

City of Wichita
City Council Meeting
November 5, 2002

Agenda Report # _____

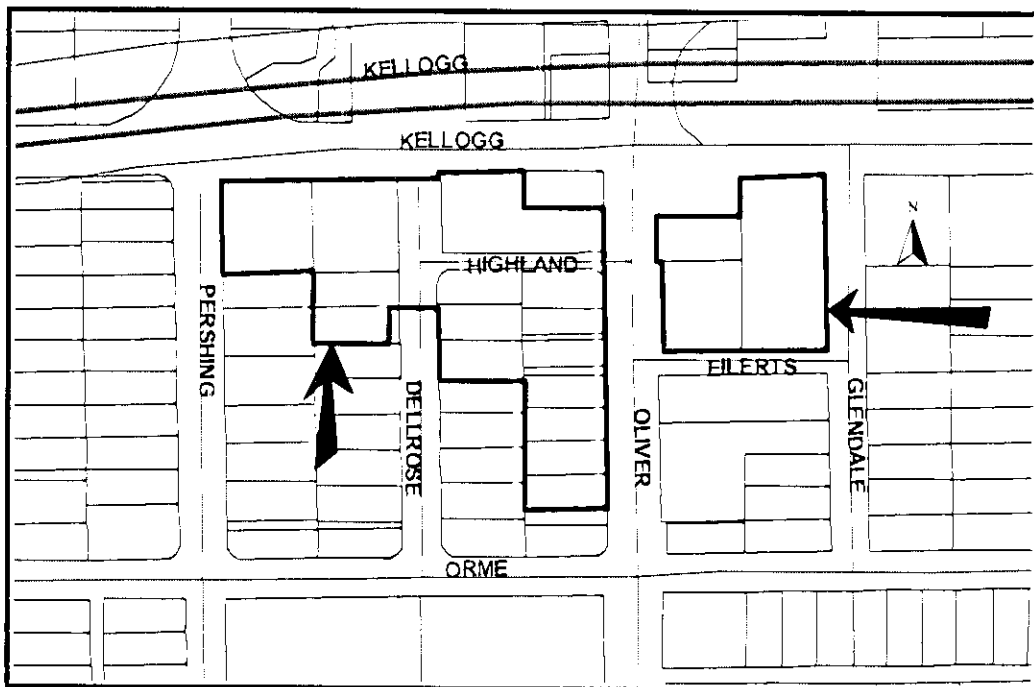
TO: Mayor and City Council Members

SUBJECT: ZON2002-00026 – Zone Change from “TF-3” Two-family Residential; “MF-29” Multi-family Residential; “LC” Limited Commercial; to “LC” Limited Commercial.
AND
CUP2002-00020 – The creation of THE OLIVER RETAIL Community Unit Plan. Generally located south of Kellogg on either side of Oliver. (District II)

INITIATED BY: Metropolitan Area Planning Department *MJ*

AGENDA ACTION: Planning

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- MAPC Recommendation:** Approve, subject to revised conditions. (8-0)
- Staff Recommendation:** Approve, subject to conditions.
- DAB Recommendation:** Approve, subject to MAPD staff conditions and with DAB II reviewing the plat before it is made final (8-0)



BACKGROUND: The applicant is requesting the creation of a Community Unit Plan for the two corners of Oliver on the south side of Kellogg Drive. The 5.14-acre C.U.P. would have two parcels. Parcel 1 would be located on the southwest corner of Kellogg Drive and Oliver would be 3.73 acres in size. It would include all the lots along Oliver between Kellogg and Orme except the southernmost residence, and extend westward from Oliver to Pershing. Parcel 2 would be located on the southeast corner and would be 1.39 acres in size. It would include the block bounded by Kellogg, Oliver, Eilerts Street and Glendale.

The C.U.P. excludes the tract closest to each corner of the intersection of Kellogg and Oliver. These excluded tracts are owned by the City of Wichita and are to be used as landscaping at the border of the off-ramps from the Kellogg/Oliver underpass, and will be subject to Design Council review prior to approval of the landscaping plan. The tract on the southeast also contains the irrigation equipment for landscaping in the right-of-way along the south side of Kellogg from Hillside to Oliver.

