AGENDA ITEM NO. 17

WICHITA—SEDGWICK COUNTY

# STAFF REPORT

MAPC October 6, 2016
DAB VI October 3, 2016

**CASE NUMBER:** CON2015-00030

**APPLICANT/AGENT:** Homer Morgan (applicant/owner) Stephen M. Joseph (agent)

**REQUEST:** Conditional Use to allow a nightclub in the city

**CURRENT ZONING:** LC Limited Commercial (LC)

**SITE SIZE:** Approximately 0.52-acres (105 feet x 214.6 feet)

**LOCATION:** Generally located south of West 49th Street North on the northeast corner West 48th Street North and North Arkansas Avenue (2032 South Broadway Avenue)

**PROPOSED USE:** Bring the site into conformance with the Unified Zoning Code

**BACKGROUND:** The LC Limited Commercial (LC) zoned site advertises itself as "Baby Dolls" a nightclub that provides its customers with dancing by employees and cereal malt beverages or alcoholic liquor for sell and consumption on the site. As defined by the Wichita-Sedgwick County Unified Zoning Code (UZC) this is a nightclub. The site has been zoned commercial since 1958 (see case history). The applicant's agent has stated the site has continuously been a nightclub for over 30-years. An oral history of the site indicates the site was perhaps previously known in the 1970s as the "49 A-Go-Go", which provided the same services as the current nightclub. The site was annexed into the City of Wichita in 1998 (see case history). Planning could not find a Use Exception or Conditional Use for a tavern, drinking establishment or nightclub on this site. The nightclub is considered a nonconforming use, i.e., being established prior to the current UZC and prior to the site being annexed into the City. The applicant is requesting a Conditional Use to bring the site into compliance with the current UZC, which was adopted by the City of Wichita and Sedgewick County in 1996.

The current UZC (Sec.III-D.6.w.) requires consideration of a Conditional Use for a LC zoned tavern, drinking establishment or a nightclub when it is located within 300 feet of a church or place of worship, public park, public or parochial school or residential zoning district. The site abuts SF-5 Single-Family (SF-5) residential property on its north side and is adjacent to SF-5 zoned single-family neighborhoods on its east (separated by a 20-foot wide alley), south (across 48th Street North) and west (across Arkansas Avenue) sides.

The site (built 1951) is located in an area that is zoned mostly SF-5 and developed with urban scale subdivision or large tracts and lots of an acre or more. A platted 20-foot alley separates the site from the east, adjacent SF-5 zoned single-family residences (built late 1940s – early 1950s). Large tract SF-5 zoned properties abut and are adjacent to the north side of the site. Most of th0 ese properties are being used as agricultural fields, with the only single-family residences located north of the site being built in 1950. It is difficult to determine what the abutting north SF-5 zoned property is being used for, but the aerial shows what appears to be an oval track and numerous out buildings. Directly south of the site, across 48th Street north, there is a LC zoned site that the appraiser's link describes as car repair, paint shop and detail shop. There is a lot of outdoor vehicle parking or storage, including trailers for semis, on the site. SF-5 zoned single-family residences (built late 1970- early 1980s) are located further south, as is a SF-5 zoned Buddhist worship complex (built 2001). Approximately 17-acres of undeveloped LI Limited Industrial zoned property owned by the City of Bel Aire is also located south of the site. All of these abutting and adjacent north, east and south properties end up against the Chisholm Creek Diversion portion of the "Big Ditch." The City of Park City is located east, across the Big Ditch. Properties located west of the site, across Arkansas Avenue are zoned SF-5 and are developed as single-family residences (built 140s -1980s). The exceptions are two LC zoned properties located directly west of the site across Arkansas Avenue. The larger of the two LC zoned sites has a single-family residence (built 1970) and the smaller is listed on the appraiser's link as having a manufactured home located on it. There are also some undeveloped properties in the area.

