

ORDINANCE NO. 48-306

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. ZON2009-00003

Zone change from B Multi-Family Residential and LC Limited Commercial to LC Limited Commercial on property described as:

Reserve C in Ken-Mar Addition to Wichita, Sedgwick County, Kansas, except that part condemned for street in District Court Case Condemnation Case No 84C2124

Generally located north of 13th Street North and west of Oliver Avenue.

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

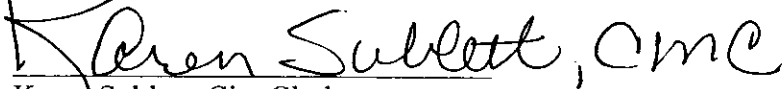
SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED AT WICHITA, KANSAS, April 7, 2009



Carl Brewer - Mayor

ATTEST:

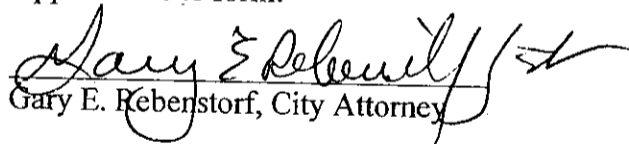


Karen Sublett, City Clerk

(SEAL)



Approved as to form:

A handwritten signature in cursive script, appearing to read "Gary E. Rebenstorf". The signature is written over a horizontal line that also underlines the printed name below it. The signature includes a large, stylized initial "G" and a long, sweeping flourish at the end.

Gary E. Rebenstorf, City Attorney

**City of Wichita
City Council Meeting
March 24, 2009**

TO: Mayor and City Council

SUBJECT: ZON2009-00003 Associated with CUP2009-00001 – Request City zone change from B Multi-family Residential to LC Limited Commercial, and creation of DP-319 Providence Square Community Unit Plan, generally located north of 13th Street North and west of Oliver Avenue. (District I)

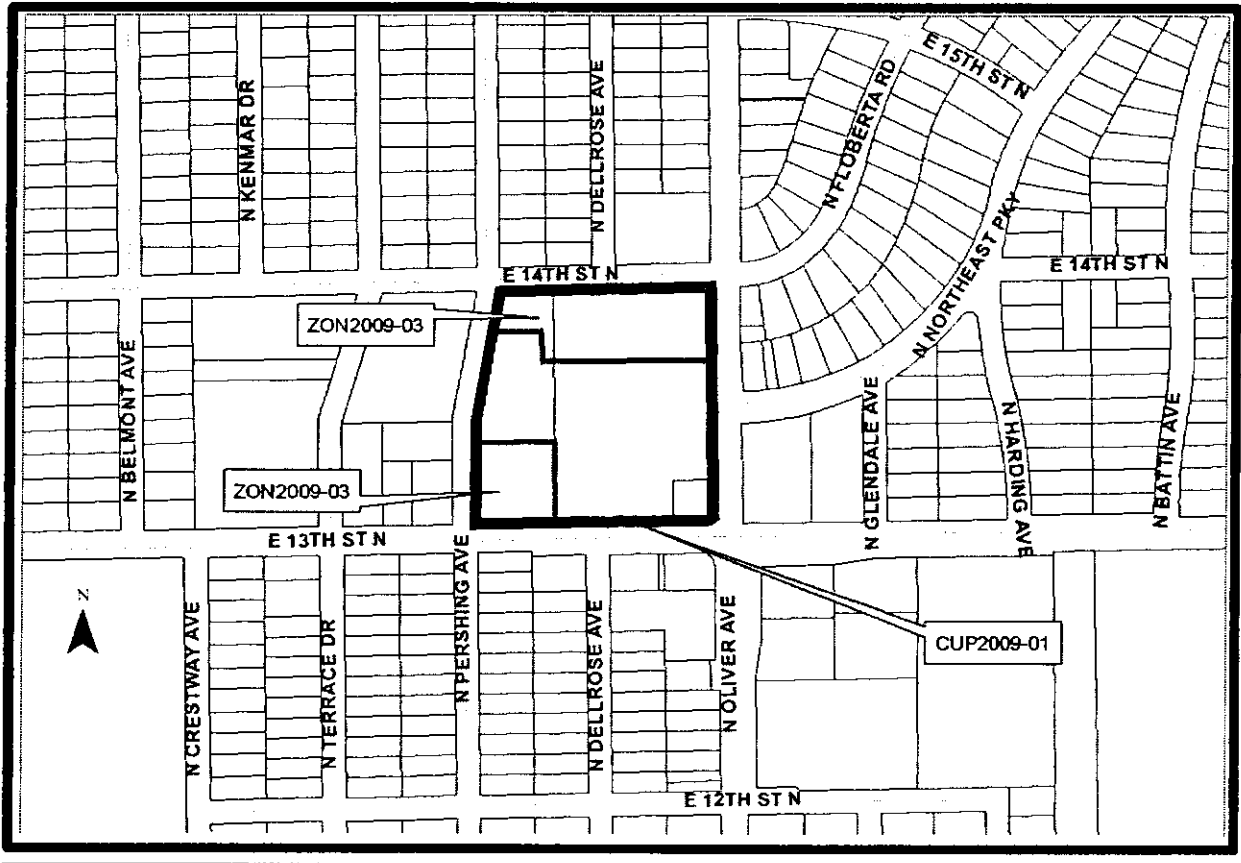
INITIATED BY: Metropolitan Area Planning Department *JLS*

