storage area and enclosing it within a building which is what the zoning ordinance calls for and number two, by enclosing that storage area within a building, we are providing noise benefits to the surrounding area because the building will serve as a noise barrier and so that would be an improvement and certainly is something that you would want to see for this operation to be on the site and in harmony with the surrounding area.

COMMISSIONER ATKINS: And so I have a question. I don't

see it in this binder but you just mentioned "noise" and so I haven't had an opportunity to go through the document that you provided us for the other Case Number on Martin Street. I am assuming or -- and I could be wrong -- that the study -- I don't know what **Tab** it is --

COMMISSIONER RENÉ: **Tab 4**.

MR. HAROLD BUCKLEY JR.: Actually, if you will refer back to your other -- your Martin Street binder --

COMMISSIONER ATKINS: Yes.

MR. HAROLD BUCKLEY JR.: -- it is under **Tab 4**.

COMMISSIONER ATKINS: Okay. And so when this study was commissioned and this study was done, can you tell us a little bit -- I see you've highlighted some things here. So now, currently, with the use, the building would, I guess, muffle some of whatever noise is created from use and so if this is -- I don't know if this is positive or negative because I haven't had an opportunity to go over. I'm just seeing it. I would imagine that it would help -- is that what you're also contending with, the building?

MR. LARRY M. DINGLE: Yes, Mr. Chairman. Let me sort of explain the context in which this study was done. Newell, in an effort to improve it's community relations, had received some complaints from the District Council Member by noise migrating from the site. So we thought it would be a good idea to take it upon ourselves to investigate that to determine exactly what's going on within the area. What the study demonstrates is that the ambient noise which we will

refer to as background noise from the airport, from the trains, from the buses and some trucks, is at a level that you don't really hear Newell. What we did is we had to partition the East Point Housing Authority to get the right to put the sound testing instruments on their property which represents the closest residential use to the Newell facilities so that we can be as accurate as we could. And it's really way of trying to determine our neighborliness and to determine how to the extent that we were being a bad neighbor, how we could find a way to do a little bit better. But what we are -- I think Mr. Buckley is exactly correct that once you've been closed, the operations that we have there, it's an assurance that will be even quieter.

COMMISSIONER ATKINS: Okay. Commissioners, are there any other questions or any other discussion?

COMMISSIONER SHELDON: Yes, sir.

COMMISSIONER ATKINS: Okay. Commissioner Sheldon. I guess I have some problems with this for a couple of reasons. I appreciate the idea of enclosing the drawing shed. That make since to me. But I -- we have three different property owners. All of this is Newell Recycling as it operates and it's Newell Recycling that's the name of the company and we have an ordinance which requires recycling to be located in I2 and this feels to me like an expansion of your current operations there simply by doing the automobile, draining of fluids and all of that and whatever other operations you are going to be conducting with the automobiles and that feels to me

like an expansion of what is a nonconforming use and therefore does not give us the authority to grant your variance.

MR. LARRY M. DINGLE: I think that's --

COMMISSIONER SHELDON: And you can break it down into the argument about assembly and machines and all of that but the fact is that's it's a recycling center and your intention is to recycle the materials that are broken down from these cars. If not on that site, they will be transported to be recycled and for me the spirit of what our obligations include would prevent us -- well, would defined us as a recycling operation since Newell is a recycling company and that being the case, I'm not comfortable sticking my neck out in terms of granting a variance for something that I don't believe we have the authority to do.

MR. LARRY M. DINGLE: May I respond? And I think it's a legitimate question in which we've struggled with a little bit, Ms. Sheldon and for example, there were times when Coca Cola the biggest soft drink product company in the world use to make movies. I think we've got to be very careful about painting with an extraordinary broad brush and what I would want to say is that the issue you've raised, we struggle with mildly because it is an honest, interesting intuitive question. Here's the way we respond. If we were coming in to ask for an I2 use to expand a new and different I2 initiative, that would be an expansion of the rights that are grandfathered by Newell in the U. S. Constitution and Georgia Constitution. So I would say that if we're taking a very noxious use

