

DR 63-18 - Initiated by MAPC -
Nonconforming Uses in Exclusive
Industrial Zoning Districts

ACTION

DATE

COMMITTEE	DATE
M.A.P.C. <i>W. J. ...</i>	<i>5-16-63</i>
<i>W. J. ...</i>	<i>6-6-63</i>
<i>W. J. ...</i>	<i>7-18-63</i>
<i>W. J. ...</i>	<i>8-6-63</i>
<i>W. J. ...</i>	<i>8-28-63</i>

Closed

X

ORDINANCE NO. _____

AN ORDINANCE RELATING TO ZONING AND NONCONFORMING USE REGULATIONS AMENDING SECTION 28.04.170 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND REPEALING SAID ORIGINAL SECTION 28.04.170 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1: That Section 28.04.170 of the Code of the City of Wichita, Kansas, be amended to read as follows:

28.04.170 Nonconforming use regulations. A. EXISTING BUILDINGS.

1. The lawful use of a building or structure existing at the time of the effective date of this chapter may be continued, although such use does not conform to the provisions hereof. Ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building. If no structural alterations are made other than those necessary to maintain the building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.
2. Whenever a nonconforming use has been changed to a higher restricted use or to a conforming use, such use shall not thereafter be reverted to a lower restricted use; provided, that all nonconforming buildings shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, on or before January 1, 1997; provided further, that nonconforming buildings which became so classified after January 1, 1937, shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, within sixty years from the date that the building became nonconforming.
3. In the "E" light industrial and "F" heavy industrial districts, the board of zoning appeals may allow as an exception, any nonconforming residential building to be enlarged, extended or reconstructed up to a maximum of 40% of the floor area of the original nonconforming use building, and any nonconforming public, charitable, eleemosynary or religious institution to be enlarged, extended or reconstructed up to a maximum of 100% of the floor area of the original nonconforming use building; provided that the Board finds that failure to grant exception will create an undue hardship on the applicant and further, provided that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate.

B. DISCONTINUANCE.

In the event that a nonconforming use of any structure or premises is discontinued, or its normal operation stopped, for a period of two years, the use of the same shall thereafter conform to a use permitted in the district in which it is located.

C. STRUCTURAL ALTERATIONS.

No existing structure used contrary to the provisions of this chapter in the district in which it is located may be enlarged, extended or reconstructed unless its use is changed to a use permitted in the district in which such structure is located or unless such enlargement, extension or reconstruction is required by court decision, law or ordinance.

D. FIRE OR CALAMITIES.

Any building destroyed by fire or other calamity to the extent of not more than fifty per cent of its structural value, may be renewed and used for its original purpose; provided, that any such building destroyed by fire or other calamity or for any other reason whatsoever to the extent of more than fifty percent of its structural value shall be reconstructed and occupied to conform to the restrictions for the district in which such building is located.

SECTION 2. That said original Section 28.04.170 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall take effect on its passage and publication once in the official city paper.

PASSED AND APPROVED this _____ day of _____, 1963.

Mayor

ATTEST:

City Clerk

(SEAL)

1 of
Cris and 1 to Manager
1 to Com -

DRAFT - CC

MEMORANDUM

TO: Honorable Members of the City Commission
The Board of City Commissioners

FROM: Deland R. Edmonds, Director of Planning

SUBJECT: Improvement Permits on Residential
Property in Industrially Zoned Areas

DATE: November 14, 1963

On October 26, 1962, after considerable research, ~~and~~ legal review, and several public hearings before the ~~Planning Commission~~ Ordinance #26-304 was ~~published amending the City Zoning Ordinance~~ ^{adopted} to implement ^{ing} the Principal of Exclusive Industrial Zoning. ~~This~~ ^{the}

amendment excluded all uses first permitted in zoning districts more restrictive than the Light Commercial District except for caretaker houses, etc.

