Planning Agenda Item #_____

City of Wichita
City Council Meeting
March 19, 1996

Agenda Report #_____

TO: Mayor and City Council Members

SUBJECT: **Z-3186 - REQUEST FOR ZONE CHANGE FROM 'AA' ONE FAMILY DWELLING DISTRICT TO 'A' TWO FAMILY DWELLING DISTRICT, LOCATED AT THE NORTHWEST CORNER OF ENGLISH AND CRESTWAY (4348 E. ENGLISH).**
(DISTRICT #2)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning

MAPC Recommendation (11-30-95): Deny, (8-5)

MAPC Recommendation (2-15-96): Approve, subject to voluntary restrictive covenant (8-3).

Staff Recommendation: Approve.

CPO Recommendation: Approve, subject to conditions (4-0).

Background: This is a zone change request to 'A' Two Family Dwelling District, by Larry J. & Mary Kay Vin Zant, in order to permit a home occupation inside an accessory structure and to permit one non-resident employee on-site, neither of which is not permitted in the existing 'AA' One Family Dwelling District.

After receiving a complaint from an area property owner in late 1995, the Office of Central Inspection inspected the site and issued a notice of violation for not having a home occupation license. However, OCI staff later discovered that the property owner did have a home occupation license; however, his home occupation was in violation of the home occupation regulations of the 'AA' District because it was operating in an accessory building and he employed non-resident employees on-site.

On November 27, 1995, CPO East Council 2 considered this request and voted 4-0 to recommend

approval of the zone change.

At the MAPC hearing on November 30, 1995, one neighbor spoke in favor of the request, and several area residents spoke in opposition to the request. The residents in opposition expressed concerns about potential hazards from storage of pool chemicals, the applicant's previous violations of the Zoning Code requirements (including outdoor storage, and the number of employees on the site), difficulty in monitoring and enforcement of the home occupation, and the precedent that would be set by approving the request. The applicant also testified that he unknowingly violated the Zoning Code by storing some equipment outside, and at times by having up to three (3) employees on the site.

During the Commission's first consideration of this matter, several MAPC members stated that they supported home occupations in residential areas. However, some members also stated that they had concerns that the proposed home occupation would not be appropriate for this area and could detrimentally affect nearby properties and the character of the neighborhood. At the November, 1995 meeting, the MAPC voted 8-5 to recommend denial of the zone change, citing the following findings: (1) opposition of neighborhood residents; (2) the extent to which removal of the restrictions will detrimentally affect nearby property; and (3) the character of the neighborhood that could be changed by the approval of this request.

After the November MAPC hearing, several area property owners filed protest petitions against this request. Due to a valid protest (35.57%), a 3/4 majority vote of the membership of the City Council is required to approve this request (6 votes).

Prior to the Wichita City Council meeting on January 9, 1996, the applicant's attorney questioned the MAPC's findings and the lack of explanation for the findings for denial. Also, the attorney suggested that the MAPC should not have focused its discussion on the applicant's home occupation. After consultation with the City Attorney, the City Council voted to refer the zone change back to the MAPC for additional public testimony and findings in support of the Planning Commission's recommendation.

At the MAPC hearing on February 15, 1996, the applicant volunteered a restrictive covenant to place restrictions on any home occupation permitted on the site. The proposed covenant reiterates many of the Zoning Code restrictions for home occupations. However, the covenant would restrict permitted home occupations to only that of a swimming pool service company and would prohibit signage of any nature on the lot. The covenant also would prohibit a second dwelling unit on the lot. The applicant also submitted letters from three local realtors who indicate that, in their opinion, the zone change would not have a negative impact upon nearby properties. The applicant testified that the College Hill area includes numerous properties already zoned 'A' and that one additional lot with 'A' zoning would not be a detriment to the neighborhood.