that has nothing to do with Newell processing and bring it onto that property, then we're expanding the envelope. But I want you to bare in mind one simple and very important thing that the governing authority here rezoned this property to the I1 District Classification. And so what we then did is undertook the responsibility of examining, if this were a clean slate, examining what rights Newell would have under that I1 district classification. It is poignantly clear and without debate that under this ordinance doing what was proposed to be done on this property is authority. So now you have a problem. If it's authorized, it would be I1 classification and we can do it legally, it's not an expansion of what has been grandfathered. What is protected is a heavy industrial use. If we're coming in and asking to expand a heavy industrial use, I think we would be clearly about it but we're not asking for that. What we're really asking for is to do what is authorized under the existing zoning rights establishment of the code. But I think -- I will tell you that that is not an insignificant question. We're layered with it and wanted to be absolutely sure that we were right that when we put this here, this use would be authorized under the existing I1 zoning. But not asking for rezoning to get to this. It's authorized processing of automobiles or machinery. It's authorized in the I1 zoning classification. But I really appreciate your time and attention and allowing us to respond to that.

COMMISSIONER ATKINS: Commissioners, are there other questions?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Any other questions of the applicant?

COMMISSIONER TUCKER: (Nods head for yes.)

COMMISSIONER ATKINS: Yes, Commissioner Tucker.

COMMISSIONER TUCKER: I'm just interesting in seeing if it would be appropriate for our own attorney to respond to what -- what she says.

COMMISSIONER ATKINS: Sure. I think by your question, that would be allow.

ATTORNEY LINDA DUNLAVY: I understand and appreciate what Larry and Harold are saying. I too, like Commissioner Sheldon, have some concerns. I think it does come down somewhat to semantics. Is this -- when you take automobiles on the Martin Street property, you bring them through the adjoining driveway access to the Central Avenue property. You drain the fluids, remove the carburetor, et cetera, et cetera and you store the fluids in barrels on the site, which is the Central Avenue site then you remove those vehicles then you take them somewhere else to be crushed and shredded. Whether what you're doing on Central Avenue side is strictly processing machinery or is it part and parcel of the full recycling process and I do think, you know, it could be contrude as expanding a nonconforming use. The other issue that I have legally with this and the expansion of nonconforming use is these bins on the Martin Street side, as I understand it from Harold, are used to

store metal such as cooper that will be brought to the Central Avenue side and then processed on the Central Avenue side and to me that appears to be expanding the space that you are using for your metal recycling operations from beyond the parameters of the I2. So those my thoughts on it. I think that it's a really close call. I think you could slice it and say, all we're doing is processing. All we're doing is storage but when you look at the expanse of definitions in our code as to what recycling is, it includes collecting, processing, you know, and the fabrication of recycled goods so I do think it is a close call. I think that it can be construed however as expanding a nonconforming use. Those are my thoughts for what they're worth.

COMMISSIONER SHELDON: And let me just say that I'm not opposed to the recycling center in any way. I'm just uncomfortable with taking a -- making that decision, given the fact that the way I read this it's not a permissible function for Planning & Zoning Commission to do. That's my story and I'm sticking with it.

COMMISSIONER TUCKER: Are you suggesting as well that we don't have the authority given that fact --

COMMISSIONER SHELDON: Exactly.

COMMISSIONER TUCKER: -- to vote to allow variance?

ATTORNEY LINDA DUNLAVY: If I might interject. I mean, in our zoning code what we have is we have limitations on the authority of the Planning & Zoning Commission and one of the things the Planning & Zoning Commission cannot do is vary a use. You do not have power to vary what uses are permitted on that property. If you

construe this to be an expansion of a nonconforming use, then you're allowing to vary that use essentially.

COMMISSIONER ATKINS: Can I ask a question of our attorney? I want us to be -- I hear that you're talking about varying a use and so I would then imagine that we would have before us an application for a use variance.

ATTORNEY LINDA DUNLAVY: We don't take application for use variances.

COMMISSIONER ATKINS: Right.

ATTORNEY LINDA DUNLAVY: We can't vary the use.

COMMISSIONER ATKINS: Right. And so I guess I go back to how does that then relate to what the application is which is a setback variance?