*
However, following the adoption of this amendment, ~~several~~ ^{certain} problems which had arisen in industrial districts under the provisions of the Exclusive Industrial Zoning Ordinance were brought to the attention of the Planning Department. The problems arose, basically, because many of the areas zoned for industry were predominately in residential use. ^{Under ordinance any} ~~any~~ additions or modifications to the large number of nonconforming uses thus created were prohibited.

Several proposed amendments were submitted to the Department of Law for their review and concurrence. The Planning Commission later held a public hearing on ~~an~~ ^{an} ~~proposed~~ amendment ^{designed to alleviate the} and recommended it to the Board of City Commissioners for adoption.

the immediate problem

* * Exclusionary Industrial Zoning is based on the concept that industries need and desire a healthy environment in which to develop and they seek to avoid locations in the midst of residential areas or where there will be residential development. The ~~three major classes of land use - residential, commercial, and industrial~~ are equal in importance and should be afforded the benefits of zoning on an equal basis. The concept of exclusionary industrial zoning was also developed as a result of the criticism that zoning regulated industrial land uses, but afforded little, if any, protection.

Exclusionary zoning, as the name implies, creates districts within which similar and related uses are permitted and from which all others are excluded. In short, industries should be excluded from residential areas because they are not compatible with residential development and likewise residences should be excluded from industrial areas on the same grounds.

Important advantages of exclusionary industrial zoning are:

Factors favoring exclusionary industrial zoning:

OCTOBER 8, 1962

BOARD OF CITY COMMISSIONERS
CITY BUILDING
204 SOUTH MAIN STREET
WICHITA, KANSAS

GENTLEMEN:

SUBJECT: EXCLUSIVE INDUSTRIAL ZONING

THE METROPOLITAN AREA PLANNING COMMISSION, AT ITS MEETING OF JUNE 21, 1962, CONSIDERED AT A PUBLIC HEARING THE METTER OF EXCLUSIVE INDUSTRIAL ZONING. THIS IS ONE OF SEVERAL PUBLIC HEARINGS HELD BY THE PLANNING COMMISSION DURING THE LAST TWO YEARS TO DISCUSS THIS MATTER AND HEAR PARTIES, BOTH PRO AND CON, ON THE SUBJECT.

THE METROPOLITAN AREA PLANNING DEPARTMENT PREPARED A STUDY ENTITLED EXCLUSIVE INDUSTRIAL ZONING IN DECEMBER, 1959. THIS STUDY CONTAINED A THOROUGH REVIEW OF INDUSTRIAL ZONING AND LAND USE AS IT THEN EXISTED IN THE METROPOLITAN AREA. AS TAKEN FROM THE REPORT, CERTAIN ADVANTAGES WERE ADVANCED IN FAVOR OF EXCLUSIVE INDUSTRIAL ZONING AND CERTAIN DISADVANTAGES WERE ALSO REVIEWED. THESE ARE AS FOLLOWS:

ADVANTAGES

Factors favoring exclusive industrial zoning:

- ?
- THE HAZARDS FROM HEAVIER VOLUMES AND LOADINGS OF INDUSTRIAL TRAFFIC ARE INTENSIFIED IN MIXED RESIDENTIAL - INDUSTRIAL AREAS;
 - INDUSTRIAL AREAS ARE NOT LIKELY TO OFFER A HEALTHFUL RESIDENTIAL ENVIRONMENT;
 - PUBLIC SERVICES REQUIRED IN RESIDENTIAL AREAS MAY BE EXCLUDED FROM AREAS DEVOTED WHOLLY TO INDUSTRIAL AREAS, THUS EFFECTING IMPORTANT TAX SAVINGS TO THE COMMUNITY;
 - ENABLES MORE PRECISE PLANNING FOR SERVICES REQUIRED FOR AN AREA; THUS REDUCING THE LIKELIHOOD OF UNNECESSARY, INEFFICIENT, UNECONOMICAL CONSTRUCTION OR INSTALLATION OF REQUIRED SERVICES AND IMPROVEMENTS;
 - MAKES POSSIBLE FREER, MORE ECONOMICAL AND MORE EFFICIENT INDUSTRIAL EXPANSION, THUS GREATLY BENEFITING THE ECONOMIC BASE AND STABILITY OF THE COMMUNITY;