The applicant's site plan is an aerial of the site, which lacks the detail needed to determine the required parking of one space per two occupants, as well as the required solid screening, lights, location of the trash receptacles, etc. The manager of Baby Dolls has stated that the posted occupancy for the site is 101, which requires 51 paved parking spaces. An on-site trip to the site could not determine parking. However it did reveal a wooden fence separating the site from the abutting north and a portion of the adjacent east properties and the location of an unscreened trash receptacle. Both the east fence and thrash receptacle may be partially located in the platted 20-foot wide unimproved alley. The trip showed no parking barriers separating the parking from Arkansas Avenue and 48th Street North

**CASE HISTORY:** The site is located on Lot 32, Northern Acres Addition, which was recorded with the Register of Deeds June 16, 1948. The 1958 Sedgwick County zoning map shows the site being zoned LC Light Commercial, which was changed to Limited Commercial with the 1996 adoption of the UZC. As previously noted the site was annexed into the City in 1998; Annexation Ordinance Number 43-965. Staff has received numerous calls protesting the request.

**ADJACENT ZONING AND LAND USE:**

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|---|---|---|
| NORTH: | SF-5 | Agricultural land, a single-family residence |
| SOUTH: | LC, SF-5 | Garage for vehicle repair, painting and vehicle storage, single-family residences |
| EAST: | SF-5 | Single-family residences, Big Ditch |
| WEST: | LC, SF-5 | Single-family residences |

**PUBLIC SERVICES:** The site has one drive onto North Arkansas Avenue, a paved two-lane minor arterial, with bar ditches on both sides of it. Access onto 48th Street North, a sand and gravel residential cul-de-sac street, is undefined but appears to be wherever a customer wants it to be. Public Water is available to the site. Public sewer is not available to the site nor to the area the site is located in. The applicant has not provided the location of an on-site sewer facility, which would be a septic system. All other utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide" (Land Use Guide) depicts this location as being appropriate for "residential" and "parks and open space" designations. Neither site's LC zoning nor its use as a nightclub is in conformance with the Land Use Guide. Per the "Community Investment Plan" the nonconforming nightclub does not contribute to promoting a safe, active, stable, and healthy living environment for what is overwhelmingly a single-family neighborhood.

Planning could not find a Use Exception or Conditional Use for a tavern, drinking establishment or nightclub on this site. The current nightclub is considered a nonconforming use, i.e., being established prior to the current UZC and prior to the site being annexed into the City. The site is located within 300 feet of SF-5 zoned properties, which is the trigger that requires approval of Conditional Use to bring the site into compliance with the current UZC and the site losing its noncompliance status.

The nightclub provides dancing by employees for the entertainment of its customers. However, according to the Police Department's Vice Division and the Metropolitan Area Building and Construction Department's Code Enforcement Division the nightclub is not considered a "sexually oriented business", i.e., a SOB. The UZC (Sec.II.B.12.n and o.) defines a SOB and per that definition Vice and Code Enforcement has determined that the nightclub's dancing by its employees for the entertainment of its customers does not make it a SOB. Planning Staff has not visited the nightclub, but will rely on Vice and Code Enforcement for that determination.

The site does have access onto the minor arterial Arkansas Avenue, which meets the locational criteria for commercial uses. However, there is no buffer of less intensive uses between the nightclub and the abutting and adjacent, which is suggested for the location of commercial development.

**RECOMMENDATION:** The nightclub is out of character and incompatible with the development in the area, which is long time established single-family residential development. Even two of the three

remaining LC zoned sites located in the area are developed as single-family residences, with the exception being what appears to be a nonconforming repair, paint and vehicle storage business. Based upon the information available prior to the public hearings, Planning staff recommends that a Conditional Use for a tavern, drinking establishment or nightclub be **DENIED.** If denied the site's LC zoning would not be removed and applicant could continue to operate as a non-conforming nightclub, per the UZC's Non-Conforming policies. Denial would make it more difficult for the site to continue to operate as a nonconforming use, prevent an expansion of the nightclub and could eventually remove the nonconforming nightclub and allow another use to operate by right on the LC zoned property that would be a more neighborhood oriented and compatible business for the area.

