

OCA 150004 PUBLISHED IN THE WICHITA EAGLE ON FEBRUARY 14, 2017

ORDINANCE NO. 47-886

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. ZON2008-00009**

City zone change from "LC" Limited Commercial to "GC" General Commercial subject to Protective Overlay #209 on property described as:

The South 200 feet of the East 180 feet of Lot 4, EXCEPT the North 133 feet thereof, Goulds Gardens Addition, Sedgwick County, Kansas.

AND

The North 73 feet of the East 150 feet of Lot 3, Gould Gardens, Sedgwick County, Kansas, Except the East 30 feet dedicated for Street.

AND

The West 52.50 feet of the North 7.50 feet of the South 74.50 feet of the East 180 feet of Lot 4, Gould Gardens, Sedgwick County, Kansas. Generally located on the west side of Arkansas Avenue 1/2 block south of 29th Street North.

**SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #209:**

- (1) Uses permitted on the site are limited to those permitted in the LC Limited Commercial zoning district; with the only GC General Commercial "manufacturing, general" use permitted on this site is the manufacturing of ice cream with machinery not exceeding 10 horsepower.
- (2) Screening (fencing, evergreen vegetation or landscaped earth berms) six to eight feet in height shall be provided along south and west property lines. If fencing is the primary screening material, then landscaping of one tree and three shrubs every 30 feet shall also be supplied.
- (3) No off-site or portable signs are allowed. Signs, in accordance with the sign code, are permitted along Arkansas Avenue.
- (4) On-site pole lighting will be no taller than 15-feet including the base/pedestal. Pole lighting will be directed down onto the site away from adjacent residential development. No pole lighting will be placed within setbacks.
- (5) The site shall be developed in conformance with all applicable regulations.

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 AT WICHITA, KANSAS May 13, 2008.

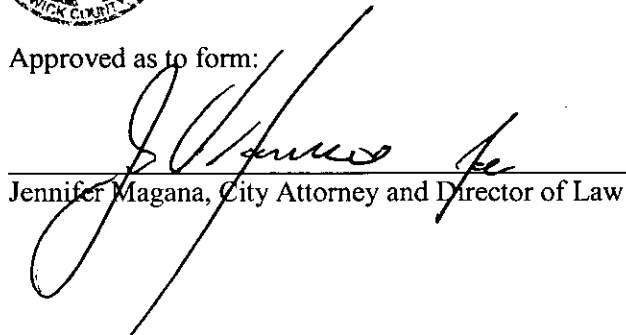
  
Jeff Longwell - Mayor

ATTEST:

  
Karen Sublett, City Clerk



Approved as to form:

