

PLAT NO. S/D 71-21 MAP NO. .5746

NAME PERDEL ADDITION

LOCATION On the south side of Kellogg in an area between
Pershing and Dellrose

ENGINEER Baughman Company

OWNER A. J. King

APPLICATION FILED 4-5-71

SKETCH PLAT FILED 4-5-71

PRELIMINARY FILED none submitted

S/D ACTION N/A

FINAL FILED 4-5-71

S/D ACTION 4-15-71 Approve

MAPC ACTION 4-22-71 Approve

BCC ACTION 8-10-71 Approve

RECORDED 8-27-71

REMARKS _____

S/D 71-21 PERDEL ADDITION-on the south side of Kellogg in area between Pershing and Dellrose
Baughman Company

4-7-71

ACTION

	DATE
5/6 COMMITTEE (final) Approve	4-15-71
M.A.P.C. Approve	4-29-71
B.C.C. [redacted] Approve	8-10-71

(except 200 foot rather than 200 foot height area for construction required)

5

Map No. 5746
Sec. No. 26
Twp. No. 27S
Range 1E

Subdivision Report and Progress

S/D No.: 71-21

Name: PERDEL ADDITION

General Location: On the south side of Kellogg in an area between Pershing and Dellrose

Owner: A. J. King
Address: 1807 East Douglas 67211 Phone: 265-1481
Subdivider: Same Phone:
Address:
Engineer/Surveyor: Baughman Company
Address: 2522 East Kellogg 67211 Phone: 683-7431

Application Received	4-5-71	FINAL PLAT RECEIVED	4-5-71
Conf. with Applicant	None	S/D Comm. Action	4-15-71 Approve
Sketch Plat Received	4-5-71	Dept. Report on Final	4-19-71
Present Zoning	"A"	M.A.P.C. ACTION	4-22-71 Approve
* Proposed Zoning	"LC"	Dept. Report on Final	4-23-71
Letter of Intent	None	Letter on Irons Received	N/A
PREL. PLAT RECEIVED	none submitted	Title/Taxes Rec'd & Reviewed	8-3-71
S/D Comm. Action	N/A	Final Review	8-4-71
Dept. Report on Prel.	N/A	Referral to B.C.C.	8-5-71
TRACING PROGRAMS:		B.C.C. ACTION	8-10-71 Approve*
Received	8-2-71	Recorded	8-27-71
Released	8-18-71		
Received			
Released			

Comments:

- * Z-1203 - Associated zone case from "A" to "LC", approved by the Bd. of City Commissioners on Sept. 22, 1970.
- * 8-10-71 B.C.C. approved plat - requested 400 foot rather than 200 foot benefit area for covenants
- 8-18-71 Called A.J. King's office to pick up tracing for recording.

REGISTER OF DEEDS
SEDGWICK COUNTY, KANSAS

J.H.
8-21-71

PERDEL _____ ADDITION was

filed for record on August 27, 1971

S-1 5-17
79
vh

John Hale

Register Of Deeds

T9-328

SUBPOENA DUCES TECUM

The State of Kansas }
Sedgwick County } etc Case Number. C-28925

THE STATE OF KANSAS TO MR. JACK GALBRAITH

You are summoned to appear in person and bring with you the minutes of the Metropolitan Area Planning Commission (Wichita, Sedgwick County, Kansas) of August 27, 1970 and June 24, 1971, and specifically, that portion of the minutes concerning zoning Case Z-1203, "A to LC".

Serve Mr. Jack Galbraith
c/o Metropolitan Area Planning Commission
City Annex Building (4th FLOOR)
104 So. Main
Wichita, Kansas.

RECEIVED
SHERIFF'S DEPARTMENT
SENIOR CLERK
APR 1 3 58 PM '74

Mr. Galbraith-we will call you on the phone
(#500 return) *attached*

WE COMMAND YOU to be and appear in your own proper person before the Judge of Division No. 1 of the District Court of the County of Sedgwick, at the Court House in Wichita, County of Sedgwick, on the 5 day of April, 1974, at 10 o'clock M., of that day, then and there to testify on behalf of the defendants in a certain controversy now pending and undetermined in said court, wherein Frey-Garvco, Inc. is plaintiff and Mobil Oil Corp., et al defendant, and this do you in nowise omit under the penalty of the law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Wichita, this 4 day of April, A. D. 1974.



DOROTHY I. VAN ARSDALE
Clerk

SAUMS AND GRANT Atty. for Defendants

Mary Ann Clausen
Deputy Clerk.