- ABSENCE OF RESIDENTIAL AND ASSOCIATED USES ALLOWS MORE SPECIALIZED AND MORE EFFICIENT TRAFFIC MOVEMENT THROUGH INDUSTRIAL AREAS AND OPERATION OF THE INDIVIDUAL ESTABLISHMENTS; CONTRIBUTING TO THE GENERAL ECONOMIC WELFARE OF THE COMMUNITY;
- NON-INDUSTRIAL USES OFTEN DISCOURAGE INDUSTRIAL EXPANSION INTO PROPERLY ZONED OR LARGELY VACANT AREAS BY COMPLICATING ASSEMBLY OF ADEQUATE SIZED CONTIGUOUS SITES;
- INDUSTRIAL USES ARE FREE OF THE DANGER THAT NON-INDUSTRIAL USES WILL ENCROACH UPON THEM AND PROTECT FACTORY CONSTRUCTION OR OPERATION WITHOUT EXCESSIVE RESTRICTIONS. THIS IS EQUALLY APPLICABLE TO PROSPECTIVE INDUSTRIES AND TO ESTABLISHED INDUSTRIES SEEKING TO EXPAND;
- MIXED RESIDENTIAL AND INDUSTRIAL USES TRADITIONALLY LEAD TO SERIOUS DETERIORATION AND BLIGHT AMONG THE RESIDENTIAL USES; RESULTING IN THE EVENTUAL NEED FOR URBAN RENEWAL AND IN THE EXPENDITURE OF PUBLIC FUNDS;
- SPECULATIVE VALUE OF THE INDUSTRIALLY ZONED LAND IS REDUCED THEREBY ENCOURAGING DEVELOPMENT OF NEW INDUSTRY;
- RECOGNIZES INDUSTRY AS THE MAJOR BASE OF THE CITY'S ECONOMY:
 1. AS A MAJOR REVENUE SOURCE;
 2. AS A PRINCIPAL EMPLOYER OF THE CITY'S RESIDENTS,RATHER THAN CONSIDERING IT AS A NECESSARY EVIL;
- WILL DISCOURAGE SEPARATING MAJOR INDUSTRIAL SITES INTO SMALLER, LESS EFFICIENT AREAS;
- CAN GUARANTEE THAT SUFFICIENT, GOOD QUALITY, PROPERLY LOCATED LAND WILL BE AVAILABLE FOR FUTURE INDUSTRIAL USE AS THE COMMUNITY AND ITS NEEDS EXPAND.

DISADVANTAGES

- ~~IMPOSES GREATER DEGREE OF CONTROL AND REGULATION ON THE PRIVATE INTEREST OWNING INDUSTRIALLY ZONED LAND;~~

The principal of exclusive industrial zoning has been accepted and has been included in nearly all new and modern up-to-date zoning ordinances as well as being supported by the Urban Land Institute as well as nationally recognized planning consultants.

*This amendment added paragraph A 3 to solve
this immediate problem.*

- 2 -

Therefore, on August 30, 1963, Ordinance #28-315 was published
amending the nonconforming use regulations ~~to read as follows.~~

28.04.170 Nonconforming use regulations. A. EXISTING BUILDINGS.

1. The lawful use of a building or structure existing at the time of the effective date of this chapter may be continued, although such use does not conform to the provisions hereof. Ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building. If no structural alterations are made other than those necessary to maintain the building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.
2. Whenever a nonconforming use has been changed to a higher restricted use or to a conforming use, such use shall not thereafter be reverted to a lower restricted use; provided, that all nonconforming buildings shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, on or before January 1, 1997; provided further, that nonconforming buildings which became so classified after January 1, 1937, shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, within sixty years from the date that the building became nonconforming.
3. In the "E" light industrial and "F" heavy industrial districts, the board of zoning appeals may allow as an exception, any nonconforming residential building to be enlarged, extended or reconstructed up to a maximum of 40% of the floor area of the original nonconforming use building, and any nonconforming public, charitable, eleemosynary or religious institution to be enlarged, extended or reconstructed up to a maximum of 100% of the floor area of the original nonconforming use building; provided that the Board finds that failure to grant exception will create an undue hardship on the applicant and further, provided that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate.

