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ORDINANCE NO. 49-291

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. ZON2012-00014

Request amendment to "P-O" Protective Overlay District #134, on property described as:

Lot 1, Block B, Central Bank & Trust, an Addition to Wichita, Sedgwick County, Kansas, generally located on the southeast corner of North Vassar Avenue and East Central Avenue.

SUBJECT TO THE FOLLOWING AMENDED PROTECTIVE OVERLAY RESTRICTIONS:

A. Provide cross-lot access to the property located to the east. Access shall be as approved by the Traffic Engineer. Access to Central Avenue is limited to one shared curb cut. The shared curb cut shall be created by the subject site and the property located east of the application area, and access control to Central except for one joint opening shall be established. Access to Vassar Avenue is limited to two locations, including access to the trash dumpster if the dumpster is accessed directly from Vassar Avenue. The property is to be developed and maintained in general conformance with a site plan approved by the Director of Planning.
B. Even though the property is zoned LC, the property would be restricted to uses permitted by right in the Neighborhood Retail ("NR") district as follows: single-family; duplex; multi-family; accessory apartment; assisted living; church; day care, limited and general; library; utility, minor; automated teller machine; bed and breakfast inn; medical service; office, general; parking area, commercial; agriculture; personal care service; personal improvement service and a restaurant that exceeds 2,000 square feet. No sound amplification systems for projecting music or human voice shall be permitted on the property. No menu or order boards are permitted. Drive-through service is permitted but is restricted to a pick-up window only.
C. The development shall meet all landscaping, screening, lighting, building setbacks, compatibility standards and buffering requirements, per the Unified Zoning Code and the Landscape Ordinance, including one shade tree or the equivalent every 20 feet along the residential edge(s) of the development for any nonresidential development, and provide a 10-foot landscape buffer along the south property line; install a solid screening wall a minimum of eight feet in height along the south and southeast property lines where adjacent to SF-5 or TF-3 zoning, and plant trees at a rate of one tree per 20 feet along the south property line and the southern 60 feet of west property line and parking lot landscaping and screening extending to the drive on Vassar, and maintain the existing solid evergreen screen and solid screening fence on the southern 100 feet of

the east property line.

D. Trash dumpsters and enclosures shall not be located within any platted or zoning building setback or any compatibility building setback.
E. Building height is restricted to a maximum height of 35 feet.
F. Restrict freestanding signs to one monument type sign no more than eight feet in height and subject to the sign regulations of the NR district. Off-site billboard, portable and electronic signage is prohibited.
G. Require nonresidential buildings to be residential in architectural character and materials, including that metal shall not be used as exterior materials except for incidental accent or trim.
H. All uses shall be developed to minimize light trespass and glare from nonresidential uses to residential zoning districts by employing cut-off luminaries and by limiting light fixtures, including base and poles to no more than 15 feet.

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 26th day of June, 2012.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

for Gary E. Rebenstorf, Director of Law

Agenda Item No._____

City of Wichita
City Council Meeting
June 19, 2012

TO: Mayor and City Council

SUBJECT: ZON2012-00014 – City zone change request from GO General Office, subject to Protective Overlay #134 ("PO-#134") to LC Limited Commercial ("LC"), subject to amended PO#134 on property located at the southeast corner of East Central Avenue and North Vassar Avenue. (District II)