  
Jennifer Magana, City Attorney and Director of Law

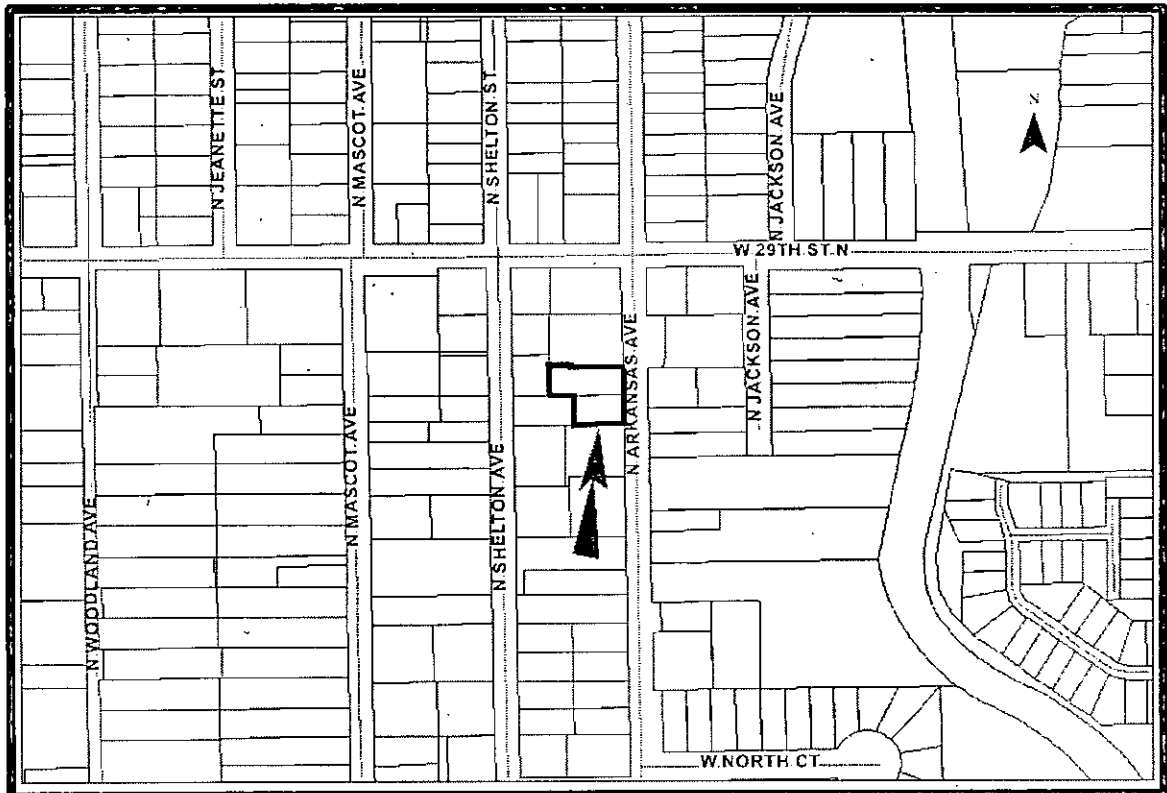
## STAFF REPORT

MAPC March 27, 2008

DAB VI April 7, 2008

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|                                |                                                                                                                                     |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>CASE NUMBER:</u></b>     | ZON2008-00009                                                                                                                       |
| <b><u>APPLICANT/AGENT:</u></b> | Dagoberto Hernandez (Owners/Applicants)<br>Max Christensen (Agent)                                                                  |
| <b><u>REQUEST:</u></b>         | "GC" General Commercial                                                                                                             |
| <b><u>CURRENT ZONING:</u></b>  | "LC" Limited Commercial                                                                                                             |
| <b><u>SITE SIZE:</u></b>       | Total Area 0.30 acres                                                                                                               |
| <b><u>LOCATION:</u></b>        | Generally located on the west side of Arkansas Avenue, ½ block south of 29 <sup>th</sup> Street North, (2925 North Arkansas Street) |
| <b><u>PROPOSED USE:</u></b>    | Expansion of current use with machinery to make ice cream (> 2 horsepower)                                                          |



**BACKGROUND:** The application area is located on the west side of Arkansas Avenue, ½ block south of 29<sup>th</sup> Street North, and is currently zoned LC, Limited Commercial ("LC"). The site currently is developed with an existing commercial building that contains manufacturing equipment for the making of ice cream, and a restaurant with a seating area. The use of the site as a restaurant and manufacturing of ice cream are legal activities in the LC district, per the Unified Zoning Code ("UZC"). Manufacturing of the ice cream is a legal activity so long as the machine used for the manufacturing does not exceed two-horsepower. However, this particular ice cream manufacturing is done with a machine which is powered by a motor that exceeds two horsepower, approximately 10 horsepower. The two-horsepower threshold is defined in Section II-B.8 (f) of the UZC as "Manufacturing, Limited." Manufacturing of goods with equipment that exceeds two-horsepower is classified by the UZC as "Manufacturing, General," which is first allowed by-right in the GC General Commercial ("GC") district.

The zoning of the surrounding property is predominately LC. Property to the north and west of the subject site is zoned LC, and is currently developed with single-family residences. Property to the south of the subject site is also zoned LC, and is developed with single-family residences and one vacant lot. Property to the east of the subject site is zoned both LC and GC. The development that currently exists on the property east of the subject site consists of warehousing/storage uses, retail, office uses and a single-family residence.