ATTORNEY LINDA DUNLAVY: The setback variance that I understand on the Central Avenue property is to allow for the processing of automobiles which are being brought from the Martin Street side to the Central Avenue side. By virtue of granting the setback variance -- and I suppose you could grant the setback variance subject to the use inside the building complying with whatever uses are permitted on this property. Although they have stated that the use they're going to put within the buildings on this, that they're seeking the setbacks for, are possibly recycling activities which would not be permitted.

COMMISSIONER ATKINS: Are there other questions from the Commission?

COMMISSIONER RENÉ: I have one.

COMMISSIONER ATKINS: Commissioner René.

COMMISSIONER RENÉ: I want to here Mr. Harold.

MR. HAROLD BUCKLEY JR.: This is a very good discussion and we are talking about definitions within your code for various uses. I talked about in the last case the definition in your zoning ordinance for the term, "recycling" and you're correct that it says that recycling is the collecting of materials with the intent of turning them from their present state into a new product and we are talking cars onto this site and we're processing them with the intent of having them recycled, not on this property but somewhere else. Now the question is: How do you interpret your term for -- your definition for recycling that really gives it some meaning and significance? If you make it too broad, then basically what you're saying is recycling is happening everywhere in the City of East Point and I will use my own office as an example. In my office, we have several collection areas and bins. We bring in paper. We bring in plastic and we bring in aluminum materials. Those material are used on our site and then they are separate. They are processed and put in different containers with the ultimate intent of sending them somewhere else to ultimately be recycled. The fact that we are taking those materials in, using them on our site and then sending them somewhere else doesn't make our office a recycling center or at the location of recycling. It just merely says that we are taking materials in and sending them out. So I would ask you to just really take a look at

your definition for recycling because you don't want to interpret it so broadly that it losing all meaning and it just doesn't -- it doesn't mean anything.

COMMISSIONER ATKINS: Any other discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Any other discussion, Commissioners?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: No. The motion on the floor is to deny. It has been seconded. The motion was made by Commissioner Sheldon. I think seconded by Commissioner Washington. If there's no other discussion Commissioners, at this time, all in favor of the motion to deny this variance, please sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed please sound nay.

COMMISSIONERS: Nay.

COMMISSIONER ATKINS: Okay. Roll Call, please.

MS. HOLMES: Commissioner René.

COMMISSIONER RENÉ: Nay.

MS. HOLMES: Commissioner Wares.

COMMISSIONER WARES: Nay.

MS. HOLMES: Commissioner Tucker.

COMMISSIONER TUCKER: No.

MS. HOLMES: Commissioner Mallory.

COMMISSIONER MALLORY: Absent.

MS. HOLMES: Commissioner Sheldon.

COMMISSIONER SHELDON: Aye.

MS. HOLMES: Commissioner Bryant.

COMMISSIONER BRYANT: Aye.

MS. HOLMES: Commissioner Washington.

COMMISSIONER WASHINGTON: Aye.

MS. HOLMES: I have the motion tide.

COMMISSIONER ATKINS: Nay.

MS. HOLMES: Motion passes.

COMMISSIONER ATKINS: Okay. Commissioners, so we will approve this variance, Case Number 2012 "V" as in Victor-006-06. Okay. Our next Agenda Item is 2012 "Z" as in zebra-012-007. It's a text amendment. Our next two agenda items are text amendments and they also require public hearings. Commissioners, at this time, I will entertain a motion to open the public hearing.

COMMISSIONER TUCKER: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Tucker.

COMMISSIONER TUCKER: I motion to open the floor for public hearing for Case Number 2012Z-012-07.

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: Before we do that, I don't think that we properly disposed of that Case Number.

ATTORNEY LINDA DUNLAVY: I think you need to make a motion to approve because the motion to deny failed.

COMMISSIONER ATKINS: Right, exactly. We did not properly dispose of that so before I do that, I want to properly dispose of that Case Number so Commissioners, lets go back to the case before then and at this time, I'll entertain another motion.

COMMISSIONER TUCKER: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Tucker.

COMMISSIONER TUCKER: I would like to make a motion to approve Case Number 2012V-006-06.

COMMISSIONER ATKINS: Is there a second?

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: It's been moved and properly seconded that we approve Case Number 2012 "V" as in Victor-006-06. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay

COMMISSIONERS: Nay.

