



**Wichita-Sedgwick County Metropolitan Area Planning Department**

March 28, 2001

Alan S. Girrens  
2659 S. 119<sup>th</sup> Street West  
Wichita, KS 67215

**FILE COPY**

**RE: CON2000-00058 – Conditional Use for a Rural Home Occupation on property zoned “SF-20” Single-Family Residential. Generally located One-fourth mile south of Pawnee on the west side of 119<sup>th</sup> Street West.**

Dear Mr. Girrens:

At its regular meeting on December 21, 2000, the Metropolitan Area Planning Commission considered the above-captioned request. The action of the MAPC was to APPROVE subject to the conditions stated in the letter dated December 26, 2000.

This action was not accompanied by valid appeals or protest petitions, therefore, the action of the Planning Commission is FINAL. Enclosed is a signed copy of the above-referenced Conditional Use Resolution. If you have any questions concerning this case, please contact our office at 268-4421.

Sincerely,

A handwritten signature in cursive script, reading 'Donna Goltry'.

Donna Goltry, AICP  
Principal Planner

DG/rs

cc: Austin Miller, P.A., %Kim Edgington, 355 N. Waco, Suite 200, Wichita, KS 67202  
Louis Sittler, 24912 W. 6<sup>th</sup> Street South, Garden Plain, KS 67050-9310  
Mark Biberstein, 100 N. Broadway, Ste 7, Wichita, KS 67202-2295  
Glen Wiltse, Director, Sedgwick County Code Enforcement  
Tom Winters, County Commissioner, District III, Main Stop County Room #320  
Rich Euson, County Legal, Mail Stop County Room #359

**CONDITIONAL USE RESOLUTION NO. CON-2000-00058**

**WHEREAS**, Alan S. Girrens (Owner); Austin Miller, P.A., c/o Kim Edgington (Agent), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requested a Conditional Use to allow for a Rural Home Occupation on 18 acres zoned "SF-20" Single-Family Residential described as:

The East 600 feet of: Beginning 1376.85 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South 702.22 feet; thence West 1241.03 feet; thence North 702.22 feet; thence East 1241.03 feet to the beginning, except the East 40 feet for road.  
**AND**

The East 600 feet of: Beginning 2079.07 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South to a point 128.77 feet South of the Northeast corner of the Southeast Quarter; thence West 1240.04 feet; thence North 639.68 feet to a point West of the beginning; thence East 1241.03 feet to the beginning, except the East 40 feet for road. Generally located One-fourth mile south of Pawnee on the west side of 119<sup>th</sup> Street West.

**WHEREAS**, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

**WHEREAS**, the MAPC did, at the meeting of December 21, 2000, consider said application; and

**WHEREAS**, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

**NOW, THEREFORE, BE IT RESOLVED** by the Metropolitan Area Planning Commission that this application be approved to permit a conditional use to allow for a Rural Home Occupation on 18 acres zoned "SF-20" Single-Family Residential described as:

The East 600 feet of: Beginning 1376.85 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South 702.22 feet; thence West 1241.03 feet; thence North 702.22 feet; thence East 1241.03 feet to the beginning, except the East 40 feet for road.  
**AND**

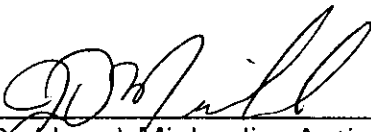
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subject to the following conditions:

