

ACTION

DATE

COMMITTEE _____

M.A.P.C. *Authorizing Staff to* 11-6-80
adviser for Public Hearing.

~~M.A.P.C.~~
M.A.P.C. *Public Hearing* 7-15-80
Continued for two weeks

B.C.C. *Approved* 3-10-81

M.A.P.C. *No Business* 1-29-81

M.A.P.C. *Approved* 2-12-81

DR 80-20 - Re: City-Amendment
Expansion of Nonconforming Uses.

WICHITA-SEDGWICK COUNTY

DATE

March 18, 1981

METROPOLITAN AREA PLANNING DEPARTMENT

TO Robert Feldner, Superintendent of Central Inspection

FROM Jack H. Galbraith, Chief Planner

SUBJECT DR-80-20 - Amendment to Zoning Ordinance
Re: Expansion and reconstruction of nonconforming uses

Attached hereto are copies of the ordinance adopted by the City Commission on March 17, 1981 and to be published March 20, 1981 which will then permit expansion and also reconstruction of nonconforming uses. Please advise your staff of these changes but also caution them on the following:


1. All uses permitted to fall under these provisions must be deemed to be legal nonconforming uses. They must fall in one of the 3 categories of legal nonconforming uses as set forth in the ordinance. Uses that have been established in violation of the ordinance are not legal nonconforming uses and should not be accommodated by this revision.
2. Any expansion permitted by this ordinance does not exempt any property from the requirements of the subdivision rules and regulations. Any property not exempt from requirements of the subdivision regulations shall be limited to a 30 percent expansion.
3. Each building or occupancy permit issued under the provision of this ordinance should be noted as a nonconforming use and a record kept of all such permits, including percentages of expansion that were permitted.
4. Any expansion permitted under this ordinance is based on the area when the use became a legal nonconforming use.
5. Properties expanded under the terms of this ordinance are subject to the same conditions as if the property were located in the proper zoning district, such as the requirements for surfaced off-street parking and loading, screening when required adjacent to a residential zoning district, and any other requirement of the ordinance wherein the use is first permitted as a conforming use.

If it would be helpful for you and your staff, that are involved in the issuance of permits, to discuss the provisions of the ordinance with any of us, I will be happy to set a time. Also, it might be helpful to review the material we have in our files to help make determinations on nonconforming uses, such as the use of our aeriels and older zoning maps.

It might also be helpful to jointly review some of the first requests for expansion you might receive, as this department will be involved in those cases that will be required to go to the Board of Zoning Appeals. It would also give

us some insight into some problem areas not previously thought of that might require some further amendments to the ordinance.

Please advise if we can be of any help.


Jack H. Galbraith
Chief Planner

JHG:GEL:sad

cc: Don Anderson, Director of Housing & Economic Development
Robert A. Lakin, Director of Planning
Sam Mobley, Central Inspection
Jim Jorgenson, Plans Examiner

ORDINANCE NO. 37-120

AN ORDINANCE AMENDING SECTIONS 28.04.170, 28.04.181.1 AND 28.04.181.5 AND ADDING SECTION 28.04.181.7 TO THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE REMODELING, CONVERSION, EXPANSION AND RECONSTRUCTION OF NONCONFORMING USES; AND REPEALING SAID ORIGINAL SECTIONS 28.04.170, 28.04.181.1 AND 28.04.181.5.

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

Section 28.04.170 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

"28.04.170 Nonconforming use regulations.

A. Registration of Nonconforming Uses. A determination by the Superintendent of Central Inspection shall be made of all nonconforming uses and a record kept of all occupancy changes, expansions or reconstructions.

Such list shall include only those uses that have been deemed to be legal nonconforming uses. Such uses shall be deemed legal nonconforming uses for one of the following reasons:

1. A use or building that was established prior to the adoption of zoning in the City of Wichita and has been continued as a legal nonconforming use.
2. A use or building that was established in conformance with the applicable zoning regulations and became nonconforming due to an amendment to the zoning ordinance and has been continued as a legal nonconforming use.
3. A use or building that was established outside the City of Wichita and was subsequently annexed into the City of Wichita, became nonconforming at that time and has been continued as a legal nonconforming use.

B. Continued Existence. Any legal nonconforming use at the time of the adoption of this ordinance may be continued indefinitely, although such use or building does not conform to the provisions hereof.

C. Loss from Natural Disaster. Any legal nonconforming use structure destroyed by fire, wind, tornado, earthquake or other natural disaster except flooding may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property lines, than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures destroyed or damaged by flooding may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the Building Code of the City of Wichita, Kansas related to construction in flood hazard areas.

D. Repair or Alteration of Original Structure: Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in paragraph C.

E. Expansion of Nonconforming Uses. Nonconforming uses may be replaced or expanded under the terms of this section as follows:

1. Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time said use became nonconforming.

2. Nonconforming uses in the AA, A, RB, R-5, R-6, B and G Zoning Districts when the use:

- a. Does not increase the number of dwelling units, when residential.
 - b. Does not exceed 50 percent of the floor area of the original use or if not a structure, not over 50 percent of the lot area originally used; provided however, that the Board of Zoning Appeals may allow a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 100 percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which the use is located.
 - c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
3. Nonconforming uses in nonresidential zoning districts when the use:
- a. Does not exceed 100 percent of the floor area, or if a structure is not involved not over 100 percent of the land area involved; provided however, the Board of Zoning Appeals may allow as a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 200 percent when the Board determines such action would not be detrimental to the area or community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby

properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection.

- b. Does not intrude into a residential zoning district.
 - c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, and 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
4. Conversion to Other Uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the Superintendent of Central Inspection based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use is prohibited.
5. Expansion not applicable to all uses. The provisions of these regulations are not applicable to the expansion of nonconforming home occupations or to the expansion of nonconforming signs.
- F. Compliance with all regulations. Any legal nonconforming use that is expanded or reconstructed under the terms of this regulation shall comply with all conditions that would normally be required for the expansion or reconstruction to have been permitted in the proper zoning district. Whenever the building and related technical codes require greater setbacks or height restrictions, then the most restrictive provision of those codes would be applicable.
- G. Abandonment of Nonconforming Uses.
1. A nonconforming use shall be considered to be abandoned when any of the following shall occur:

- a. The owner shall have in writing or by public statement indicated intent to abandon the building, structure or use.
 - b. A more restrictive use shall have supplanted the original nonconforming use.
 - c. The building or structure shall have been removed as a result of condemnation as an unsafe structure.
 - d. The owner shall have changed physically the building or structure or its permanent equipment in such a manner, as to clearly indicate an abandonment of the nonconforming use.
 - e. The property is vacant for 24 consecutive months and the owner has failed to maintain said property as required by applicable regulations.
2. Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.
 3. Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over 24 months shall not be used except for uses permitted by the district in which it is located."

Section 28.04.181.1 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

"1. Outdoor Amusement Parks.

- 1.1 Any lawful uses of land or structures providing facilities for miniature golf courses, amusement parks or other outdoor places of entertainment existing at least six months prior to annexation to the city and covering an area of fifteen

acres or more, may continue such operations although such use does not conform to the provisions hereof. .

- 1.2 Such uses of such land or structures may be maintained, expanded or enlarged within the area owned, leased or rented by the owner or operator of such uses at least six months prior to annexation to the city; provided, however, such expansion or enlargement does not exceed fifty percent of the existing floor and game area at the time of such annexation.
- 1.3 Such expansion, enlargement or maintenance, shall be in accordance with the height and area regulations of the "B" multiple-family dwelling district or the district wherein the use is located.
- 1.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.
- 1.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

Section 28.04.181.5 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

- "5. Radio and television towers and transmitter facilities.
 - 5.1 Any lawful uses of land or structures for radio or television transmitting facilities and towers existing prior to annexation to the city may continue such operation although such use does not conform to the provisions hereof.

- 5.2 Such uses of land or structure may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, that such expansion, enlargement or construction has received approval by the Federal Communications Commission (and, if for towers, by the Federal Aviation Agency and in conformance to Section 28.08 of the Code).
- 5.3 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.
- 5.4 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

Section 28.04.181 of the Code of the City of Wichita, Kansas, shall be amended by adding the following:

"7. Nurseries

- 7.1 Any lawful uses of land or structures for nurseries existing prior to annexation to the city may continue such operation although such use does not conform to the provisions hereof.
- 7.2 Such uses of land or structures may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, such expansion or enlargement of structures in excess of that permitted by Section 28.04.170 shall be limited to shade or horticulture structures designed for nursery stock protection but not including greenhouses used for sales or display area.

7.3 Any such expansion permitted by this Section of the ordinance shall be limited to twenty feet in height.


7.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

7.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

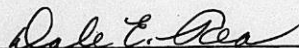
The originals of Sections 28.04.170, 28.04.181.1 and 28.04.181.5 of the Code of the City of Wichita, Kansas, are hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official City paper.

ADOPTED as Wichita, Kansas, this 17th day of MARCH, 1981.

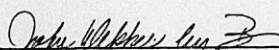

Robert G. Knight, Mayor

ATTEST:


Donald C. Gisick, City Clerk

(SEAL)

APPROVED AS TO FORM:


John Dekker, Director of Law

WICHITA-SEDGWICK COUNTY

DATE

March 2, 1981

METROPOLITAN AREA PLANNING DEPARTMENT

TO E. H. Denton, City Manager
FROM Robert A. Lakin, Director of Planning
SUBJECT DR-80-20 - Possible amendment to Zoning Ordinance Re: Expansion and reconstruction of nonconforming uses.

Attached hereto is a delineated copy of a proposed amendment to the City of Wichita zoning ordinance related to the permitted expansion and reconstruction of nonconforming uses. This amendment is being recommended by the Planning Commission to the City Commission for adoption. Please place the amendment on the City Commission agenda for their consideration on March 10, 1981.

BACKGROUND

Since the adoption of zoning in the City of Wichita in 1922, uses that were not in compliance with the regulations have been considered nonconforming uses. Also those uses that have been annexed into the City of Wichita over the years that were not afforded the appropriate zoning district or for other reasons do not conform to the regulations of the district are also considered nonconforming. With the numerous amendments made to the zoning ordinance since the original adoption, many uses have become nonconforming because of either amendments to the text or maps.

Over these years, nonconforming uses have been limited primarily to a state of status quo, being permitted only to maintain the existing building or buildings without structural alternations. If the building or property was vacated for a period of two years, the property would lose the nonconforming use rights and would have to be converted to a use permitted in the zoning district wherein the use is located.

One other provision that is applicable to nonconforming uses is the one that states whenever a nonconforming use is destroyed by fire or other calamity or for any other reason to the extent of more than fifty percent of its structural value, it shall be reconstructed and occupied to conform to the restrictions of the zoning district wherein the building is located. Although this does not happen often, it is a detriment to the financing of a structure that is a nonconforming use. The provision which refers to fifty percent of its structural value can and has been interpreted in a number of ways.

Although enabling legislation permitting the adoption of zoning regulations limits the applicability of the regulations on nonconforming uses, it does not prevent the adopting authority from adopting more lenient provisions for nonconforming uses. Although it has been almost uniform throughout the country that nonconforming uses are limited to a state of status quo, it is not my personal belief that this is in the best interest of our community.

It is my opinion that permitting an owner the right to modify and maintain a nonconforming use would eliminate, for the most part, two basic situations. One would be the deterioration of nonconforming structures in a neighborhood due to the inability of the owner to expand and substantially renovate an existing nonconforming use. Secondly, it will eliminate the need, in most instances, for the owner to secure a zoning change in order to expand or structurally alter a nonconforming use. This would prevent the establishment of zoning in some areas that might be contrary to established zoning policy which has happened on several occasions.

The proposed amendment to the zoning ordinance is similar to the amendment that was adopted into the Sedgwick County Zoning Resolution approximately two years ago. It should also be noted that, prior to 1961, all property annexed into the City of Wichita was brought into the City in the most restrictive zoning classification and has remained as "AA" One-family Dwelling District unless subsequently changed through the public hearing process. Amendments to the ordinance over the last 20 years have now been made so that properties are presently placed in a corresponding zoning classification and only in a rare instance are nonconforming uses created by annexation.

Although the existing ordinance has a provision for eventual elimination of all nonconforming uses by 1997, or within 60 years of the date a use became nonconforming, it is questionable as to its validity under the enabling legislation.

In the consideration of this amendment, the Sedgwick County Nurseryman's Association expressed their concern of the possibility of erection of structures to protect stock which is vital to what they consider a very seasonal business. An additional amendment was prepared which will permit nonconforming nurseries to provide additional shade or horticulture structures designed for nursery stock protection in excess of the normal permitted expansions for nonconforming uses.