COMMISSIONER ATKINS: Okay. Roll Call, please.

MS. HOLMES: Commissioner René.

COMMISSIONER RENÉ: Approved.

MS. HOLMES: Commissioner Wares.

COMMISSIONER WARES: Approved.

MS. HOLMES: Commissioner Tucker.

COMMISSIONER TUCKER: Yes.

MS. HOLMES: Commissioner Sheldon.

COMMISSIONER SHELDON: No.

MS. HOLMES: Commissioner Bryant.

COMMISSIONER BRYANT: No.

MS. HOLMES: Commissioner Washington.

COMMISSIONER WASHINGTON: No.

MS. HOLMES: There's a tie.

COMMISSIONER ATKINS: Approved.

MS. HOLMES: Motion passes.

COMMISSIONER ATKINS: Okay. I just wanted to make sure that our applicant -- sorry, but I for got to dispose of that properly. All right. So now onto the next two Agenda Items. They are text amendments and I would entertain a motion to open the public hearing for the first.

COMMISSIONER TUCKER: I sounded my motion. Should I resound it?

COMMISSIONER ATKINS: Okay. Commissioner Tucker has made a motion to open the public hearing for Case Number 2012 "Z" as in zebra-012-07. Is there a second?

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: So moved and properly second that we open the public hearing for this case. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now open. Are there any proponents -- is there

anyone here to speak to this text amendment?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Any proponents?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Seeing none, are there any opponents?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Any opponents for this text amendment?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Seeing none, Commissioners, at this time, I will entertain a motion to close the public hearing.

COMMISSIONER TUCKER: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Tucker. I'd like to make a motion to close the public hearing on Case Number 2012Z-012-07.

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: It's been moved by Commissioner Tucker, seconded by Commissioner Wares that we close the public hearing for Case Number 2012 "Z" as in zebra-012-07. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it.

The public hearing is now closed. Staff, would you please sound your recommendation.

MS. CARTER: Staff recommends approval of Case Number 2012 "Z" as in zebra-012-07 to amend the language in the ordinance Part 10 Planning and Zoning -- I mean, Planning Development, Chapter 2, Article F, 10-2172 violations and 10-2173 penalty for the City of East Point Georgia.

COMMISSIONER ATKINS: Commissioners, you've heard Staff's recommendation. I'll entertain a motion.

COMMISSIONER TUCKER: Mr. Chair.

COMMISSIONER ATKINS: Commissioner Tucker.

COMMISSIONER TUCKER: I would like to make a motion to accept the Staff's recommendation concerning Case Number 2012Z-012-07.

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: It's been moved by Commissioner Tucker that we accepts Staff's recommendation for approval for Case Number 2012 "Z" as in zebra-012-07. It's been seconded by Commissioner Wares. Is there any discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Any discussion? Okay.

COMMISSIONER SHELDON: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Sheldon.

COMMISSIONER SHELDON: I would just add for the public to know that this describes the penalties regarding -- the penalties and

how this will be handled in Municipal Court for a violation -- let's see. Help me.

ATTORNEY LINDA DUNLAVY: It's for a violation of any ordinances in the City of East Point --

COMMISSIONER SHELDON: Of any ordinance

ATTORNEY LINDA DUNLAVY: -- essentially and it's correcting an error that was made when the code was first drafted.

COMMISSIONER SHELDON: Right. It's improvement to our language. In essence, I just wanted to make sure the public knows what we're doing here.

COMMISSIONER ATKINS: Okay. Absolutely. Is there any discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Any other discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Okay. Commissioners, the motion is to approve. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the the ayes have it. This particular item we recommend approval. Case Number 2012 "Z" as in zebra-015-07 is also a text amendment. Commissioners, at this time, I will entertain a motion to open the public hearing.

COMMISSIONER BRYANT: Mr. Chairman.

COMMISSIONER ATKINS: Yes, Commissioner Bryant.

COMMISSIONER BRYANT: I make a motion that we open the hearing on 2012Z-015-07.

COMMISSIONER ATKINS: Is there a second?

COMMISSIONER SHELDON: Second.