1. The "Conditional Use" for operation of a contractor's storage facility shall meet all requirements of the Unified Zoning Code Sec. IV-E.(3)(a), Sec. IV-E.(3)(c), Sec. IV-E.(3)(g), Sec. IV-E.(6)(e), and Sec. IV-E.(6)(g).
2. The revised Site Plan shall designate those portions of existing structures used as the principal residence and as accessory structures for agricultural use.
3. The rural home occupation shall be limited to the use of existing structures or portions thereof, and to the maximum amounts specified in Sec. IV-E.(6)(c) plus one additional 10,000 square foot building.
4. Outdoor storage for the rural home occupation shall be located no closer than 200 feet from the property line abutting 119<sup>th</sup> Street West on the gravel drive and in the area west of the main building and north of the pole barn. The outdoor storage shall be screened and/or landscaped in compliance with Sec. IV-E.(6)(d) and with a maximum size of 10,000 square feet.
5. The distance required between the rural home occupation and the adjacent dwelling wherein no rural home occupation is conducted may be reduced from 600 feet to 500 feet.
6. Any materials that could potentially contaminate the groundwater or surface water shall be stored in such a manner as approved by the Environmental Health Division of the Health Department.
7. The site shall be developed in general conformance with a revised site plan to be reviewed and approved by the Director of Planning and that is in substantial conformance with all the conditions contained herein.
8. Any violation of these conditions shall render this Conditional Use Permit null and void.
9. The "Conditional Use" permit shall terminate after a period of 10 years from date of approval. If the owner seeks to renew the rural home occupation at the termination of this 10-year period, the owner shall file an application for a "Conditional Use" permit and be subject to the public hearing process.

Adopted this 21st day of December 2000. This resolution shall become effective on the fifteenth day after the date last noted above unless the matter is forwarded to the Governing Body for final action under the provisions of Section V-D.6. When any one or more of the exceptions listed in Section V-D.6 exist, this resolution with its conditions of approval shall be considered a recommendation of the MAPC to the Governing Body which shall then have final authority to approve, approve with conditions or modifications, or deny the Conditional Use application.

METROPOLITAN AREA PLANNING COMMISSION

  
\_\_\_\_\_  
J.D. (Jerry) Michaelis, Acting Chair MAPC

ATTEST:

  
\_\_\_\_\_  
Marvin S. Krout, Secretary

**STAFF REPORT**  
MAPC December 21, 2000

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CASE NUMBER: CON2000-00058

APPLICANT/AGENT: Alan S. Girrens (owner); Austin-Miller, P.A. c/o Kim Edgington (agent)

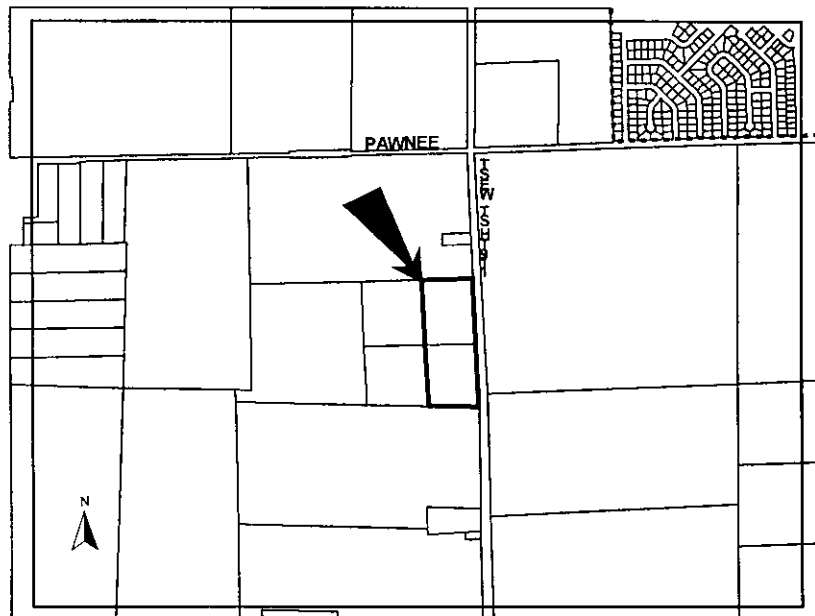
REQUEST: Conditional Use for a Rural Home Occupation

CURRENT ZONING: "SF-20" Single Family

SITE SIZE: 18 acres

LOCATION: One-fourth mile south of Pawnee on the west side of 119<sup>th</sup> Street West

PROPOSED USE: Continued operation a landscape construction business as a rural home occupation



**BACKGROUND:** The applicant is requesting a "Conditional Use" for an 18-acre tract located on the west side of 119<sup>th</sup> Street West approximately one-fourth mile south of Pawnee. The property is zoned for large-lot residential use and has a residence connected to the north end of the main structure. In addition, the building is being used for the applicant's landscape contractor's business (which comes under the zoning code definition of "construction sales and service").