The subject site is in Flood Zone X, which identifies the area being in a flood insurance rate zone that corresponds to areas outside the 100-year floodplain, and by areas protected from the 100-year flood by levees.

**CASE HISTORY:** The application area is platted as part of the Gould Gardens Addition, recorded May 1, 1914.

**ADJACENT ZONING AND LAND USE:**

|        |             |                              |                          |
|--------|-------------|------------------------------|--------------------------|
| NORTH: | "LC"        | Limited Commercial           | Residence                |
| SOUTH: | "LC"        | Limited Commercial           | Residence                |
| EAST:  | "LC" & "GC" | Limited & General Commercial | Retail Store & Warehouse |
| WEST:  | "LC"        | Limited Commercial           | Residence                |

**PUBLIC SERVICES:** All public services are available to the site. 29<sup>th</sup> Street, north of the subject site, is a paved three-lane minor arterial with approximately 14,200 average daily trips. Arkansas Street is a paved two-lane minor arterial with approximately 11,800 average daily trips.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as "Local Commercial." "This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing." In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the **Commercial/Office Objective** to "Develop future retail/commercial areas which

complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as **Strategy III.B.3** that recommends working with property owners and businesses to reduce the number of access points along arterial streets, thus improving traffic safety and flow. **Strategy III.B.6** recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

**Commercial Locational Guideline #1** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The proposed development complies with this guideline. **Commercial Locational Guidelines #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use; **#5** commercially-generated traffic should not feed directly onto local residential streets; and **#6** commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the provisions of Protective Overlay No. 209:

1. Uses permitted on the site are limited to those permitted in the LC Limited Commercial zoning district; with the only GC General Commercial “manufacturing, general” use permitted on this site is the manufacturing of ice cream with machinery not exceeding 10 horsepower.
2. Screening (fencing, evergreen vegetation or landscaped earth berms) six to eight feet in height shall be provided along south and west property lines. If fencing is the primary screening material, then landscaping of one tree and three shrubs every 30 feet shall also be supplied.
3. No off-site or portable signs are allowed. Signs, in accordance with the sign code, are permitted along Arkansas Avenue.
4. On site pole lighting will be no taller than 15-feet including the base/pedestal. Pole lighting will be directed down onto the site away from adjacent residential development. No pole lighting will be placed within setbacks.
5. The site shall be developed in conformance with all applicable regulations.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The zoning of the surrounding property is predominately zoned LC. Property to the north and west of the subject site is zoned LC and is currently developed with single-family residences. Property to the south of the subject site is also zoned LC that is developed with single-family residences and one vacant, commercially zoned lot. Property to the east of the subject site is zoned both LC and GC. The development that currently exists on the property east of the subject site consists of warehousing/storage uses, retail, office uses and a single-family residence.

2. **The suitability of the subject property for the uses to which it has been restricted:**  
The site is zoned LC Limited Commercial. The LC district permits a wide range of retail and office uses that would be appropriate at this location.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:**  
The land located to the east is already zoned GC General Commercial. Approval of this request will not introduce zoning or potential uses into the area that do not already exist. The machine triggering the need for the rezoning is located inside a building, minimizing any potentially detrimental affects.
4. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Denial of the request would cause the applicant economic loss for a business that has been in operation for several years. Approval of the request will allow this business to grow and compete more successfully in the future without introducing a new zoning district into the area.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Comprehensive Plan identifies this area as "Local Commercial." "This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing." The current zoning request for GC, subject to the recommended protective overlay, for the 0.3-acre subject site is in conformance with the Comprehensive Plan's recommended development. In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the **Commercial/Office Objective** to "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses," as well as **Strategy III.B3** working with property owners and businesses to reduce the number of access points along arterial streets, thus improving traffic safety and flow. **Strategy III.B.6** Channel traffic generated by commercial activities to the closest major thorough-fare with minimum impact upon local residential streets.
6. **Impact of the proposed development on community facilities:** As recommended, the existing use will remain in operation so there will be no change in the type of use or operation. All services are in place, and any increased demand on community facilities can be handled by current infrastructure.