

RESOLUTION NO. 138-02

A RESOLUTION APPROVING A CONDITIONAL USE TO ALLOW FOR A RURAL HOME OCCUPATION FOR VEHICLE REPAIR WITH UP TO TWO NON-RESIDENT WORKERS IN A 30 X 60 FOOT BUILDING LOCATED ON THE EAST SIDE OF NORTH 135TH STREET WEST, NORTH OF 69TH STREET NORTH AND K-96 (7260 NORTH 135TH STREET WEST); WITHIN COLWICH AREA OF INFLUENCE, ON PROPERTY ZONED "RR" RURAL RESIDENTIAL, LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 17.C OF THE ZONING REGULATIONS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, DECEMBER 12, 1984 AND SUBSEQUENTLY AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF SEDGWICK COUNTY, KANSAS.

SECTION I. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita Sedgwick County Unified Zoning Code, a conditional use for the land legally described herein is approved as follows:

Case No. CON2002-00021

A Conditional Use to allow for a home occupation for vehicle repair with up to two non-resident workers in a 30 X 60 foot building on property described as:

That part of the Southwest Quarter of Section 1, Township 26 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, described as:

Beginning at a point on the West line of said Southwest Quarter with an assumed bearing of North 00 degrees 00'00" East, on said line a distance of 1800.00 feet north from the Southwest corner of said quarter; thence continuing North 00 degrees 00'00" East, on said West line, a distance of 420.00 feet; thence North 86 degrees 44'10" East, parallel with the South line of said Southwest Quarter, a distance of 569.50 feet; thence South 00 degrees 00'00" West parallel with said West line, a distance of 420.0 feet; thence South 86 degrees 44'10" West, parallel with said South line, a distance of 569.50 feet to the point of beginning, subject to a road right-of-way on the West. Generally located on the east side of north 135th Street West, north of 69th Street North and K-96 (7260 North 135th Street West); within the Colwich area of influence.

Subject to the following conditions:

1. The rural home occupation shall be for the uses permitted under "vehicle repair, limited", as defined by the Wichita-Sedgwick County Unified Zoning Code, only.
2. The rural home occupation and all associated storage shall take place in the designated 30x60 foot garage only; no associated storage or activity shall take place in other buildings or outdoors.
3. Outdoor storage of vehicles, equipment, parts, waste, waste containers, or any other associated items is prohibited. All vehicles associated with the conditional use shall be stored inside the proposed 30x60 foot building.
4. Non-resident additional employees shall be limited to a maximum of two.
5. The applicant shall have the proposed building inspected by county code enforcement and the county fire department to ensure that it meets all applicable codes, policies and standards. These inspections shall be completed and approved prior to operation of the Conditional Use.
6. 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 septic tank, lateral field, or soil, to include floor drain waste from the proposed building; and the safe containment of any spilled commercial waste. This plan shall be approved by KDHE prior to operation of the Conditional Use.
7. The applicant shall submit the "Regulated Waste Activity Notification" form to the Kansas Department of Health and Environment, and obtain a regulated waste license from the Kansas Department of Health and Environment.
8. Development and maintenance of the site shall be in conformance with the approved site plan.
9. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

SECTION II. That upon the taking effect of this Resolution, the notation of such Conditional Use shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

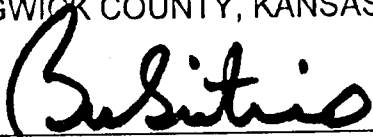
SECTION III. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

Commissioners present and voting were:

BETSY GWIN	<u>aye</u>
TIM R. NORTON	<u>aye</u>
THOMAS G. WINTERS	<u>aye</u>
CAROLYN McGINN	<u>aye</u>
BEN SCIORTINO	<u>aye</u>

DATED this 28th day of August, 2002.

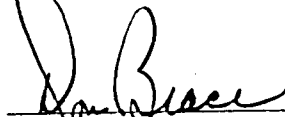
BOARD OF COUNTY COMMISSIONERS OF
SEDGWICK COUNTY, KANSAS



BEN SCIORTINO, Chairman
Fifth District



ATTEST:

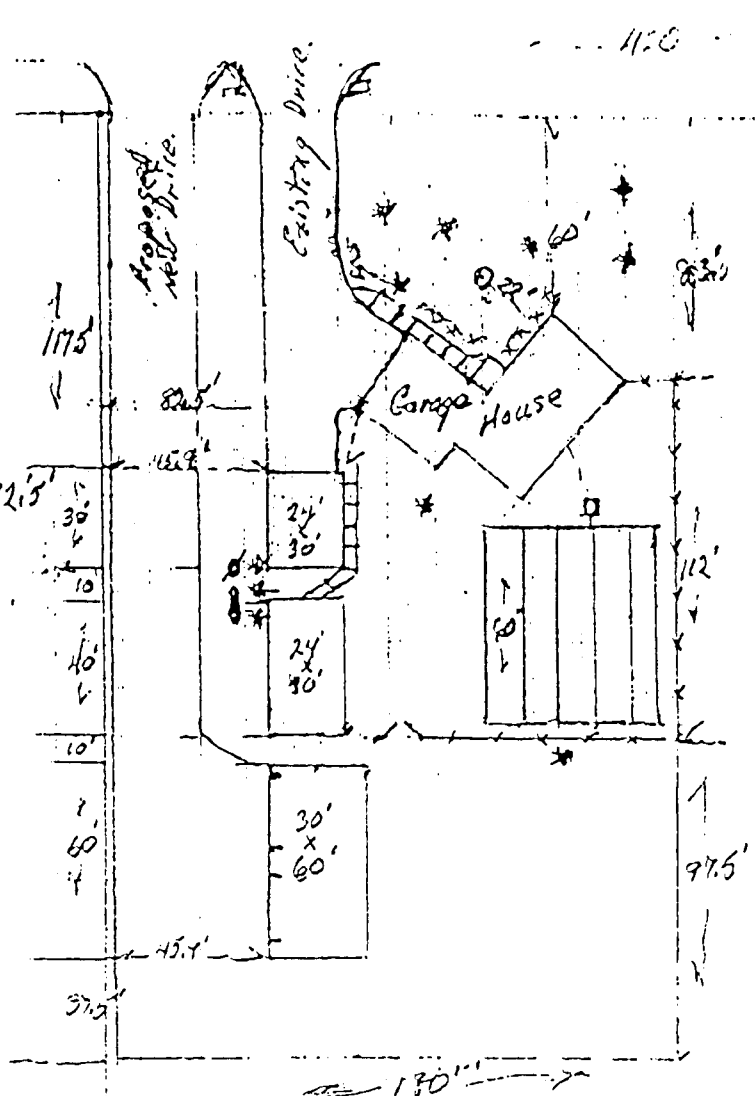


DON BRACE
County Clerk

APPROVED AS TO FORM ONLY:



ROBERT W. PARNACOTT
Assistant County Counselor



Test
 7260 N 135th St. West

- Legend
- Elect. Pole \otimes
 - Propane Tank ⊗
 - Water Well \circ
 - Privacy Fence - - -
 - Chain Link Fenc. - - - x
 - Trees + Shrubs *
 - Lotteral Field |||||
 - Septic Tank \square
 - Con. Walks. |||||

Scale: $\frac{1}{4}" = 15'$

CON 2002-21
APPROVED

William J. McNeely

Date: 11-1-02

SITE PLAN

5.49 acres,
 Tract in the SW $\frac{1}{4}$
 Sec. 1 - T26S - R2W

STAFF REPORT

MAPC 7-11-02
Colwich PC 5-28-02

CASE NUMBER: CON2002-00021

APPLICANT/AGENT: Stephen and Alice Jett (owners)

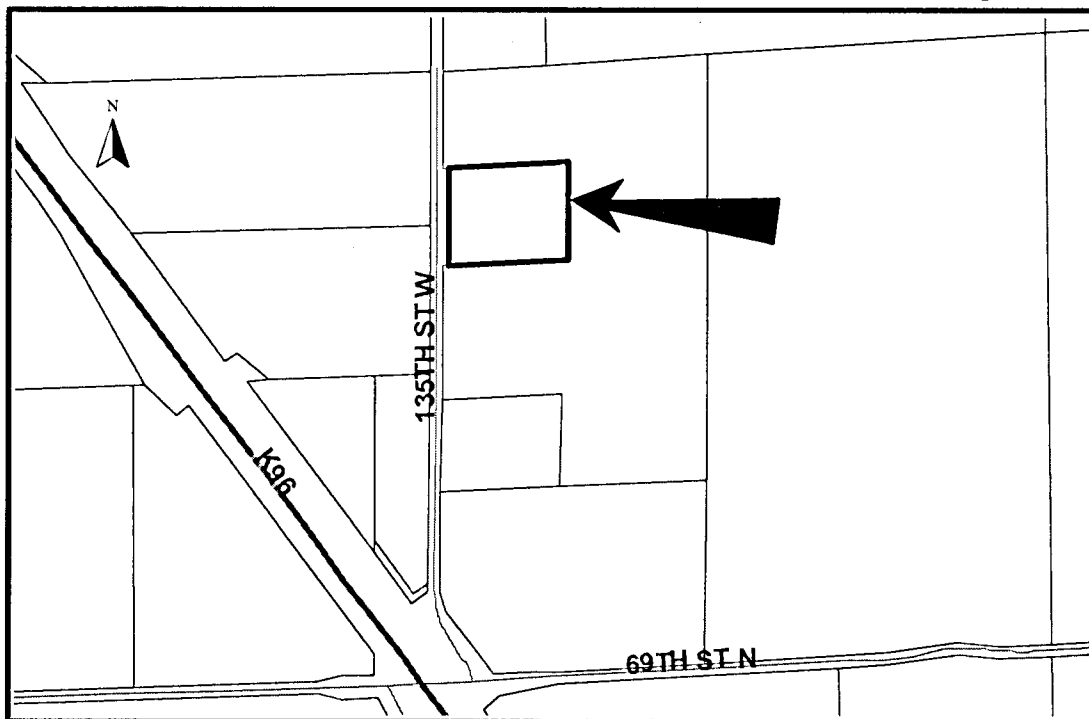
REQUEST: Conditional Use to allow a rural home occupation on less than 20 acres