The application area is located in an agricultural area with "SF-20" Single-Family zoning surrounding it on all sides. The nearest development is Granview Subdivision under development one mile north, and DP-142 Pawnee Mesa Residential C.U.P. (Hunter's Ridge) that is located one-half mile to the northeast. Both of these areas are within the corporate limits for Wichita. The only non-residential use near the property is a site for a church on the northeast corner of 119<sup>th</sup> and Pawnee, zoned "SF-20." The Calfskin Creek borders the property to the west, but the application area is outside the FEMA 100-year floodplain. The applicant owns additional land to the west that lies within the floodplain.

The proposed Site Plan shows an existing building and a pole barn. Both are metal structures. The location of the residence is not designated on the Site Plan, but it is our understanding that it is located in the northern portion of the main building. The Site Plan also shows a proposed 10,000 square foot building expansion, as well as a significant expansion of the outdoor storage to approximately 80,000 square feet. The proposed screening is a minimal planting of trees on the front of the property along 119<sup>th</sup> Street West. (See "**Recommendations**" additional discussion of the ways in which the Site Plan does not comply with guidelines for a rural home occupation.

#### **ADJACENT ZONING AND LAND USE:**

|        |                        |                             |
|--------|------------------------|-----------------------------|
| NORTH: | "SF-20" Single-Family  | Agriculture, farm           |
| EAST : | "SF-20" Single Family  | Agriculture                 |
| SOUTH: | "SF-20" Single Family; | Agriculture                 |
| WEST:  | "SF-20" Single Family  | Agriculture, Calfskin Creek |

#### **CASE HISTORY:**

The applicant filed a request for "LI" Limited Industrial zoning (ZON2000-00015) that was ultimately withdrawn on October 19, 2000. Staff had recommended **DENIAL** of "LI" based on this use being incompatible with the Comprehensive Plan and future development trends of the area. The case was heard and deferred by MAPC previously (May 25, 2000, June 15, 2000, and June 29, 2000). The motion on the June 29th was to defer the case until receiving a County Counselor's opinion on whether the use could be operated as "Conditional Use" for a rural home occupation. This opinion, dated September 29, 2000, confirmed that a rural home occupation may be permitted based on the facts as presented. These facts included our previous memo dated June 25, 2000 that did not show the proposed building expansion and where we had estimated outdoor storage to be in the

range of 5,000 square feet.

The previous case (ZON2000-00015) received a 40 percent protest against the proposed "LI" zoning.

**PUBLIC SERVICES:** Access to the property is via 119<sup>th</sup> Street West, a two-lane arterial paved to county standard. Traffic volumes in 1997 were low, rated as 2,360 ADTs for the segment of 119<sup>th</sup> south of Pawnee. Volumes are predicted to increase to approximately 9,000 by 2030. The 2030 Transportation Plan shows 119<sup>th</sup> being widened north of Pawnee to Maple from two lanes to four lanes; this improvement is not included in the C.I.P. for 2000-2009. South of Pawnee, it remains a two-lane facility.

City water and sewer services are not available west of 119<sup>th</sup> at the current time. The nearest water line is 16" line that is 1/4 mile east of Pawnee and 119<sup>th</sup>. The nearest sewer mains that could possibly be extended are a 12" main that is 1 1/2 miles east of Pawnee and 119<sup>th</sup>, or a 12" main that is 1/2 mile north and 1/3 mile east of Pawnee and 119<sup>th</sup>.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" in the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for low-density residential use, and places it beyond the 10 Year Urban Service Area, but within the 30 Year Urban Service Area. The area to the north, east, and west of the application area is shown for low-density residential also. The area to the south is identified as remaining in rural use. No land is shown along 119<sup>th</sup> as industrial except over a mile to the north between Kellogg and the abandoned right-of-way of the Kansas Central Railroad, and over 1 1/2 mile to the south between MacArthur and K-42.

