

## **CONDITIONAL USE RESOLUTION NO. CON-2001-00049**

**WHEREAS**, Louis and Stephanie Falcon (owners), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requested a Conditional Use to allow a rural home occupation on less than 20 acres for a custom auto paint shop in an existing garage on 7.84 acres zoned "RR" Rural Residential described as:

A tract beginning at the Northeast corner of the East Half of the Northwest Quarter of Section 27, Township 25 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas, thence South 365 feet; thence West 764 feet; thence North 115 feet; thence West 250 feet; thence North 250 feet; thence East along the North line of said Section, 1,014 feet to the point of beginning. Generally located on the south side of west 93<sup>rd</sup> Street North, between 263<sup>rd</sup> West and 247<sup>th</sup> West (25701 W. 93<sup>rd</sup> North), Mount Hope, KS.

**WHEREAS**, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

**WHEREAS**, the MAPC did, at the meeting of October 11, 2001, consider said application; and

**WHEREAS**, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

**NOW, THEREFORE, BE IT RESOLVED** by the Metropolitan Area Planning Commission that this application be approved to permit a conditional use to allow a rural home occupation on less than 20 acres for a custom auto paint shop in an existing garage on 7.84 acres zoned "RR" Rural Residential described as:

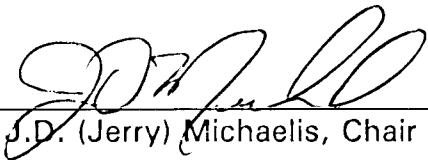
A tract beginning at the Northeast corner of the East Half of the Northwest Quarter of Section 27, Township 25 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas, thence South 365 feet; thence West 764 feet; thence North 115 feet; thence West 250 feet; thence North 250 feet; thence East along the North line of said Section, 1,014 feet to the point of beginning. Generally located on the south side of west 93<sup>rd</sup> Street North, between 263<sup>rd</sup> West and 247<sup>th</sup> West (25701 W. 93<sup>rd</sup> North), Mount Hope, KS.

subject to the following conditions:

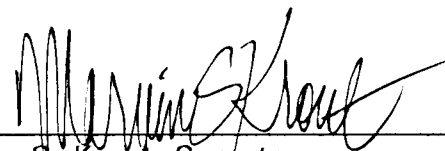
1. The rural home occupation shall be for a vehicle paint shop only, shall take place in the existing garage only, shall have no outdoor storage, and shall permit no additional employees.
2. The applicant shall install a paint booth and air filtration system that meets all applicable codes, policies and standards.
3. The applicant shall have the existing garage building inspected to ensure that it meets all applicable building and fire codes for the intended use of vehicle painting.
4. The applicant shall develop a hazardous material waste storage and disposal plan to meet all applicable codes, policies and standards. This plan shall include the safe storage of all commercial waste, the prevention of any commercial waste from entering the application area lagoon, to include floor drains from the garage, and the safe containment of any spilled commercial waste.
5. The applicant shall submit the "Regulated Waste Activity Notification" form to Kansas Department of Health and Environment, and obtain a regulated waste license from the Kansas Department of Health and Environment.
6. Development and maintenance of the site shall be in conformance with the approved site plan.
7. This Conditional Use permit shall be rendered null and void if the site is not operated or maintained in conformance with adopted conditions of approval, or if operations have not begun within one year of approval.

Adopted this 11th day of October, 2001. This resolution shall become effective on the fifteenth day after the date last noted above unless the matter is forwarded to the Governing Body for final action under the provisions of Section V-D.6. When any one or more of the exceptions listed in Section V-D.6 exist, this resolution with its conditions of approval shall be considered a recommendation of the MAPC to the Governing Body which shall then have final authority to approve, approve with conditions or modifications, or deny the Conditional Use application.