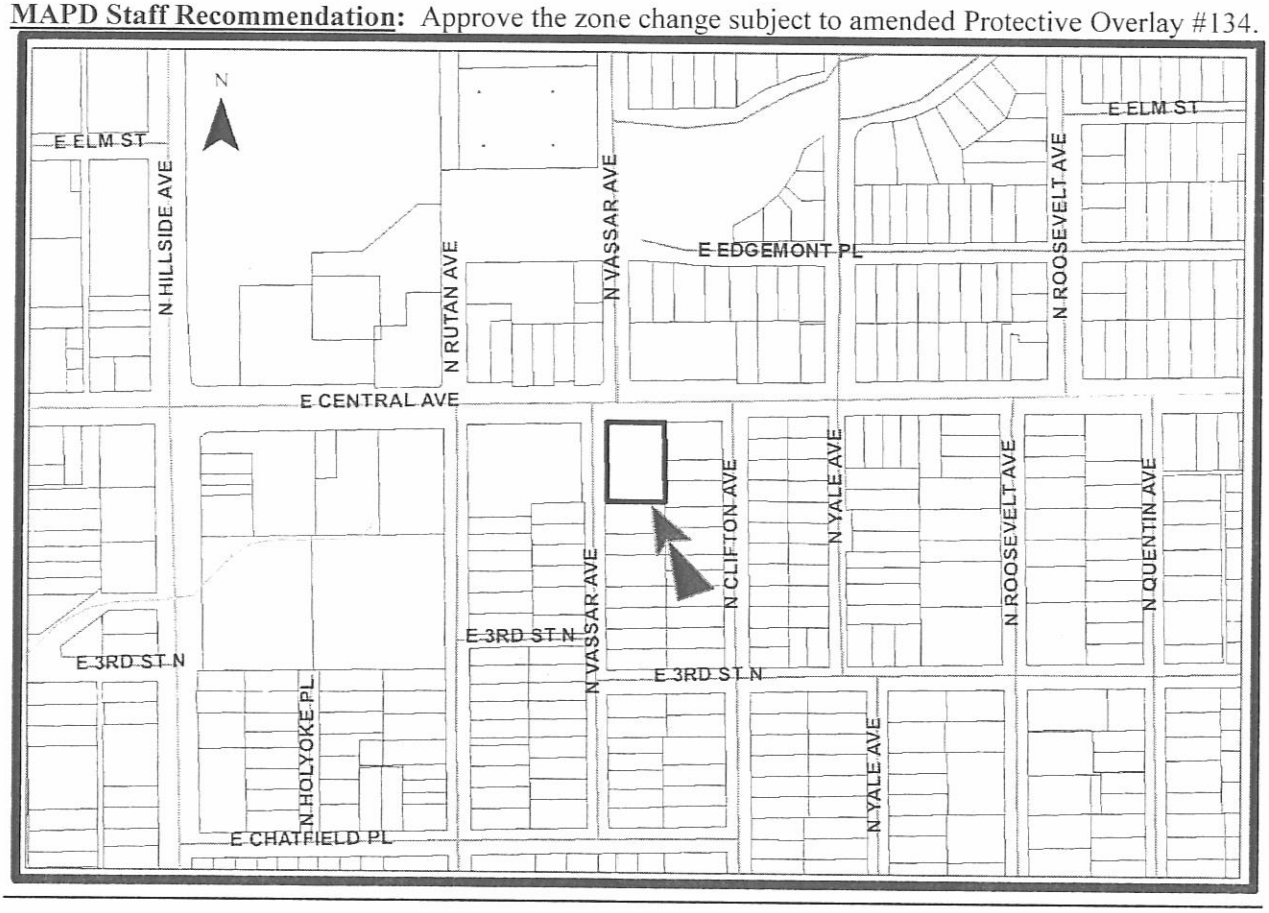
INITIATED BY: Metropolitan Area Planning Department JLS

AGENDA: Planning (Non-Consent)

MAPC Recommendation: Approve the zone change subject to amended Protective Overlay #134 (10-0).

DAB II Recommendation: Approve the zone change subject to the MAPC recommended Protective Overlay #134 plus three additional conditions described below in the analysis section (9-0).

MAPD Staff Recommendation: Approve the zone change subject to amended Protective Overlay #134.