B. DISCONTINUANCE.

In the event that a nonconforming use of any structure or premises is discontinued, or its normal operation stopped, for a period of two years, the use of the same shall thereafter conform to a use permitted in the district in which it is located.

C. STRUCTURAL ALTERATIONS.

No existing structure used contrary to the provisions of this chapter in the district in which it is located may be enlarged, extended or reconstructed unless its use is changed to a use permitted in the district in which such structure is located or unless such enlargement, extension or reconstruction is required by court decision, law or ordinance.

D. FIRE OR CALAMITIES.

Any building destroyed by fire or other calamity to the extent of not more than fifty per cent of its structural value, may be renewed and used for its original purpose; provided, that any such building destroyed by fire or other calamity or for any other reason whatsoever to the extent of more than fifty percent of its structural value shall be reconstructed and occupied to conform to the restrictions for the district in which such building is located.

On November 5, 1963, the Board of City Commissioners again brought up the problem of issuing permits for expansion of residences in "E" and "F" industrial zones.

~~The~~ present zoning regulations state that ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building.

For those persons wishing to construct an addition, it is necessary before a building permit is issued that they be granted an exception by the Board of Zoning Appeals. The Board may allow as an exception any nonconforming residential building to be enlarged, extended or reconstructed up to a maximum of forty (40) percent of the floor area of the original nonconforming use; provided, that the Board finds that failure to grant exception will create an undue hardship on the applicant.

The Zoning Ordinance also provides in Section 28.04.170, Nonconforming Uses - C. Structural Alterations, that buildings and structures may be enlarged, extended or reconstructed when it is "required by court decision, law or ordinance". Thus, whenever new rooms are

required under the Housing Code, or new sanitary facilities are required under the Health Code, Central Inspection would have the authority to issue permits on nonconforming buildings ^{without any further approval.} It is doubtful, however, that any ordinance would require the construction of items which are a convenience only, such as garages, accessory buildings, etc. *These could be covered under the BZA forty (40) percent expansion clause*

R The Superintendent of Central Inspection states that building permits are being issued and have been issued in the past to nonconforming residential uses in "E" and "F" Industrial Districts for maintenance *(This includes new siding, roofs, replace porches, etc.)* and repairs of all types. ~~A~~ It has also been that ~~department's~~ *division's* policy to issue permits to bring nonconforming residences up to meet present codes. Also for those requesting permits for enlarging or expanding existing nonconforming residential structures, after an exception has been granted by the Board of Zoning Appeals not to exceed forty (40) percent of the original structure, permits are issued for such expansion.

Only two such problems have been brought before the Board of Zoning Appeals in the last several months. An undue hardship was found to exist in both cases and the Board directed the Office of Central Inspection to issue building permits. However, one of the residences wanted to exceed the permitted forty (40) percent expansion. The Board referred the case back to the Metropolitan Area Planning

Commission for review since it was the Board's contention that those residences were in a questionable heavy industrial zone. The recommendations of the report have been reviewed by the Planning Commission and they have directed the Planning staff to advertise for public hearing to change a portion of the study area from "F" Heavy Industrial to "B" Multiple-Family Residential.