CURRENT ZONING: "RR" Rural Residential

SITE SIZE: 5.01 acres

LOCATION: On the east side of north 135th Street West, north of 69th Street North and K-96 (7260 North 135th Street West); within the Colwich area of influence

PROPOSED USE: Home occupation for vehicle repair with up to two non-resident workers in a 30x60 foot building



BACKGROUND: The applicant is requesting a Conditional Use for a rural home occupation on a 5-acre un-platted tract located on the east side of north 135th Street West, north of 69th Street North and K-96. All property surrounding the application area is zoned "RR" Rural Residential. Surrounding the application area to the north, east, and south is one piece of property under agricultural production. To the west of the application area are two large lot single-family residences, these two residences lie within 500 feet from the location of the proposed Conditional Use building. Additional large lot residences lie to the north and south of the application area.

The application area is zoned "RR" Rural Residential and developed with a single-family residence, two accessory garages of 960 and 720 square feet, a third 1,800 square foot garage is planned to house the proposed Conditional Use. The application area is served by a private well and a septic tank / lateral field sewage system.

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. Waste oil and/or antifreeze from only a few cars will add up to 55 pounds. Sedgwick County Code Enforcement and Fire Department require building approval for the proposed use.

Planning Staff has received one letter in opposition to the conditional use from a neighbor north of the application area (see attached).

CASE HISTORY: This property, under the current applicant/owners, sought and received a Conditional Use for a dog-breeding kennel (CU 340) which became effective on March 8, 1991. CU 340 was then revoked by the Sedgwick County Department of Code Enforcement on October 14, 1991 as a result of failure to comply with the conditions. The owners filed for reconsideration of the kennel Conditional Use, but were informed on October 18, 1991 that Section 17(C)(8) of the County Zoning Resolution prohibits the refilling of a conditional use permit case within one year following the advertised public hearing date of a similar application. CU 340 for a dog breeding kennel now remains revoked.

The applicant informed Planning Staff that he has been operating a vehicle repair and transmission rebuilding business on the application area for approximately four years.

The applicant requested a building permit, for the proposed Conditional Use, on

December 4, 2001. The building permit application states that it is for a 30x30 foot metal storage and hobby building to be used for residential storage with no commercial use. The current Conditional Use application site plan shows this same building as a 30x60 foot building, County Code Enforcement has since inspected the site and found that the building was built to 30x60 feet, and was moved into illegally without a required inspection.

On January 11th, 2002, Sedgwick County Code Enforcement responded to a neighbor's complaint at the application area of "large numbers of vehicles and a transmission shop". The inspector found inoperable cars and an operating transmission shop; the applicant told the inspector that the property was under a Conditional Use for a rural home occupation. County Code Enforcement later informed the applicant that the Conditional Use was for a dog breeding kennel (which Staff now knows to be revoked) and not for any form of vehicle repair. County Code Enforcement informed the applicant that a Conditional Use for vehicle repair would be required in order to continue to operate his business.

The applicant filed a Conditional Use application with MAPD on April 18th, 2002. The application states that it is for a home based business Conditional Use on less than 20 acres with 1 to 2 non-resident workers in the existing 30x60 foot building.

The application area is within the City of Colwich Zoning Area of Influence. The City of Colwich Planning Commission heard this Conditional Use Request on May 28, 2002. One neighbor spoke in favor of the request, two neighbors spoke in opposition to the request. One of the opposing neighbors produced a Declaration of Restrictions which lists conditions, covenants, and restriction on 70 acres, to include the application area. The restrictions include "No business structure shall be erected or business or profession of any nature conducted on the land herein described...". The Colwich Planning Commission moved to recommend denial of the Conditional Use request, based on the MAPD recommendation. The motion passed by a vote of 4 to 3, with one commissioner abstaining because of his late arrival.