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, subject to replatting within 1 year and conditions. (12-0)

MAPD Staff Recommendations: Approve, subject to replatting within 1 year and conditions.

DAB Recommendations: Approve, subject to MAPC recommendation (7-0-1).



BACKGROUND: The applicant proposes to redevelop Ken Mar Shopping Center as DP-319 Providence Square Community Unit Plan, located on the northwest corner of 13th Street North and Oliver Avenue. Total size of the CUP would be 7.51 acres, encompassing the land between 13th Street Oliver Avenue, 14th Street North and Pershing Avenue.

Currently the property beneath the existing buildings and some of its surrounding parking field is zoned LC. A band of B Multi-Family Residential (“B”) borders 14th Street North and a patch of B zoning is located on the southwest corner of the proposed CUP at the intersection of 13th Street North and Pershing Avenue. The applicant has requested that the entire CUP be zoned LC.

A TIF district for the Ken Mar Center Redevelopment Project (Providence Square) was approved for the site January 6, 2009. The TIF requires redevelopment of the shopping center in order to utilize TIF funding to upgrade the parking lot, site lighting and access points onto the site. The redeveloped shopping center would consist of renovation of Parcel 1 (5.19 acres), including the two existing buildings, plus addition of Parcel 2 (0.48 acres) and Parcel 3 (0.67 acres) as freestanding uses along 13th Street North and Parcel 5 (0.46 acres) as a freestanding use along Oliver Avenue. Parcel 4 (0.71 acres), located at the corner of 13th and Oliver, currently has a small retail building (originally a gas station) but could be redeveloped with a new structure in the future.

Proposed uses are those permitted by right in the LC zoning district except for the following prohibited uses: correctional placement residences, vehicle storage yards, general vehicle repair, outdoor storage (as a separate use), taverns, nightclubs, asphalt or concrete plants, sexually oriented businesses and adult entertainment as defined by City Code. No service stations, convenience stores with gas islands or restaurants with drive in or drive through facilities would be permitted within 200 feet of residentially zoned property. Any use for which a conditional use permit would be required under LC zoning would require a CUP amendment. Multi-family residential use (such as apartments or lofts) would be a permitted use above the existing retail buildings on Parcel 1, but all residential uses would be prohibited on Parcels 2-5. The ability to add the residential component to Parcel 1 probably hinges on the ability to comply with parking requirements.

The CUP does not propose specific architectural standards, but provided a façade elevation as part of the TIF review. This elevation is included as supplementary documentation as an indication of the general appearance of the center. It proposes consistent landscaping and lighting elements with a height limitation of 28 feet. While this lighting height is taller than typical in close proximity to residential zoning, the lighting would be separated from the closest residences by the street; and the residences are oriented with the side yards rather than front yards across from the development. A photometric plan is attached to demonstrate containment of lighting onto the site and away from the residences to the north.

The CUP would omit the screening wall between the CUP and the residential zoning. Instead, a landscape screening of shrubbery and trees is proposed. In addition, the CUP would be subject to standard Landscape Ordinance requirements, triggered by the scope of the redevelopment. The CUP states that trash receptacles and outside storage would be screened from ground level view, referring to outdoor work and storage areas customarily found as accessory uses to LC principal uses because “outdoor storage” as a principal use is prohibited. A pedestrian plan, and internal site circulation and cross circulation are required by the CUP.