SUMMARY:

The proposed amendment as recommended by the Planning Commission will eliminate the strict limitations placed on all nonconforming uses by the existing ordinance. The amendments will provide the following changes:

1. Permit the rebuilding of nonconforming uses when destroyed by fire, tornado or other similar cause. Structures destroyed by flooding, however, may be constructed only if in compliance with the requirements for construction in flood hazard areas.
2. Permit the structural alteration of nonconforming uses heretofore prohibited.
3. Allow the expansion of nonconforming uses either as a use by right or through the Board of Zoning Appeals with the limitations being based on whether the nonconforming use is located in a residential zoning

district or in other districts. Expansion permitted in a residential zoning district is 50% as a use by right and can be 100% when determined appropriate by the Board of Zoning Appeals. Expansion permitted in other zoning districts is 100% as a use by right or 200% by the Board of Zoning Appeals.

4. Permits the conversion of a nonconforming use to a new use provided the new use is of the same general character or more restrictive than the existing use.
5. Provides that any nonconforming use that is expanded or reconstructed must comply with the same requirements as would be necessary for a conforming use in any district.
6. Sets forth terms for the abandonment of a nonconforming use which is more lenient than under the 24 month vacancy as set forth in the existing ordinance.
7. Permits the construction of shade or horticulture structures for nursery stock protection in excess of the normal permitted expansions of nonconforming uses.

It was the unanimous recommendation of the Planning Commission that this ordinance be adopted. An excerpt of the Planning Commission minutes are attached for your information.

RECOMMENDED ACTION:

1. Concur in the recommendation of the Planning Commission and place the ordinance on first reading.
2. Return the amendment to the Planning Commission for reconsideration. The City Commission states the following reasons for such reconsideration.



Robert A. Lakin
Director of Planning

RAL:GEL:sad

Attachment

cc: Don Anderson, Director of Housing & Economic Development
Robert Feldner, Superintendent of Central Inspection
Wichita Board of Realtors, 717 North Emporia, Wichita 67214
Wichita Area Builders Association, 730 North Main, Wichita 67203
Chamber of Commerce, 350 West Douglas, Wichita 67202
Pete Nulik, 2410 West 25th Street North, Wichita 67204
R. E. McHenry, Hillside Nursery, 2200 South Hillside, Wichita 67211

Deletions ~~marked~~ here
Additions underlined

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 28.04.170, 28.04.181.1 AND 28.04.181.5 AND ADDING SECTION 28.04.181.7 TO THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE REMODELING, CONVERSION, EXPANSION AND RECONSTRUCTION OF NONCONFORMING USES; AND REPEALING SAID ORIGINAL SECTIONS 28.04.170, 28.04.181.1 AND 28.04.181.5.

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

Section 28.04.170 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

"28.04.170 Nonconforming use regulations.

- A. Registration of Nonconforming Uses. A determination by the Superintendent of Central Inspection shall be made of all nonconforming uses and a record kept of all occupancy changes, expansions or reconstructions. Such list shall include only those uses that have been deemed to be legal nonconforming uses. Such uses shall be deemed legal nonconforming uses for one of the following reasons:
1. A use or building that was established prior to the adoption of zoning in the City of Wichita and has been continued as a legal nonconforming use.
 2. A use or building that was established in conformance with the applicable zoning regulations and became nonconforming due to an amendment to the zoning ordinance and has been continued as a legal nonconforming use.
 3. A use or building that was established outside the City of Wichita and was subsequently annexed into the City of Wichita, became nonconforming at that time and has been continued as a legal nonconforming use.
- B. Continued Existence. Any legal nonconforming use at the time of the adoption of this ordinance may be continued indefinitely, although such use or building does not conform to the provisions hereof.
- C. Loss from Natural Disaster. Any legal nonconforming

use structure destroyed by fire, wind, tornado, earthquake or other natural disaster except flooding may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property lines, than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures destroyed or damaged by flooding may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the Building Code of the City of Wichita, Kansas related to construction in flood hazard areas.

- D. Repair or Alteration of Original Structure: Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in paragraph C.
- E. Expansion of Nonconforming Uses. Nonconforming uses may be replaced or expanded under the terms of this section as follows:
1. Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time said use became nonconforming.
 2. Nonconforming uses in the AA, A, RB, R-5, R-6, B and G Zoning Districts when the use:
 - a. Does not increase the number of dwelling units, when residential.

- b. Does not exceed 50 percent of the floor area of the original use or if not a structure, not over 50 percent of the lot area originally used; provided however, that the Board of Zoning Appeals may allow a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 100 percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which the use is located.
- c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
- d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, 28.04.142 and 28.04.143.
- e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
3. Nonconforming uses in nonresidential zoning districts when the use:
- a. Does not exceed 100 percent of the floor area, or if a structure is not involved not over 100 percent of the land area involved; provided however, the Board of Zoning Appeals may allow as a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 200 percent when the Board determines such action would not be detrimental to the area or community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection.

- b. Does not intrude into a residential zoning district.
 - c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, and 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
4. Conversion to Other Uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the Superintendent of Central Inspection based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use is prohibited.
5. Expansion not applicable to all uses. The provisions of these regulations are not applicable to the expansion of nonconforming home occupations or to the expansion of nonconforming signs.
- F. Compliance with all regulations. Any legal nonconforming use that is expanded or reconstructed under the terms of this regulation shall comply with all conditions that would normally be required for the expansion or reconstruction to have been permitted in the proper zoning district. Whenever the building and related technical codes require greater setbacks or height restrictions, then the most restrictive provision of those codes would be applicable.
- G. Abandonment of Nonconforming Uses.
- 1. A nonconforming use shall be considered to be abandoned when any of the following shall occur:
 - a. The owner shall have in writing or by public statement indicated intent to abandon the

- building, structure or use.
- b. A more restrictive use shall have supplanted the original nonconforming use.
 - c. The building or structure shall have been removed as a result of condemnation as an unsafe structure.
 - d. The owner shall have changed physically the building or structure or its permanent equipment in such a manner, as to clearly indicate an abandonment of the nonconforming use.
 - e. The property is vacant for 24 consecutive months and the owner has failed to maintain said property as required by applicable regulations.
2. Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.
 3. Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over 24 months shall not be used except for uses permitted by the district in which it is located."

~~28.04.170--Noneonforming-use-regulations. A--EXISTING-BUILDINGS.~~

~~1.--The-lawful-use-of-a-building-or-structure-existing at-the-time-of-the-effective-date-of-this-chapter-may be-continued,-although-such-use-does-not-conform-to the-provisions-hereof.--Ordinary-maintenance-and repair-may-be-done-on-such-noneonforming-buildings, and-such-structural-alterations-may-be-made-which are-necessary-to-maintain-the-building-or-structure in-good-condition;-provided,-that-such-alterations do-not-enlarge-or-change-the-general-character-of the-building.--If-no-structural-alterations-are made-ether-than-these-necessary-to-maintain-the~~

building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.

2. Whenever a nonconforming use has been changed to a higher restricted use or to a conforming use, such use shall not thereafter be reverted to a lower restricted use; provided, that all nonconforming buildings shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, on or before January 1, 1937; provided further, that nonconforming buildings which became so classified after January 1, 1937, shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, within sixty years from the date that the building becomes nonconforming.

3. In the "E" light industrial and "F" heavy industrial districts, the board of zoning appeals may allow as an exception, any nonconforming residential building to be enlarged, extended or reconstructed up to a maximum of forty percent of the floor area of the original nonconforming use building, and any nonconforming public, charitable, eleemosynary or religious institution to be enlarged, extended or reconstructed up to a maximum of one hundred percent of the floor area of the original nonconforming use building; provided, that the board finds that failure to grant exception will create an undue hardship on the applicant and further provided, that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement,

~~extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate.~~

B.---DISCONTINUANCE.

~~In the event that a nonconforming use of any structure or premises is discontinued, or its normal operation stopped, for a period of two years, the use of the same shall thereafter conform to a use permitted in the district in which it is located.~~

C.---STRUCTURAL ALTERATIONS.

~~No existing structure used contrary to the provisions of this chapter in the district in which it is located may be enlarged, extended or reconstructed unless its use is changed to a use permitted in this district in which such structure is located or unless such enlargement, extension or reconstruction is required by court decision, law or ordinance.~~

D.---FIRE OR CALAMITIES.

~~Any building destroyed by fire or other calamity to the extent of not more than fifty percent of its structural value, may be renewed and used for its original purpose; provided, that any such building destroyed by fire or other calamity or for any other reason whatsoever to the extent of more than fifty percent of its structural value shall be reconstructed and occupied to conform to the restrictions for the district in which such building is located.~~

Section 28.04.181.1 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

"1. Outdoor Amusement Parks.

1.1 Any lawful uses of land or structures providing facilities for miniature golf courses, amusement parks or other outdoor places of entertainment existing at least six months prior to annexation to the city and covering an area of fifteen

acres or more, may continue such operations although such use does not conform to the provisions hereof.

1.2 Such uses of such land or structures may be maintained, expanded or enlarged within the area owned, leased or rented by the owner or operator of such uses at least six months prior to annexation to the city; provided, however, such expansion or enlargement does not exceed fifty percent of the existing floor and game area at the time of such annexation.

1.3 Such expansion, enlargement or maintenance, shall be in accordance with the height and area regulations of the "B" multiple-family dwelling district or the district wherein the use is located.

1.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

1.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

~~1.5 In the event of discontinuance for a period of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

~~1.6 This subsection shall be effective and apply to all such uses and structures annexed to the city after June 1, 1951.~~

Section 28.04.181.5 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

"5. Radio and television towers and transmitter facilities.

5.1 Any lawful uses of land or structures for

radio or television transmitting facilities and towers existing prior to annexation to the city may continue such operation although such use does not conform to the provisions hereof.

5.2 Such uses of land or structure may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, that such expansion, enlargement or construction has received approval by the Federal Communications Commission (and, if for towers, by the Federal Aviation Agency), and in conformance to Section 28.08 of the Code.

5.3 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

5.4 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

~~5.4 In the event of discontinuance for a period of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

Section 28.04.181 of the Code of the City of Wichita, Kansas, shall be amended by adding the following:

"7. Nurseries

7.1 Any lawful uses of land or structures for nurseries existing prior to annexation to the city may continue such operation although such use does not conform to the provisions hereof.

7.2 Such uses of land or structures may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, such expansion or enlargement of structures in excess of that permitted by Section 28.04.170 shall be limited to shade or horticulture

structures designed for nursery stock protection but not including greenhouses used for sales or display area.

7.3 Any such expansion permitted by this Section of the ordinance shall be limited to twenty feet in height.

7.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

7.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

The originals of Sections 28.04.170, 28.04.181.1 and 28.04.181.5 of the Code of the City of Wichita, Kansas, are hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this ____ day of _____, 1981.

Robert G. Knight, Mayor

ATTEST:

Donald C. Gisick, City Clerk

(SEAL)

February 6, 1981

RECEIVED

FEB 9 1981

METROPOLITAN PLANNING
ROUTE *file*



WICHITA

AREA
CHAMBER
OF
COMMERCE

Mr. Robert A. Lakin
Director of Planning
Wichita/Sedgwick County Metropolitan
Area Planning Department
455 North Main
Wichita, KS 67202

Dear Bob:

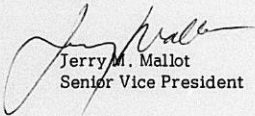
In response to your proposed amendments to the City zoning ordinance concerning reconstruction and expansion of conforming uses, I would like to provide the following comments.

On a brief overview, it looks like an excellent plan that would solve many problems and prevent many future problems for your department and the City Commission. It's the kind of policy which would encourage better development and, as you pointed out in your letter, would prevent deterioration of existing buildings in nonconforming zoning.

We will get other opinions from committees in the Chamber, but on first glance, I am certain that we will favor such a direction.

Please let me know if there is any additional input that would be helpful from the Chamber.

Sincerely,


Jerry M. Mallot
Senior Vice President

JMM:rs

EXCERPT FROM PLANNING COMMISSION MINUTES OF FEBRUARY 12, 1981

6. Case No. DR 80-20 - Possible Amendments to the City of Wichita Zoning Ordinance Re: Reconstruction and Expansion of Nonconforming Uses.

GALBRAITH stated that this item had been on the agenda at the MAPC meeting of January 15, 1981, and at that time the Commission deferred it for two weeks so that staff could contact the Mobile Home Association for comments.