METROPOLITAN AREA PLANNING COMMISSION

  
J.D. (Jerry) Michaelis, Chair MAPC

ATTEST:

  
Marvin S. Krout, Secretary

# SITE PLAN APPROVED

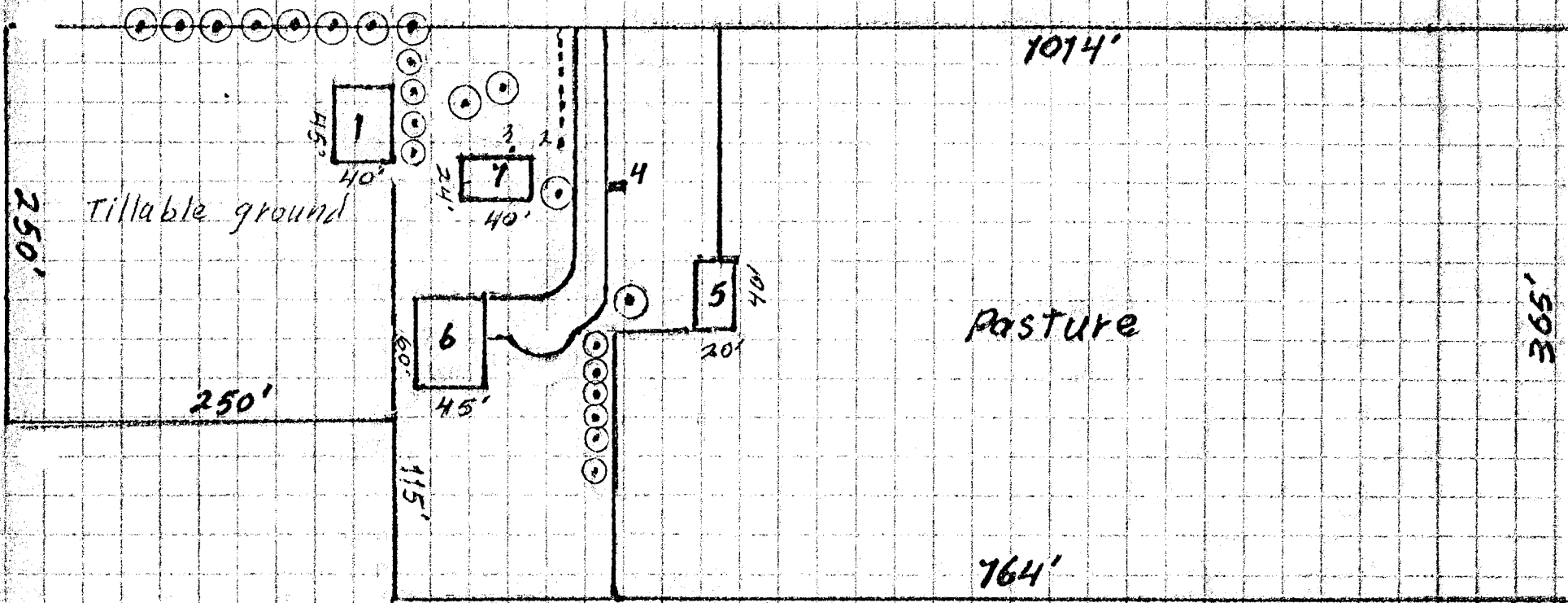
*William J. McNulty*

Date: 6-18-02

- 1 - Lagoon
- 2 - R.E.A electric
- 3 - Bell
- 4 - Propane tank
- 5 - Barn
- 6 - Garage
- 7 - House

N 1" = 100'

93 rd Street North



7.84 AC.

*Charles L. McCormick* B.F.A.  
Aug. 4 2001

Con 2001-49

FILE COPY



AGENDA ITEM NO. 9

## STAFF REPORT

MAPC 10-11-01  
Mt. Hope PC 9-22-01

CASE NUMBER: CON2001-00049

APPLICANT/AGENT: Louis and Stephanie Falcon (owners)

