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ORDINANCE NO. 48-792

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

**BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.**

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2009-00036

Zone change request from SF-5 Single-family Residential to GC General Commercial, on property described as:

The west 455 feet of Lot 1, Block A, Ysidro 2nd Addition, Wichita, Sedgwick County, Kansas; and,

Zone change request from SF-5 Single-family Residential to LI Limited Industrial, on property described as:

Lot 1, Block A, except the west 455 feet, Ysidro 2nd Addition, Wichita, Sedgwick County, Kansas.

Generally located south on the east side of Broadway, north of MacArthur Road.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 10 day of August, 2010.

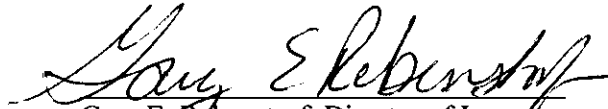
ATTEST:


Karen Sublett, City Clerk


Carl Brewer, Mayor

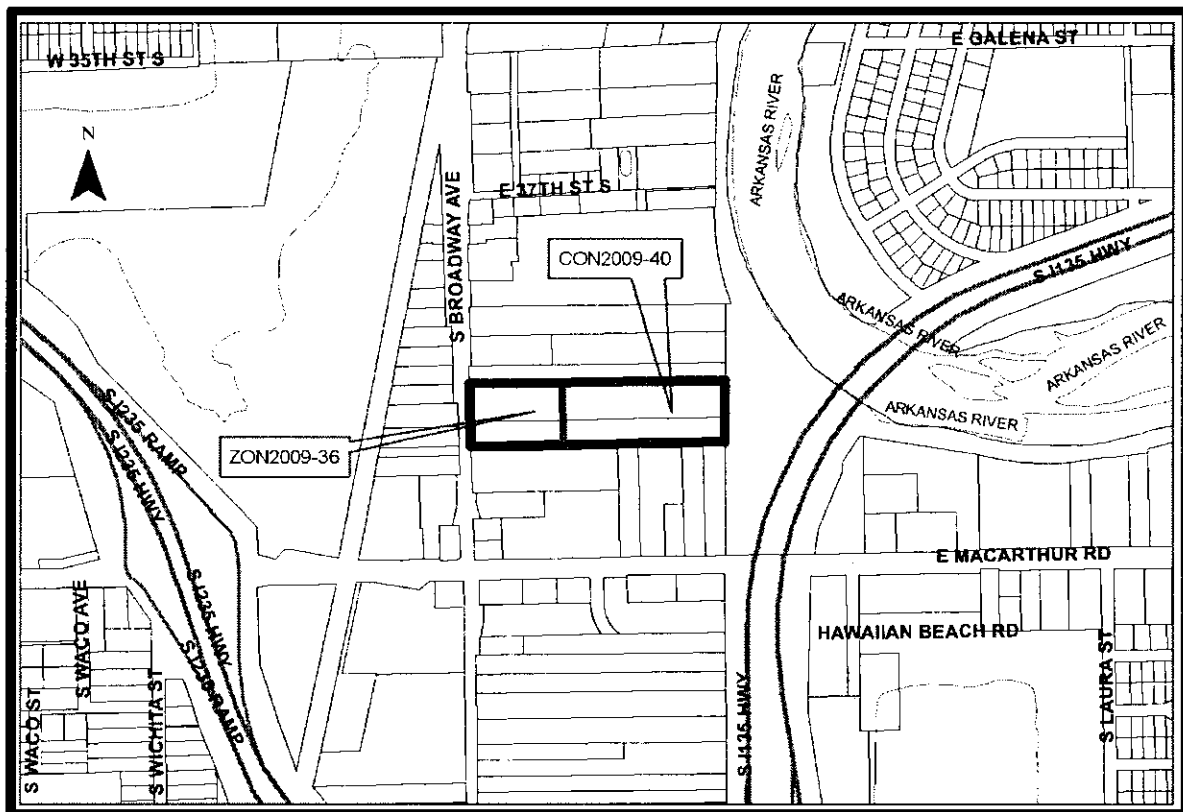


APPROVED AS TO FORM:


Gary E. Rebenstorf, Director of Law
By SW

Agenda: Planning (Consent)

DAB III Recommendations: Approve unanimously (8-0), subject to staff recommendations.



Background: The applicant is requesting a zone change from SF-5 Single-family Residential ("SF-5") to GC General Commercial ("GC") and LI Limited Industrial ("LI"). The requested LI zoning is associated with a Conditional Use (CON2009-40) to permit a wrecking/salvage yard on the rezoned LI portion of the 9.66-acre unplatted tract. The subject property was a nursery and still has many of the nursery's structures on it. The Unified Zoning Code (UZC) definition of a "wrecking and salvage yard" includes the proposed use: "...a lot, land, or structure used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage materials, junk, or discarded materials; and/or for the sale of parts thereof. Typical uses include motor vehicle salvage yards and junkyards." The UZC, Art III, Sec III-D.6.e, requires a Conditional Use for a wrecking/salvage yard in the LI zoning district.

Per the UZC, Art III, Sec III-D.6.e, the conditions for Conditional Use for a wrecking/salvage yard in the LI zoning district are:

- (1) Is not abutting an arterial street, expressway, or freeway;
- (2) In the opinion of the Planning Director, will not adversely affect the character of the neighborhood; and
- (3) Is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence.