If the Planning Commission were to initiate zoning changes at this time for all those industrial areas having nonconforming residential uses, the Commission would not have the benefit of a long-range land use plan. Rezoning on an individual basis would result in criticism of spot zoning. In most cases, because of the cost involved and the other problems suggested, this procedure is not recommended *at this time.*

The City Commission is aware that the Planning Commission has entered into contract with Richard F. Babcock, Attorney, Chicago, Illinois. The contract provides that Babcock shall prepare prototype zoning and subdivision regulations which can be used as a guide in the preparation of final zoning and subdivision ordinances. Also included will be reports as to existing zoning and subdivision regulations, and new zoning and subdivision techniques. *Following this, revisions can be made ~~with~~ considered and made in the zoning maps.*

Recommendation:

IT IS THE RECOMMENDATION OF THE CITY MANAGER THAT THE EXISTING ORDINANCE ADEQUATELY PROTECTS THE RIGHTS OF RESIDENTIAL PROPERTY OWNERS LOCATED IN INDUSTRIAL DISTRICTS X IN THAT THEY CAN:

- A. MAINTAIN AND KEEP THEIR PROPERTIES IN PROPER REPAIR AND IN ~~XXX~~ CONFORMANCE WITH ALL CITY ~~XX~~ CODES;
- B. EXPAND THEIR PROPERTIES UP TO 40% OF THEIR ORIGINAL SIZE.

THIS PROVIDES AN IMMEDIATE AND EFFECTIVE² SHORT RANGE SOLUTION TO THE PROBLEM.

THE ~~XXXXXXXXXX~~ ULTIMATE LONG RANGE SOLUTION WILL BE THE ESTABLISHMENT OF REVISED ZONING MAPS AFTER THE ADOPTION OF A NEW ZONING ORDINANCE.

NO REVISION OF THE EXISTING NON-CONFORMING PROVISIONS ARE RECOMMENDED AT THIS TIME.

~~Edward R. Edwards~~
~~Director of Planning~~

WICHITA-SEDGWICK COUNTY

DATE
November 5, 1963

METROPOLITAN AREA PLANNING DEPARTMENT

TO Jack H. Galbraith, Senior Planner
FROM Robert A. Lakin, Assistant Planning Director
SUBJECT Nonconforming Uses - Exclusive Industrial Zones

At the City Commission meeting today, John Stevens brought up the problem of issuing permits for expansion of residences in "E" and "F" zones. Stevens took the position that residences in "E" and "F" cannot expand, that they cannot be maintained and rehabilitated; whereas we are encouraging the same under the Housing Code, and that failure to allow expansion is a taking of private property, hence, compensable.

We may be required to write a memorandum to the Commission for the Manager on this subject. Clancy will advise shortly. If required to prepare a memorandum, make sure the following points are made:

- A. Distinguish between maintenance and upkeep with expansion, remodeling and structural changes.
- # B. Reference to Section 28.04.170.C wherein permits are authorized even though nonconforming if such enlargement, extension or reconstruction is required by a court decision, law or ordinance (such as Housing Code).
- C. A careful explanation of the 40% (and 100%) expansion clause through the BZA. Do not refer to the filing fees, etc.

Bob

Robert A. Lakin
Assistant Planning Director

RAL:mm

Check with legal Dept, Glen Lytle and R. Wulz.

August 1, 1963

Board of City Commissioners
City Building
Wichita, Kansas

Gentlemen:

Subject: DR 63-18 - Nonconforming
Use in the Exclusive Industrial
Districts

At the regular meeting of the Metropolitan Area Planning Commission on July 18, 1963, a public hearing was held for consideration of a proposed amendment to the Zoning Ordinance relating to expansion of nonconforming uses in the Exclusive Industrial District. The existing ordinance provides that only ordinary maintenance and repair may be done on such nonconforming uses so as to keep the building in good repair. No alterations may be made which will enlarge or change the character of the building.

The proposed amendment would give the Board of Zoning Appeals the authority to allow as an Exception the expansion of any nonconforming residential building in the "E" and "F" districts up to a maximum of 40% of the floor area of the original nonconforming building. It would also allow the Board authority to permit any nonconforming public, charitable, eleemosynary or religious institution in the "E" and "F" districts to expand up to a maximum of 100% of the floor area of the original nonconforming building. It is further provided that the Board shall not grant an exception for either residential or public building (as mentioned above) until it is determined that failure to grant such a permit would create an undue hardship upon the applicant. It is also provided that any expansion that is allowed would also be accorded the same nonconforming status as that enjoyed by the original building; and that whenever the time limit for the original building expires, the time limit of the expansion or alteration shall also expire.

