

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 2006-26

Request for zone change from "LC" Limited Commercial District to "GC" General Commercial District, on property described as:

A tract of land located in Lot 1, Block 1, The Home Depot Addition, a replat of a portion of Lot 1, Block a, Broadway 47 Plaza 2nd Addition to Wichita, Sedgwick County, Kansas, being described as follows;

Commencing at the southeast corner of said Lot 1, thence on an assumed bearing of N89°59'59" W along the south line of said Lot 1, a distance of 62.13 feet; thence N 00°00'01" E a distance of 106.92 feet to the point of beginning of the tract to be described; thence N89°59'59" W a distance of 157.58 feet; thence N 00°00'01" E a distance of 0.75 feet; thence N89°59'59" W a distance of 32.67 feet; thence N 00°00'01" E a distance of 209.83 feet; thence S89°59'59" E a distance of 190.25 feet; thence S00°00'01" W a distance of 100.50 feet; thence S89°59'59" E a distance of 10.46 feet; thence S00°00'01" W a distance of 44.00 feet; thence n 89°59'59" W a distance of 10.46 feet; thence S00°00'01" W a distance of 66.08 feet to the point of beginning. Contains 40,499.15 square feet/0.93 acres, more or less (subject to easements, reservations and restrictions of record);

AND

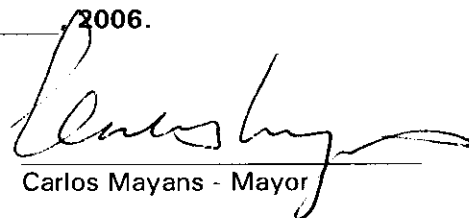
A tract of land located in Lot 1, Block 1, the Home Depot Addition, a replat of a portion of Lot 1, Block A, Broadway 47 Plaza 2nd Addition to Wichita, Sedgwick County, Kansas, being described as follows; Commencing at the southwest corner of Lot 2, Block A, Broadway 47 Plaza 2nd Addition, thence on an assumed bearing of N 89°35'09" W a distance of 49.08 feet to the point of beginning of the tract to be described; thence S00°00'01" W a distance of 83.72 feet; thence N89°59'59" W a distance of 19.00 feet; thence N00°00'01" E a distance of 162.00 feet; thence S89°59'59" E a distance of 19.00 feet; thence S00°00'01" W a distance of 78.28 feet to the point of beginning. Contains 3,078.00 square feet/0.07 acres, more or less (subject to easements, reservations and restrictions of record).

Generally located on the southwest corner of 47th Street south and Broadway Avenue.

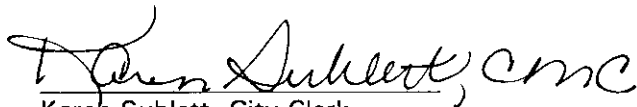
SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

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 12th day of Sept., 2006.


Carlos Mayans - Mayor

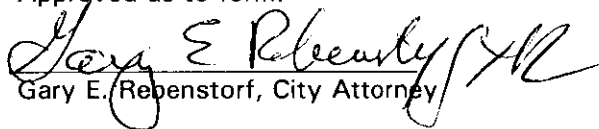
ATTEST:


Karen Sublett, City Clerk

(SEAL)



Approved as to form:


Gary E. Rebenstorf, City Attorney

STAFF REPORT

MAPC July 6, 2006
DAB IV July 5, 2006

CASE NUMBER: ZON2006-26 & CUP2006-29 DP-28, Amendment #2, Broadway 47 Plaza Community Unit Plan (CUP)

APPLICANT/AGENT: Broadway 47, LLC, c/o David J. Christe
CASCO c/o Greg Goette (agent)