SHERIFF'S RETURN

Received this writ _____, 19____. Served the same by delivering a certified copy to each person named personally, at the times following, to-wit:

_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____

Served the same by leaving a copy thereof at the usual place of residence, at the times following, to-wit:

_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____

The following persons not found in Sedgwick County:

_____	19____	_____	19____
_____	19____	_____	19____

Serving first person \$	_____
Serving _____ copies	_____
Not found	_____
Mileage _____ at 9c	_____
TOTAL \$	_____

not called to appear.
JAS 4/9/74
SHERIFF
DEPUTY

Excerpt from P.C. minutes
7/8/20/70 associated with
Zone Case Z-1203

Page 27
8-27-70

BLEDSE pointed out that there should not be more than one entrance on West Street allowed.

No one spoke either in favor of or in opposition.

MOTION: BLANCHAT moved, WILKINSON seconded and it carried unanimously that the Planning Commission recommend to the City Commission that this application be approved, subject to platting within one year from the date of approval by the City Commission, in order to provide for adequate street right-of-way on West Street, access control and uilding setbacks, or the application be denied, and that the ordinance effectuating the zone change not be published until the plat has been recorded with the Register of Deeds.

-
34. Case No. Z-1203 - L. Vernon Johnson and A. J. King request change from "A" to "IC" for Lots 1, 2, 3, 22, 23, 24, Block 2, Kellogg Heights. Generally located on the south side of Kellogg between Pershing and Dellrose.

LAKIN pointed out the area on the map and reviewed the following staff report:

Comments

1. In the latter part of 1958, a request for a change of zoning from "A" to "IC" (Z-0110) was filed for the area contained in this application. Action of the Planning Commission was to recommend denial of "IC" and that the area be rezoned to the "BB" Office classification. The City Commission denied the application.
2. In the middle part of 1963, a request was again filed on subject property by the present owner for a change of zoning from "A" to "IC" (Z-0472). The Planning Commission recommended that the application be denied and on July 23, 1963, the City Commission concurred in the recommendation of the Planning Commission.
3. On September 5, 1963, the Planning Commission considered a request for a change of zoning from "A" to "BB" (Z-0491) on the same area. Action of the Planning Commission was to recommend approval of the application. Subsequent to this action, 39.28% of the property owners within 200 feet filed valid protest petitions. At the meeting of the City Commission on October 1, 1963, a motion to approve the change failed to receive a 4/5ths vote and the application was denied.
4. On August 8, 1968, the Planning Commission considered a request for a change of zoning from "A" to "BB" (Z-1013) for the area contained in this application, plus an additional lot on Dell-

platting in order to provide for adequate right-of-way for Kellogg, access control and building setbacks within one year from date of approval by the Board of City Commissioners, or the application be denied, and that the ordinance effectuating the zone change not be published until the plat has been recorded with the Register of Deeds; and that the staff be instructed to close Case Z-1013.

GEORGE B. POWERS, attorney for the applicants, pointed out that there have been changes in the area since previous considerations of rezoning for subject property. He stated that it is desired to relocate the Johnson Oil Company service station at Grove and Kellogg to this location, since the present location will be required for the highway interchange at Grove and Kellogg. POWERS said that one of the houses to the west has been removed and that the house on the corner to the west has been converted to a dental office and that on to the east of the application area is all light commercial. POWERS noted that in 1968, the Planning Commission determined that subject property should not be "A" or "AA" and that it should be established as a buffer zone of "BB" Office. POWERS continued that since that time there have been changes in the area, principally the medial strip on Kellogg which definitely makes it a commercial street in that it can no longer be used for housing from an economic standpoint.

POWERS felt that his client has been placed in a very dangerous position in view of the taking of his property for the interchange, in that it is one of the ten largest stations in Wichita volume-wise. He agreed that his client is being paid for the physical taking, but that payment for damage because of loss of business, is difficult to establish. He felt that unless Johnson Oil Company can establish another station in the vicinity, irreparable damages will be suffered.

POWERS called attention to a Federal law passed in 1968 which declares that the prompt and equitable relocation and re-establishment of business (as well as persons, farmers, etc.) displaced as a result of the federal highway programs and construction of federal aid highways is necessary to insure that individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Congress further determined that relocation payments and advisory assistance should be provided to all persons or businesses displaced. Further, it is provided that states shall provide a relocation advisory assistance program which shall include such measures, facilities or services as may be necessary or appropriate in order to determine the needs, if any, of displaced families, individuals, business concerns, etc. for relocation assistance, and to assist owners of displaced business in obtaining and becoming established in suitable locations.