GLEN LYTLE, Special Assistant for Zoning, stated that this amendment was similar to what was adopted into the Sedgwick County Zoning Resolution approximately two years ago. It will permit the expansion and rebuilding of nonconforming uses, but it does, however, place a limitation on the expansion of nonconforming uses in the residential zoning district. He said that in residential districts it would allow a 50 percent expansion of the floor area of the nonconforming structure by right and through the Board of Zoning Appeals, a 100 percent expansion could be permitted. In the commercial or industrial districts, there could be a 100 percent expansion as a use by right, or a 200 percent expansion by the Board of Zoning Appeals. The amendment also establishes terms defining the abandonment of a nonconforming use. This has been a problem in years past, where the property is vacant for a period of two years and then loses its nonconforming status. As set forth in this ordinance it would have to be a definite attempt of abandonment by the owner which would indicate that he wished to abandon the use. LYTLE said that in discussing this amendment with Robert Feldner, Superintendent of Central Inspection, that Feldner had some concern relative to the first paragraph of the ordinance. His concern was the statement "that the Superintendent of Central Inspection shall establish a complete record of all nonconforming uses". Feldner felt that this was too large of a task and that only an analysis should be made at such time that the expansion is wanted and a determination is needed for the issuance of a building or occupancy permit. Then a record would be kept of all expansion requests. An amendment setting forth this change was given to the Commissioners.

LYTLE stated that he spent approximately an hour with representatives from the nurseries prior to this meeting in anticipation of what some of their problems might be. One of their major problems was the requirement for off-street parking as it relates to greenhouses with this type of use. LYTLE said that at the present time the zoning ordinance requires one space for each 250 square feet of floor space for commercial uses. As it relates to nurseries this is sometimes rather excessive when there is a large amount of greenhouse or enclosed space. LYTLE said that in relationship to pole buildings and structures that are put up to protect nursery stock, he presented an amendment which would permit nurseries and those types of operations to provide an unlimited area for the construction of these types of structures as a nonconforming use. He said that in discussing this with the nursery operators they felt that this would be acceptable. LYTLE related that these types of structures are not the type that when the nurseries are abandoned that the structures could be converted to other uses and would be removed.

LYTLE said that Commissioner Bayouth, at the January 15 meeting, had asked if the Mobile Home Association had been contacted. LYTLE said that they had not been contacted at that time, but copies of the amendment had been sent to them prior to this meeting. He said that he did get a call from the president of the association, and he indicated that he was in favor of the amendment and would like to see it approved.

BAYOUTH asked if the ordinance could be amended to cover only the showroom of the nurseries.

LYTLE said no, not under this particular amendment as only the sections related to nonconforming uses had been advertised for hearing.

R. E. MCHENRY, speaking for the nurserymen, stated that the nurserymen would like to express that they were grateful and appreciated the effort that the Commission has given to allow them some relief. He said that essentially they were all in agreement that it was something they wanted and have needed for a long time. They requested an amendment to Section D regarding the off-street parking. MCHENRY said that the nursery was a seasonal business and therefore they have very limited and stringent controls on their selling season, by virtue of nature. They do not always have the demand for parking that an ordinary mercantile establishment would have.

MOTION: That the Planning Commission approve the amendments as furnished and the additions as presented by staff, and that staff be authorized to review and submit amendments for consideration by the Planning Commission on off-street parking for nurseries and other similar uses. Bayouth moved, Goebel seconded and it carried unanimously. Martens was not present. Savina and Shook were absent.

WICHITA-SEDGWICK COUNTY

DATE
March 2, 1981

METROPOLITAN AREA PLANNING DEPARTMENT

TO E. H. Denton, City Manager
FROM Robert A. Lakin, Director of Planning
SUBJECT DR-80-20 - Possible amendment to Zoning Ordinance Re: Expansion and reconstruction of nonconforming uses.

Attached hereto is a delineated copy of a proposed amendment to the City of Wichita zoning ordinance related to the permitted expansion and reconstruction of nonconforming uses. This amendment is being recommended by the Planning Commission to the City Commission for adoption. Please place the amendment on the City Commission agenda for their consideration on March 10, 1981.

BACKGROUND

Since the adoption of zoning in the City of Wichita in 1922, uses that were not in compliance with the regulations have been considered nonconforming uses. Also those uses that have been annexed into the City of Wichita over the years that were not afforded the appropriate zoning district or for other reasons do not conform to the regulations of the district are also considered nonconforming. With the numerous amendments made to the zoning ordinance since the original adoption, many uses have become nonconforming because of either amendments to the text or maps.

Over these years, nonconforming uses have been limited primarily to a state of status quo, being permitted only to maintain the existing building or buildings without structural alternations. If the building or property was vacated for a period of two years, the property would lose the nonconforming use rights and would have to be converted to a use permitted in the zoning district wherein the use is located.

One other provision that is applicable to nonconforming uses is the one that states whenever a nonconforming use is destroyed by fire or other calamity or for any other reason to the extent of more than fifty percent of its structural value, it shall be reconstructed and occupied to conform to the restrictions of the zoning district wherein the building is located. Although this does not happen often, it is a detriment to the financing of a structure that is a nonconforming use. The provision which refers to fifty percent of its structural value can and has been interpreted in a number of ways.

Although enabling legislation permitting the adoption of zoning regulations limits the applicability of the regulations on nonconforming uses, it does not prevent the adopting authority from adopting more lenient provisions for nonconforming uses. Although it has been almost uniform throughout the country that nonconforming uses are limited to a state of status quo, it is not my personal belief that this is in the best interest of our community.

It is my opinion that permitting an owner the right to modify and maintain a nonconforming use would eliminate, for the most part, two basic situations. One would be the deterioration of nonconforming structures in a neighborhood due to the inability of the owner to expand and substantially renovate an existing nonconforming use. Secondly, it will eliminate the need, in most instances, for the owner to secure a zoning change in order to expand or structurally alter a nonconforming use. This would prevent the establishment of zoning in some areas that might be contrary to established zoning policy which has happened on several occasions.

The proposed amendment to the zoning ordinance is similar to the amendment that was adopted into the Sedgwick County Zoning Resolution approximately two years ago. It should also be noted that, prior to 1961, all property annexed into the City of Wichita was brought into the City in the most restrictive zoning classification and has remained as "AA" One-family Dwelling District unless subsequently changed through the public hearing process. Amendments to the ordinance over the last 20 years have now been made so that properties are presently placed in a corresponding zoning classification and only in a rare instance are nonconforming uses created by annexation.

Although the existing ordinance has a provision for eventual elimination of all nonconforming uses by 1997, or within 60 years of the date a use became nonconforming, it is questionable as to its validity under the enabling legislation.

In the consideration of this amendment, the Sedgwick County Nurseryman's Association expressed their concern of the possibility of erection of structures to protect stock which is vital to what they consider a very seasonal business. An additional amendment was prepared which will permit nonconforming nurseries to provide additional shade or horticulture structures designed for nursery stock protection in excess of the normal permitted expansions for nonconforming uses.

SUMMARY:

The proposed amendment as recommended by the Planning Commission will eliminate the strict limitations placed on all nonconforming uses by the existing ordinance. The amendments will provide the following changes:

1. Permit the rebuilding of nonconforming uses when destroyed by fire, tornado or other similar cause. Structures destroyed by flooding, however, may be constructed only if in compliance with the requirements for construction in flood hazard areas.
2. Permit the structural alteration of nonconforming uses heretofore prohibited.
3. Allows the expansion of nonconforming uses either as a use by right or through the Board of Zoning Appeals with the limitations being based on whether the nonconforming use is located in a residential zoning

district or in other districts. Expansion permitted in a residential zoning district is 50% as a use by right and can be 100% when determined appropriate by the Board of Zoning Appeals. Expansion permitted in other zoning districts is 100% as a use by right or 200% by the Board of Zoning Appeals.


4. Permits the conversion of a nonconforming use to a new use provided the new use is of the same general character or more restrictive than the existing use.
5. Provides that any nonconforming use that is expanded or reconstructed must comply with the same requirements as would be necessary for a conforming use in any district.
6. Sets forth terms for the abandonment of a nonconforming use which is more lenient than under the 24 month vacancy as set forth in the existing ordinance.
7. Permits the construction of shade or horticulture structures for nursery stock protection in excess of the normal permitted expansions of nonconforming uses.

It was the unanimous recommendation of the Planning Commission that this ordinance be adopted. An excerpt of the Planning Commission minutes are attached for your information.

RECOMMENDED ACTION:

5-0

1. Concur in the recommendation of the Planning Commission and place the ordinance on first reading.
2. Return the amendment to the Planning Commission for reconsideration. The City Commission states the following reasons for such reconsideration.



Robert A. Lakin
Director of Planning

RAL:GEL:sad

Attachment

cc: Don Anderson, Director of Housing & Economic Development
Robert Feldner, Superintendent of Central Inspection
Wichita Board of Realtors, 717 North Emporia, Wichita 67214
Wichita Area Builders Association, 730 North Main, Wichita 67203
Chamber of Commerce, 350 West Douglas, Wichita 67202
Pete Nulik, 2410 West 25th Street North, Wichita 67204
R. E. McHenry, Hillside Nursery, 2200 South Hillside, Wichita 67211

Deletions marked thru
Additions underlined

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 28.04.170,
28.04.181.1 AND 28.04.181.5 AND ADDING
SECTION 28.04.181.7 TO THE CODE OF THE CITY
OF WICHITA, KANSAS, PERTAINING TO THE REMODEL-
ING, CONVERSION, EXPANSION AND RECONSTRUCTION
OF NONCONFORMING USES; AND REPEALING SAID
ORIGINAL SECTIONS 28.04.170, 28.04.181.1 AND
28.04.181.5.

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

Section 28.04.170 of the Code of the City of Wichita, Kansas, shall
be amended to read as follows:

"28.04.170 Nonconforming use regulations.

- A. Registration of Nonconforming Uses. A determination by
the Superintendent of Central Inspection shall be made
of all nonconforming uses and a record kept of all
occupancy changes, expansions or reconstructions.
Such list shall include only those uses that have been
deemed to be legal nonconforming uses. Such uses shall
be deemed legal nonconforming uses for one of the follow-
ing reasons:
1. A use or building that was established prior to
the adoption of zoning in the City of Wichita and
has been continued as a legal nonconforming use.
 2. A use or building that was established in conformance
with the applicable zoning regulations and became non-
conforming due to an amendment to the zoning ordinance
and has been continued as a legal nonconforming use.
 3. A use or building that was established outside the
City of Wichita and was subsequently annexed into
the City of Wichita, became nonconforming at that
time and has been continued as a legal nonconforming
use.
- B. Continued Existence. Any legal nonconforming use at the
time of the adoption of this ordinance may be continued
indefinitely, although such use or building does not
conform to the provisions hereof.
- C. Loss from Natural Disaster. Any legal nonconforming

use structure destroyed by fire, wind, tornado, earthquake or other natural disaster except flooding may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property lines, than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures destroyed or damaged by flooding may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the Building Code of the City of Wichita, Kansas related to construction in flood hazard areas.

- D. Repair or Alteration of Original Structure: Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in paragraph C.
- E. Expansion of Nonconforming Uses. Nonconforming uses may be replaced or expanded under the terms of this section as follows:
1. Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time said use became nonconforming.
 2. Nonconforming uses in the AA, A, RB, R-5, R-6, B and G Zoning Districts when the use:
 - a. Does not increase the number of dwelling units, when residential.

- b. Does not exceed 50 percent of the floor area of the original use or if not a structure, not over 50 percent of the lot area originally used; provided however, that the Board of Zoning Appeals may allow a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 100 percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which the use is located.
 - c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
3. Nonconforming uses in nonresidential zoning districts when the use:
- a. Does not exceed 100 percent of the floor area, or if a structure is not involved not over 100 percent of the land area involved; provided however, the Board of Zoning Appeals may allow as a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 200 percent when the Board determines such action would not be detrimental to the area or community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection.

