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ORDINANCE NO. 47-747

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. ZON 2005-52**

Request for a zone change from "LC" Limited Commercial District to "GC" General Commercial District and to PO # 167, for property described as:

Lots 1, 2 and 3, Block A, Westport 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas.

Generally located west of Tyler Road and on the north side of Kellogg..

**SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #167:**

- (1) The development parcel contains 5.22 net acres, more or less.
- (2) Restricted uses: group residence, correctional placement residence (limited and general), group home (limited, general, and commercial), communication tower (commercial), kennel (boarding/breeding/training, and hobby), night club, riding academy or stable, tattooing and body piercing facility, tavern and drinking establishment, outdoor vehicle repair, asphalt and concrete plant, gas and fuel storage, rock crushing, and solid waste incinerator.
- (3) The transfer of title on all or any portion of the land included in the development does not constitute a termination of the overlay or any portion thereof; but said overlay shall run with the land for development and be binding upon the present land owners, their successor and assigns and their lessees unless amended. However, the Planning Direct, with concurrence of the Superintendent of Central Inspection, may approve minor adjustments to the conditions of the overlay, consistent with the approved development plan, without filing a formal ordinance amendment.
- (4) Landscape and Parking Lot Screening – Shall be in accordance with the City of Wichita Landscape Ordinance, including but not limited to a landscaped street yard and parking lot landscaping and screening along Kellogg Drive, Seville Avenue and Dubon Avenue. Additionally, the rate of plant materials on Dubon Avenue shall be calculated at a rate of one shade tree required per 40 feet of lineal frontage along Dubon, with this requirement being met by a minimum of at least one-third evergreen plant material; two ornamental trees or ten shrubs shall be equivalent to one shade tree and may be substituted for shade trees except that no more than one-third of the total requirement may be met by shrubby plant material. A landscape plan, prepared by a Landscape Architect licensed in the State of Kansas, indicating the location, type, and specification of plant material shall be submitted to the planning department for its review and approval prior to the issuance of any building permit(s). The site shall be screened along Dubon Avenue by way of building walls and solid screening walls. Building walls seen from ground level along Dubon Avenue shall not have visible windows, doors, or utility meters or boxes, but shall give the appearance of solid masonry screening wall of the same material, texture and color as the buildings walls and be connected to the buildings walls. The screening walls shall be a minimum of 8' in height and set back at least 20' from the

right-of-way. Landscaping will be required along Dubon Avenue and shall be in accordance with the City of Wichita Landscape Ordinance, except that Dubon Avenue right-of-way may be used for meeting the landscaping requirements; any improvements in the right-of-way shall require review by Public Works, and may require a minor street privilege.

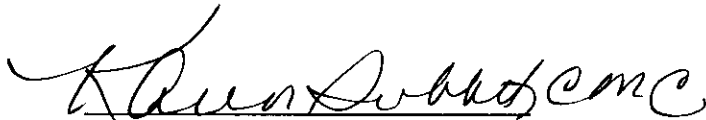
- (5) Minimum Setback Requirements: front setback - 20 feet; side setback – 0 feet; rear setback – 0 feet for building; 20 feet for screening wall.
- (6) All signs shall be per Wichita Sign Code for property zoned “LC”. No portable or off-site signs allowed. No signs shall be allowed on the north side of the buildings, facing Dubon Avenue, nor on the west façade facing Seville Avenue except within the southernmost 20 feet of the façade.
- (7) Parking – Shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code (“UZC”).
- (8) Architectural Control – All buildings shall have the same predominate exterior building materials with consistent architectural character, color and texture, and consistent lighting design (fixtures, poles, lamps, etc.) as approved by the Planning Director. There shall be no predominately metal façades on any buildings. Light standards shall be a maximum height of 25 feet and consistent in pole and fixture throughout the development. No freestanding light standards shall be allowed on Dubon Avenue; building wall lighting shall be limited to 15 feet in height and shall have directional shielding to prevent light spillage onto residential zoning districts.
- (9) An owners association agreement providing for the maintenance of reserves, open spaces, internal devices, parking areas, drainage areas, etc. shall be filed by the time the plat is filed of record.
- (10) All drainage ways and easements shall be determined at the time of platting.
- (11) Loading areas, trash receptacles, outdoor storage, and docks shall be screened from ground level view. Mechanical equipment on top of buildings shall be screened to the height of the unit. Screening of all trash dumpsters and mechanical equipment will be constructed to match the buildings they support and no trash dumpsters shall be allowed along Dubon. Outdoor storage shall be screened such that no stored material protrudes above the top of the screening. In those cases where these requirements are more stringent than the UZC, it shall be deemed that these requirements shall govern.
- (12) The development of this property shall proceed in accordance with the development plan as recommended for approval by the Metropolitan Area Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Planning Director, shall constitute a violation of the building permit authorizing construction of the proposed development.
- (13) Outdoor speakers and sound amplification systems shall not be permitted on the site.
- (14) Maximum height – 35 feet; maximum building coverage – 30 percent; maximum gross floor area – 35 percent.