COMMISSIONER ATKINS: It's been moved and properly seconded that we open the public hearing for Case Number 2012 "Z" as in zebra-015-07. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now open. Are there any proponents for this text amendment?

(Whereupon the two proponents approach the podium.)

COMMISSIONER ATKINS: All right. We have two proponents. Have they properly signed the speakers cards, Staff.

MS. CARTER: Both of them.

MS. HOLMES: I have one card.

COMMISSIONER ATKINS: You have one card and two hands raised. Lets see if we can get another card.

MS. HOLMES: Thank you.

COMMISSIONER ATKINS: Please state your name abdomen your address.

MR. HAROLD BUCKLEY JR.: Good evening. My name is

Harold Buckley. 2849 Paces Ferry Road in Atlanta. I am here really to just give you a little bit of background which I did share with you at the Work Session last week. The impetus for this text amendment is a number of citations that were issued on electric fences in the City of East Point. The code that you have is silent regarding whether electric fences are allow or prohibited. Now, you can interpret that either way but there is a question as to whether -- what a status is for those fences. Those citations were issued to customers of my client, Century Security, and because it installed the fences and it has assumed the responsibility for maintaining them and also handling any issues that come up with those fences. They are trying to work something out with the City in the form of a text amendment. We did submit a proposed draft amendment to the City for it's consideration that would clarify that electric fences are allow and specifically the electric fences that were the subject of the citations were allow, the City took a look at that and did -- and formed it's own draft which is what is pending before you. We have a number of concerns with this draft because while it does address electric fences in general, it doesn't really address the conflict that prompted it to be created in the first place. So to allow us more time to talk to the police chief, the fire chief and other members of the City Staff to try to come up with a refined draft that addresses the present dispute, we would ask you to defer this so that we could work on refinements to it.

COMMISSIONER ATKINS: So Mr. Buckley, in essence, you're

not a proponent for this. You're an opponents and I was calling for proponents but we heard you loud and clear.

MR. HAROLD BUCKLEY JR.: Well, I apologize. I'm a proponent for the text amendment in general. I would just like to maybe refine what is before you today.

COMMISSIONER ATKINS: Okay. All right. We've heard from Mr. Buckley. Are there any other proponents or are there any proponents for this text amendment?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Any proponents for this text amendment?

AUDIENCE: (No response.)

COMMISSIONER ATKINS: Are there any opponents for this text amendment in addition to Mr. Buckley?

MR. LARRY M. DINGLE: I need to speak for it.

COMMISSIONER ATKINS: If you are an opponents and you have signed a speaker's card, it is now your opportunity to state your name and your address.

MR. LARRY M. DINGLE: This is a very interesting evening. I'm Larry Dingle. 2849 Paces Ferry Road. I wanted to give a little bit more practical context to what we're really dealing with. As you know the City of East Point has evolved as -- it use to be one of the State's leading industrial Cities and now we've migrated to retain some of that but also to move into an area of business park and development and we have some very large property owners in the

City of East Point who have the responsibility for protecting and maintain very significant and important properties including automobiles, including motorcycles and watercraft also including, unfortunately, firearms and what we're trying to do is to find a way as responsibly as we can to make sure that we provide the greatest protection not just for their property but what happens to citizens of the City of East Point when the wrong people get their property in their possession. So we think that there are some -- and I would say that I have a slightly different position than Harold. They aren't huge differences. They are two issues around which there is a need to seek resolution and it really is going to require our sitting down with the fire chief, because they are life-safety relate issues, and the police chief to talk with them more fully and directly and see if we can find a solution. So we are respectfully requesting, whether I'm seeking in favor or against, that we defer this measure so that we have an opportunity to seek out the possibility of finding some proper -- some common ground. But there are basically two, possibly three issues that I think we have the ability to resolve if we defer it.

COMMISSIONER ATKINS: Okay. Are there any other opponents? You just want pop up Mr. Buckley.

MR. HAROLD BUCKLEY JR.: I understand. I understand.

COMMISSIONER ATKINS: We run a very orderly meeting here. Okay. You just can't pop up.

MR. HAROLD BUCKLEY JR.: Okay. There's one last thing.