- b. Does not intrude into a residential zoning district.
 - c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, and 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
4. Conversion to Other Uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the Superintendent of Central Inspection based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use is prohibited.
5. Expansion not applicable to all uses. The provisions of these regulations are not applicable to the expansion of nonconforming home occupations or to the expansion of nonconforming signs.
- F. Compliance with all regulations. Any legal nonconforming use that is expanded or reconstructed under the terms of this regulation shall comply with all conditions that would normally be required for the expansion or reconstruction to have been permitted in the proper zoning district. Whenever the building and related technical codes require greater setbacks or height restrictions, then the most restrictive provision of those codes would be applicable.
- G. Abandonment of Nonconforming Uses.
- 1. A nonconforming use shall be considered to be abandoned when any of the following shall occur:
 - a. The owner shall have in writing or by public statement indicated intent to abandon the

- building, structure or use.
- b. A more restrictive use shall have supplanted the original nonconforming use.
 - c. The building or structure shall have been removed as a result of condemnation as an unsafe structure.
 - d. The owner shall have changed physically the building or structure or its permanent equipment in such a manner, as to clearly indicate an abandonment of the nonconforming use.
 - e. The property is vacant for 24 consecutive months and the owner has failed to maintain said property as required by applicable regulations.
2. Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.
3. Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over 24 months shall not be used except for uses permitted by the district in which it is located."

28-04,170--Noneonforming-use-regulations. A.--EXISTING-BUILDINGS.

1v---The-lawful-use-of-a-building-or-structure-existing
at-the-time-of-the-effective-date-of-this-chapter-may
be-continued,-although-such-use-does-not-conform-to
the-provisions-hereof.--Ordinary-maintenance-and
repair-may-be-done-on-such-noneonforming-buildings,
and-such-structural-alterations-may-be-made-which
are-necessary-to-maintain-the-building-or-structure
in-good-condition;-provided,-that-such-alterations
do-not-enlarge-or-change-the-general-character-of
the-building.--If-no-structural-alterations-are
made-other-than-these-necessary-to-maintain-the

building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.

2. Whenever a nonconforming use has been changed to a higher restricted use or to a conforming use, such use shall not thereafter be reverted to a lower restricted use, provided, that all nonconforming buildings shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, on or before January 1, 1937; provided further, that nonconforming buildings which became so classified after January 1, 1937, shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, within sixty years from the date that the building becomes nonconforming.
3. In the "R" light industrial and "P" heavy industrial districts, the board of zoning appeals may allow as an exception, any nonconforming residential building to be enlarged, extended or reconstructed up to a maximum of forty percent of the floor area of the original nonconforming use building, and any nonconforming public, charitable, eleemosynary or religious institution to be enlarged, extended or reconstructed up to a maximum of one hundred percent of the floor area of the original nonconforming use building; provided, that the board finds that failure to grant exception will create an undue hardship on the applicant and further provided, that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement,

~~extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate.~~

~~B. DISCONTINUANCE.~~

~~In the event that a nonconforming use of any structure or premises is discontinued, or its normal operation stopped, for a period of two years, the use of the same shall thereafter conform to a use permitted in the district in which it is located.~~

~~C. STRUCTURAL ALTERATIONS.~~

~~No existing structure used contrary to the provisions of this chapter in the district in which it is located may be enlarged, extended or reconstructed unless its use is changed to a use permitted in this district in which such structure is located or unless such enlargement, extension or reconstruction is required by court decision, law or ordinance.~~

~~D. FIRE OR CALAMITIES.~~

~~Any building destroyed by fire or other calamity to the extent of not more than fifty percent of its structural value, may be renewed and used for its original purpose, provided, that any such building destroyed by fire or other calamity or for any other reason whatsoever to the extent of more than fifty percent of its structural value shall be reconstructed and occupied to conform to the restrictions for the district in which such building is located.~~

Section 28.04.181.1 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

"1. Outdoor Amusement Parks.

- 1.1 Any lawful uses of land or structures providing facilities for miniature golf courses, amusement parks or other outdoor places of entertainment existing at least six months prior to annexation to the city and covering an area of fifteen

acres or more, may continue such operations although such use does not conform to the provisions hereof.

1.2 Such uses of such land or structures may be maintained, expanded or enlarged within the area owned, leased or rented by the owner or operator of such uses at least six months prior to annexation to the city; provided, however, such expansion or enlargement does not exceed fifty percent of the existing floor and game area at the time of such annexation.

1.3 Such expansion, enlargement or maintenance, shall be in accordance with the height and area regulations of the "B" multiple-family dwelling district or the district wherein the use is located.

1.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

1.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

~~1.5 In the event of discontinuance for a period of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

~~1.6 This subsection shall be effective and apply to all such uses and structures annexed to the city after June 1, 1951.~~

Section 28.04.181.5 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

"5. Radio and television towers and transmitter facilities.

5.1 Any lawful uses of land or structures for

radio or television transmitting facilities and towers existing prior to annexation to the city may continue such operation although such use does not conform to the provisions hereof.

5.2 Such uses of land or structure may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, that such expansion, enlargement or construction has received approval by the Federal Communications Commission (and, if for towers, by the Federal Aviation Agency), and in conformance to Section 28.08 of the Code.

5.3 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

5.4 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

~~5.4 In the event of discontinuance for a period of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

Section 28.04.181 of the Code of the City of Wichita, Kansas, shall be amended by adding the following:

"7. Nurseries

7.1 Any lawful uses of land or structures for nurseries existing prior to annexation to the city may continue such operation although such use does not conform to the provisions hereof.

7.2 Such uses of land or structures may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, such expansion or enlargement of structures in excess of that permitted by Section 28.04.170 shall be limited to shade or horticulture

structures designed for nursery stock protection but not including greenhouses used for sales or display area.

7.3 Any such expansion permitted by this Section of the ordinance shall be limited to twenty feet in height.

7.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

7.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located."

The originals of Sections 28.04.170, 28.04.181.1 and 28.04.181.5 of the Code of the City of Wichita, Kansas, are hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, 1981.

Robert G. Knight, Mayor

ATTEST:

Donald C. Gisick, City Clerk

(SEAL)

EXCERPT FROM PLANNING COMMISSION MINUTES OF FEBRUARY 12, 1981

6. Case No. DR 80-20 - Possible Amendments to the City of Wichita Zoning Ordinance Re: Reconstruction and Expansion of Nonconforming Uses.

GALBRAITH stated that this item had been on the agenda at the MAPC meeting of January 15, 1981, and at that time the Commission deferred it for two weeks so that staff could contact the Mobile Home Association for comments.

GLEN LYTLE, Special Assistant for Zoning, stated that this amendment was similar to what was adopted into the Sedgwick County Zoning Resolution approximately two years ago. It will permit the expansion and rebuilding of nonconforming uses, but it does, however, place a limitation on the expansion of nonconforming uses in the residential zoning district. He said that in residential districts it would allow a 50 percent expansion of the floor area of the nonconforming structure by right and through the Board of Zoning Appeals, a 100 percent expansion could be permitted. In the commercial or industrial districts, there could be a 100 percent expansion as a use by right, or a 200 percent expansion by the Board of Zoning Appeals. The amendment also establishes terms defining the abandonment of a nonconforming use. This has been a problem in years past, where the property is vacant for a period of two years and then loses its nonconforming status. As set forth in this ordinance it would have to be a definite attempt of abandonment by the owner which would indicate that he wished to abandon the use. LYTLE said that in discussing this amendment with Robert Feldner, Superintendent of Central Inspection, that Feldner had some concern relative to the first paragraph of the ordinance. His concern was the statement "that the Superintendent of Central Inspection shall establish a complete record of all nonconforming uses". Feldner felt that this was too large of a task and that only an analysis should be made at such time that the expansion is wanted and a determination is needed for the issuance of a building or occupancy permit. Then a record would be kept of all expansion requests. An amendment setting forth this change was given to the Commissioners.

LYTLE stated that he spent approximately an hour with representatives from the nurseries prior to this meeting in anticipation of what some of their problems might be. One of their major problems was the requirement for off-street parking as it relates to greenhouses with this type of use. LYTLE said that at the present time the zoning ordinance requires one space for each 250 square feet of floor space for commercial uses. As it relates to nurseries this is sometimes rather excessive when there is a large amount of greenhouse or enclosed space. LYTLE said that in relationship to pole buildings and structures that are put up to protect nursery stock, he presented an amendment which would permit nurseries and those types of operations to provide an unlimited area for the construction of these types of structures as a nonconforming use. He said that in discussing this with the nursery operators they felt that this would be acceptable. LYTLE related that these types of structures are not the type that when the nurseries are abandoned that the structures could be converted to other uses and would be removed.

LYTLE said that Commissioner Bayouth, at the January 15 meeting, had asked if the Mobile Home Association had been contacted. LYTLE said that they had not been contacted at that time, but copies of the amendment had been sent to them prior to this meeting. He said that he did get a call from the president of the association, and he indicated that he was in favor of the amendment and would like to see it approved.

BAYOUTH asked if the ordinance could be amended to cover only the showroom of the nurseries.

LYTLE said no, not under this particular amendment as only the sections related to nonconforming uses had been advertised for hearing.

R. E. MCHENRY, speaking for the nurserymen, stated that the nurserymen would like to express that they were grateful and appreciated the effort that the Commission has given to allow them some relief. He said that essentially they were all in agreement that it was something they wanted and have needed for a long time. They requested an amendment to Section D regarding the off-street parking. MCHENRY said that the nursery was a seasonal business and therefore they have very limited and stringent controls on their selling season, by virtue of nature. They do not always have the demand for parking that an ordinary mercantile establishment would have.

MOTION: That the Planning Commission approve the amendments as furnished and the additions as presented by staff, and that staff be authorized to review and submit amendments for consideration by the Planning Commission on off-street parking for nurseries and other similar uses. Bayouth moved, Goebel seconded and it carried unanimously. Martens was not present. Savina and Shook were absent.

Possible Amendments to the
City of Wichita Zoning Ordinance Scheduled for
Public Hearing before the MAPC - Thursday, January 15, 1981

Recommended that Section 28.04.170 be amended to read as follows:

28.04.170 Nonconforming use regulations.

- A. Registration of Nonconforming Uses. ^{determination by the} ~~A complete record~~
~~Supervisor of Central Inspection shall be made~~
~~of the location of all nonconforming uses shall be made~~
~~a record of all occupancy changes, expansions or reconstructions.~~
~~and kept by the Superintendent of Central Inspection.~~

Such list shall include only those uses that have been deemed to be legal nonconforming uses. Such uses shall be deemed legal nonconforming uses for one of the following reasons:

1. A use or building that was established prior to the adoption of zoning in the City of Wichita and has been continued as a legal nonconforming use.
 2. A use or building that was established in conformance with the applicable zoning regulations and became nonconforming due to an amendment to the zoning ordinance and has been continued as a legal nonconforming use.
 3. A use or building that was established outside the City of Wichita and was subsequently annexed into the City of Wichita, became nonconforming at that time and has been continued as a legal nonconforming use.
- B. Continued Existence. Any legal nonconforming use at the time of the adoption of this ordinance may be continued

Recommended that the following section be added to the ordinance:

28.04.181.7 Nurseries.

7.1 Any lawful uses of land or structures for nurseries existing prior to annexation to the city may continue such operation although such use does not conform to the provisions hereof.

7.2 Such uses of land or structures may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, such expansion or enlargement of structures in excess of that permitted by Section 28.04.170 shall be limited to shade or horticulture structures designed for nursery stock protection but not including greenhouses used for sales or display areas.

7.3 Any such expansion permitted by this Section of the ordinance shall be limited to twenty feet in height.

7.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

7.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located.

WICHITA-SEDGWICK COUNTY

DATE
January 8, 1981

METROPOLITAN AREA PLANNING DEPARTMENT

TO Wichita-Sedgwick County Metropolitan Area Planning Commission
FROM Robert A. Lakin, Director of Planning
SUBJECT DR-80-20 - Possible Amendments to the City of Wichita Zoning Ordinance Re: Reconstruction and Expansion of non-conforming uses.

Attached is a copy of a proposed amendment to the City of Wichita zoning ordinance that has been advertised for public hearing for your meeting of January 15, 1981. This amendment relates to the possibility of permitting the reconstruction and expansion of non-conforming uses.

BACKGROUND

Since the adoption of zoning in the City of Wichita in 1922, uses that were not in compliance with the regulations have been considered nonconforming uses. Also those uses that have been annexed into the City of Wichita over the years that were not afforded the appropriate zoning district or for other reasons do not conform to the regulations of the district are also considered nonconforming. With the numerous amendments made to the zoning ordinance since the original adoption, many uses have become nonconforming because of either amendments to the text or maps.

Over these years, nonconforming uses have been limited primarily to a state of status quo, being permitted only to maintain the existing building or buildings without structural alterations. If the building or property was vacated for a period of two years, the property would lose the nonconforming use rights and would have to be converted to a use permitted in the zoning district wherein the use is located.