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

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 15 day of January, 2008.

ATTEST:

  
Karen Sublett, City Clerk

  
Carl Brewer, Mayor

(SEAL)



Approved as to form:

  
Gary E. Rebenstorf, City Attorney

City of Wichita  
City Council Meeting  
March 7, 2006

Agenda Report No. \_\_\_\_\_

**TO:** Mayor and City Council

**SUBJECT:** ZON2005-00052 – Zone change from “LC” Limited Commercial to “GC” General Commercial with a Protective Overlay and Protective Overlay on property zoned “GC” General Commercial. Generally located north of Kellogg between Byron Road and Seville Avenue. (District V)

**INITIATED BY:** Metropolitan Area Planning Department *JLS*

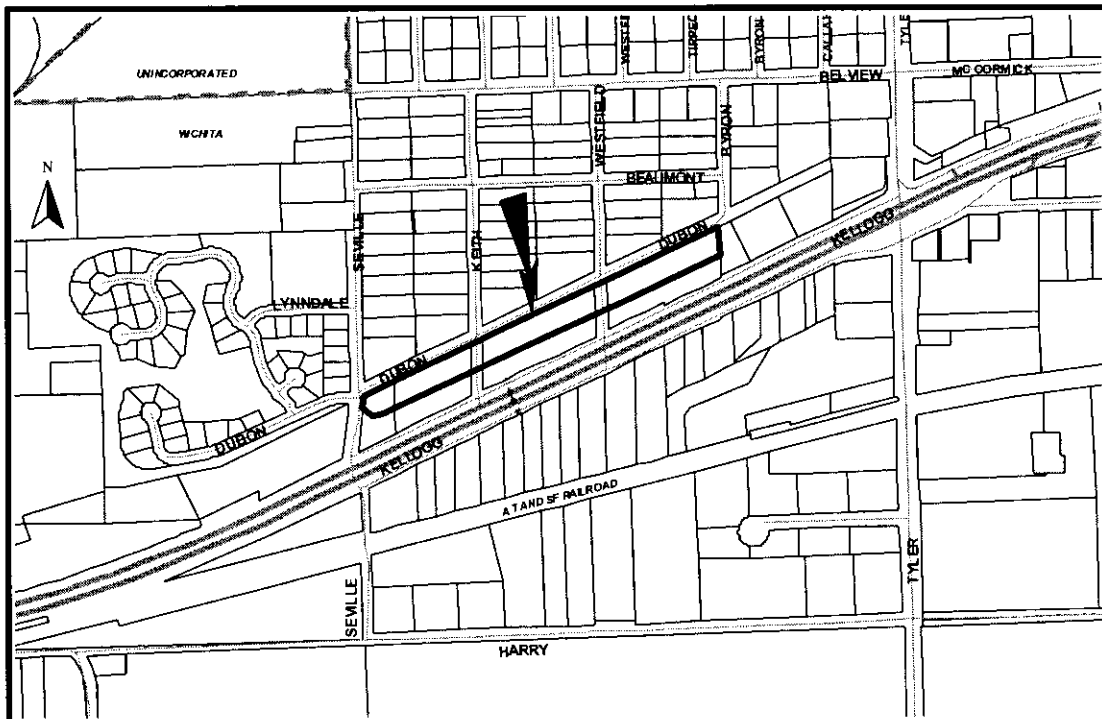
**AGENDA:** Planning (Consent)

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**MAPC Recommendation:** Approve, subject to replatting the entire property and subject to the Protective Overlay #167, vote 12-0.

**MAPD Staff Recommendation:** Approve, subject to replatting within one year and Protective Overlay #167.

**DAB Recommendation:** The District V Advisory Board recommended by a vote of 7-0 to approve the change to General Commercial and with a Protective Overlay according to staff recommendations.



**Background:** The applicant requests a zone change from “LC” Limited Commercial to “GC” General Commercial with a protective overlay on 3.19 acres, plus a protective overlay on 2.03 additional acres of existing “GC” General Commercial zoning. Total site size is 5.22 acres.

