



Wichita-Sedgwick County Metropolitan Area Planning Department

August 18, 2011

TDFW, LLC
Attn: Steven Barrett and Brad Mitchell
150 N. Market
Wichita, KS 67202

Roosevelt E. Hunt
7310 E 35th Street North
Wichita, KS 67226

RE: CON2011-00015- City Conditional Use for Nightclub in the City on property zoned LC Limited Commercial, generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 S. Rock Road).

Dear Ladies and Gentlemen:

At its regular meeting on **August 16, 2011**, the Wichita City Council considered the above captioned request. The action of the Council was to approve this request. The request is approved subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all City ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
3. Construction of improvements shall be completed within one year of approval of the Conditional Use by the governing body.
4. The parking lot shall be kept free of all trash and debris.
5. No loitering, congregating or excessive noise shall be permitted in the parking lot.
6. No outside loudspeakers or entertainment, including dancing, shall be permitted.

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7. Operation of the Nightclub in the City shall be limited to:
 - Wednesday 8:00 p.m. – midnight
 - Thursday 8:00 p.m. – midnight
 - Friday 8:00 p.m. - Saturday 2:00 a.m.
 - Saturday 8:00 p.m. - Sunday 2:00 a.m.
8. 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 the Conditional Use null and void.

If you have any questions, please contact our office at 268-4421.

Sincerely,



Donna Goltry, A.I.C.P.
Principal Planner
Current Plans Division

DJG:mc

Copies to: Justin Demel, 100 E. English, Wichita, KS 67202
Clay Bastian, 100 E. English, Wichita, KS 67202
Jim's Tire and Auto, 1205 S Rock Rd., Wichita, KS 67207
Manning L and Dixie S Swanson, 8022 E. Grail St., Wichita, KS 67202
Angelita Rivera, 8010 E. Grail St., Wichita, KS 67207
Donald E and Evelyn G. Page, 1105 Paige, Wichita, KS 67207
Kayla Garrett, 1175 S. Rock Rd., Wichita, KS 67207
Cedar Lakes Village (Condos), Almer J. Mandt, 8419 E. Harry, #502, Wichita, KS 67207
Cedar Lakes Village (Homes), Terry Leiker, 8436 Lakeland Ct., Wichita, KS 67207
Cedar Bridge, Margaret Knoff, 1620 S. Longford, Wichita, KS 67207
Hedgewood 2, Kathy McVey, PO Box 781424, Wichita, KS 67275
Colonial Oaks, Kathy Cullinane, 8310 E. Champions Ct., Wichita, KS 67226
Eastridge, Pat Winters, 746 S. Gouverneur St., Wichita, KS 67207
Minneha Township, Don Gragg, #50 E. St. Cloud Place, Wichita, KS 67230
WCC II, Pete Meitzner, Mail Stop 1-13
N.A. II, Antoine Sherfield, Mail Stop 1-135
Julianne Kallman, Engineering, Mail Stop 1-71

RESOLUTION No. 11-202

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT A NIGHTCLUB IN THE CITY, ON APPROXIMATELY 1.48 ACRES ZONED LC LIMITED COMMERCIAL ("LC"), GENERALLY LOCATED ON THE EAST SIDE OF ROCK ROAD 1/8 MILE NORTH OF HARRY STREET (1208 SOUTH ROCK ROAD), WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 48-451, AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, a Conditional Use to allow a Nightclub in the City, on approximately 1.48 acres zoned LC Limited Commercial, subject to the conditions listed below:

Case No. CON2011-00015

A Conditional Use to permit a Nightclub in the City on approximately 1.48 acres zoned LC Limited Commercial.

Lot 2 and Lot 3, except the South 25 feet of the West 200 feet, in Triple J Addition, Wichita, Sedgwick County, Kansas, Wichita, Sedgwick County, Kansas, generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 South Rock Road).