One other provision that is applicable to nonconforming uses is the one that states whenever a nonconforming use is destroyed by fire or other calamity or for any other reason to the extent of more than fifty percent of its structural value, it shall be reconstructed and occupied to conform to the restrictions of the zoning district wherein the building is located. Although this does not happen often, it is a detriment to the financing of a structure that is a nonconforming use. The provision which refers to fifty percent of its structural value can and has been interpreted in a number of ways.

Although enabling legislation permitting the adoption of zoning regulations limits the applicability of the regulations on nonconforming uses, it does not prevent the adopting authority from adopting more lenient provisions for nonconforming uses. Although

it has been almost uniform throughout the country that nonconforming uses are limited to a state of status quo, it is not my personal belief that this is in the best interest of our community.

It is my opinion that permitting an owner the right to modify and maintain a nonconforming use would eliminate, for the most part, two basic situations. One would be the deterioration of nonconforming structures in a neighborhood due to the ability of the owner to expand and substantially renovate an existing nonconforming use. Secondly, it will eliminate the need, in most instances, for the owner to secure a zoning change in order to expand or structurally alter a nonconforming use. This would prevent the establishment of zoning in some areas that might be contrary to established zoning policy which has happened on several occasions.

The proposed amendment to the zoning ordinance is similar to the amendment that was adopted into the Sedgwick County Zoning Resolution approximately two years ago. It should also be noted that, prior to 1961, all property annexed into the City of Wichita was brought into the City in the most restrictive zoning classification and has remained as "AA" One-family Dwelling District unless subsequently changed through the public hearing process. Amendments to the ordinance over the last 20 years have now been made so that properties are presently placed in a corresponding zoning classification and only in a rare instance are nonconforming uses created by annexation.

Although the existing ordinance has a provision for eventual elimination of all nonconforming uses by 1997, or within 60 years of the date a use became nonconforming, it is questionable as to its validity under the enabling legislation.

SUMMARY:

The proposed amendment as drafted will eliminate the strict limitations placed on all nonconforming uses by the existing ordinance. The amendments will provide the following changes:


1. Permit the rebuilding of nonconforming uses when destroyed by fire, tornado or other similar cause. Structures destroyed by flooding, however, may be reconstructed only if in compliance with the requirements for construction in flood hazard areas.
2. Permit the structural alteration of nonconforming uses heretofore prohibited.
3. Allows the expansion of nonconforming uses either as a use by right or through the Board of Zoning Appeals with the limitations being based on whether the nonconforming use is located in a residential zoning district or in other districts. Expansion permitted

in a residential zoning district is 50% as a use by right and can be 100% when determined appropriate by the Board of Zoning Appeals. Expansion permitted in other zoning districts is 100% as a use by right or 200% by the Board of Zoning Appeals.

4. Permits the conversion of a nonconforming use to a new use provided the new use is of the same general character or more restrictive than the existing use.
5. Provides that any nonconforming use that is expanded or reconstructed must comply with the same requirements as would be necessary for a conforming use in any district.
6. Sets forth terms for the abandonment of a nonconforming use which is more lenient than under the 24 month vacancy of the existing ordinance.

RECOMMENDATION:

Make any changes in the proposed amendment deemed to be in the best interests of the community and make a recommendation to the Board of City Commissioners for adoption.


Robert A. Lakin
Director of Planning

RAL:GEL:sad

cc: Robert Feldner, Superintendent of Central Inspection
Don Anderson, Director of Housing & Economic Development
Wichita Board of Realtors, 717 North Emporia, Wichita 67214
Wichita Area Builders Association, 730 North Main, Wichita
67203
Chamber of Commerce, 350 West Douglas, Wichita 67202
Pete Nulik, 2410 West 25th Street North, Wichita 67204

Possible Amendments to the
City of Wichita Zoning Ordinance Scheduled for
Public Hearing before the MAPC - Thursday, January 15, 1981

Recommended that Section 28.04.170 be amended to read as follows:

28.04.170 Nonconforming use regulations.

- A. Registration of Nonconforming Uses. A complete record of the location of all nonconforming uses shall be made and kept by the Superintendent of Central Inspection. Such list shall include only those uses that have been deemed to be legal nonconforming uses. Such uses shall be deemed legal nonconforming uses for one of the following reasons:
1. A use or building that was established prior to the adoption of zoning in the City of Wichita and has been continued as a legal nonconforming use.
 2. A use or building that was established in conformance with the applicable zoning regulations and became nonconforming due to an amendment to the zoning ordinance and has been continued as a legal nonconforming use.
 3. A use or building that was established outside the City of Wichita and was subsequently annexed into the City of Wichita, became nonconforming at that time and has been continued as a legal nonconforming use.
- B. Continued Existence. Any legal nonconforming use at the time of the adoption of this ordinance may be continued

indefinitely, although such use or building does not conform to the provisions hereof.

- C. Loss from Natural Disaster. Any legal nonconforming use structure destroyed by fire, wind, tornado, earthquake or other natural disaster except flooding may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property lines, than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures destroyed or damaged by flooding may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the Building Code of the City of Wichita, Kansas related to construction in flood hazard areas.
- D. Repair or Alteration of Original Structure: Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in paragraph C.
- E. Expansion of Nonconforming Uses. Nonconforming uses may be replaced or expanded under the terms of this section as follows:

1. Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time said use became nonconforming.

2. Nonconforming uses in the AA, A, RB, R-5, R-6, B and G Zoning Districts when the use:
 - a. Does not increase the number of dwelling units, when residential.

 - b. Does not exceed 50 percent of the floor area of the original use or if not a structure, not over 50 percent of the lot area originally used; provided however, that the Board of Zoning Appeals may allow a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 100 percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which the use is located.

- c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.141, 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
3. Nonconforming uses in nonresidential zoning districts when the use:
- a. Does not exceed 100 percent of the floor area, or if a structure is not involved not over 100 percent of the land area involved; provided however, the Board of Zoning Appeals may allow as a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 200 percent when the Board determines such action would not be detrimental to the area of community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection.

- b. Does not intrude into a residential zoning district.
 - c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.141, 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
4. Conversion to Other Uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the Superintendent of Central Inspection based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use is prohibited.
5. Expansion not applicable to all uses. The provisions of these regulations are not applicable to the expansion of nonconforming home occupations or to the expansion of nonconforming signs.

F. Compliance with all regulations. Any legal

nonconforming use that is expanded or reconstructed under the terms of this regulation shall comply with all conditions that would normally be required for the expansion or reconstruction to have been permitted in the proper zoning district. Whenever the building and related technical codes require greater setbacks or height restrictions, then the most restrictive provision of those codes would be applicable.

G. Abandonment of Nonconforming Uses.

1. A nonconforming use shall be considered to be abandoned when any of the following shall occur:
 - a. The owner shall have in writing or by public statement indicated intent to abandon the building, structure or use.
 - b. A more restrictive use shall have supplanted the original nonconforming use.
 - c. The building or structure shall have been removed as a result of condemnation as an unsafe structure.

- d. The owner shall have changed physically the building or structure or its permanent equipment in such a manner, as to clearly indicate an abandonment of the nonconforming use.
 - e. The property is vacant for 24 consecutive months and the owner has failed to maintain said property as required by applicable regulations.
2. Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.
 3. Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over 24 months shall not be used except for uses permitted by the district in which it is located.

The following is the original Section 28.04.170 which shall be

deleted:

~~28.04.170~~—Noneconforming use regulations. A. EXISTING BUILDINGS.

~~1. The lawful use of a building or structure existing at the time of the effective date of this chapter~~ may be continued, although such use does not conform to the provisions hereof. Ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building. If no structural alterations are made other than those necessary to maintain the building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.

2. Whenever a nonconforming use has been changed to a higher restricted use or to a conforming use, such use shall not thereafter be reverted to a lower restricted use; provided, that all nonconforming buildings shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, on or before January 1, 1937; provided further, that nonconforming buildings which became so classified after January 1, 1937, shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, within sixty years from the date that the building becomes nonconforming.

3. In the "E" light industrial and "F" heavy industrial districts, the board of zoning appeals may allow as an exception, any nonconforming residential building to be enlarged, extended or reconstructed up to a maximum of forty percent of the floor area of the original nonconforming use building, and any nonconforming public, charitable, eleemosynary or religious institution to be enlarged, extended or reconstructed up to a maximum of one hundred percent of the floor area of the original nonconforming use building; provided, that the board finds that failure to grant exception will create an undue hardship on the applicant and further provided, that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate.

B. DISCONTINUANCE.

In the event that a nonconforming use of any structure or premises is discontinued, or its normal operation stopped, for a period of two years, the use of the same shall thereafter conform to a use permitted in the district in which it is located.

C. STRUCTURAL ALTERATIONS.

No existing structure used contrary to the provisions of this chapter in the district in which it is located may be enlarged, extended or reconstructed unless its use is changed to a use permitted in this district in which such structure is located or unless such enlargement, extension or reconstruction is required by court decision, law or ordinance.

D. FIRE OR CALAMITIES.

Any building destroyed by fire or other calamity to the extent of not more than fifty percent of its structural value, may be renewed and used for its original purpose; provided, that any such building destroyed by fire or other calamity or for any other reason whatsoever to the extent of more than fifty percent of its structural value shall be reconstructed and occupied ~~to conform to the restrictions for the district in which such building is located.~~

Recommended that Section 28.04.181-1 shall be amended to read as follows:

1. Outdoor Amusement Parks.

1.1 Any lawful uses of land or structures providing facilities for miniature golf courses, amusement parks or other outdoor places of entertainment existing at least six months prior to annexation to the city and covering an area of fifteen acres or more, may continue such operations although such use does not conform to the provisions hereof.

1.2 Such uses of such land or structures may be maintained, expanded or enlarged within the area owned, leased or rented by the owner or operator of such uses at least six months prior to annexation to the city; provided, however, such expansion or enlargement does not exceed fifty percent of the existing floor and game area at the time of such annexation.

1.3 Such expansion, enlargement or maintenance, shall be in accordance with the height and area regulations of the "B" multiple-family dwelling district or the district wherein the use is located.

1.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

1.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located.

~~1.5 In the event of discontinuance for a period of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

~~1.6 This subsection shall be effective and apply to all such uses and structures annexed to the city after June 17, 1951.~~

Recommended the Section 28.04.181-5 shall be amended to read as follows:

5. Radio and television towers and transmitter facilities.

5.1 Any lawful uses of land or structures for radio or television transmitting facilities and towers existing prior to annexation to the city may continue

such operation although such use does not conform to the provisions hereof.

5.2 Such uses of land or structure may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, that such expansion, enlargement or construction has received approval by the Federal Communications Commission (and, if for towers, by the Federal Aviation Agency), and in conformance to Section 28.08 of the Code).

5.3 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

5.4 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located.

~~5.4 In the event of discontinuance for a period of of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

THE CITY OF WICHITA
OFFICE OF CITIZEN PARTICIPATION

DATE January 14, 1981

RECEIVED

JAN 14 1981

METROPOLITAN PLANNING

ROUTE _____

TO Glen Lytle, Special Assiant for Zoning
FROM Shirley Mast, CPO Administrative Aide

SUBJECT Proposed Amendments to the City
of Wichita Zoning Ordinance

During the first round of January meetings, Neighborhood CPO Councils discussed the proposed amendments to the City of Wichita Zoning Ordinance that isscheduled for public hearing before the MAPC on Thursday, January 15, 1981.

Comments and recommendations from the Neighborhood Councils are as follows:

- A - Split opinion with some members favoring the amendments because they felt the expansion provision liberalizes the Zoning ordinance, and other members favoring a "grandfather clause" which would allow existing nonconforming uses to remain, while not allowing expansion.
- B - Disapproved of the amendments regarding nonconforming use regulations because ordinance is less restrictive.
- C - Disapproved of the proposed amendments.
- D - Disapproved of the amendments regarding nonconforming use regulations.
- E - Received and filed.
- F - Requested deferral of the item by MAPC until March, 1981 to allow the organization more time to consider the amendments.
- G - Council took no action.
- H - Approved of the proposed amendments.
- I - Received and filed.
- J - That the MAPC not make a decision on the proposed amendments at this time, but to study further.
- K - Council took no action.
- L - Disapproved of the proposed amendments.
- M - Concerned that enforcement of the amendments could be a problem.

Glen Lytle
Page 2
January 14, 1981

N - Approved of the proposed amendments with the following modifications:

- (a) Expansion of nonconforming uses in residential areas up to 50% allowed, subject to BZA approval.
- (b) Expansion of nonconforming uses in Commercial areas up to 100% allowed, subject to BZA approval.