Currently Parcel 1 consists of commercial uses zoned "LC" Limited Commercial, some vacant lots, and small residences on property zoned "TF-3" Two-family Residential. More specifically, the property east of Dellrose is developed with the existing Midas Muffler Center, with Midas as the main tenant and six small businesses in the center. Another strip center was located between Dellrose and Oliver, but it was destroyed by a tornado in 1999 and the site has been cleared. The land swapped with the City of Wichita for landscaping includes part of this former strip center. Highland Lane, a small public way about 120 feet south of Kellogg, is proposed to be vacated. Three vacant residential lots are located south of Highland, and the remainder of Parcel 1 is occupied with single-family houses proposed for demolition for redevelopment.

Six four-plexes are located on Parcel 2. The parcel is zoned "MF-29" Multi-family.

Proposed uses for the Oliver Retail Center are all uses allowed in the "LC" Limited Commercial zoning district except adult entertainment establishments, group homes, group residential, halfway house, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor would be allowed as long as food was the primary service of the establishment. The C.U.P. does not request exclusion of vehicle sales and gambling facilities. However these uses were excluded by the Real Estate Purchase Contract between the City of Wichita and Donald Walenta and should be excluded by the C.U.P.

Some of the potential commercial uses, as proposed, include convenience stores, service stations, general retail and office, secondhand stores, pawnshops, restaurants (including drive-in and drive-through), animal care (limited), banks, funeral home, hotel, personal care service, personal improvement service, indoor recreation and entertainment (see Article III, Section III-B.14.b of the Unified Zoning Code for complete listing of permitted by-right uses).

Building setbacks for Parcel 1 along the common property lines with residential zoning (TF-3) and existing residences are shown as ten feet in width. This is significantly less than the 35-foot standard C.U.P. requirement, as well as the 25-foot compatibility setback that is required by the Unified Zoning Code when commercial use borders residential use. A six-foot masonry wall is proposed along these common property lines. Otherwise, the C.U.P. does not include any additional measures to reduce the impact of commercial use on the adjacent residences. Examples of measures employed in other C.U.P.s include restrictions on drive-in and drive-through restaurants, overhead doors, and gas islands within 200 feet of residential zoning, limiting lighting standards in height, or additional landscape buffering requirements.

Parcel 2 proposes a 15-foot setback on Glendale and Eilerts. Again, this is below the 35-foot standard C.U.P. setback and the 25-foot street side setback of the UZC. The properties across Eilerts and Glendale are zoned "LC" and "GO", although a "LC/GO" property consist of two four-plexes in exceptionally good condition that would be impacted by the 15-foot setback, particularly if no landscaped street yard and parking lot screening or screening of mechanical, work and storage areas is provided (these measures would not be required by the UZC because of the commercial zoning across both streets).

Height for both parcels is requested as 45 feet. This is ten feet higher than for "LC" in the Unified Zoning Code.

Circulation is a major concern for the parcels. (see Public Services discussion below).

The character of the surrounding area to the south and west of Parcel 1 is modest but well maintained single-family residences. Jefferson Elementary is located on the southwest corner of Oliver and Orme. The area south of Parcel 2 is a small retail strip center, Cedar Village. The land east of Glendale transitions from a vehicle sales operation along Kellogg, to two four-plexes, to single-family residences in good condition.

At the MAPC meeting held September 26, 2002, the MAPC voted (8-0) to approve subject to staff recommended conditions, as modified by staff presentation at the meeting, and subject to additional revisions of allowing a point of access on the Kellogg off-ramp if allowed by KDOT and a point of access on Kellogg Drive east of Oliver. These conditions would be as follows:

- A. APPROVE the zone change (ZON2002-00020) to "LC" Limited Commercial for subject to replatting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-261), subject to the following conditions:
 1. Access from the Kellogg off-ramp is contingent on receiving approval of the access break from KDOT.