Background: The applicant is seeking a zone change from GO General Office ("GO"), subject to the development standards found in Protective Overlay ("PO") #134 ("PO #134") that are detailed in the case history section located below, to LC Limited Commercial ("LC"), subject to a revised Protective Overlay, on .58 acre located at the southeast corner of East Central Avenue and North Vassar Avenue. The site is currently undeveloped, and has been for 20 plus years. The property has 134.44 feet of frontage along Central Avenue and 188.89 feet along Vassar Avenue. As indicated in the agent's attached letter dated April 5, 2012, and associated site plan, the applicant proposed to develop a 6,000 square-foot building on the southern one-third of the site. Parking is proposed to be located on the northern two-thirds of the lot. The applicant's agent has advised staff that the applicant has two potential restaurant operators considering the site if the zone change is approved.

The applicant's proposed protective overlay contains the following development standards: (even though the site would be zoned LC) uses on the property would be restricted to the Neighborhood Retail ("NR") district except it would allow a restaurant that exceeds 2,000 square feet; restaurants would be permitted a drive-up window without audible speakers; LC screening requirements would be required and signage restricted to NR standards would be allowed. The applicant's site plan depicts a relocated driveway on Central from the northeastern to the northwestern quadrant of the site and closure of the northernmost driveway along Vassar Street. The trash dumpster is proposed to be located at the existing southernmost curb cut, approximately 60 feet north of the site's southern property line. If developed as shown on the site plan, the proposed 100-foot by 60-foot building would act as a buffer between the proposed parking lot on the north and the residences located to the south and east of the site. However, the proposed Protective Overlay does not require development in conformance with the site plan; nor does it show how a drive-through would be located on the site.

As currently zoned the site is not permitted to have a restaurant since the GO district does not permit restaurants. The NR Neighborhood Retail ("NR") zoning district is the first zoning district to permit a restaurant but it is subject to Sec. III-d.6.t. Section III-d.6.t limits restaurants in the NR district to a maximum size of 2,000 square feet in gross floor area and prohibits drive-up window or in-vehicle food service. The LC district does not restrict restaurants in the same fashion as the NR district. Additional NR development standards include: no individual commercial use can exceed 8,000 square feet; the NR district is not be used on sites that exceed six acres in size and no outdoor storage or display is permitted for commercial uses.

The table presented below provides a comparison of the uses currently permitted; those uses proposed by the applicant and those uses recommended by planning staff. The uses lined out are allowed in the GO district but were excluded by the existing Protective Overlay.

Uses Permitted in the GO District; Uses lined out are not permitted by the **Current PO**	Uses Permitted in the NR District; Uses lined out are not permitted by the **Proposed PO**	PO Uses **recommended** by staff
Single-family	Single-family	Single-family
Duplex	Duplex	Duplex
Multi-family	Multi-family	Multi-family
Accessory Apartment	Accessory Apartment	Accessory Apartment
Assisted Living	Assisted Living	Assisted Living
~~Group Home~~ (Cannot now be excluded by state law)	Group Home (Cannot now be excluded by state law)	Group Home
~~Group Residence Limited and General~~	Group Residence, Limited	
~~Cemetery~~		
Church	Church	Church
Community Assembly		