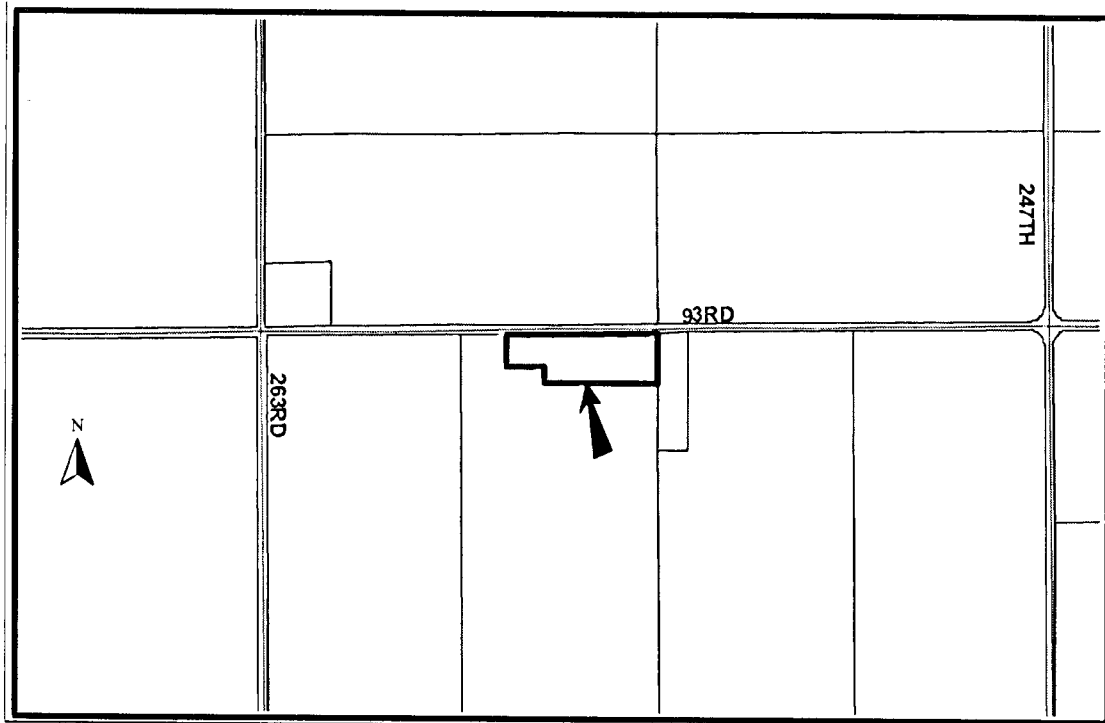
REQUEST: Conditional use to allow a rural home occupation on less than 20 acres

CURRENT ZONING: "RR" Rural Residential

SITE SIZE: 7.84 acres

LOCATION: On the south side of West 93<sup>rd</sup> Street North, between 263<sup>rd</sup> West and 247<sup>th</sup> West (25701 West 93<sup>rd</sup> North); within the Mt. Hope area of influence

PROPOSED USE: Home occupation for a custom auto paint shop in an existing garage



**BACKGROUND:** The applicant is requesting a Conditional Use for a rural home occupation on a 7.84-acre un-platted lot located along the south side of West 93<sup>rd</sup> Street North, between 263<sup>rd</sup> West and 247<sup>th</sup> West. Agricultural fields surround the application area, the nearest residential neighbor lies over 1,100 feet to the west. The property is zoned "RR" Rural Residential and developed with a single-family residence, a barn and a garage. The application area is on a lagoon sewage system. The owners intend to operate a custom auto paint shop in the existing garage with no outside employees. The applicants propose, in the attached business plan, to use only the existing 2,700 square foot garage, to install an industrial spray booth with an air filtration system, to comply with all EPA standards, to operate a custom paint business only, and to store no cars or parts outside the garage.

The application area is in the Equus Beds Groundwater Management District #2, a water source for the City of Wichita, and therefore raises concerns about hazardous material management for the requested use. The Equus Beds District staff considers this area a "sensitive" groundwater area. Sedgwick County Environmental Code, and both County and Kansas Department of Health and Environment (KDHE) policies prohibit any commercially generated waste, to include effluent from commercial floor drains, from being discharged into lagoons or septic systems. KDHE requires a hazardous material license for any business generating more than 55 pounds of hazardous material per month; KDHE then monitors the licensed businesses.