**RECOMMENDATION:** This area is expected to transition from rural to urban use within 10 to 30 years. The transition to urban development is expected to follow the pattern of low-density residential use, as indicated in the *Comprehensive Plan*.

In general, construction sales and service does not blend well with residential use. Typical operations have a lot of heavy equipment (noise), rely on outdoor storage of equipment and supplies, and require a large amount of land, making adequate screening and buffering expensive. However, it is permitted as a rural home occupation if the applicant can meet all the criteria of Sec. IV-E.6-7 of the Unified Zoning Code. In situations where the applicant cannot meet all these criteria but has a minimum of 5 acres and no more than four employees, it can be approved as a "Conditional Use".

In this case, the landscape business has already been established. Continued operation in the short run is somewhat in character with the rural land use nearby. As the area transitions to urban use, and the nearest residential areas are only 1/2 mile away, the business could become a deterrent to the development of surrounding areas. Therefore, it is recommended that the use be allowed to continue as long as it operates as a home

occupation during the next 10 years and that the extent of the use is not expanded beyond its current level. This allows the applicant to continue operation and time to plan for expansion in a location suitable for industrial use.

The criteria for rural home occupations contained in the Unified Zoning Code can be modified by MAPC, however, the code gives parameters that can be used to judge whether the proposed home occupation truly meets the spirit and intent of the rural home occupation standards, or is being used as a vehicle to circumvent the UZC. In this case, the Site Plan violates the scope and intensity of the rural home occupation in many respects.

Because the Site Plan was just received, Staff has not had time to discuss it with the applicant. However, the Site Plan, as submitted, would allow for a significant expansion of the existing indoor and outdoor storage and change the character of the operation.

The applicant is requesting a doubling or tripling of the indoor building area, to a maximum amount somewhere in the vicinity of 14,000 square feet. Yet, the maximum amount of indoor storage envisioned by the UZC is 3,000 square feet or in an accessory structure equal to the size of the principal residence. We do not know the exact size of the principal residence, but from building permit data it appears to be approximately 1,000 to 1,500 square feet. Staff recommends the proposed building expansion be eliminated and that the existing space be limited to 3,000 square feet devoted to the home occupation. The remaining space would be the residence and used for agricultural activities.

The applicant is requesting nearly 8 times as much outdoor storage as the Unified Zoning Code allows for outdoor storage. The plan shows between 80,000 and 85,000 square feet and the UZC limit is 10,000. In addition, the location of the outdoor storage is nearer to 119<sup>th</sup> and the southern property line than the 200 feet stipulated in the UZC, although the Site Plan could accommodate this 200-foot buffer simply by moving the outdoor storage area back by about 25 feet on the east.

Whenever outdoor storage is less than 600 feet from the right-of-way or interior property line, the screening standards in the UZC require solid, semi-solid fencing and/or landscape materials that provide the desired screening effect with the first growing season following installation. The Site Plan fails to provide this level of screening. It only provides for a tree buffer of one tree every 40 feet, with no stipulation as to type or caliper.

Finally, the current operation has very little outdoor storage, perhaps in the range of 5,000 square feet based on a recent site visit. Allowing the change from the current level of outdoor storage to that requested by the applicant is a serious change in character of the operation.

