

(150004) Published in The Wichita Eagle on 7-1-05
ORDINANCE NO. 46-615

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. ZON2004-00067

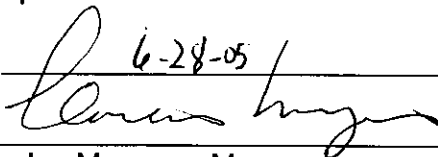
Request for Zone change from "B" Multi-family Residential to "LC" Limited Commercial, on property described as:

Lot 295, the Granville Park Addition to Wichita, Sedgwick County, Kansas. Generally located at the southwest corner of Hydraulic Avenue and 13th Street North.

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,

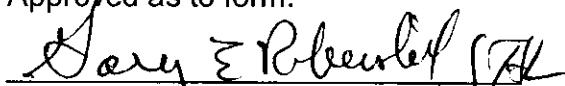
6-28-05

Carlos Mayans - Mayor

ATTEST:


Karen Sublett, City Clerk

(SEAL)

Approved as to form:


Gary E. Rebenstorf, City Attorney

**City of Wichita
City Council Meeting
June 21, 2005**

Agenda Report No. _____

TO: Mayor and City Council

SUBJECT: ZON2004-00067 – Zone change from “LC” Limited Commercial and “B” Multi-family Residential to “GC” General Commercial. Generally located at the southwest corner of Hydraulic Avenue and 13th Street North. (District I)

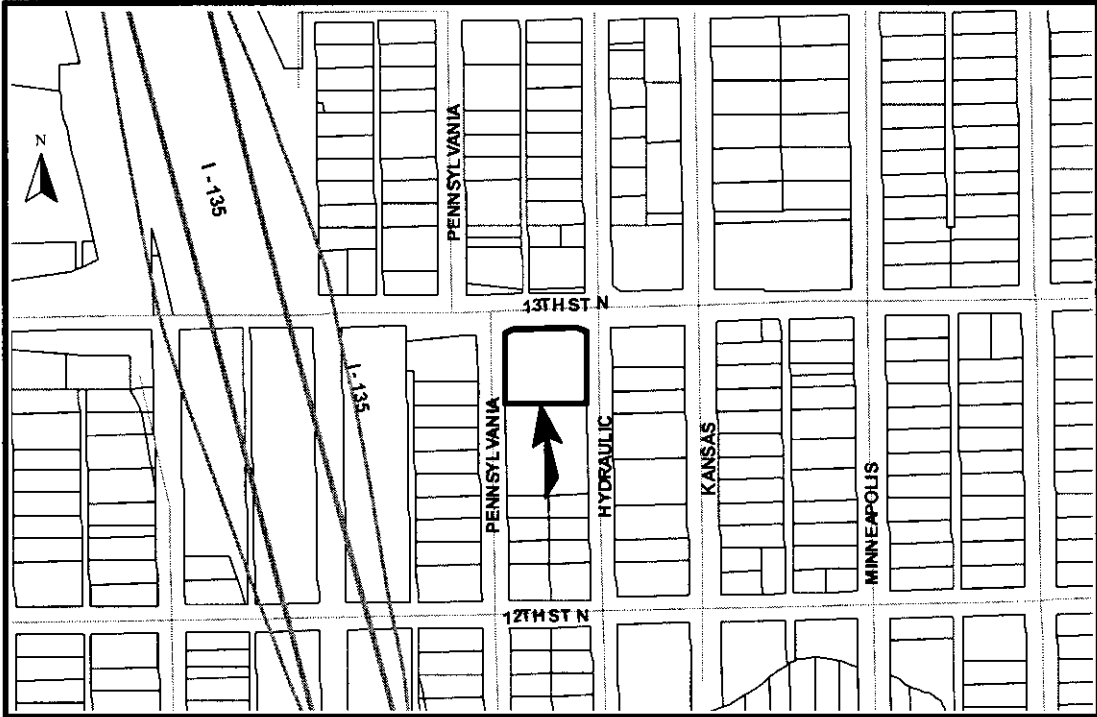
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-consent)

MAPC Recommendations: Deny (6-4), but rezone the "B" Multi-family Residential zoned lot to "LC" Limited Commercial, to match the rest of the site's "LC" zoning.

MAPD Staff Recommendations: Deny, but rezone the "B" Multi-family Residential zoned lot to "LC" Limited Commercial, to match the rest of the site's "LC" zoning.