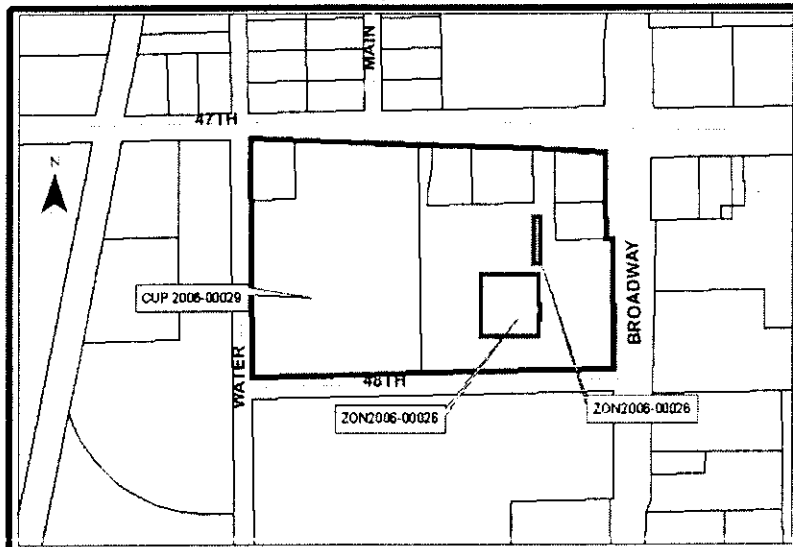
REQUEST: Zone change from "LC" Limited Commercial to "GC" General Commercial on a portion of Parcel 1, Broadway 47 Plaza CUP, to allow outside display and storage/garden center. Amend parking, signage, setback, parcel size, to allow additional parcels and their proposed uses

CURRENT ZONING: "LC" Limited Commercial

SITE SIZE: 18.19-acres

LOCATION: Southwest corner of 47th Street South and Broadway Avenue

PROPOSED USE: Home Depot (general retail) with a garden center and additional out parcels for commercial development



BACKGROUND: The applicant requests a zone change from "LC" Limited Commercial to "GC" General Commercial on a (+) 34,760-square foot portion(s) of Parcel 1. The requested "GC" zoning is for a Home Depot's proposed garden center, which is considered outdoor storage and sales. The applicant also requests Amendment #2 to the CUP. The proposed amendment addresses redevelopment of the CUP by reducing the area of Parcel 1 and reconfiguring it to create six (6) new parcels; Parcels 1 (reduced in size and reconfigured), 7, 8, 9, 10 & 11. The existing Parcels 2, 3, 4, 5 & 6 of the CUP are not affected by the proposed amendment.

The proposed uses for Parcels 7, 8, 9, 10, & 11 are: shopping center, financial institutions, office, personal services and retail sales as permitted by the zoning district. These proposed uses listed are permitted by right in the existing parcels of the CUP. The maximum building coverage is 30%, floor area ratio is 30%, maximum building height is 35-feet and maximum number of buildings is one (1). These are the same as all or most (but never exceeding) of the existing parcels. Parcel 11 has 35% max floor area ratio, rather than 30%, which all other the other parcels have, other than Parcel 1. Parcel 1's proposed uses are: shopping center, financial institutions, office, personal services, retail sales, garden center, and outdoor sales and storage. Parcels 1's maximum building coverage is 35%, floor area ratio is 40%, maximum building height is 55-feet and maximum number of buildings is four (4). Parcel 1 is the proposed site of the Home Depot.

Maximum floor area ratio is approximately the same as in the original CUP, but it appears that maximum building area has increased (10%), within the context of the need for the maximum building coverage for Parcel 11 missing from the proposed amendment.

The site currently has a large retail box (1965) on it, most of which is a vacant Checkers grocery store. A pawnshop, a hair salon, a nail salon, a Rent-a-Center, a submarine sandwich shop and a tax preparing office occupy the rest of the building. The applicant is proposing to allow those existing businesses to remain in the eastern portion of the big box, while demolishing the rest of the structure, then rebuild as a Home Depot. Per the current Unified Zoning Code (UZC,) a pawnshop is a specific use. At the time of the recording of the original CUP a pawnshop was considered retail. Per the current UZC a pawnshop is not allowed in the CUP and the existing pawnshop is considered a legal nonconforming use. Approximately half of the site has never been developed. Other developments in CUP DP-28, on the out parcels, is either, (a) retail; a Dollar Store (1999), a Burger King (1999), a Hollywood Video (1998), or (b) a gas station with a convenience store and car wash (1987), or (c) financial; an Emprise Bank (1989).