O - Approved of the proposed amendments.

Summary of Council Actions:

Three Councils approved of the amendments (H,N, & O).

Four Councils opposed the amendments (B,C,D, & L).

Two Councils took no action on the amendments (G & K).

Two Councils received and filed (E & I).

Two Councils suggested that a decision on the amendments be deferred to allow for further study. (F & J).

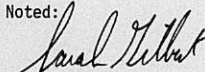
Two Councils provided comments only (A & M).

Please provide the Councils comments and recommendations to the MAPC for consideration when the matter is considered at the January 15 meeting.


Shirley Mast
CPO Administrative Aide

SM:rs

Noted:


Sarah Gilbert
Assistant CP Coordinator

To	<i>Lytle</i>	From	<i>REN</i>
Subject	<i>Mobile Home - / Lath House</i>		Date
			<i>1-21-81</i>
Message	<p><i>What is status of Allison & his group Re Mobile Home?</i></p> <p><i>Also what about nursery man; lath houses and C.I.D?</i></p> <p><i>What is relation to zoning? Amend to allow lath permits w/o zoning?</i></p>		
	<p>SIGNED <i>REN</i> DATE <i>1-21-81</i></p>		
Reply	<p><i>Don Allison indicates his group has hired Clark Nelson and they have had several meetings. Nelson should be contacting us soon. Feldner says he has had no recent contact from nurseries. - Lath houses are considered horticulture structures and considered buildings. This would possibly prevent certain Nurseries from adequate expansion under proposal. Also I believe this has been a problem relative to parking regmt's. Possibly a general exception for such uses might be appropriate.</i></p>		
	<p>SIGNED <i>Lytle</i></p>		

January 16, 1981

Mr. Don Allison
4230 South Broadway
Wichita, Kansas 67216

Dear Don:

Enclosed herewith is a copy of a proposed amendment to the City of Wichita Zoning Ordinance related to expansion and reconstruction of nonconforming uses. This amendment was scheduled for public hearing before the Planning Commission on January 15, 1981. After some discussion, the hearing was continued to the meeting of January 29, 1981 in order to allow more study by interested individuals.

As you will note, this amendment is similar to the provision adopted by the County approximately two years ago. For the most part this would not affect any mobile home park that has been established within the City of Wichita since 1964 as they should be conforming uses. This would, however, permit the expansion of some of the older parks that are nonconforming, without a change of zoning, provided the expansion conforms to the existing regulations for the development of mobile home parks.

If you have any questions on this amendment, please give me a call.

Sincerely,

Glen E. Lytle
Special Assistant for Zoning

GEL:el

Enclosure

WICHITA-SEDGWICK COUNTY

DATE
January 8, 1981

METROPOLITAN AREA PLANNING DEPARTMENT

TO Wichita-Sedgwick County Metropolitan Area Planning Commission
FROM Robert A. Lakin, Director of Planning
SUBJECT DR-80-20 - Possible Amendments to the City of Wichita Zoning Ordinance Re: Reconstruction and Expansion of non-conforming uses.

Attached is a copy of a proposed amendment to the City of Wichita zoning ordinance that has been advertised for public hearing for your meeting of January 15, 1981. This amendment relates to the possibility of permitting the reconstruction and expansion of non-conforming uses.

BACKGROUND

Since the adoption of zoning in the City of Wichita in 1922, uses that were not in compliance with the regulations have been considered nonconforming uses. Also those uses that have been annexed into the City of Wichita over the years that were not afforded the appropriate zoning district or for other reasons do not conform to the regulations of the district are also considered nonconforming. With the numerous amendments made to the zoning ordinance since the original adoption, many uses have become nonconforming because of either amendments to the text or maps.

Over these years, nonconforming uses have been limited primarily to a state of status quo, being permitted only to maintain the existing building or buildings without structural alterations. If the building or property was vacated for a period of two years, the property would lose the nonconforming use rights and would have to be converted to a use permitted in the zoning district wherein the use is located.

One other provision that is applicable to nonconforming uses is the one that states whenever a nonconforming use is destroyed by fire or other calamity or for any other reason to the extent of more than fifty percent of its structural value, it shall be reconstructed and occupied to conform to the restrictions of the zoning district wherein the building is located. Although this does not happen often, it is a detriment to the financing of a structure that is a nonconforming use. The provision which refers to fifty percent of its structural value can and has been interpreted in a number of ways.

Although enabling legislation permitting the adoption of zoning regulations limits the applicability of the regulations on non-conforming uses, it does not prevent the adopting authority from adopting more lenient provisions for nonconforming uses. Although

it has been almost uniform throughout the country that nonconforming uses are limited to a state of status quo, it is not my personal belief that this is in the best interest of our community.

It is my opinion that permitting an owner the right to modify and maintain a nonconforming use would eliminate, for the most part, two basic situations. One would be the deterioration of nonconforming structures in a neighborhood due to the ability of the owner to expand and substantially renovate an existing nonconforming use. Secondly, it will eliminate the need, in most instances, for the owner to secure a zoning change in order to expand or structurally alter a nonconforming use. This would prevent the establishment of zoning in some areas that might be contrary to established zoning policy which has happened on several occasions.

The proposed amendment to the zoning ordinance is similar to the amendment that was adopted into the Sedgwick County Zoning Resolution approximately two years ago. It should also be noted that, prior to 1961, all property annexed into the City of Wichita was brought into the City in the most restrictive zoning classification and has remained as "AA" One-family Dwelling District unless subsequently changed through the public hearing process. Amendments to the ordinance over the last 20 years have now been made so that properties are presently placed in a corresponding zoning classification and only in a rare instance are nonconforming uses created by annexation.

Although the existing ordinance has a provision for eventual elimination of all nonconforming uses by 1997, or within 60 years of the date a use became nonconforming, it is questionable as to its validity under the enabling legislation.

SUMMARY:

The proposed amendment as drafted will eliminate the strict limitations placed on all nonconforming uses by the existing ordinance. The amendments will provide the following changes:

1. Permit the rebuilding of nonconforming uses when destroyed by fire, tornado or other similar cause. Structures destroyed by flooding, however, may be reconstructed only if in compliance with the requirements for construction in flood hazard areas.
2. Permit the structural alteration of nonconforming uses heretofore prohibited.
3. Allows the expansion of nonconforming uses either as a use by right or through the Board of Zoning Appeals with the limitations being based on whether the nonconforming use is located in a residential zoning district or in other districts. Expansion permitted

in a residential zoning district is 50% as a use by right and can be 100% when determined appropriate by the Board of Zoning Appeals. Expansion permitted in other zoning districts is 100% as a use by right or 200% by the Board of Zoning Appeals.

4. Permits the conversion of a nonconforming use to a new use provided the new use is of the same general character or more restrictive than the existing use.
5. Provides that any nonconforming use that is expanded or reconstructed must comply with the same requirements as would be necessary for a conforming use in any district.
6. Sets forth terms for the abandonment of a nonconforming use which is more lenient than under the 24 month vacancy of the existing ordinance.

RECOMMENDATION:

Make any changes in the proposed amendment deemed to be in the best interests of the community and make a recommendation to the Board of City Commissioners for adoption.


Robert A. Lakin
Director of Planning

RAL:GEL:sad

cc: Robert Feldner, Superintendent of Central Inspection
Don Anderson, Director of Housing & Economic Development
Wichita Board of Realtors, 717 North Emporia, Wichita 67214
Wichita Area Builders Association, 730 North Main, Wichita
67203
Chamber of Commerce, 350 West Douglas, Wichita 67202
Pete Nulik, 2410 West 25th Street North, Wichita 67204

Possible Amendments to the
City of Wichita Zoning Ordinance Scheduled for
Public Hearing before the MAPC - Thursday, January 15, 1981

Recommended that Section 28.04.170 be amended to read as follows:

28.04.170 Nonconforming use regulations.

- A. Registration of Nonconforming Uses. A complete record of the location of all nonconforming uses shall be made and kept by the Superintendent of Central Inspection. Such list shall include only those uses that have been deemed to be legal nonconforming uses. Such uses shall be deemed legal nonconforming uses for one of the following reasons:
1. A use or building that was established prior to the adoption of zoning in the City of Wichita and has been continued as a legal nonconforming use.
 2. A use or building that was established in conformance with the applicable zoning regulations and became nonconforming due to an amendment to the zoning ordinance and has been continued as a legal nonconforming use.
 3. A use or building that was established outside the City of Wichita and was subsequently annexed into the City of Wichita, became nonconforming at that time and has been continued as a legal nonconforming use.
- B. Continued Existence. Any legal nonconforming use at the time of the adoption of this ordinance may be continued

indefinitely, although such use or building does not conform to the provisions hereof.

- C. Loss from Natural Disaster. Any legal nonconforming use structure destroyed by fire, wind, tornado, earthquake or other natural disaster except flooding may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property lines, than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures destroyed or damaged by flooding may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the Building Code of the City of Wichita, Kansas related to construction in flood hazard areas.
- D. Repair or Alteration of Original Structure: Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in paragraph C.
- E. Expansion of Nonconforming Uses. Nonconforming uses may be replaced or expanded under the terms of this section as follows:

1. Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time said use became nonconforming.

2. Nonconforming uses in the AA, A, RB, R-5, R-6, B and G Zoning Districts when the use:
 - a. Does not increase the number of dwelling units, when residential.

 - b. Does not exceed 50 percent of the floor area of the original use or if not a structure, not over 50 percent of the lot area originally used; provided however, that the Board of Zoning Appeals may allow a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 100 percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which the use is located.

- c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.141, 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
3. Nonconforming uses in nonresidential zoning districts when the use:
- a. Does not exceed 100 percent of the floor area, or if a structure is not involved not over 100 percent of the land area involved; provided however, the Board of Zoning Appeals may allow as a variance, as set forth in Section 2.12.590.B of the Code, to permit expansion by not more than 200 percent when the Board determines such action would not be detrimental to the area of community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection.

- b. Does not intrude into a residential zoning district.
 - c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - d. Provides for off-street parking and loading as required by Sections 28.04.141, 28.04.142 and 28.04.143.
 - e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.
4. Conversion to Other Uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the Superintendent of Central Inspection based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use is prohibited.
5. Expansion not applicable to all uses. The provisions of these regulations are not applicable to the expansion of nonconforming home occupations or to the expansion of nonconforming signs.

F. Compliance with all regulations. Any legal nonconforming use that is expanded or reconstructed under the terms of this regulation shall comply with all conditions that would normally be required for the expansion or reconstruction to have been permitted in the proper zoning district. Whenever the building and related technical codes require greater setbacks or height restrictions, then the most restrictive provision of those codes would be applicable.

G. Abandonment of Nonconforming Uses.

1. A nonconforming use shall be considered to be abandoned when any of the following shall occur:
 - a. The owner shall have in writing or by public statement indicated intent to abandon the building, structure or use.
 - b. A more restrictive use shall have supplanted the original nonconforming use.
 - c. The building or structure shall have been removed as a result of condemnation as an unsafe structure.

- d. The owner shall have changed physically the building or structure or its permanent equipment in such a manner, as to clearly indicate an abandonment of the nonconforming use.
 - e. The property is vacant for 24 consecutive months and the owner has failed to maintain said property as required by applicable regulations.
2. Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.
3. Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over 24 months shall not be used except for uses permitted by the district in which it is located.

The following is the original Section 28.04.170 which shall be

deleted:

~~28.04.170~~—Noneonforming use regulations. A. EXISTING BUILDINGS.

~~1. The lawful use of a building or structure existing at the time of the effective date of this chapter~~ may be continued, although such use does not conform to the provisions hereof. Ordinary maintenance and repair may be done on such nonconforming buildings, and such structural alterations may be made which are necessary to maintain the building or structure in good condition; provided, that such alterations do not enlarge or change the general character of the building. If no structural alterations are made other than those necessary to maintain the building, a nonconforming use of the building may be changed to another nonconforming use of the same or higher restricted classification.

2. Whenever a nonconforming use has been changed to a higher restricted use or to a conforming use, such use shall not thereafter be reverted to a lower restricted use; provided, that all nonconforming buildings shall be removed or converted and the building thereafter devoted to a use permitted in the district in which such building is located, on or before January 1, 1937; provided further, that nonconforming buildings which became so classified after January 1, 1937, shall be removed or converted

and the building thereafter devoted to a use permitted in the district in which such building is located, within sixty years from the date that the building becomes nonconforming.