Day Care, Limited and General	Day Care, Limited and General	Day Care, Limited and General
Golf Course		
~~Hospital~~		
Library	Library	Library
Nursing Facility		
Parks and ~~Recreation~~	Parks and Recreation	
~~Recycling Collection Station, Private~~	Recycling Collection Station, Private	
~~School, Elementary, Middle and High~~	School, Elementary, Middle or High	
University or College		
Utility, Minor	Utility, Minor	Utility, Minor
Automated Teller Machine	Automated Teller Machine	Automated Teller Machine
Bed and Breakfast Inn	Bed and Breakfast Inn	Bed and Breakfast Inn
~~Broadcast/Recording Studio~~	Broadcast/Recording Studio	
~~Funeral Home~~		
~~Hotel/Motel~~		
~~Marine Facility~~		
Medical Service	Medical Service	Medical Service
Office, General	Office, General	Office, General
Parking Area, Commercial	Parking Area, Commercial	Parking Area, Commercial
~~Wireless Communication Facility~~	Wireless Communication Facility	
~~Asphalt or Concrete Plant, Limited~~	Asphalt or Concrete Plant, Limited	
Agriculture	Agriculture	Agriculture
Personal Care Service (CU approval required)	Personal Care Service	Personal Care Service
Personal Improvement Service (CU approval required)	Personal Improvement Service	Personal Improvement Service
~~Animal Care, Limited and General~~		
~~Bank or Financial Institution~~	Bank or Financial Institution	
~~Correctional Placement Residence, Limited and General~~	Correctional Placement Residence, Limited	
~~Heliport~~		
~~Printing and Copying, Limited~~	Printing and Copying, Limited	
~~Vocational School~~		
~~Warehouse, self-service~~		
	Restaurant, ~~limited to max. size of 2,000 square feet and no drive through or in-car service~~	Restaurant exceeding 2,000 square feet w/o drive through
	Retail, General, limited to max. size of 6,000 square feet	

Selected uses permitted by right in the GO district include: single-family, duplex, multi-family, assisted living, group residence limited and general, church, community assembly, day care limited and general, hospital, nursing facility, ATM, bed and breakfast inn, funeral home, hotel/motel subject to Sec. III-D.6.j, medical service and general office. For comparison purposes, selected uses permitted by right in the NR district include: single-family, duplex, multi-family, assisted living, group residence limited and general, church, day care limited and general, *school elementary, middle and high*, ATM, *bank*, bed and breakfast inn, medical service, general office, *personal care service*, *personal improvement service*, *restaurant limited to a maximum size of 2,000 square feet gross floor area and no drive-up window service or in-vehicle food service* and *retail general*. (Uses italicized are not permitted in the GO district.) The NR

district also limits individual commercial uses to a maximum gross floor area of 8,000 square feet and does not permit outside storage or display.

Unified Zoning Code ("UZC") compatibility setback standards (Sec. IV-C.4) apply to the side and rear lot lines adjacent to property zoned TF-3 or more restrictive. In this case there is SF-5 and/or TF-3 zoning abutting the southeast and southern property lines. The minimum building compatibility setback is 15 feet plus one foot for each five feet of (subject tract) lot width over 50 feet. In no case shall the compatibility setback standards alone require more than a 25-foot setback. In this instance, the site is 134.44 feet wide resulting in a side (east) and rear (south) yard compatibility setback of 31.88 feet; however, the maximum setback distance required by the code is 25 feet. Compatibility height standards limit building height to a maximum height of 35 feet when located within 50 feet of TF-3 or more restrictive zoning. Compatibility standards also require dumpsters to be located twenty feet from TF-3 or more restrictive zoned property. (It is approximately 23 feet to the south side of the southernmost driveway.) The UZC requires a wooden screening fence, at least six feet tall, and/or landscaping and berms equal to a six-foot tall fence that provides year round solid screening. The landscape ordinance requires buffering of one shade tree every forty feet if there is a fence or one tree every thirty feet plus five shrubs without a fence. The landscape ordinance will also require parking lot screening and a landscaped street yard.

The NO Neighborhood Office ("NO"), NR and GO zoning districts have the same signage regulations, which permit ground or pole signs up to 32 square feet in gross surface area; multi-tenant lots sharing the same sign may have up to twenty-four feet each to a maximum of ninety-six square feet. Sign height is permitted to be up to twenty-two feet. Signs are to be spaced 150 feet apart if there is more one sign per zoning lot. Building signage is limited in the NR district to thirty-two square feet in area and thirty feet in height per building elevation for each major use provided the building elevation to which any sign is to be attached has one of the following: street frontage; is adjacent to a nonresidential zoning district or if adjacent to a residential district, there must be parking, loading or open space with a depth of 150 feet or more as measured from the sign face to the property line which adjoins the residential zoning district. Lighting of such signs is limited to direct or internal illumination of white light only and without flashing or moving images.