An ordinance effecting this change has been prepared by the Department of Law. If the Commission agrees to the proposed change, the ordinance should be placed on its first reading.

Respectfully submitted,

Leland R. Edmonds
Secretary

LRE:JWH:ber

May 31, 1963

TO: Metropolitan Area Planning Commission Members

FROM: L. L. Little, Director of Planning

SUBJECT: Nonconforming uses in Exclusive Industrial Districts

At the last meeting of the Metropolitan Area Planning Commission, the Department submitted a memorandum pointing out that problems have arisen in relation to residential development in the "E" and "F" districts. This is because of the number of residences located in these districts. As nonconforming uses, they cannot expand, add rooms, accessory structures, etc. Normal maintenance, however, is permitted.

It was pointed out that the proposed amendment submitted at the last meeting was of doubtful legality in that it applied only to industrial districts and not the other districts, thus lacking uniformity. The staff was instructed to revise this amendment so that it would apply only as an Exception to be granted by the Board of Zoning Appeals under certain specified conditions. The Department was also instructed to provide information as to the amount of residential development in industrial districts.

It is suggested that the Commission has the following alternative courses of action in this matter:

- A. Authorize the Board of Zoning Appeals to grant exceptions to allow expansions or additions to nonconforming residential and public and quasi-public uses located in industrial districts. Conditions which would require findings of hardship, establishment of length of life for the nonconformity, and degree of expansion, should be included in the general authority given to the Board.

Legal counsel feels that the constitutionality of such an amendment is more likely to be upheld than the previous proposed amendment.

A suggested amendment to accomplish this purpose, follows:

SECTION 28.04.170 - NONCONFORMING USE REGULATIONS. A. EXISTING BUILDINGS.

Amend to read as follows:

Designate the first paragraph now in force as A.1

Designate the second paragraph now in force as A.2.

Add as follows:

A.3 In the "E" Light Industrial and "F" Heavy Industrial districts, the Board of Zoning Appeals may allow as an Exception, any nonconforming residential or public or quasi-public building to be enlarged, extended or reconstructed up to a maximum of 40% of the floor area of the original nonconforming use building, provided that the Board finds that failure to grant Exception will create an undue hardship on the applicant and further, provided that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate.

B. Another alternate is the rezoning of residentially used property to a residential classification. There are approximately 646 acres of land used for residential purposes in industrially zoned areas. This constitutes 5.5% of the total area zoned for industrial purposes (these figures include both the city and three-mile ring area as of March, 1960). Further breakdowns are not available at this time. However, additional residential land in the north industrial district has been zoned heavy industrial by the City Commission on recommendation of the Planning Commission a few months ago.

If the Planning Commission were to initiate zone changes at this time for these areas, it would not have the benefit of a land use plan. Rezoning on an individual basis could result in criticisms of spot zoning. Because of the costs involved and the other problems suggested, this procedure is not recommended.

- C. It was suggested by the Planning Commission that the ordinance might be amended to allow new porches, garages, and accessory buildings without being brought under the general nonconforming use clause prohibiting the expansion, extension, or reconstruction of "structures". This could be done but it would tend to create other problems and conflicts in the ordinance as "structures" is the base for the definition of "building", and all setbacks, etc., are based on either the definition of structure or building. This would then require rewriting to eliminate the resulting conflicts without solving the basic problem. This approach is not recommended.
- D. The Zoning Ordinance provides in Section 28.04.170, Non conforming Uses - C. Structural Alterations, that buildings and structures may be enlarged, extended or reconstructed when it is "required by court decisions, law or ordinance". Thus, whenever new rooms are required under the housing code, or new sanitary facilities are required under the Health Codes, Central Inspection would have the authority to issue permits on nonconforming buildings. It is doubtful, however, that any ordinance would require the construction of items which are a convenience only, such as garages, accessory buildings, etc.