Clearly, the proposed "Conditional Use" seriously challenges the spirit and intent of the UZC by the proposed expansions of the indoor and outdoor storage, as well as by the



minimal screening proposed. Based on this Site Plan and information available prior to the public hearing, Staff recommends the application be **APPROVED subject to a revised Site Plan that meets the following conditions:**

1. The "Conditional Use" for operation of a contractor's storage facility shall meet all requirements of the Unified Zoning Code Sec. IV-E.(3)(a), Sec. IV-E.(3)(c), Sec. IV-E.(3)(g), Sec. IV-E.(6)(e), and Sec. IV-E.(6)(g).
2. The revised Site Plan shall designate those portions of existing structures used as the principal residence and as accessory structures for agricultural use.
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6. Any materials that could potentially contaminate the groundwater or surface water shall be stored in such as a manner as approved by the Environmental Health Division of the Health Department.
7. The site shall be developed in general conformance with a revised site plan to be reviewed and approved by the Director of Planning and that is in substantial conformance with all the conditions contained herein.
8. Any violation of these conditions shall render this Conditional Use Permit null and void.
9. The "Conditional Use" permit shall terminate after a period of 10 years from date of approval. If the owner seeks to renew the rural home occupation at the termination of this 10-year period, the owner shall file an application for a "Conditional Use" permit and be subject to the public hearing process.

This recommendation is based on the following findings:

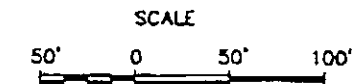
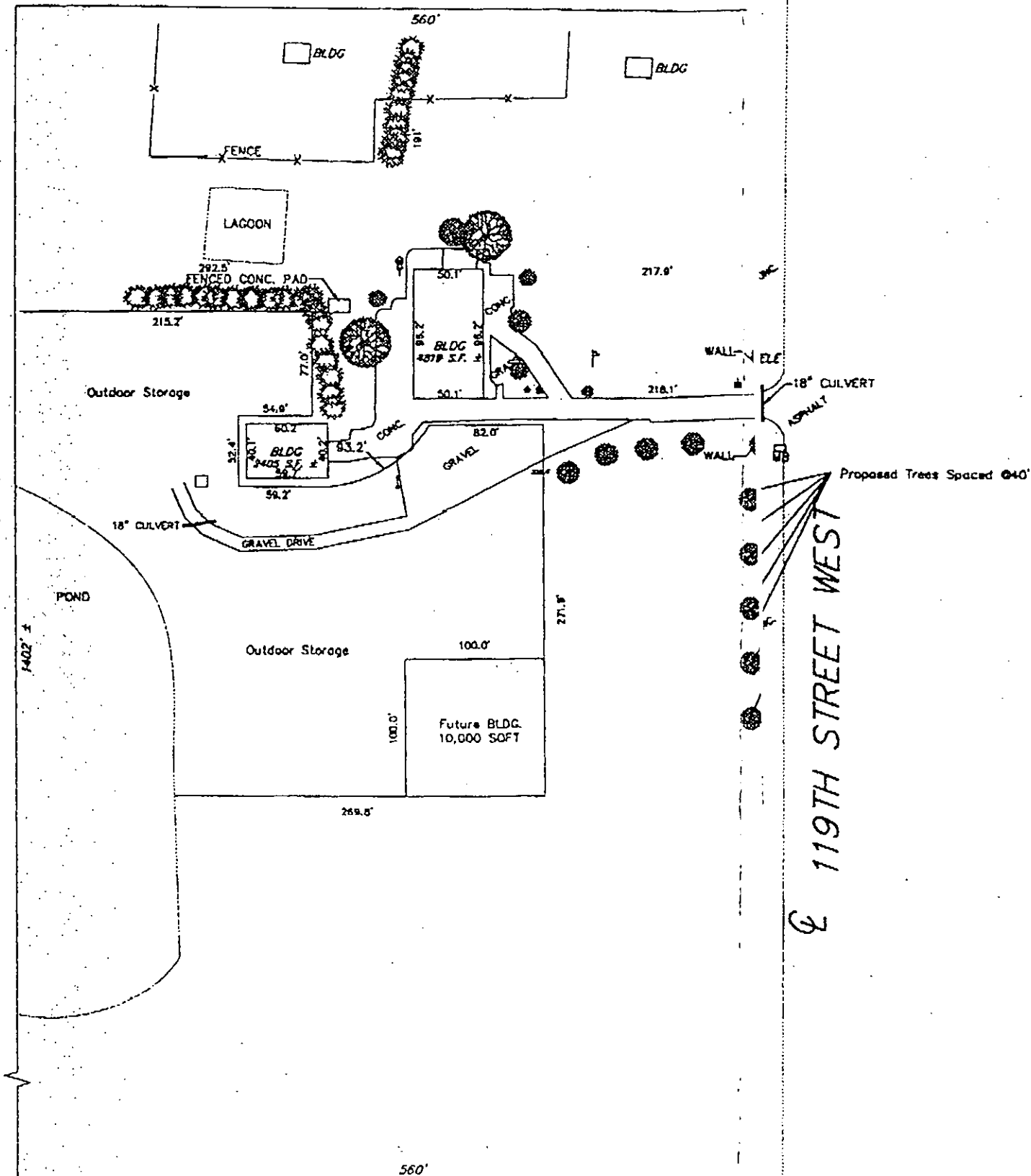
1. The zoning, uses and character of the neighborhood: The land in the immediate vicinity of the property is used for agricultural purposes. The character of urban development on the eastern side of 119<sup>th</sup> to the north of the application area is low-