SUBJECT TO THE FOLLOWING CONDITIONS:

APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all city ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
3. Construction of improvements shall be completed within one year of approval of the Conditional Use by the governing body.
4. The parking lot shall be kept free of all trash and debris.
5. No loitering, congregating or excessive noise shall be permitted in the parking lot.
6. No outside loudspeakers or entertainment, including dancing, shall be permitted.
7. Operation of the Nightclub in the City shall be limited to:
 - Wednesday 8:00 p.m. – midnight
 - Thursday 8:00 p.m. – midnight
 - Friday 8:00 p.m. - Saturday 2:00 a.m.
 - Saturday 8:00 p.m. - Sunday 2:00 a.m.
8. 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 the Conditional Use null and void.

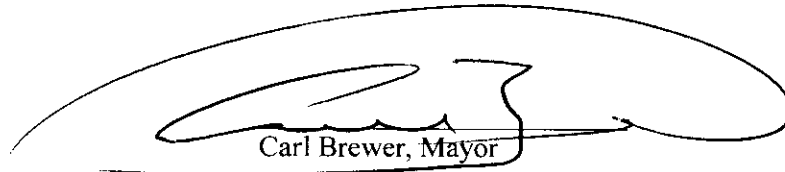
CON2011-00015

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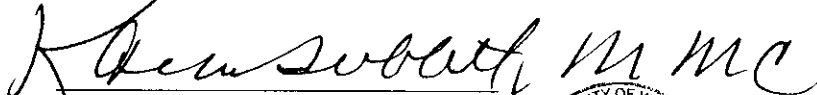
SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

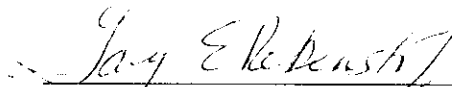
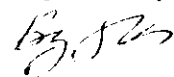
ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date
August 16, 2011.


Carl Brewer, Mayor

ATTEST:


Karen Sublett, City Clerk

Approved as to form:


Gary E. Rebenstorf, City Attorney




City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: CON2011-00015 – City Conditional Use for Nightclub in the City; generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road) (District II)

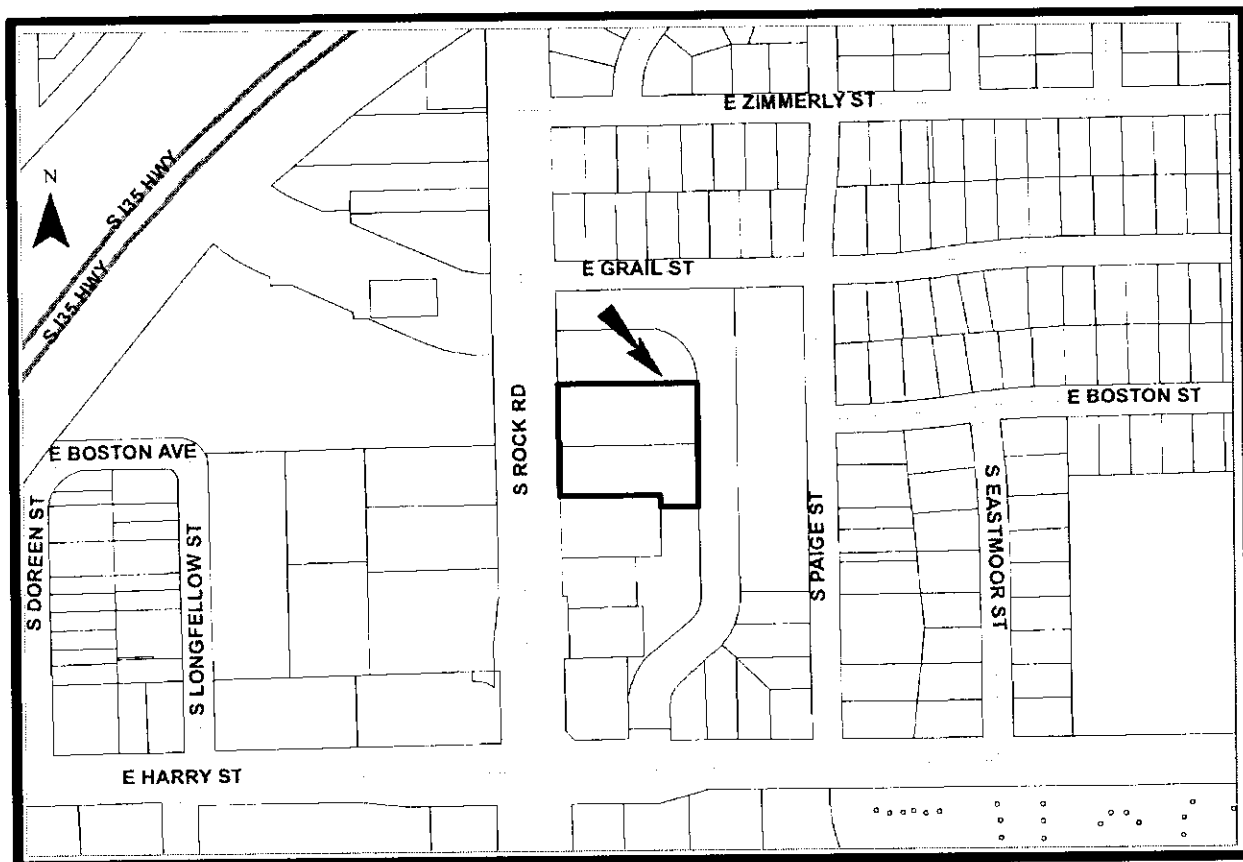
INITIATED BY: Metropolitan Area Planning Department *J/S*