It is the opinion of the Planning Department that the character of the exclusive industrial districts can best be maintained through either Alternate A or Alternate D. If Alternate A or C is accepted by the Planning Commission, the Department should be instructed to advertise for the appropriate public hearing on July 18. If Alternate D is selected, it would be desirable for the Planning Commission to adopt as policy the concept that nonconforming uses in industrial districts should be allowed to expand or rebuild only when such is necessary to protect public health, safety or welfare. If such a policy statement is adopted, the Department should be directed to advise the Department of Health and the Central Inspection Division accordingly.

L. L. Little
Director of Planning

LLL:RAL:ber

TO: Metropolitan Area Planning Commission
FROM: L. L. Little, Director of Planning
SUBJECT: Nonconforming Uses in Exclusive Industrial Districts

DATE: May 9, 1963

It has come to the attention of the Planning Department that several problems have arisen in industrial districts which now are under the provisions of the Exclusive Industrial Zoning Ordinance. The problems arise, basically, out of the fact that many of the areas now zoned for industry are predominately in residential use. Any additions or modifications to the large numbers of nonconforming uses thus created (residences, churches or schools) are prohibited.

One solution to providing home owners with some means of improving their properties, such as adding garages or rooms when an increase in the family requires it, is to rezone the property to a residential category. However, such a procedure is expensive to the applicant and will create a number of "spot zones". Until the Land Use Plan is complete so that a determination may be made as to which areas should be retained as industrial and which should be rezoned for residential, it is suggested that a provision be included in the Zoning Ordinance to allow these nonconforming uses certain expansion rights. This would be similar to that provision now in the County Zoning Resolution.

As a general criteria for this amendment, it is proposed that only those nonconforming uses in the exclusive industrial districts be affected and further, that any expansion allowed under this amendment enjoy only the privileges of the original nonconforming use as to time in which it may continue in existence.

This proposed amendment has been submitted to the Department of Law for its review and concurrence. The Department of Law has questioned the whether an ordinance should allow expansion of nonconforming uses in two districts and not allow expansion in any other district. It has been noted that zoning provisions must be uniform and if there be a lack of uniformity, then some degree of justification must be stated.

If the Planning Commission wishes to allow some relief in industrially zoned areas only, it is suggested that the following amendment be advertised for a public hearing at its meeting of June 20, 1963.

SECTION 29.04.170 - NONCONFORMING USE REGULATIONS. A. EXISTING BUILDINGS.

Amend to read as follows:

The lawful use of a building or structure existing at the time of the effective date of this chapter may be continued although such use does not conform to the provisions hereof. Ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building; provided however, that in the "E" Light Industrial and "F" Heavy Industrial districts, any nonconforming use building may be enlarged, extended or reconstructed up to a maximum of 40% of the floor area of the original nonconforming use building and further provided that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate. If no structural alterations are made other than those necessary to maintain the building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.

If the Planning Commission wishes to accord the expansion rights to nonconforming uses in all zoning districts, references to the "E" and "F" Industrial Districts in the above suggested notice should be deleted.

L. L. Little
Director of Planning

LLL/JWH:mm

THE CITY OF WICHITA

OFFICE OF Assistant City Attorney DATE May 3, 1963

TO Robert A. Lakin, Senior Planner

FROM Lawrence E. Curfman

SUBJECT Nonconforming uses in the "E"
Light Industrial and "F" Heavy
Industrial Districts

I have reviewed the enclosure with your letter of April 30. I think slight changes could be made to improve the enclosed amendment, although, in general, I have no quarrel with the language. I question, however, the constitutionality of an ordinance which would permit a 40 per cent expansion in the floor area of a nonconforming use building in two districts and would not permit any expansion in any other district. As you know, zoning must be uniform. What would be the justification for this complete lack of uniformity?