density residential. The only non-residential use being developed nearby is a church, which is a permitted use in all residential zoning districts. The property to the west is located in the Calfskin Creek floodplain. The land to the west of the Calfskin along 135<sup>th</sup> Street West, the next major county line road, 135<sup>th</sup> Street West, is in agricultural use with a few large-lot residential uses.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be used as agricultural land or in low-density residential use. The landscape contractor's business can only be operated as a "Conditional Use" for a rural home occupation since the applicant has less than 5 acres.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" for a rural home occupation would allow the continued operation of the landscape contractor's business for up to ten years and so long as it complies with the conditions if approval **and** is maintained as a residence. Any expansion of these uses would hamper the viability of the residential character in surrounding areas since the activities conducted upon the site are incompatible with low-density residential use.
4. The length of time the subject property has remained vacant as zoned: The property has been in agricultural use and more recently has been in operation as a landscape construction business even though it was not zoned for this type of business.
5. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Any expansion of the business is at the expense of the general public by compromising the proposed development pattern and the infrastructure being planned to serve future residential growth. The "Conditional Use" gives the applicant the ability to plan for business expansion in a suitable industrial site, thus reducing any loss to the applicant.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: A landscape contractor's business is not in conformance with the *Comprehensive Plan*.
7. Impact of the proposed development on community facilities: Traffic impact should be minimal. Sewage impacts would be minimal if adhering to a criterion of domestic water level generation and proper drainage/floodplain management. However, greater consumption of water would require extension of sewer lines to serve the site.

# SITE PLAN FOR CON2000-00058

2650 S. 119TH STREET WEST  
WICHITA, SEDGWICK COUNTY, KANSAS



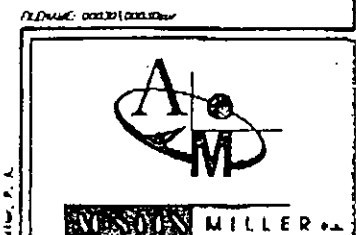
## LEGEND

- Light Pole
- Monitoring Well
- Tree
- Bush
- Cedar Tree
- Flagpole
- Mail Box
- Power Pole
- Dead Man
- Fence
- Telephone Pedestal
- Cleanout

## LEGAL DESCRIPTION

The East 600 feet of the Southeast 1/4 of the Northeast 1/4, Section 1, Township 28 South, Range 2 West of the 6th Principal Meridian, Sedgwick County, Kansas. Except the East 40 for Road Dedication.

Applicant: Alan S. Girrens



RETURN TO FILE