Sedgwick County Code Enforcement and Fire Department require building approval for the proposed use. County Fire Code also requires an approved spray booth for the proposed use.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

|        |      |                                     |
|--------|------|-------------------------------------|
| NORTH: | "RR" | agricultural fields                 |
| SOUTH: | "RR" | agricultural fields                 |
| EAST:  | "RR" | agricultural fields                 |
| WEST:  | "RR" | agricultural fields, farm residence |

**PUBLIC SERVICES:** The property is located along West 93<sup>rd</sup> Street North, a two-lane, township gravel road. The traffic count on this section of West 93<sup>rd</sup> Street North for year 2000 was approximately 130 cars per day (ADTs). The property has one drive entrance onto West 93<sup>rd</sup> Street North.

**CONFORMANCE TO PLANS/POLICIES:** The "Sedgwick County Development Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as "rural."

The *Wichita-Sedgwick County Unified Zoning Code* permits "Automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works, and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts, or equipment;" as a rural home occupation "by right." However, the application area is less than 20 acres, and therefore must be granted a Conditional Use for a rural home occupation.

**RECOMMENDATION:** The Zoning Code puts limits on rural home occupation size, storage, employment, signage, noise, and other factors that make these uses compatible with their surrounding areas. The application area is isolated from residential neighbors, and the applicants volunteer to use best practices within an existing, adequate, accessory structure.

Planning staff feels that several significant conditions should be used to protect the Equus Bed Groundwater Management District #2 from hazardous materials. Equus Bed Groundwater Management District #2 staff concurs with planning staff, and recommends that the applicant be required to obtain a hazardous material license from KDHE. Subject to the recommended conditions, planning staff feels that this request meets the Zoning Code intent of allowing Conditional Uses for rural home occupations on properties of less than 20 but greater than 5 acres.

Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions.

1. The rural home occupation shall be for a vehicle paint shop only, shall take place in the existing garage only, shall have no outdoor storage, and shall permit no additional employees.
2. The applicant shall install a paint booth and air filtration system that meets all applicable codes, policies and standards.
3. The applicant shall have the existing garage building inspected to ensure that it meets all applicable building and fire codes for the intended use of vehicle painting.
4. The applicant shall develop a hazardous material waste storage and disposal plan to meet all applicable codes, policies and standards. This plan shall include the safe storage of all commercial waste, the prevention of any commercial waste from entering the application area lagoon, to include floor drains from the garage, and the safe containment of any spilled commercial waste.
5. The applicant shall submit the "Regulated Waste Activity Notification" form to Kansas Department of Health and Environment, and obtain a regulated waste license from the Kansas Department of Health and Environment.
6. Development and maintenance of the site shall be in conformance with the approved site plan.
7. This Conditional Use permit shall be rendered null and void if the site is not

operated or maintained in conformance with adopted conditions of approval, or if operations have not begun within one year of approval.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: All property surrounding the application area is used for agricultural purposes, the nearest residential neighbor is over 1,100 feet to the west. Provided the rural home occupation takes place in the existing garage only, with an EPA approve filtration system, and with no outdoor storage, this occupation should have no affect on the surrounding area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which primarily permits large lot residential uses. The site could continue to be used without the Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: So long as the rural home occupation takes place in the existing garage only, with an EPA approved filtration system, complies with all applicable laws and policies, and has no outdoor storage, this occupation should have no affect on the surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested conditional use is in conformance with the *Wichita-Sedgwick County Unified Zoning Code* provisions for rural home occupations on properties of less that 20 but greater than 5 acres.
5. Impact of the proposed development on community facilities: The only impact would be a traffic increase on West 93<sup>rd</sup> Street North, which had a relatively low traffic count in 2000 of approximately 130 vehicles per day.