This recommendation is based on the following findings:

**(1)** **The zoning, uses and character of the neighborhood:** The area is overwhelmingly zoned SF-5 and developed with long established single-family residences. Even two of the four area's LC zoned sites are developed as single-family residences, with the exception being what appears to be a nonconforming repair, paint and vehicle storage business.

**(2)** **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, which accommodates office and retail uses. If denied the site's LC zoning would not be removed and applicant could continue to operate as a non-conforming nightclub, per the UZC's Non-Conforming policies. Denial would make it more difficult for the site to continue to operate as a nonconforming use, prevent an expansion of the nightclub and could eventually remove the nonconforming nightclub and allow another use to operate by right on the LC zoned property that would be a more neighborhood oriented and compatible business for the area.

**(3)** **Extent to which removal of the restrictions will detrimentally affect nearby property:** Typical concerns about tavern-drinking establishments include bad behavior resulting from unlimited liquor sales, noise, and the hours of the nightclub having a detrimental impact on the adjacent single-family residential neighborhood. Denial of the request could have a negative financial impact on the applicants.

**(4)** **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2030 Wichita Functional Land Use Guide" (Land Use Guide) depicts this location as being appropriate for "residential" and "parks and open space" designations. Neither site's LC zoning nor its use as a nightclub is in conformance with the Land Use Guide. Per the "Community Investment Plan" the nonconforming nightclub does not contribute to promoting a safe, active, stable, and healthy living environment for what is overwhelmingly a single-family neighborhood.

Planning could not find a Use Exception or Conditional Use for a tavern, drinking establishment or nightclub on this site. The current nightclub is considered a nonconforming use, i.e., being established prior to the current UZC and prior to the site being annexed into the City. The site is located within 300 feet of SF-5 zoned properties, which is the trigger that requires approval of Conditional Use to bring the site into compliance with the current UZC and the site losing its noncompliance status.

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**(5)** **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for police services.

However, if the MAPD finds the Conditional Use request for a nightclub appropriate and votes to approve it, the MAPD must make alternate findings. Planning Staff proposes the following conditions if the MAPD approves the Conditional Use:

(1) The site shall be developed with an approved revised site plan, showing, but not limited to, the required parking spaces, locating dumpsters 20 feet from the north and east abutting and adjacent SF-5 zoned properties, solid screening with a solid screening gate around the dumpsters, and a solid wooden fence along the east property line. The site plan shall also confirm the location of the east abutting platted 20-foot wide alley to determine that the wooden fence and dumpster(s) are not located in the platted alley. The site plan shall also show barriers separating parking from all public street right of way and the platted alley. The barrier on the south side of the site shall be constructed to allow no access onto 48th Street North. The site plan must be submitted for review within 60-days of approval by the MAPC or, as applicable, the appropriate governing body.
(2) No outdoor speakers or outdoor entertainment are permitted.
(3) The Conditional Use shall not be in effect until all improvements on the site are completed, including the location of dumpsters 20 feet from the abutting and adjacent SF-5 zoned properties, the required screening (including dumpsters), parking barriers and the paved parking lot is stripped to determine if any adjustments or variances are needed to resolve the required parking is competed. This must be completed within 90 days of approval by the MAPC or, as applicable, the appropriate governing body or the Conditional use shall be declared null and void.
(4) The applicant shall obtain all required state, local and other applicable permits and inspections.
(5) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

CON 2015-30

SITE PLAN
Conditional Use Permit Application
CONDITIONAL USE:
Tavern and Drinking Establishment and Entertainment Establishment
APPLICANT:
Homer Morgan, Trustee
AGENT:
Stephen M. Joseph
LEGAL DESCRIPTION:
Lot 32, Northern Acres Addition
BUSINESS:
Baby Dolls
ADDRESS:
4900 N. Arkansas, Wichita
Legend
4900 N Arkansas
10' setback
10' setback
4900 N Arkansas
Parking
Parking
W 48th St N
Arkansas Ave
Google earth
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N
100 ft