North of the application area, across 47th Street South, development facing the site is commercial on the eastern half and residential on the western half. The eastern half is

zoned "GC" CUP DP-216, is a Dillon grocery store (built 1995) with gas service. The western half is single-family residential (random selections= built throughout the 1950s) development zoned "SF-5". Northeast of the site, across the Broadway Avenue – 47th intersection, there is a mix of "GC", "LC" and "LI" Limited Industrial zoning. Development consists of stand alone fast food and sit down restaurants (6), a retail strip with uses ranging from a liquor store, a sit down restaurant (1), medical, a nail shop, phone sales and a fast cash business. The most recent of these businesses appears to be the Applebee's restaurants and the retail strip, both built in 1994. East of the site, across Broadway, there is free standing McDonalds (1977) and Pizza Hut (2000) restaurants, both zoned "GC". There is also a "LC" zoned CUP DP-68, developed as a K-Mart big box retail (1976) and a retail strip housing three (3) sit down restaurants, retail and a check cashing/fast cash business. West of the site, across Water Street to the railroad tracks, there are undeveloped "LI" and "SF-5" zoned properties. South of the site, across 48th Street South there is the LI" zoned Pepsi Bottling plant, a manufacturing facility and some undeveloped property.

CASE HISTORY: The site and the other three corners of the 47th Street South - Broadway Avenue intersection was zoned "LC" Light Commercial by the Bock March 28, 1958. The site was part of an area annexed into the City between 1961- 1970. The site was originally platted as part of the Broadway 47 Plaza Addition, recorded with the Register of Deeds October 2, 1968. The DP-28 Broadway 47 Plaza CUP was created August 20, 1968. Amendment #1 (approved January 6, 1987) allowed three (3) new out parcels within the CUP and changed access control onto Broadway and 47th. Amendment #1 also approved financial institutions, office, personal services, restaurants, retail sales and service stations including convenience sales and car washes, if first approved by the BZA as uses for the new out parcels. Amendment #1 also changed /reduced the setbacks, added a general provision for screening trash receptacles and increased the number of buildings to allow two (2) buildings on the new parcels in reference for additional buildings for car wash(s). The site was replatted as part of the Broadway 47 Plaza 2nd Addition, recorded with the Register of Deeds August 31, 1987. The replat showed the three (3) new out parcels and the new setbacks. A lot split was approved December 17, 1996. A portion of the Broadway 47 Plaza 2nd Addition is being replatted as the Home Depot Addition: SUB2006-58, approved by Subdivision June 19, 2006 and scheduled for the July 6, 2006 MAPC meeting. This replat is associated with the current amendment #2 and the zone change. The replat excludes Lots 2, 3, 4, & 5, as recorded on the Broadway 47 Plaza 2nd Addition & Lot 6, Broadway 47 Plaza 2nd Addition, created by the 1996 lot split: Film 1853, Page 1664.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5", "GC" "LC"	Single-family residences, Dillon grocery/gas with CUP, strip retail, restaurants (free standing and in strip retail)
SOUTH:	"LI"	Pepsi Cola bottling facility, manufacturing, auto parts sales

EAST:	"LC", "GC"	K-Mart retail with outdoor garden center & retail strip with CUP, restaurants (free standing and in strip retail)
WEST:	"LI", "SF-5"	Undeveloped property

PUBLIC SERVICES: Broadway Avenue and 47th Street South are four-lane arterials, right turn lanes, dual left turn lanes and accel/decel lanes. Current traffic counts are between 14,670 – 24,467 ADT's. 2030 projected traffic counts are between 16,000 – 32,000 ADTs. K-DOT has approved a concept for improvements to the IH-135 – 47th Street South interchange, which is approximately ¼-mile from the site. All other normal public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies the application area as within the 2030 Wichita Growth Area, appropriate for "regional commercial". This classification encompasses major destination areas containing concentrations of commercial, office, and personal service uses that have a predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships, and big box retail outlets with a regional market draw. Regional Commercial areas may also include higher density residential housing and uses typically found in Local Commercial areas. The requested "GC" zoning and the amendment match the Guide and current development trends in the area.