3. In the "E" light industrial and "F" heavy industrial districts, the board of zoning appeals may allow as an exception, any nonconforming residential building to be enlarged, extended or reconstructed up to a maximum of forty percent of the floor area of the original nonconforming use building, and any nonconforming public, charitable, eleemosynary or religious institution to be enlarged, extended or reconstructed up to a maximum of one hundred percent of the floor area of the original nonconforming use building; provided, that the board finds that failure to grant exception will create an undue hardship on the applicant and further provided, that the new enlargement, extension or reconstruction shall be accorded the same nonconforming use status as the existing building has at the time the enlargement, extension or reconstruction is made. Whenever the time limit for the nonconforming use status of the original building terminates, then the nonconforming use status of the new addition shall also terminate.

B. DISCONTINUANCE.

In the event that a nonconforming use of any structure or premises is discontinued, or its normal operation stopped, for a period of two years, the use of the same shall thereafter conform to a use permitted in the district in which it is located.

C. STRUCTURAL ALTERATIONS.

No existing structure used contrary to the provisions of this chapter in the district in which it is located may be enlarged, extended or reconstructed unless its use is changed to a use permitted in this district in which such structure is located or unless such enlargement, extension or reconstruction is required by court decision, law or ordinance.

D. FIRE OR CALAMITIES.

Any building destroyed by fire or other calamity to the extent of not more than fifty percent of its structural value, may be renewed and used for its original purpose; provided, that any such building destroyed by fire or other calamity or for any other reason whatsoever to the extent of more than fifty percent of its structural value shall be reconstructed and occupied ~~to conform to the~~ restrictions for the district in which such building is ~~located~~.

Recommended that Section 28.04.181-1 shall be amended to read as follows:

1. Outdoor Amusement Parks.

1.1 Any lawful uses of land or structures providing facilities for miniature golf courses, amusement parks or other outdoor places of entertainment existing at least six months prior to annexation to the city and covering an area of fifteen acres or more, may continue such operations although such use does not conform to the provisions hereof.

1.2 Such uses of such land or structures may be maintained, expanded or enlarged within the area owned, leased or rented by the owner or operator of such uses at least six months prior to annexation to the city; provided, however, such expansion or enlargement does not exceed fifty percent of the existing floor and game area at the time of such annexation.

1.3 Such expansion, enlargement or maintenance, shall be in accordance with the height and area regulations of the "B" multiple-family dwelling district or the district wherein the use is located.

1.4 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.

1.5 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located.

~~1.5 In the event of discontinuance for a period of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

~~1.6 This subsection shall be effective and apply to all such uses and structures annexed to the city after June 17, 1951.~~

Recommended the Section 28.04.181-5 shall be amended to read as follows:

5. Radio and television towers and transmitter facilities.

5.1 Any lawful uses of land or structures for radio or television transmitting facilities and towers existing prior to annexation to the city may continue

such operation although such use does not conform to the provisions hereof.

- 5.2 Such uses of land or structure may be maintained, expanded or enlarged within the area owned or leased by the owner or operator of such use; provided, however, that such expansion, enlargement or construction has received approval by the Federal Communications Commission (and, if for towers, by the Federal Aviation Agency), and in conformance to Section 28.08 of the Code.
- 5.3 Any such structure destroyed or partially destroyed by fire, flood, wind, earthquake or other calamity or by the public enemy, may be rebuilt and used for its original purpose.
- 5.4 In the event of abandonment as defined in Section 28.04.170, then the property shall not be reused unless the new use shall conform to the district requirements in which it is located.
- ~~5.4 In the event of discontinuance for a period of two years, paragraph B of Section 28.04.170 shall then apply to such use.~~

(Published in the Daily Record on December 17, 1980)

OFFICIAL NOTICE

TO WHOM IT MAY CONCERN AND TO ALL PERSONS INTERESTED.

NOTICE IS HEREBY GIVEN, that on Thursday, January 15, 1981, the Wichita-Sedgwick County Metropolitan Area Planning Commission, in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m., will consider the following changes in Title 28, the Code of the City of Wichita, Kansas:

An amendment to Sections 28.04.170 and 28.04.181 of the Zoning Ordinance pertaining to the remodeling, reconstruction and allowing for the expansion of nonconforming uses in the City of Wichita.

Copies of the proposed amendment are available upon request from the Wichita-Sedgwick County Metropolitan Area Planning Department.

The proposed amendment will there be discussed and considered by the Wichita-Sedgwick County Metropolitan Area Planning Commission, and all persons interested in said matter will be heard at this time concerning their views and wishes, and any protest against any of the provisions of the proposed changes of the zoning ordinance will be considered by the Commission as by law provided.

WITNESS my hand and seal this 16th day of December, 1980.

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

(SEAL)

(Published in the Daily Record on December 17, 1980)

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

(SEAL)

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

October 27, 1980

RE: AGENDA ITEM NO. 27

TO Planning Commission
FROM Robert A. Lakin, Director of Planning
SUBJECT DR 80-20 - City Amendment Nonconforming Use Provisions

I have attached a copy of the letter I received from L.P. Nulik concerning the Nonconforming Use Provision of the Zoning Ordinance. Pete and I are long-time friends and he and I have talked over the alternatives available to him in terms of expanding his Service Station. A zoning change, of course, is available to him. It would clearly be a case of "spot zoning" and the staff would not be supportive of such action. I am, however, sympathetic to his problem and also to the needs of Nonconforming Uses.

As you will remember, we have amended the County Zoning Resolution to provide for expansion of Nonconforming Uses in certain conditions. Essentially, we allowed Nonconforming Uses in Commercial Districts to expand more than a Commercial Nonconforming Use in a Residential District. Requirements would be made relative to off-street parking, setbacks, and screening for expansions of the use and a percentage of the floor area would be a limiting factor in any expansions.

It is my recommendation that the Planning Commission authorize staff to advertise for Public Hearing an Amendment to the City Zoning Ordinance similar in nature to that which we have provided for the County's Zoning Resolution. A copy of the existing County provision is attached for your information as well as Mr. NULIK's letter.

Boyanth Smith
8-0

Robert A. Lakin
Robert A. Lakin, Director of Planning

RAL:vn
Attachments: (2)

cc: Wichita Area Builders, 730 N. Main - Suite I, Wichita 67202
Wichita Area Board of Realtors, 717 N. Emporia, Wichita 67214
Jack H. Galbraith, Chief Planner, Current Plans Division, MAPD
Glen Lytle, Special Assistant of Zoning, MAPD
Robert Feldner, Superintendent of Central Inspection, HED

Published in the Wichita Beacon on September 11, 1978

RESOLUTION

A RESOLUTION AMENDING THE ZONING RESOLUTION OF SEDGWICK COUNTY, KANSAS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS AND EFFECTIVE AFTER MARCH 3, 1958, WITH AMENDMENTS TO DECEMBER 28, 1977, FOR THE UNINCORPORATED TERRITORY LYING WITHIN THREE MILES OF THE CITY OF WICHITA, THE CITY OF HAYSVILLE, THE CITY OF DERBY, THE CITY OF PAULVANE, THE CITY OF VALLEY CENTER, THE CITY OF GODDARD, AND THAT PORTION OF THE AREA WITHIN THREE MILES OF THE CITY OF CENEY AS ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS ON OCTOBER 3, 1973, ALL IN SEDGWICK COUNTY, KANSAS: BY AMENDING SECTION 12 OF THE SEDGWICK COUNTY, KANSAS ZONING RESOLUTION; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 14.C THEREOF.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

SECTION 1. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on July 6, 1978, after notice and public hearing as provided by law under authority granted by Section 14.C of the Sedgwick County Zoning Resolution as adopted March 3, 1958 and subsequently amended, SECTION 12 - "EXCEPTIONS"; Subsection B. "USE NONCONFORMING" shall be amended to read as follows:

B. NONCONFORMING USES:

1. **Registration of Nonconforming Uses.** A complete record of the location of all nonconforming uses shall be made and kept by the Sedgwick County Zoning Administrator.
2. **Continued Existence.** Any use made nonconforming by the provisions of this resolution, any use made nonconforming by a subsequent amendment to this resolution, or a use which was nonconforming at the time of adoption of this resolution may continue indefinitely.
3. **Loss from Natural Disaster.** Any nonconforming use structure damaged or destroyed by fire, wind, tornado, flood, earthquake or other natural disaster may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor

areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property line, than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the Building Code of Sedgwick County related to construction in flood hazard areas.

4. **Repair or Alteration of Original Structure.** Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in Paragraph 3.
5. **Expansion of Nonconforming Uses.** Nonconforming uses may be replaced or expanded under the terms of this section as follows:
 - a) Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time of the adoption of the zoning resolution, or at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time of the adoption of the zoning resolution, or at the time said use became nonconforming.
 - b) Nonconforming uses in Residential Districts when the use:
 - (1) Does not increase the number of dwelling units, when residential.
 - (2) Does not exceed 50 percent of the floor area of the original use or if not a structure, not over 50 percent of the lot area originally used; provided however, that after providing notice as per Section 13, the Board of Zoning Appeals may allow an

expansion of not more than 100 percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which it is located.

- (3) Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - (4) Provides for off-street parking and loading as required by Section 11.
 - (5) Provides for advertising signs only in accordance with the requirements of the district in which the use is first a permitted or conforming use.
- c) Nonconforming uses in nonresidential areas when the use:
- (1) Does not exceed 100 percent of the floor area, or if a structure is not involved not over 100 percent of the land area involved; provided however, that after providing notice as per Section 13, the Board of Zoning Appeals may allow expansion of not more than 200 percent when the Board determines such action would not be detrimental to the area or community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection and police service.
 - (2) Does not intrude into a residential zoning district.
 - (3) Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - (4) Provides for off-street parking and loading as required by Section 11.
 - (5) Provides for advertising signs only in

accordance with the requirements of the district in which the use is first a permitted or conforming use.

- d) Office, Commercial or Industrial uses shall provide a (6) six foot high screening fence to be constructed of masonry, wood, or other similar materials, along any interior side or rear property line that is within or adjacent to a residential zoning district; provided, however, when the adjacent property is being utilized for office, commercial or industrial use, said screening fence shall not be required. This screening shall be used to protect the existing and future development from light, noise, and blowing debris, and to protect adjacent property values. Whenever said screening fence extends into a required front yard setback, it shall be reduced to (3) three feet in height.
6. Conversion to Other Uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the zoning administrator based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use would require a conditional use permit.
7. Abandonment of Nonconforming Uses.
- a) A nonconforming use shall be considered to be abandoned when any of the following shall occur:
 - (1) The owner shall have in writing or by public statement indicated intent to abandon the building, structure or use.
 - (2) A more restrictive use shall have supplanted the original nonconforming use.
 - (3) The building or structure shall have been removed as a result of condemnation as an unsafe structure.

- (4) The owner shall have changed physically the building or structure or its permanent equipment in such a manner, as to clearly indicate an abandonment of the nonconforming use.
- (5) The property is vacant for 24 consecutive months and the owner has failed to maintain said property as required by applicable County codes.
- b) Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.
- c) Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over 24 months shall not be used except for uses permitted by the district in which it is located.
- d) Nonconforming billboards shall be completely removed from any premises not later than 2 years from the effective date of this resolution, or from the date of any subsequent amendment to this resolution that would cause any billboard to become nonconforming, if at least three residential units are constructed within two hundred (200) feet in any direction of a billboard. Until such condition does occur, such billboard may continue indefinitely.

SECTION II. This resolution shall take effect and be enforced from and after its adoption and publication in the official County paper.

PASSED AND ADOPTED THIS 30th day of August, 1978.

EVERETT PATRICK, CHAIRMAN
JOHN HALE, COMMISSIONER
TOM SCOTT, COMMISSIONER

ATTEST:

Dorothy K. White, County Clerk, by Judy Smith,
Deputy County Clerk.

(SEAL)

APPROVED AS TO FORM BY: James W. Pattinson, Assistant County Counselor
for Theodore H. Hill, County Counselor

October 22, 1980

RECEIVED

OCT 24 1980

METROPOLITAN PLANNING

ROUTE

Mr. Bob Lakin
Planning Department
10th Floor
City Hall
City of Wichita
455 N. Main
Wichita, Kansas 67202

Dear Bob:

Per your request, please find attached list of reasons for proposed addition to Pleasant Valley Service, 2410 West 25th Street North, Wichita, Kansas.

We realize we are in a non-conforming zone. We are also aware that we can apply for a light commercial, however, it would be time consuming and expensive, and we may have only a slight chance of getting approval.

Therefore, we would like the MAPC to allow us to expand under an amendment to the non-existing zone.