The property is a narrow strip of land approximately one-third mile long but only 120 feet deep. It flanks the north side of Kellogg Drive and is bounded on the north by Dubon Avenue, an unpaved road. Its eastern edge is located at Byron Road (approximately one-sixth mile west of Tyler Road), and the property extends westward to Seville Avenue. It currently includes two platted rights-of-way, Westfield Avenue and Keith Avenue.

The current zoning pattern is comprised of a row of 80-foot lots. Eleven lots (including two that are wider than 80 feet) are zoned “LC” and five lots are zoned “GC”, but the “GC” lots are interspersed between the “LC” lots. The extremely shallow depth of the lots and the interspersed zoning pattern challenge the effective use of the property. The applicant has sought to unify the property by eliminating the intervening streets (Westfield Avenue and Keith Avenue), obtaining “GC” zoning for the entire property, reducing the rear building setback to 0 feet and making the entire property subject to the protective overlay provisions. The property could be developed without this approval and with the standard 10-foot building setback on the “LC” zoning and 0 feet on the “GC” portions.

The protective overlay would require architectural compatibility among the buildings, with no predominately metal façades. The rear of the buildings and a matching solid masonry wall eight feet in height with a setback of 20 feet would be constructed along Dubon Avenue and would not have visible doors, windows or utility meters in order to mitigate the impact on the residential neighborhood to the north. Trees would be placed on the property or within the right-of-way of Dubon as an additional type of buffer, and signs would be prohibited on the residential side of the buildings. Lighting would be standardized, and it is recommended that only wall units be permitted on the back side of the building and that these be lowered and shielded to mitigate the impact.

Prohibited uses would be group residence, correctional placement residence (limited and general), group home (limited, general and commercial), communication tower (commercial), kennel (boarding/breeding/training and hobby), night club, riding academy or stable, tattooing and body piercing facility, tavern and drinking establishment, outdoor vehicle repair, asphalt and concrete plant, gas and fuel storage, rock crushing and solid waste incinerator. The property would retain auto and highway oriented uses typical of the Kellogg corridor.

The surrounding property is developed in a starkly contrasting manner. The property to the north and northwest is a suburban residential area with large lots on property zoned “SF-5” Single-family Residential. The property to the south and southeast of Kellogg is high intensity auto-related commercial uses and includes an agricultural sales and service, RV and truck vehicle sales, equipment rental and a flea market on property zoned “GC”. The property to the east is vacant except for a restaurant on the southwest corner of the Kellogg interchange at Tyler Road. It is zoned “SF-5”, “LC” and “GC”; the property was approved for commercial development as DP-268 Holland Commercial, but is still awaiting platting (and a second platting extension was made to February 6, 2006).

**Analysis:** At the District V Advisory Board meeting held January 9, 2006, the Board voted (7-0) to approve the requested zone change for the property (approximately 3.19 acres) zoned “LC” Limited Commercial to “GC” General Commercial and subject to a protective overlay for the entire area (approximately 5.22 acres) including the land already zoned “GC”. DAB members noted this property was a challenging site to develop. Area residents asked about paving Dubon Avenue, with staff noting the advantages of less dust and maintenance and disadvantages of encouraging additional traffic on the street and the cost to residents.

At the MAPC meeting held January 19, 2006, MAPC voted (12-0) to approve the requested zone change for the “LC” portion of the property subject to replatting the entire property and subject to the protective overlay provisions for the entire property. The Commission discussed screening of the property along

Dubon Avenue with the screening wall in combination with the backs of the buildings (with no service areas and access on the rear of the buildings) and landscaping, and paving on Dubon. A Commission member asked about possible pedestrian access through the screening wall to connect to the neighborhood. Two citizens spoke about the issues of paving Dubon Avenue, with one noting it would be difficult to get a 51% paving petition due to many retired people living along it, and the other indicating they wished the applicant/agent to consider paving the road. Another citizen spoke about not wanting traffic along Dubon or employees parking there. A citizen who could not attend the meeting forwarded comments in opposition, which are attached. No formal protest petitions were filed.

**Financial Considerations:** None.

**Legal Considerations:** The ordinance has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:**

1. Adopt the findings of the MAPC and approve the zone change subject to replatting within one year and subject to the additional conditions of Protective Overlay #167; instruct the Planning Department to forward the ordinance for first reading when the plat is forwarded to City Council;  
or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)