AGENDA: Planning (Non-Consent)

MAPC Recommendation: The MAPC recommendation comes as a recommendation to deny the request due to a tie vote that constitutes a failure to recommend approval (5-5).

DAB II Recommendation: The District II Advisory Board recommended to accept the Planning Staff's recommendation contingent on compliance in reference to RESOLUTION No. 11-161 (6-3).

MAPD Staff Recommendation: The MAPD staff recommended approval, subject to conditions of the Conditional Use.



Background: The applicant is seeking a Conditional Use to permit a Nightclub in the City on property zoned LC Limited Commercial ("LC"), generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road). The proposed lease is located in a one-story strip center except for the center portion (1206 and 1208 South Rock Road) where the applicant proposes to operate a nightclub on the top floor. The bottom story is vacant and is not included in the proposed Conditional Use. Other businesses located in the north and south wings of the strip center include three personal care service businesses (cleaners, alterations, tanning salon) and two restaurants.

The applicant's statement (attached) states that he intends to operate a club (Seven Night Club) that would provide alcoholic drinks (drinking establishment), recorded music and recorded video entertainment for patrons 25 years of age and up. Other activities could include live entertainment by comedians, poetry readings and open mike. According to the applicant's statement, the business cannot qualify as a drinking establishment/restaurant (50 percent food sales) due to the lack of kitchen facilities. Regardless, the provision of the music and entertainment would trigger the designation of nightclub because it is within 300 feet of property zoned residentially. The site abuts a drainage ditch zoned B Multi-Family ("B"), which is located next to an apartment development also zoned B.

Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road, at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. Past records show a variety of clubs have been licensed to 1206 South Rock Road. The names of the previous clubs were (listed from most recent to earlier): The Groove, Club LaFaye, Kat Eyes Inc., Cocktails, Club Groove, Max S, Jammers (top floor) and Jo-Jo's Down Under (bottom floor). None of the licenses were issued to the 1208 address. The last nightclub (The Groove) has been closed for over a year, but less than two years. The occupancy associated with all these clubs has remained the same: 210 person occupancy on the top floor and 115 person occupancy on the bottom floor.

Access to the top floor appears to be by way of an exterior iron stairway. No Americans with Disabilities Act accessibility is provided at the main entrance, but a ramp is attached to the rear of the building.

The Unified Zoning Code requires that any nightclub located within 300 feet of residential zoning be subject to Conditional Use review to determine if the particular site is suitable for the operation of a nightclub. As previously mentioned, the upper floor has been part of a two-story nightclub operation in the past, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view.

Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC General Commercial (GC), is located west of Rock Road. Residential uses are located directly east across the previously mentioned drainage ditch, in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

Analysis: At the MAPC meeting held May 26, 2011, the MAPC voted (5-5) to approve the request; the tie vote represents a failure to approve the request. No alternate motion was made. Therefore, the case comes to the Wichita City Council with a recommendation of denial due to failure to recommend approval by the Planning Commission. At the Metropolitan Area Planning Commission (MAPC) meeting held May 23, the owners of the apartment complex to the southeast, the manager of the apartment complex to the east and home owners in the vicinity objected to approval of a Conditional Use

for a nightclub. Those speaking brought up issues with past operation of nightclubs based on the license issued to the lower level of this structure, 1206 South Rock Road (the applicant submitted the request for operating a Nightclub in the City apart from a restaurant and only for the upper story or 1208 South Rock Road, which previously had no license for a nightclub operation solely on the upper premises). The neighbors commented on problems with people congregating in the parking lot associated with past club operations, especially after closing at 2:00 a.m., that the noise from the people in the parking lots disrupted those living in the nearby apartments and residences, fights and other violence in the parking lot, traffic (including people on foot) from the nightclub traveling through the neighborhood late at night, trash and litter found in the parking lot of businesses across Rock Road. One citizen presented a report of past police calls to the location associated with previous clubs.

Roosevelt Hunt, the applicant seeking to operate the nightclub, addressed these comments and reiterated that he intended to make his operation different and avoid neighborhood impacts. He said he was in agreement with the recommendations contained in the Metropolitan Area Planning Department staff report designed to mitigate the neighborhood impacts addressed by the citizens at the public hearing. In addition to testimony given by citizens at the meeting, a number of written and verbal correspondences have been received concerning the case and are attached to this referral. No formal protests were filed by the neighbors after the MAPC vote for failure to approve constituting a recommendation of denial. The applicant has filed an appeal of the MAPC action to the Wichita City Council.

At the Wichita City Council hearing held July 12, 2011, the Wichita City Council voted to defer action and send the request for consideration to the District II Advisory Board (DAB).

The DAB heard this case on August 1, 2011. Discussion at the DAB meeting included how this nightclub would differ from previous cases and how the manager would implement a 25-year old age limit and whether there is evidence that the older age limit will deter crime. Other items discussed were the need for parking lot security, the opposition of neighborhood residents and businesses, and the importance of enforcement by City agencies (police/OCI) if the conditions of approval were not followed. The DAB recommendation was to accept the Planning Staff's recommendation contingent on compliance in reference to RESOLUTION No. 11-161 (6-3), which contains the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all City ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
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Financial Considerations: The City will not incur any additional financial considerations in regards to the Conditional Use request.

Goal Impact: The recommendation of the MAPC is designed to promote Economic Vitality.

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

Recommendation/Actions: 1) Adopt the recommendation of the MAPC and deny the request (simple majority required); 2) approve the Conditional Use subject to the conditions of the Conditional Use based on the findings in the staff report; and authorize the Mayor to sign the resolution (requires a two-third majority vote to override the Planning Commission's recommendation to the City Council on the first hearing) or 3) return the request to MAPC for reconsideration (simple majority vote required).

Attachments:

- Resolution based on MAPD staff report
- Site plan
- MAPC Minutes
- DAB Memo
- Appeal from applicant dated May 31, 2011
- Applicant's original statement of intent for operation filed with the Conditional Use Request
- Correspondence from Angelita Rivera dated May 26, 2011
- Copy of police responses to 1206 S. Rock Road, submitted by Justin Demal on May 25, 2011
- Correspondence from Dixie Swanson dated May 24, 2011
- Correspondence from Todd Hying dated May 24, 2011
- Correspondence from Kayla Garrett dated May 24, 2011
- Correspondence from Diane Marshall dated May 24, 2011
- Comment from Donald E. and Evelyn G. Page