The surrounding area is developed with tire sales and outdoor tire storage, car sales, vehicle repair, vehicle body repair shops, vehicle towing and storage, vehicle wrecking and salvage yards, junk yards, a sexual oriented business, motels and retail. Many of the existing commercial/industrial uses located on the east side of Broadway do not conform to the UZCs' regulations, as only their Broadway frontage is zoned GC, but their commercial/industrial uses extend to the back of their deep lots, which are zoned SF-5. There are a few single-family residences scattered on these SF-5 zoned portions of properties. An exception to this zoning pattern is a property owned by the applicant (Ysidro Addition, recorded May 24, 2004), located approximately 400 feet north of the subject site. This site is zoned LI with a Conditional Use for a vehicle wrecking and salvage yard; ZON2003-70 and CON2003-53. On its east side, the subject site backs up to the Arkansas River and a portion of I-135 right-of-way (ROW). All of the properties in this area, located on the east side of Broadway, end at the river or the river and the interstate ROW. Properties located on the west side of Broadway are zoned GC, are not as deep and are much smaller than the properties located on the east side of Broadway. These west properties' back yards end at the railroad tracks that run northeast to southwest, which separates them from a LI zoned cement plant.

The site plan shows an existing 15-foot wide landscape buffer along the site's north, east and south sides. Compatibility setbacks would extend beyond this 15-foot landscape buffer, up to 25 feet on the north and south sides of the site, if the LI zoning is approved. A proposed 8-foot solid, corrugated metal fence is shown around all four sides of the proposed LI zoned portion of the site where the vehicle wrecking and salvage yard is to be located. The proposed GC zoning will run from Broadway 475 feet deep into the subject site, as shown on the site plan. The site plan also shows some of the existing structures to stay up, including a stone/brick house located in the proposed GC portion of the site.

Analysis: At the DAB III meeting held on December 2, 2009, the DAB recommended approval (8-0) of the requested GC and LI zoning and a Conditional Use to permit a wrecking/salvage yard on the rezoned LI portion of the 9.66-acre unplatted tract, subject to platting within one year. There were members of the public that spoke in opposition at the DAB meeting. At the MAPC meeting held on December 17, 2009, the MAPC voted to approve (13-1) the requested GC and LI zoning and a Conditional Use to permit a wrecking/salvage yard on the rezoned LI portion of the 9.66-acre unplatted tract, subject to platting within one year. There were members of the public that spoke in opposition at the MAPC meeting.

Note: There were no protests recorded for the requested zoning change and the Conditional Use, CON2009-40. Because no protest were recorded the MAPC action for approval for CON2009-40 is final, thus the Council will consider and take action only on the zoning request. The approved conditions of CON2009-40 on the LI zoned portion of the site, subject to platting within a year of approval by the governing body are:

1. The Conditional Use shall authorize the operation of a vehicle wrecking and salvage yard. In no event shall the storage or bailing of waste, scrap paper, rags or junk (excluding metal) be permitted in conjunction with this use.
2. The site shall be developed in accordance with the approved site plan.
3. The subject property shall be entirely enclosed by a metal panel fence that is not less than 8 feet in height and having cracks and openings not in excess of five percent of the area of such fence. The metal panel fence shall be a single color and shall be white, gray, tan or similar non-bright color. Access gates are permitted in the screening fence, but all gates shall be constructed of solid metal panels matching the fence and shall remain closed unless in use. No wrecked vehicles or salvage, including vehicle parts or accessories, shall be permitted for screening purposes or located on or attached to the screening fence. The site shall be developed and operated in compliance with all the other conditions of UZC Art III, Sec III-D.6.e.
4. The height of wrecked vehicles or salvage, including vehicle parts or accessories, shall not exceed the height of the screening fence and shall not be visible from ground-level view from any public right-of-way or adjoining properties.
5. Salvaged materials are to be piled and stored in an orderly manner such as would be provided by racks or bins. In order to reduce rodent potential, racks and bins shall be elevated so there is at least 18 inches between the bottom of the rack or bin and the ground. Racks or bins shall be a minimum of 48 inches away from any wall, fence, or other rack or bin. Non-rackable material shall be stored with an exposed perimeter or in a manner specified by Environmental Services to prevent rodent harborage and breeding. All stored, wrecked and salvaged vehicles and materials shall be on a surface approved by the Office of Central Inspection.
6. The applicant shall maintain at all times an active program for the eradication and control of rodents.
7. Weeds shall be controlled within the salvage area and adjacent to and along the outside perimeter of the screening fence.
8. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the wrecking/salvage yard shall be provided by fire lanes per the direction and approval of the Fire Department.
9. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
10. Access to the subject property shall be provided for on-going inspections of the site for soil and groundwater contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells on the property to monitor the quality of groundwater and shall pay the cost of an annual groundwater test for contaminants as designated by Environmental Services.
11. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
12. The applicant shall implement a drainage plan approved by the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
13. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of a wrecking/salvage yard.
14. 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.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC, approve the zone change subject to the conditions of CON2009-40 and subject to the condition of platting within one year of approval by the governing body; instruct the Planning Department to forward the ordinance for first reading when the plat is recorded.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Attachment: MAPC Minutes, Ordinance and DAB Memo.