Setbacks vary in width and deviate from standard Unified Zoning Code required setbacks of 35 feet for CUPs along streets. The variations are found on Parcel 1 in those locations where the existing buildings are zero feet from the property line on Oliver Avenue and at certain points on Pershing Avenue for Parcel 1. On the remainder of Parcel 1, the setback increases to 35 feet. Parcel 2 and 5 are currently vacant tracts of land, but also propose reduced setbacks of 10 feet along Pershing Avenue for Parcel 2 and along 14th Street North for Parcel 5, presumably to increase the buildable area on these small tracts. For Parcel 2, it continues the pattern of narrow setback found for both sides Pershing Avenue, where the west side is developed commercially with a narrow side street setback. For Parcel 5, the reduced setback of 10 feet mimics the setback of Dellrose United Methodist Church on the north side of 14th. This reduced setback would serve to narrow down the visual corridor along 14th Street North and provide a more sharply defined corner to the

commercial development. The area between the building and the sidewalk would be limited to landscaping. Considering these factors, the reduced setback probably meets the general intent of a development pattern that provides a reasonable separation between the residences (farther west) and a commercial edge to the development. The setbacks on Parcel 4 (corner of 13th and Oliver) are shown as 35 feet although this clips the edges of the existing building. Presumably if the parcel were redeveloped with a new structure, it would adhere to the standard 35-foot setback on this corner.

Maximum building coverage is to be limited to 30 percent for the entire CUP and maximum gross floor area (for commercial uses) would be 35 percent. Maximum building height would be 35 feet for all Parcels except Parcel 1. Maximum building height for Parcel 1 would be 45 feet. The maximum building coverage would be 33 percent for Parcel 1 to correspond with the requirements of the TIF. Residential use would be permitted in excess of this limit, up to 90 units on Parcel 1. This would be a density equivalent MF-18. Coupled with the retail and commercial component, it could encourage a shop/live/work type of environment if the market demand supports this mixed use. With the maximum height of 45 feet, it would allow two stories of apartments on top of the commercial ground level floor, again however the limitation perhaps would be limited by providing parking.

Electronic signs would be restricted to 13th Street North and Oliver Avenue. The CUP prohibits moving and rotating signs, signs with moving lights, portable signs, off-site signs and billboards. Window signage is restricted to 25 percent of window area. No specific building wall signage restrictions are included beyond the general restrictions on electronic signs and signs with movement. The number of signs (when considering the two requested 30-foot high signs that count as two sign locations) exceeds the Wichita Sign Code allowances by one sign location on the 13th Street North frontage and one sign location on the Oliver Avenue frontage. Additionally a 100-foot spacing rather than 150 feet per Wichita Sign Code is requested.

Ken-Mar Shopping Center was built in 1956. The buildings are on property zoned LC, but the majority of the parking field is located on property zoned B. A church on property zoned SF-5 is located directly north of the site, and single-family residences on property zoned SF-5 are located north and northwest of the site. A convenience store, zoned LC, and more residences, zoned GO, TF-3 and SF-5 are located directly east of the site. A service station and a post office substation are to the southeast and more businesses and a restaurant are located directly south, all on property zoned LC. The area to the west includes some vacant retail stores and a large furniture store and furniture warehouse, with a mix of GC General Commercial ("GC"), OW Office Warehouse ("OW"), LC and GO zoning.

Analysis: At the MAPC meeting held February 19, 2009, MAPC voted (12-0) to approve subject to staff recommendations. No citizens spoke in opposition. At the District III Advisory Board meeting held March 5, 2009, the District Advisory Board voted (7-0-1) to recommend approval subject to recommendations by MAPC. No citizens spoke in opposition. No protest has been received. The recommendation is the request be **APPROVED subject to replatting within one year and subject the following conditions:**

- A. **APPROVE** the zone change (ZON2009-00003) to LC for the property zoned B.
- B. **APPROVE** the Community Unit Plan (DP-319), subject to the following conditions:
 1. Provide contingent dedication of ten feet of right-of-way for Oliver Avenue and a corner clip of 20 feet x20 feet.
 2. Allow the reduced setbacks and additional sign locations as requested by the CUP.
 3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 4. 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.
 5. The ordinance/resolution establishing the zone change shall not be published until the platting has been recorded with the Register of Deeds.

6. Prior to publishing the ordinance/resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-319) includes special conditions for development on this property.
7. The applicant shall submit four revised copies of the CUP 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.

Financial Considerations: None

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

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change and CUP subject to the condition of replatting within one year and 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 two-third majority vote of the City Council on the first hearing.)