If further information is needed, please contact me.

Sincerely,
PLEASANT VALLEY SERVICE

L. P. Nulik

L.P. Nulik
Owner

LPN/nsz

Reasons for proposed addition to establishment at
2410 West 25th Street North:

1. Need for larger equipment area.

At present, facilities are not large enough to accommodate needed equipment.

2. Inadequate working space.

Present stalls are too narrow, thus do not allow efficient working space.

Customers have expressed concern over inadequate space to handle workload.

One technician can handle 2 stalls (2 vehicles).

3. Additional stalls would allow technicians to work indoors during inclement weather.
4. Addition would allow beautification of facilities beneficial to the surrounding area.

October 27, 1980

Planning Commission

Robert A. Lakin, Director of Planning

DR 80-20 - City Amendment Nonconforming Use Provisions

I have attached a copy of the letter I received from L.P. Nulik concerning the Nonconforming Use Provision of the Zoning Ordinance. Pete and I are long-time friends and he and I have talked over the alternatives available to him in terms of expanding his Service Station. A zoning change, of course, is available to him. It would clearly be a case of "spot zoning" and the staff would not be supportive of such action. I am, however, sympathetic to his problem and also to the needs of Nonconforming Uses.

As you will remember, we have amended the County Zoning Resolution to provide for expansion of Nonconforming Uses in certain conditions. Essentially, we allowed Nonconforming Uses in Commercial Districts to expand more than a Commercial Nonconforming Use in a Residential District. Requirements would be made relative to off-street parking, setbacks, and screening for expansions of the use and a percentage of the floor area would be a limiting factor in any expansions.

It is my recommendation that the Planning Commission authorize staff to advertise for Public Hearing an Amendment to the City Zoning Ordinance similar in nature to that which we have provided for the County's Zoning Resolution. A copy of the existing County provision is attached for your information as well as Mr. Nulik's letter.

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A RESOLUTION AMENDING THE ZONING RESOLUTION OF SEDGWICK COUNTY, KANSAS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS AND EFFECTIVE AFTER MARCH 3, 1958, WITH AMENDMENTS TO DECEMBER 28, 1977, FOR THE UNINCORPORATED TERRITORY LYING WITHIN THREE MILES OF THE CITY OF WICHITA, THE CITY OF HAYSVILLE, THE CITY OF DERBY, THE CITY OF MULVANE, THE CITY OF VALLEY CENTER, THE CITY OF GODDARD, AND THAT PORTION OF THE AREA WITHIN THREE MILES OF THE CITY OF CHENEY AS ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS ON OCTOBER 3, 1973, ALL IN SEDGWICK COUNTY, KANSAS: BY AMENDING SECTION 12 OF THE SEDGWICK COUNTY, KANSAS ZONING RESOLUTION; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 14.C THEREOF.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

SECTION 1. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on July 6, 1978, after notice and public hearing as provided by law under authority granted by Section 14.C of the Sedgwick County Zoning Resolution as adopted March 3, 1958 and subsequently amended, SECTION 12 - "EXCEPTIONS"; Subsection B. "USE NONCONFORMING" shall be amended to read as follows:

B. NONCONFORMING USES:

1. Registration of Nonconforming Uses. A complete record of the location of all nonconforming uses shall be made and kept by the Sedgwick County Zoning Administrator.
2. Continued Existence. Any use made nonconforming by the provisions of this resolution, any use made nonconforming by a subsequent amendment to this resolution, or a use which was nonconforming at the time of adoption of this resolution may continue indefinitely.
3. Loss from Natural Disaster. Any nonconforming use structure damaged or destroyed by fire, wind, tornado, flood, earthquake or other natural disaster may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor

areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property line, than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the Building Code of Sedgwick County related to construction in flood hazard areas.

4. **Repair or Alteration of Original Structure.** Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in Paragraph 3.
5. **Expansion of Nonconforming Uses.** Nonconforming uses may be replaced or expanded under the terms of this section as follows:
 - a) Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time of the adoption of the zoning resolution, or at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time of the adoption of the zoning resolution, or at the time said use became nonconforming.
 - b) Nonconforming uses in Residential Districts when the use:
 - (1) Does not increase the number of dwelling units, when residential.
 - (2) Does not exceed 50 percent of the floor area of the original use or if not a structure, not over 50 percent of the lot area originally used; provided however, that after providing notice as per Section 13, the Board of Zoning Appeals may allow an

expansion of not more than 100 percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which it is located.

- (3) Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - (4) Provides for off-street parking and loading as required by Section 11.
 - (5) Provides for advertising signs only in accordance with the requirements of the district in which the use is first a permitted or conforming use.
- c) Nonconforming uses in nonresidential areas when the use:
- (1) Does not exceed 100 percent of the floor area, or if a structure is not involved not over 100 percent of the land area involved; provided however, that after providing notice as per Section 13, the Board of Zoning Appeals may allow expansion of not more than 200 percent when the Board determines such action would not be detrimental to the area or community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection and police service.
 - (2) Does not intrude into a residential zoning district.
 - (3) Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.
 - (4) Provides for off-street parking and loading as required by Section 11.
 - (5) Provides for advertising signs only in

accordance with the requirements of the district in which the use is first a permitted or conforming use.

- d) Office, Commercial or Industrial uses shall provide a (6) six foot high screening fence to be constructed of masonry, wood, or other similar materials, along any interior side or rear property line that is within or adjacent to a residential zoning district; provided, however, when the adjacent property is being utilized for office, commercial or industrial use, said screening fence shall not be required. This screening shall be used to protect the existing and future development from light, noise, and blowing debris, and to protect adjacent property values. Whenever said screening fence extends into a required front yard setback, it shall be reduced to (3) three feet in height.
6. Conversion to Other Uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the zoning administrator based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use would require a conditional use permit.
 7. Abandonment of Nonconforming Uses.
 - a) A nonconforming use shall be considered to be abandoned when any of the following shall occur:
 - (1) The owner shall have in writing or by public statement indicated intent to abandon the building, structure or use.
 - (2) A more restrictive use shall have supplanted the original nonconforming use.
 - (3) The building or structure shall have been removed as a result of condemnation as an unsafe structure.

- (4) The owner shall have changed physically the building or structure or its permanent equipment in such a manner, as to clearly indicate an abandonment of the nonconforming use.
- (5) The property is vacant for 24 consecutive months and the owner has failed to maintain said property as required by applicable County codes.
- b) Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.
- c) Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over 24 months shall not be used except for uses permitted by the district in which it is located.
- d) Nonconforming billboards shall be completely removed from any premises not later than 2 years from the effective date of this resolution, or from the date of any subsequent amendment to this Resolution that would cause any billboard to become nonconforming, if at least three residential units are constructed within two hundred (200) feet in any direction of a billboard. Until such condition does occur, such billboard may continue indefinitely.

SECTION II. This resolution shall take effect and be enforced from and after its adoption and publication in the official County paper.

PASSED AND ADOPTED THIS 30th day of August, 1978.

EVERETT PATRICK, CHAIRMAN
JOHN HALE, COMMISSIONER
TOM SCOTT, COMMISSIONER

ATTEST:

Dorothy K. White, County Clerk, by Judy Smith,
Deputy County Clerk.

(SEAL)

APPROVED AS TO FORM BY: James M. Pattinson, Assistant County Counselor
for Theodore H. Hill, County Counselor

October 27, 1980

L. P. Nullk
2410 W. 25th Street North
Wichita, KS 67204


RE: DR 80-20 - City Amendment
Nonconforming Use Provisions

Dear Pete:

This is to acknowledge receipt of your letter of October 22, 1980. I have prepared a memorandum to the Planning Commission which I will place on their Agenda at their next meeting of November 6, 1980. As is our custom, communications of this type are placed at the end of the Agenda; therefore, it may be late in the afternoon before we get to it.

It is not necessary for you to be at the Planning Commission meeting, however you may want to come down in case they have questions. I will leave this to your judgment.

Sincerely,


Robert A. Lakin
Director of Planning

RAL:vn

October 22, 1980

RECEIVED

OCT 24 1980

METROPOLITAN PLANNING

ROUTE

Mr. Bob Lakin
Planning Department
10th Floor
City Hall
City of Wichita
455 N. Main
Wichita, Kansas 67202

Dear Bob:

Per your request, please find attached list of reasons for proposed addition to Pleasant Valley Service, 2410 West 25th Street North, Wichita, Kansas.

We realize we are in a non-conforming zone. We are also aware that we can apply for a light commercial, however, it would be time consuming and expensive, and we may have only a slight chance of getting approval.

Therefore, we would like the MAPC to allow us to expand under an amendment to the non-existing zone.

If further information is needed, please contact me.

Sincerely,
PLEASANT VALLEY SERVICE

L. Pete Nulik

L.P. Nulik
Owner

LPN/nsz

Reasons for proposed addition to establishment at
2410 West 25th Street North:

1. Need for larger equipment area.

At present, facilities are not large enough to accommodate needed equipment.

2. Inadequate working space.

Present stalls are too narrow, thus do not allow efficient working space.

Customers have expressed concern over inadequate space to handle workload.

One technician can handle 2 stalls (2 vehicles).

3. Additional stalls would allow technicians to work indoors during inclement weather.
4. Addition would allow beautification of facilities beneficial to the surrounding area.

October 27, 1980

Wichita-Sedgwick County Planning Commission

Robert A. Lakin, Director of Planning

Downtown UDAG

The Commission has requested that we keep you informed concerning the Downtown UDAG. Attached is some correspondence regarding the current status of the project. It appears that the City will be preparing a revision package in terms of the grant application to allow staging for some of the initial projects that are about to get underway. The initial thinking is related to projects north of Douglas and parking garages related thereto, and the walkways that would be utilized in connection with them. As other information becomes available we will keep you advised.

Robert A. Lakin, Director of Planning

RAL:vn

THE CITY OF WICHITA

OFFICE OF CITY MANAGER

DATE October 13, 1980


TO The Honorable Board of City Commissioners

FROM E. H. Denton, City Manager

SUBJECT Downtown Urban Development
Action Grant (UDAG)

Attached is a copy of the letter from the U.S. Department of Housing and Urban Development (HUD) that the Downtown UDAG application has been carried over for consideration in the fourth quarter funding for 1980. The reasons for HUD not approving the application for third quarter funding are listed in the letter.

This office and other agencies of the City will be working closely with the Foundation for Wichita Development (FWD) to attempt to address the concerns of HUD prior to their decision point for the next quarter.


E. H. Denton
City Manager

EHD/tpd
Attachment

cc: Russell L. Brenner, Director of Administration (w/a)
Robert A. Lakin, Director of Planning (w/a)
Don E. Anderson, Director of Housing and Economic Development
Kenneth H. Kitchen, Director of Redevelopment and Rehabilitation

RECEIVED

OCT 17 1980

METROPOLITAN PLANNING

ROUTE _____



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

Office of the City Manager	
<input checked="" type="checkbox"/> [Signature]	<input type="checkbox"/> HP
<input type="checkbox"/> [Signature]	<input type="checkbox"/> SH
<input type="checkbox"/> [Signature]	<input type="checkbox"/> [Signature]
OCT 10 1980	
Copies To <u>DEA, KKK, etc.</u>	
Send to _____	
UNREPLY REFERENCE	

OCT 6 1980

Mr. E. H. Denton
City Manager of Wichita
Wichita, Kansas 67202

Dear Mr. Denton:

Re: Application Hold-Over
City of Wichita
Application No. B-00-AA-20-0011
Project: The Wichita Downtown
Development Project

This is to notify your City formally that its application for an Urban Development Action Grant for the above project has not been approved. However, we are holding it over for further consideration during the fourth calendar quarter of 1980. This action neither means nor implies that the application will be approved.

The major reasons for our action are the following:

1. The lack of firm financial commitments and tenants for most transactions.
2. The lack of clear, firm "but for" clauses for each transaction.
3. The need to scale down or phase the entire project.
4. The need for a greater historical review due to the scope and magnitude of the project.

If you have additional relevant material or information which you wish to submit, we shall be pleased to receive and consider it. All supplementary information should be submitted to the Office of Urban Development Action Grants, U.S. Department of Housing and Urban Development, Washington, D.C. 20410, in time to be received by us not later than December 5, 1980. An additional copy should be sent to your HUD Area Office.

If you have not already been contacted by a member of the Action Grant staff and you desire further information or assistance, please telephone Rocky Wade at (202) 755-8227.

Thank you for your cooperation.

Sincerely,

for Margaret B. Swell
David S. Cordish
Director
Office of Urban Development
Action Grants