POWERS pointed out that there is only one other possible service station location between Broadway and the Turnpike, and it is owned by Mrs. Hudson and not available for a service station. Unless this station, Johnson Oil, is replaced one of the major businesses will be eliminated and he considered this point very

approved for "BB" zoning for over three years and there have been no buyers, and it is valuable land and ought to be developed. He referred again to the action of Congress and the fact that while an owner is paid for the taking of property, there is no way to compensate for the loss of business. He repeated that they need a station on the south side of Kellogg and development of this property would add materially to the tax revenue for the City.

The question of traffic count was brought up and POWERS reported the following figures: Traffic headed east on Kellogg in a 24-hour period in 1968 was 12,000 and at present it is about 14,000 vehicles.

BLEDSOE asked Mr. Powers if his clients would be willing to file restrictive covenants limiting the use of the property to a service station for a period of ten years. POWERS noted that a service station would not require the entire property. BLEDSOE said he had in mind a restriction which would assure there being no drive-in type facility, beer tavern or any use which would be noisy or create a disturbance in the neighborhood.

POWERS said it would be their plan to buy the entire property, one-half to be used for a service vice station, and they would be willing to restrict the use of the property in any reasonable fashion so it wouldn't adversely affect the neighbors.

In considering the right-of-way on Kellogg, POWERS said they have anticipated an additional requirement in this respect and it will be taken care of through replatting.

CHAIRMAN JACKSON declared a 5-minute recess after which the meeting reconvened with the same members present.

WILLIAM R. WOOD, attorney, spoke in opposition, on behalf of himself as a resident in the area and on behalf of other property owners. He submitted a protest signed by 20 people in the area, most of whom were present. He stated that they are violently opposed to a service station and that he purchased his home (just south of Mr. Klepper's service station) in 1968 when he moved to Wichita, with the understanding that the application area was "BB" zoning which would permit office uses. He said if it had been zoned "LC" at that time, he would not have purchased his property. He felt that a service station would devalue every property in the area and that most of the homes are \$14,000 to \$22,000 in value. WOOD pointed out that there is a Johnson Oil Company service station only a few blocks west on Kellogg and that there is no medial immediately in front of it and thus the station can be reached from any direction, so he could not feel too much sympathy for the oil company. He did not think the general area needs a replacement for the station being eliminated because of the existing five service stations in the vicinity of Oliver and Kellogg.

right-of-way being required, in which case, (if this request is permitted and the service station developed), the new station would also be condemned and the City would be asked again to move the proposed use to another new location. He questioned the advisability of such a procedure when it would mean replacing the use at some future time.

STEWART commented that it has been suggested that the proposed change affects the public interest in various ways, and of course it is obvious that what is proposed would affect his client from the standpoint of competition. As to the public interest, STEWART asked if there is any private interest which so overrides the public interest that the public interest should be ignored and the private interest upheld. With respect to the public interest, STEWART stated that one of the questions is, is the station needed and does it serve the public, would it aid the motoring public going east on Kellogg, would it provide a service not already available. Reference was made to the surrounding neighborhood and the fact that the west portion of subject area cannot be used commercially unless approved by 3/4 of the owners in the Addition, and STEWART suggested that the opposition of the owners is increased in view of their legal rights represented by the restrictive covenants.

STEWART referred to the zoning policy and the fact that the staff has reviewed recent applications for rezoning in the area, one case being approved for "BB" and an office building having been constructed thereon, although the request was for "LC". He thought there was a great deal to be said for the policy the Commission has established of not going beyond "BB" zoning in this area, in view of the Master Plan for improvement of Kellogg, and he asked that the Commission observe the past policy. As for private interest, STEWART pointed out that this is not a case where an owner has held the land for a long time unable to develop it, but rather any burden so far as chances for development have been eliminated by reason of the "BB" zoning approved a few years ago.

In summary, STEWART commented that it is obvious the change is not in the public interest and that there is no overriding private interest; there is only one private interest and that is purely economical and will saddle this community with the possibility that subject property would have to be condemned at some later date for improvement and upgrading of Kellogg. He doubted that the additional taxes which is claimed will be paid by the proposed development would warrant the tax cost for condemnation at a later time.

About ten property owners in the area stood to indicate their opposition, and STEWART said that some had to leave the meeting earlier.

HENNESSY referred to an earlier zoning request for "LC" which was approved and fourplexes removed to permit light commercial development and felt that a precedent had perhaps been set by this previous action. He thought that he considered it obvious that it was the feeling that "LC" would be granted and as far as the covenants, he thought that should be up to the applicant in that the City has no control over private restrictions.

Excerpt from P.C. minutes
of 6-24-71 Assembly
with 2-1203

Page 7
6-24-71

buffer for the residences to the north, it would be desirable that assurances be provided that subject property will not be utilized for other than a garden center, or uses permitted in the "LC" Light Commercial District.