The table below compares the development standards contained in the existing Protective Overlay to those proposed by the applicant.

Existing Protective Overlay-134	Proposed Protective Overlay
A. Provide cross-lot access to the property located to the east and close the northernmost and the southernmost of the three existing drives on Vassar Avenue	
B. Allow those uses permitted by right in the GO zoning district and personal care service and personal improvement service granted as a Conditional Use, with the following uses prohibited: animal care, limited and general; bank or financial institution; broadcast and recording studio; cemetery; correctional placement residence, limited and general; funeral home; group home, limited, general and commercial; group residence, general and limited; manufactured home; heliport; hospital; hotel or motel; marine facility; recreation; printing and copying, limited; recycling collection station, private; school, elementary, middle and high; vocational school; warehouse, self-service; wireless communication facility; and all industrial, manufacturing and extractive uses	Uses on the property would be restricted to the Neighborhood Retail ("NR") district except it would allow a restaurant that exceeds 2,000 square feet; restaurants would be permitted a drive-up window without audible speakers.
C. The development shall meet all landscaping, screening, lighting, building setbacks, compatibility	LC screening requirements would be required

standards and buffering requirements, per the Unified Zoning Code and the Landscape Ordinance, including one shade tree or the equivalent every 20 feet along the residential edge(s) of the development for any nonresidential development, and provide a 10-foot landscape buffer along the south property line; install a solid screening fence a minimum of six feet in height and plant trees at a rate of one tree per 20 feet along the south property line and the southern 60 feet of west property line and parking lot landscaping and screening extending to the drive on Vassar, and maintain the existing solid evergreen screen and solid screening fence on the southern 100 feet of the east property line	
D. Restrict building height to 35 feet	
E. Restrict freestanding signs to one monument type sign no more than eight feet in height and subject to the size limitations of the GO district	Signage restricted to NR standards would be allowed
F. Require nonresidential buildings to be residential in architectural character and materials, including that metal shall not be used as exterior materials except for incidental accent or trim	
G. All uses shall be developed to minimize light trespass and glare from nonresidential uses to residential zoning districts by employing cut-off luminaries and by limiting light fixtures, including base and poles to no more than 14 feet	
H. No sound amplification systems for projecting music or human voices shall be permitted on the property if the music and/or voice can be heard within any residential zoning district, which is located within a 500-foot radius of the site	Restaurants would be permitted a drive-up window without audible speakers

Analysis: At the Metropolitan Area Planning Commission (MAPC) meeting held May 17, 2012, the MAPC voted (10-0) to recommend approval of LC zoning subject to the following amended Protective Overlay #134:

A. Provide cross-lot access to the property located to the east. Access shall be as approved by the Traffic Engineer. Access to Central Avenue is limited to one shared curb cut. The shared curb cut shall be created by the subject site and the property located east of the application area, and access control to Central except for one joint opening shall be established. Access to Vassar Avenue is limited to two locations, including access to the trash dumpster if the dumpster is accessed directly from Vassar Avenue. The property is to be developed and maintained in general conformance with a site plan approved by the Director of Planning.

B. Even though the property is zoned LC, the property would be restricted to uses permitted by right in the Neighborhood Retail ("NR") district as follows: single-family; duplex; multi-family; accessory apartment; assisted living; church; day care, limited and general; library; utility, minor; automated teller machine; bed and breakfast inn; medical service; office, general; parking area, commercial; agriculture; personal care service; personal improvement service and a restaurant that exceeds 2,000 square feet. No sound amplification systems for projecting music or human voice shall be permitted on the property. No menu or order boards are permitted. Drive-through service is permitted but is restricted to a pick-up window only.