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	agricultural fields
SOUTH:	"RR"	agricultural fields
EAST:	"RR"	agricultural fields
WEST:	"RR"	agricultural fields, single family residences

PUBLIC SERVICES: The property is located along north 135th Street West, a two-lane, section line, gravel road with a 50 foot half-width right of way adjacent to the application area. No traffic count is available for this section of 135th which dead ends approximately 800 feet north of the application area. The property has one drive

entrance onto 135th.

CONFORMANCE TO PLANS/POLICIES: The “Sedgwick County Development Guide”, amended in January 2002, of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as “rural.”

The *Wichita-Sedgwick County Unified Zoning Code* states that home occupations “...are intended to permit residents to engage in home occupations that are compatible with residential land uses and to ensure that home occupations do not adversely affect the integrity of residential and rural areas.”

The Zoning Code permits “Automobile painting, upholstering, 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” on parcels of 20 acres or greater, and further than 600 feet from dwellings without home occupations. Because the application area is less than 20 acres, and is less than 600 feet from other dwellings without home occupations, a Conditional Use is required for a rural home occupation.

The Zoning Code limits rural home occupation accessory structures to a floor area equal to the floor area of the principle residence, or up to 3,000 square feet, whichever is greater. The application area residence is recorded as 1,292 square feet and has an attached garage. The applicant requests that the Conditional Use take place in the proposed 1,800 square foot building; however, the application area already has an additional 1,680 square feet in two accessory structures. All of the accessory structures combined would exceed the allowable 3,000 square foot limit. To allow a Conditional Use in only the one accessory structure would be difficult to enforce.

RECOMMENDATION: The Comprehensive Plan identifies this area as “rural”; as such, this area does not have the infrastructure or facilities to accommodate intense commercial use. The Zoning Code clearly intends to protect rural areas and residents from incompatible land uses and the adverse effects of commercial activities. If the application area were the required 20 acres, with the required 600-foot distance from the use to other residences, it would be permitted “by right” and would most likely have little to no adverse affects on neighbors, provided the requirements of the Unified Zoning Code were adhered to. However, the nature of this requested Conditional Use would produce noise, odors, and traffic which would adversely affect the nearby residential neighbors on 135th Street. The size of the proposed Conditional Use building, along with the two proposed outside employees, would result in a significant intensity of business. County Code Enforcement has advised Planning Staff that even the minimum requirements of the Zoning Code, such as limiting the Conditional Use to 3,000 square feet, or prohibiting any outdoor storage, would be difficult to enforce. Neighbors have already expressed opposition to the proposed Conditional Use; they

desire a rural residential area without the incompatible business of vehicle repair.

Therefore, it is recommended that this Conditional Use request be DENIED. But, if in the opinion of the MAPC this Conditional Use request is appropriate for this location, the planning staff recommends approval only if the site plan is revised, and under the following conditions, listed 1-9. The site plan should be revised to eliminate the 9,506 square foot parking area; and add landscape screening of evergreen trees, spaced no more than every 30 feet, along the north and south property lines of the application area.

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.

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3. Outdoor storage of vehicles, equipment, parts, waste, waste containers, or any other associated items is prohibited. All vehicles associated with the conditional use shall be stored inside the proposed 30x60 foot building.
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5. The applicant shall have the proposed building inspected by county code enforcement and the county fire department to ensure that it meets all applicable codes, policies and standards. These inspections shall be completed and approved prior to operation of the Conditional Use.
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8. Development and maintenance of the site shall be in conformance with the approved site plan.
9. If operations have not begun within one year of approval, or if the Zoning

Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

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 zoned "RR" and used for agricultural or rural residential uses; two residences exist at less than 500 feet to the west of the proposed use building. The proposed Conditional Use of vehicle repair is out of character with 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 as developed for a residence without the requested Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Conditional Use would subject neighbors directly across 135th to commercially generated noise, odors, and traffic. Hazardous waste spillage from the proposed Conditional Use would put neighbors' wells, as well as the rest of the Equus Beds groundwater, at risk.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested Conditional Use is not in conformance with the Comprehensive Plan; this area is designated as "rural", and is therefore not appropriate for the requested intense commercial use. This request is not in conformance with the *Wichita-Sedgwick County Unified Zoning Code* in that the proposed use would subject nearby residences to incompatible land uses and the adverse effects of commercial activities. The Zoning Code minimum standards for rural home occupations would be difficult to enforce on this property.
5. Impact of the proposed development on community facilities: The requested use would impact the dead-end, un-paved North 135th Street West with commercial traffic. It could also potentially impact the Equus Beds Groundwater, and neighboring wells, with commercial hazardous waste.