4. In the event the Planning Commission recommends approval of the application, the normal requirement is to require the platting of the property within one year from the date of approval by the Board of City Commissioners; or the application be considered denied.

GALBRAITH said it was the Staff recommendation that this application be approved subject to platting to include the area proposed to be dedicated to the City and covenants that the area requested for "C" zoning will be used only for a garden center or other uses permitted in the "LC" district. It was pointed out that the only reason for asking for "C" was because that district is required for outside display of merchandise which is usually associated with a garden center.

DON BOTTENBERG was present in support of the request and said they were willing to submit covenants that the area would be used as a garden center and that they were agreeable to the Staff recommendation, including platting.

No one appeared in opposition.

MOTION: JACKSON moved, TAYLOR seconded and it carried unanimously that, based on the offering of restrictive covenants that the area requested for "C" Commercial zoning would not be used for any use other than a garden center or uses permitted in the "LC" Light Commercial district, the Planning Commission recommend to the City Commission that this request be approved, subject to platting the application area as well as the area proposed to be dedicated to the City for drainage purposes, all within one year from the date of approval by the City Commission, or the application be considered denied, and that the ordinance effectuating the change not be published until the plat has been recorded with the Register of Deeds.

-
10. Request for clarification of voluntary restrictive covenants which were offered as a condition of approval of zone case 2-1203 - "A" to "LC", generally located on the south side of Kellogg between Dellrose and Pershing.

GALBRAITH reviewed the following information which had been provided the Planning Commissioners prior to this meeting:

The above captioned zone change request was considered by the Wichita-Sedgwick County Metropolitan Area Planning Com-

GEORGE B. POWERS, attorney for the applicants in the above case, reviewed the circumstances of the previous action with respect to the restrictive covenants, and said that at the time of the previous hearing, the plans were for a Johnson Oil Company service station on the lots on Pershing, and there was no objection to the exclusion of food and drink, it being his understanding at the time (and he assumed that was the understanding of the Commissioners) that reference to food and beverage referred to uses such as Sandy's, McDonald's or Dairy Queen, where there is excessive traffic, noise, lights, etc. POWERS said that after the meeting his client had asked about the right to sell bottled drinks and candy bars from the service station and Powers had indicated he thought such was not excluded from the motion.

POWERS pointed out that since the previous meeting, he has been unable to secure approval from 75% of the owners in the Addition for lifting the limitation of only single-family development on the lots on Pershing and the Johnson Oil Company has decided not to utilize such property. POWERS continued that it is his understanding the property owners in the area would be agreeable to a business building or dental or medical clinic, but do not want a service station regardless of screening.

POWERS said that his client has an opportunity to trade properties with Mr. Luis Casado, but that Mr. Casado is not agreeable to the restriction so far as sale of food or beverage. He suggested that they should have an interpretation of the meaning of the reference to food and beverage for preparation of the covenants in connection with the platting which is now in process. POWERS commented that perhaps the strict reading of the motion would prohibit a high class restaurant or a grocery store, but he doubted that such uses were what the Commissioners had in mind when the motion was voted on. He felt there had been no discussion of this point after Bledsoe had suggested the amendment to the original motion on August 27, 1970.

HENNESSY ARRIVED.

KAMEN recalled that during the discussion, it was very clearly outlined by the applicant that it would be a very clean, neat and orderly service station so that the neighborhood would not be adversely affected, and there was discussion of not only dispensing of food and beverages, but also what area the service station could cover and the location of pumps.

KAMEN said the manner in which the application area was reported to be developed was the basis for allowing the zoning and then in order to make certain everything was covered and that there would be no retail sale of food and beverage in the sense of allowing anything else that was disturbing to the neighborhood, Bledsoe had suggested the wording in the amended motion related to food and beverage.

HENNESSY pointed out that this property has been vacant for many years and other areas in the general neighborhood along

ney was the claim that there was no other location on the south side of Kellogg east to beyond the City limits, other than Mrs. Hudson's property which was not available, and yet when plans for lifting the restrictions on the west portion of subject property did not materialize, Johnson Oil Company is constructing a station on the south side of Kellogg just east of Oliver where they obtained light commercial zoning.

SMITH felt that the request being considered for clarification actually is a request for amendment of the application or approval, and that legal requirements have not been met so far as public hearing for amendment in that no legal publication was made to rehear this case. He felt that any action taken today so far as changing any wording in the previous motion would have to go back to the City Commission.