C. The development shall meet all landscaping, screening, lighting, building setbacks, compatibility standards and buffering requirements, per the Unified Zoning Code and the Landscape Ordinance, including one shade tree or the equivalent every 20 feet along the residential edge(s) of the development for any nonresidential development, and provide a 10-foot landscape buffer

along the south property line; install a solid screening wall a minimum of eight feet in height along the south and southeast property lines where adjacent to SF-5 or TF-3 zoning, and plant trees at a rate of one tree per 20 feet along the south property line and the southern 60 feet of west property line and parking lot landscaping and screening extending to the drive on Vassar, and maintain the existing solid evergreen screen and solid screening fence on the southern 100 feet of the east property line.

D. Trash dumpsters and enclosures shall not be located within any platted or zoning building setback or any compatibility building setback.
E. Building height is restricted to a maximum height of 35 feet.
F. Restrict freestanding signs to one monument type sign no more than eight feet in height and subject to the sign regulations of the NR district. Off-site billboard, portable and electronic signage is prohibited.
G. Require nonresidential buildings to be residential in architectural character and materials, including that metal shall not be used as exterior materials except for incidental accent or trim.
H. All uses shall be developed to minimize light trespass and glare from nonresidential uses to residential zoning districts by employing cut-off luminaries and by limiting light fixtures, including base and poles to no more than 15 feet.

At the MAPC meeting, the applicant's agent indicated that a pizza restaurant or a coffee shop was a possible tenant if the application was to be approved. There were at least three people who spoke in opposition to the case. Those who spoke cited the following concerns: more intense zoning will permit uses that could generate greater amounts of traffic on Vassar, a residential street; the proposed drive-up window would place vehicles closer to single-family residences and would allow more noise, vehicle head lights and litter to negatively impact abutting property and the larger neighborhood. The applicant states that the proposed screening, landscaping, building setbacks and other development standards contained in the proposed PO address and mitigate neighborhood concerns.

District Advisory Board (DAB) II heard this case on June 4, 2012. There were at least four nearby property owners who spoke in opposition. People who spoke expressed general opposition to the application and the proposed drive-through service and advocated for solid screening and landscaping. The speakers commented that the application represents additional commercial intrusion into a residential neighborhood. The protesting neighbors were concerned that the proposed zone change would: put more traffic on the residential portion of Vassar; increase the number of wrecks at Vassar and 3rd Street that already occur due to commercial development at Hillside and Central; increase non-neighborhood oriented traffic through the neighborhood and access to Vassar Street south of the application area should be blocked or the project should be required to have right-turns only to direct traffic north to Central; increase the risk of accidents since there are cars parked on both sides of Vassar; put neighborhood children at risk by increased traffic generated by the proposed zone change; negatively impact nearby residents with increased noise, headlights, litter, cooking odors, drunk drivers and property values of the residences would be negatively impacted. The DAB unanimously recommended approval (9-0) as recommended by the MAPC plus the following requirements: no left turn signs should be placed on driveway exits onto Vassar; a solid screening wall up to 15 feet in length should be installed along Vassar running north from the south property line and the applicant is to work with the neighborhood to investigate the potential for terminating Vassar with a hammerhead or cul-de-sac to cut off commercial traffic from using Vassar south of the application area.

Staff did not receive any valid official protests; however, two unsigned e-mails were submitted. The e-mails expressed opposition to the proposed zone change and the proposed pizza restaurant, and expressed concern that the request allowed for the encroachment of another business into a residential neighborhood. The application may be approved, as recommended by the MAPC, with a simple majority vote.

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Goal Impact: The application will promote Economic Vitality.

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

Recommendation/Actions: 1) Adopt the findings of the MAPC and approve the zone change request to LC subject to the MAPC recommended Protective Overlay #134, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required); 2) deny the requested zone change (two-thirds majority required) or 3) return the application to the MAPC for further consideration (simple majority required).

Attachments: Site plan, MAPC minutes, ordinance, DAB memo, Kathy Laird e-mail and Katrina Cotton e-mail.

AMENDED 5-17-2012
ZON12-14

SITE PLAN SE CORNER

CENTRAL AND VASSAR