Lawrence E. Curfman
Assistant City Attorney

LSC:sm

cc: Fred W. Aley

DRAFT COPY

Howe
DR 63-18

TO: Metropolitan Area Planning Commission
FROM: L. L. Little, Director of Planning
SUBJECT: Nonconforming Uses in the Exclusive Industrial Districts

The amendment as outlined below has been necessitated by the adoption of the Exclusive Industrial Zoning Ordinance which excluded from the "E" Light Industrial and "F" Heavy Industrial Districts all those uses first permitted in the "AA", "A", and "RB" Districts.

As an immediate outgrowth of this amendment of those uses first permitted in the districts outlined above have become nonconforming. The nonconforming use clause of the Zoning Ordinance provides that when a building has become nonconforming, that only ordinary maintenance, repair and such structural alterations as are necessary to keep the building in good condition may be done.

The immediate problem centers around churches and people who own homes in industrial districts. The staff has has inquiries from several churches that wish to expand their existing facilities in order to accommodate their congregations and several home owners who wish to expand their existing dwellings in order to sufficiently accommodate their families. The staff has had to advise these people that the only way in which they can be allowed to expand their existing structures would be to apply for rezoning to a category where they would again become a conforming use.

APR 30 1963

DRAFT COPY

It is suggested that this is not the most logical way in which to approach the problem because rezoning will completely off-set the basic intent of the exclusive industrial zoning ordinance and further, rezoning will often times result in "spot zoning".

The proposed amendment would alleviate the problems just mentioned in that those who wish could expand their existing dwelling, structures, etc. up to a certain percentage of the floor area of the existing building. By this method, expansion would be allowed but the new expansion would be accorded the same nonconforming use status as that of the existing building.

If the Commission agrees with this general approach, it is suggested that the following amendment to the Zoning Ordinance be advertised for a public hearing at its meeting of June 6, 1963.

SECTION 28.04.170 - NONCONFORMING USE REGULATIONS. A. EXISTING BUILDINGS.

Amend to read as follows:

The lawful use of a building or structure existing at the time of the effective date of this chapter may be continued although such use does not conform to the provisions hereof.

Ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building; provided however, that in the "E" Light

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industrial and "F" heavy industrial districts, any nonconforming use building may be enlarged, extended or reconstructed up to a maximum of 40% of the floor area of the existing building and further provided that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate. If no structural alterations are made other than those necessary to maintain the building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.

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April 30, 1963

Lawrence E. Curfman, Assistant City Attorney

Robert A. Lakin, Senior Planner

Nonconforming uses in the "E" Light Industrial
and "F" Heavy Industrial Districts

Enclosed is a copy of a proposed amendment to the Zoning Ordinance relative to nonconforming uses in the "E" Light Industrial and "F" Heavy Industrial Districts. Will you please examine this draft and comment on the legality of the proposed change.

It is our purpose to allow nonconforming uses in the "E" Light Industrial and "F" Heavy Industrial Districts to expand up to a maximum of 40% of the floor area of the existing building.

Please note that the proposed change does not include nonconforming uses in the "AA" Single Family, "A" Two Family, "RB" Four Family, "B" Multiple Family, "BB" Office District, "LC" Light Commercial, "C" Commercial or "D" Central Business District; but only applies to the nonconforming uses in the "E" Light Industrial and "F" Heavy Industrial Districts.

The proposed change has been underlined in the attached copy of the amendment.

If you have any questions regarding the above proposal or if we may be of assistance in any way, please do not hesitate to call.

Robert A. Lakin
Senior Planner

RAL/JWH:mm

Enclosure

SECTION 28.04.170 NONCONFORMING USE REGULATIONS. A. EXISTING BUILDINGS.

Amend to read as follows:

The lawful use of a building or structure existing at the time of the effective date of this chapter may be continued, although such use does not conform to the provisions hereof. Ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building; provided, however, that in the "E" light industrial and "F" heavy industrial districts, any nonconforming use building may be enlarged, extended or reconstructed up to a maximum of 40% of the floor area of the existing building and further provided that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate. If no structural alterations are made other than those necessary to maintain the building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.