ORLIN WAGNER, attorney residing in the area, commented that Powers has expressed concern for the valuable property which has been undeveloped for many years, and yet has apparently not considered the value represented by the 35 to 40 homes in the two block area of Kellogg Heights Addition, which would be considerably lowered in value and rendered less desirable for homes by undesirable development on subject property. He pointed out that it was the applicant's suggestion at the City Commission meeting to put certain restrictions on the development of the property and now they are attempting to gain favorable clarification to amend the restrictions. It was his feeling that in view of the possible trade or sale with Mr. Casado, that Mr. Powers would like the Commissioners to believe that a grocery store or restaurant does not have traffic. Also, apparently Mr. King would like to sell the property to his own economic advantage and doesn't care about the economic disadvantage to the residents in the area. He maintained that the voluntary restrictive covenants as indicated in the motion of the Planning Commission on August 27, 1970 are very clear and do not need any interpretation.

WAYNE KING, representing his father who owns subject property, said when the property was purchased 8 years ago there was some idea of building a restaurant, and when it was discovered they could not do so, they have attempted to do something about selling the property. He resented the inference that they were crafty and trying to "hoodwink" members of the Commission, but are only trying to sell the property because they themselves cannot use it, and too when one considers the required dedications associated with replatting, the useable area is reduced considerably. He indicated they are just trying to break even so far as disposing of the property, and as for development of a doctor or dental clinic, he pointed out that real estate people usually list property for sale and then find a buyer, rather than finding a buyer and then the property. KING repeated that there is nothing sly or underhanded about transactions on the property and their only desire is to do something with it.

Taylor, Burnett and Jackson) and I opposed (Hennessy) that the words in the amended motion speak for themselves; that it was meant to exclude all food and beverage businesses, but not the sale of soft drinks or candy as an accessory use to the principal business.

Meeting adjourned at 3:40 p.m.


Robert A. Lakin
Secretary

State of Kansas
ss
Sedgwick County

I, Robert A. Lakin, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the Minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission held on June 24, 1971, is a true and correct copy of the Minutes officially approved by such Commission.

GIVEN under my hand and official seal this 23rd day of
July, 19 71.

(SEAL)


Robert A. Lakin, Secretary
Wichita-Sedgwick County Metro-
politan Area Planning Commission

*Good
OK J.A.S*

RESTRICTIVE COVENANTS

THE UNDERSIGNED, A. J. KING, being the sole owner of the following described property, to-wit:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas;

does hereby declare this 3rd day of August, 1971:

W I T N E S S E T H:

WHEREAS, the above described property is in the process of being zoned "LC" Light Commercial; and

WHEREAS, the undersigned in connection therewith desires to make the following declarations of restrictions and limitations as to how said property may be utilized, hereby specifying that such declarations and restrictions shall constitute covenants running with the land for the purpose of setting forth requirements upon which the undersigned and his successors in title are governed, which requirements, limitations and restrictions shall be for the benefit of those persons who own property within ~~two~~ ^{four} hundred feet of the captioned property;

AJK 8-11-71

(400)
~~(200)~~

AJK 8-11-71

NOW, THEREFORE, the undersigned, A. J. King, does hereby declare that the following will be complied with by the undersigned on the said described property:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas.

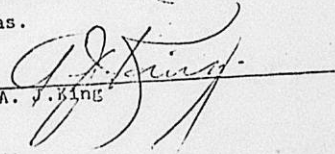
1. Any development of said property consistent with the "LC" zoning will have and require 5'-8' fence constructed either of redwood, plastic, and/or cedar, or similar non-see-through material along the south line of said property along with landscape screening of deciduous and coniferous shrubs placed along said fence.

2. For a period of ten (10) years from June 1, 1971, the development and use of the property shall exclude a retail food or beverage business but shall not exclude the sale of food or beverage as an accessory use to the principal business.

The above covenants, conditions, and limitations shall run with the land and be binding upon the present owner, his successors, trustees and assigns, and all parties claiming by, through or under him.

In the event the owner of said property as above set forth, or his successors in interest or assigns, shall violate or attempt to violate any of the conditions, covenants, and limitations as above set forth, it shall be lawful for those property owners within ~~two~~^{four} hundred ~~(200)~~⁽⁴⁰⁰⁾ feet of the *OK 2-11-71* captioned property and the City of Wichita to prosecute any proceeding at law or in equity against said party or parties violating or attempting to violate any such covenants, limitations, or conditions either to prevent them from doing so or to compel compliance therewith.

IN WITNESS WHEREOF, the said owner and grantor of these limitations, conditions, covenants and restrictions has executed this declaration the day and year above written in Wichita, Sedgwick County, Kansas.


A. J. King