2. The C.U.P. shall be revised to specify the northernmost openings on Parcels 1 and 2 (located at the current location of Highland Lane) as right-in/right-out only.
3. An additional ten feet of right-of-way should be shown along the northeast segment of Parcel 1.
4. General Provision #5 shall be revised to include: "A guarantee at time of platting shall be provided for a continuous decel lane on the west side of Oliver from Kellogg off-ramp south to the full movement entrance and a decel lane on east side of Oliver from Eilerts street to the right-in/right-out access point. Necessary extension of the left-turn lane on northbound Oliver shall be evaluated and determined at time of platting."
5. A circulation plan shall be submitted and approved by the Traffic Engineer in conjunction with the Planning Director prior to the issuance of any building permit; with the circulation plan being designed to discourage travel on Pershing and channel traffic toward Oliver for Parcel 1.
6. The C.U.P. shall be revised to provide additional landscaped buffer trees wherever a 10-foot setback is proposed, with no loading docks, trash receptacles or outdoor work and storage areas being allowed within the 10-foot setback. This setback would replace the compatibility setback of 25-feet of UZC Sec. IV-C.4.
7. The C.U.P. shall be revised for Parcel 2 to provide a 20-foot building setback along Eilerts Street and Glendale.
8. Parcel Description 1(F) and 2(F) shall be revised to add: "however, heights of structures shall be subject to UZC Sec. IV-C.5.b.
9. General Provision #14 shall be revised to state that trash dumpsters may not be placed any closer than 20 feet from the property line as required per UZC Sec. IV-C.7.b.
10. General Provision #17 shall be revised to add the following: (sentence 1) and be permitted those uses allowed by-right in the "LC" Limited Commercial zone. (additional sentences) No overhead doors, drive-in or drive-through facilities or gas islands shall be located within 200 feet of residential zoning on Parcel 1. No vehicle sales or multi-game, casino-style gambling facilities shall be permitted.
11. General Provision #6 shall be revised: Signs located within 200 feet of residentially zoned property shall not exceed 20 feet in height.
12. General Provision #9A shall be revised to add that light poles shall be limited in height to 24 four feet, except within 200 feet of residentially zoned property where light poles shall not exceed 14 feet in height.

13. General Provision #11 shall be modified to indicate that landscaping on the adjoining property owned by the City of Wichita shall be installed and maintained in accordance to the agreement with the City of Wichita (and as reviewed by the Design Council), and may be credited toward meeting landscaped street yard requirements. This credit shall not be used to reduce any screening or parking lot landscaping requirements of the Landscape Ordinance. Street frontage along Glendale and Eilerts Street shall provide a landscaped street yard and parking lot screening if parking lots are located between the buildings and street.
14. General Provision #15 shall add that metal shall not be allowed as the predominate material of any façade.
15. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
16. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
17. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
18. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-257) includes special conditions for development on this property.
19. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

At the DAB II meeting held October 7, 2002, board members discussed the case, particularly focusing on access on Kellogg off-ramp being dangerous, allowing the access point on Kellogg Drive being in conflict with the Access Management Plan and potential for traffic from the center to use Pershing. DAB II voted (8-0) to recommend approval of the application subject to MAPD staff recommendations and with DAB II reviewing the plat before it is made final.

Letters in opposition have been received from three owners but all are outside the area considered for a legally binding protest.

Recommended Action:

1. Concur with the findings of the MAPC and approve the zone change and C.U.P., subject to the recommended conditions; instruct the Planning Department to forward the ordinance for first reading when the plat is forwarded to the City Council; or

 2. Return the application to the MAPC for reconsideration
- (An override of the Planning Commission's recommendation requires a 2/3rd majority vote of the membership of the governing body on the first hearing.)

Just Read 8-5-02

(150004), published in The Wichita Eagle on Oct. 10 2003

ORDINANCE NO. 45-781

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

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

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

Case No. ZON 2002-26

Request for zone change from "TF-3" Two-family Residential District, MF-29" Multi-family Residential District and "LC" Limited Commercial District to "LC" Limited Commercial District on property described as:

Ann Waienta Addition, Wichita, Sedgwick County, Kansas.

Generally located on the southeast and southwest corner of Kellogg and Oliver.

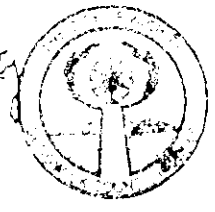
SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

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

ADOPTED this 12th day of August, 2003.

ATTEST:

Patricia Ellis, Deputy
for Pat Graves, City Clerk



Carlos Mayans
Carlos Mayans, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf
Gary E. Rebenstorf, City Attorney