At the February MAPC hearing, several citizens spoke in both support and opposition to the request. The property owners to the north and south of the applicant's property both testified in favor of the

application. Those citizens in support indicated that they did not feel that the zone change would be a detriment upon the area. The president of the College Hill Neighborhood Association testified that the Association voted to take a position to oppose the zone change. Those citizens in opposition, including the Neighborhood Association, expressed concern that the zone change would set a precedent for additional rezoning requests in the area and they also noted staff's recent findings that there have been no similar rezoning requests approved in the College Hill area since the mass downzoning that occurred in 1960 at the neighborhood's request *(see letter dated 1-22-96 from Kevin Kokes to Joanie Ewy)*.

After discussion, the MAPC voted 8-3 to reverse it previous recommendation and to recommend approval of the zone change, subject to filing the voluntary restrictive covenant offered at the MAPC meeting in a form approved by the City Attorney. The MAPC recommendation is based on the findings prepared by planning staff.

Recommendation:

1. Concur with the findings of the MAPC and approve the zone change subject to the condition of recording the voluntary restrictive covenant, and place the ordinance establishing the zone change on first reading; instruct the Clerk to withhold publication until the covenant is recorded with the Register of Deeds; or

2. Deny the request and cite findings.

(Due to a valid protest against this request, a 3/4 majority vote of the membership of the governing body is required to approve this request. Since this is the second hearing for this matter, an override of the Planning Commission's recommendation requires a simple majority vote of the membership of the governing body.)

Attachments:

Locational map
CPO2 minutes from 11-27-95
MAPC minutes from 11-30-95 (staff report located on pages 1-3)
WCC minutes from 1-9-96
MAPC minutes from 2-15-96
Proposed restrictive covenant submitted by the applicant at the 2-15-96 MAPC hearing.
Letter dated 1-2-96 from Ann Graham to Sheldon Kamen, City Council Dist. 2
Letter dated 1-22-96 from Kevin Kokes to Joanie Ewy and attached minutes for zoning cases Z-2449, Z-2516, Z-2973, Z-3000.
Letter dated 1-11-96 from David L. Karmol to Vin Zant Pool Service
Letter dated 1-24-96 from Lawrence Volbrecht to Larry Vin Zant
Letter dated 1-25-96 from Diane Park to members of the MAPC
Letter dated 2-14-96 from Kitchel L. Woods to Dale Miller

SEDGWICK COUNTY

METROPOLITAN AREA PLANNING
DEPARTMENT
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March 19, 1996

Larry J. & Mary Kay Vin Zant
4348 E. English
Wichita, KS 67218

RE: Z-3186 - Zone change from 'AA' One Family Dwelling District to 'A' Two Family Dwelling District, located at the northwest corner of English and Crestway (4348 E. English).

On March 19, 1996, the City Council considered the above-referenced request. The action of the Council was to deny the zone change.

If you have any questions, please call the Metropolitan Area Planning Department at 268-4421 or the City Law Department at 268-4681.

Sincerely,

Kevin Kokes

Kevin Kokes
Senior Planner

cc: Robert Kaplan, Law Building, 430 N. Market, Wichita, KS 67202
Fred and Mary Johnson, 149 S. Crestway, Wichita, KS 67218
Beth King, 4222 E. English, Wichita, KS 67218
Greg Henning, 4347 E. English, Wichita, KS 67218
Kitchel L. Woods, 151 N. Pershing, Wichita, KS 67208
Diane Z. Park, 6100 E. Central #215, Wichita, KS 67208
Joanie Ewy, 4331 E. English, Wichita, KS 67218
David Burros, 4123 E. English Wichita, KS 67218
Marvel Blye, 240 S. Pershing, Wichita, KS 67218
Ann Graham, 4335 East English, Wichita, KS 67218
Mary Pottorf, 212 S. Crestway, Wichita, KS 67218
Harold W. Deets, Chairman, Board of Trustees, East Heights United Methodist Church, 150 S. Crestway, Wichita, KS 67218

Romauldo Turner, 136 S. Belmont, Wichita, KS 67218
Vernon Wheeler, 174 S. Crestway, Wichita, KS 67218
Kerry Clark, 200 S. Crestway, Wichita, 67218
Larry Osterhaut, Fire Department
Kurt Schroeder, Superintendent of Central Inspection
Dick Jonker, Office of Central Inspection
Randy Sparkman, Office of Central Inspection
Joe Lang, First Asst. City Attorney