Just very quickly. It whether take thirty seconds or less. One of the concerns we have with the ordinance is when it talks about the energizer component of the fence, it make reference to a Figure 102. Figure 102 is not part of the ordinance and it's not referenced so it's not clear what that standard is. So that would be one of the thing we will want to address during our deferral period.

COMMISSIONER ATKINS: Okay. Back to our orderly meeting. Are there any other opponents for this text amendment?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Any other opponents for this text amendment?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Seeing none, Commissioners, at this time, I will entertain a motion to close the public hearing.

COMMISSIONER SHELDON: So moved.

COMMISSIONER TUCKER: I second.

COMMISSIONER ATKINS: It's been moved by Commissioner Sheldon and seconded by Commissioner Tucker that we close with public hearing for Case Number 2012 "Z" as in zebra-015-07 text amendment. Commissioners, all in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now closed. Staff, would you please sound

your recommendation.

MS. CARTER: Staff recommends deferral of the amended -- amendment to the language in the ordinance Part 10 Planning and Development, Chapter 2 General Provisions, Section 10-2044.D.3.a fences and walls for the City of East Point Georgia.

COMMISSIONER ATKINS: Commissioners, you've heard the speakers. One was clearly an opponent in the public hearing. I'm not really sure what the other was and you've also heard Staff's recommendation. At this time, I'll entertain your motion.

COMMISSIONER TUCKER: I didn't miss the recommendation. We're you recommending change.

COMMISSIONER SHELDON: Deferral.

COMMISSIONER ATKINS: Deferral.

MS. CARTER: It's a deferral. And we do have a letter from the -- we have a letter request from Harold Buckley for deferral as well.

COMMISSIONER ATKINS: That would be the best way to describe him at this point, Harold Buckley, yes. Okay. Staff -- Commissioners, you've heard Staff's recommendation. It is a deferral. At this time, I will entertain your motion.

COMMISSIONER TUCKER: Mr. Chair.

COMMISSIONER ATKINS: Yes, Commissioner Tucker.

COMMISSIONER TUCKER: I have a motion -- I put a motion on the floor to defer Case Number 2012Z-015-07.

COMMISSIONER WARES: I second.

COMMISSIONER ATKINS: Okay.

COMMISSIONER SHELDON: Discussion.

COMMISSIONER SHELDON: Do we need a date-certain for the deferral?

MS. CARTER: Yes. The next August meeting.

COMMISSIONER SHELDON: Thank you. Would you make a friendly amendment Mr. Commissioner.

COMMISSIONER ATKINS: Tucker. Time certain to our August meeting, to defer to our August meeting.

COMMISSIONER TUCKER: To defer to our August meeting.

COMMISSIONER ATKINS: Okay. The motion has been amended to defer to our August meeting by Commissioner Tucker and it's been accepted by Commissioner Wares. So Commissioners, is there any other discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: No other discussion?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Commissioners, at this time, all in favor sound aye for the motion to defer.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. We will defer this Agenda Item to our August meeting. Next on our agenda are announcements. Staff, do you have any announcements

to make that would be for the public good?

VIII. <u>ANNOUNCEMENTS</u>:

MS. CARTER: Staff does not have any announcements.

COMMISSIONER ATKINS: Okay. Commissioners, do you have any announcements?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: No, okay. At this time, I will entertain a motion to adjourn.

IX. <u>ADJOURNMENT</u>:

COMMISSIONER WARES: So moved.

COMMISSIONER ATKINS: Is there a second?

COMMISSIONER SHELDON: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Wares and seconded by Commissioner Sheldon that we adjourn our July meeting. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, this meeting is now adjourned. Thank you.

(Whereupon this concludes the City of East Point Planning & Zoning meeting for July 19, 2012.)

Attest:

I hereby attest that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 62 represent a true and correct transcript that I am not in any way financially interested in the result of said case.

I am here as an independent contractor for East Point Planning & Zoning Commission.

I was contacted by the offices of East Point Planning & Zoning Commission to provide stenography services to take down the meeting minutes.

The foregoing meeting for the City of East Point Planning & Zoning Commission on July 19, 2012, at 7 o'clock P.M. were taken down by me and transcribed by me this 1st day of August, 2012.

Jeanene Harper
Stenographic Stenographer