The site is also located with the "South Wichita/Haysville Area Plan" (Resolution #36-02, approved by the Board of County Commissioners (BoCC) March 20, 2002 & Ordinance #45-248/DR2000-00012, approved by WCC April 2, 2002), which states as a goal the improvement of the areas opportunities for additional commercial growth (Sec.V.6. "Action Plan"). Supporting "regional" commercial growth at the center located on the southwest corner of the 47th Street South – Greenwich Road intersection, the subject site, is a stated strategy in the plan: Sec.V.6.6.B.3. Replacing the vacant Checkers grocery store with a national chain, Home Depot, certainly fits into that strategy.

RECOMMENDATION: The proposed zone change and amendment is in general conformance with the "Wichita Land Use Guide" recommendation of regional commercial use, the South Wichita/Haysville Area Plan's site-specific strategy for regional commercial growth and the original CUP's intent in regards to uses and development.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the following conditions:

A. APPROVE the zone change (ZON2006-26) to "GC" General Commercial on the

described portion(s) of Parcel 1, subject to replatting within a year;

B. APPROVE Amendment #2 to Community Unit Plan DP-28 (CUP2006-29), subject to the conditions listed on the proposed amendment to the CUP and the following changes to the proposed amendment's General Provisions, Parcel Descriptions and Proposed Uses:

1. Change language in General Provision #3, 'Drainage' to "...drainage and drainage improvements will be guaranteed at the time of the final plat.
2. Reduce the parking requirements in the reconfigured Parcel 1 and the newly created Parcels 9, 10 & 11, by 25%.
3. Add Parcels 2, 3 & 6 to General Provision #9, 'Landscaping' in reference to landscaping plan and guarantee.
4. Revise General Provision #6 "signs": (a) No portable signs or off site sites permitted on the CUP. Allow (a) Maximum size of wall signs for Parcel 1 shall be increased by 20% per City sign code adjustments. (b) Maximum number of wall signs per elevation for Parcel 1 shall increase by 2. This will allow 5 signs. (c) Allow one (1) multi-tenant sign along the CUP's 47th Street South frontage and one (1) along its Broadway Avenue frontage, per the City sign code for the "LC" zoning district
5. All property included within amended portion of the C.U.P. and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed.
6. The resolution establishing the amendment and the zone change shall not be published until the replat has been recorded with the Register of Deeds. Prior to publishing the resolution establishing the amendment and the zone change, the applicant shall record a document with the Register of Deeds indicating that the replatted portion of the CUP (referenced as DP-28) includes special conditions for development on this property.
7. The applicant shall submit 4 revised copies of the amended C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: "GC" and "LC zoning exists at the other three corners of the 47th Street South and Broadway Avenue

intersection. There is another CUP east of the site with a national big box retail; K-Mart. Uses in the area are mostly commercial with a mix of national, regional, and local businesses.

2. The suitability of the subject property for the uses to which it has been restricted: The CUP has never been fully developed, and is now occupied by a large nearly vacant big box retail store. The proposed amendment and "GC" zoning would allow more opportunities for smaller scale development on the newly created out parcels and allow the Home Depot to have their typical garden centers.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The amendment and zone change can only help the whole area. A vacant building of this size coupled with almost half of the CUP never having been developed is a huge negative impact on the area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies the rezoning area as appropriate for "regional commercial" development. The proposed development is in accordance with the commercial locational guidelines of the plan. The site is specifically targeted in the "South Wichita/Haysville Area Plan" for "regional" commercial growth.
5. Impact of the proposed development on community facilities: The proposed development will result in increased traffic on this portion of 47th Street South and Broadway Avenue, only if it develops. The proposed maximum building coverage is within (+) 10% of the original CUP, which was only half developed, therefore traffic will only be approaching what was anticipated with the original CUP. Drainage impacts will be evaluated at the time of platting.