DAB Recommendations: DAB I voted (8-0) to deny the request for "GC" zoning with the Protective Overlay and to deny a Conditional Use for a car sales lot, but rezone the "B" Multi-family Residential zoned lot to "LC" Limited Commercial, to match the rest of the site's "LC" zoning.



Background: The applicant requests a zone change from “LC” Limited Commercial and “B” Multi-family Residential to “GC” General Commercial on Lots 289 – 295, the Granville Park Addition. Lots 289-294 are currently zoned “LC” and Lot 295 is zoned “B”. The subject properties are located on the southwest corner of Hydraulic Avenue and 13th Street North. The applicant proposes redevelopment of the property for used car sales and auto bodywork and painting. The “GC” zoning district allows outdoor vehicle and equipment sales and auto bodywork and painting.

The subject site currently has a vacant 1,000 square foot gas station building on it. The applicant proposes to build an additional 2,400 square foot building behind it for auto mechanical work, bodywork and painting. The applicant proposes to use the vacant building as office space for both of the proposed uses. The applicant has proposed to enclose the area where the paint and body works will be located with a privacy fence, a 5-foot landscape buffer on its south side where it abuts the American Legion Hall, and on its east and west sides where it is adjacent to residential zoning. The applicant has also proposed to close the entrances onto the site from Pennsylvania Avenue.

East of the subject site and across Hydraulic Avenue are a dentist office, zoned “LC”, and single-family residences, zoned “LC” and “B”. South of the subject site there is American Legion Post 273, zoned “LC”, and single-family residences, zoned “B” and “SF-5” Single-family Residential. West of the subject site, across Pennsylvania Avenue, there is a vacant lot zoned “LC” and single-family residences zoned “SF-5”. North of the subject site, across 13th Street North, there is a car sales lot, a warehouse, a bar and a neighborhood retail strip containing a self-service laundry, barber and beauty shops and some vacant space. All of these developments are zoned “LC”.

Analysis: The applicants had originally requested a zone change to “GC” General Commercial on Lots 289 – 295, the Granville Park Addition, to allow used car sales and an auto body and paint shop. At the January 13, 2005 MAPC meeting, the applicant changed his request to “GC” zoning with a Protective Overlay. The provisions of the proposed Protective Overlay are:

- (1) Allow auto bodywork and painting and outdoor vehicle and equipment sales as the only permitted “GC” uses.
- (2) Enclose the area where the paint and body works would be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts the American Legion Hall, and on its east and west sides where it is adjacent to residential zoning.
- (3) Close the entrances onto the site from Pennsylvania Avenue.

Planning Staff made two recommendations:

- (1) Deny the requested “GC” zoning, but rezone the southern most lot (Lot 295) zoned “B” to “LC”, to match the rest of the site’s “LC” zoning. This recommendation was based on the requested zoning not matching the intent and goals of the McAdams Rezoning Ordinance and the McAdams Revitalization Plan.
- (2) If the Planning Commission finds a car sales lot as an appropriate use for this site, rezone the site’s “B” zoned lot (Lot 295) to “LC” Limited Commercial to match the rest of the site’s “LC” zoning and approve a Conditional Use for vehicle sales outdoors, subject to the following conditions:
 1. All requirements of Article III, Section III.D.6.x. of the Unified Zoning Code (UZC) shall be met. Any variance from Article III, Section III-D, 6.x of the UZC would require a waiver approved by the Wichita City Council.
 2. In addition to uses permitted in the “LC” Limited Commercial district, the site shall be limited to the sales of cars and light trucks. No sale or rental of trailers, vehicles or trucks larger than pick ups. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business.

3. The applicant shall dedicate by separate instrument an additional 10-foot of street right-of-way along the property's 13th Street North frontage within six months of final approval of the Conditional Use.
4. The applicant shall dedicate by separate instrument complete access control along the site's Hydraulic Avenue and Pennsylvania Avenue frontages. Where existing access is currently located on these frontages, the applicant shall guarantee the continuation of the curb, per City Standards.
5. No elevated display areas.
6. Parking spaces for employees and customers shall be provided on the property as required by the UZC and in conformance with the standards established by the City Traffic Engineer. The parking spaces shall be marked and designated for employees and customers and shall not be used for display or storage of vehicles for sale, unless an employee drives the vehicle. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business unless additional parking spaces for such businesses are provided per a revised site plan approved by the Planning Director.
7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
8. A landscape plan, per the Landscape Ordinance, shall be submitted, including landscaped street yards and a landscape buffer along the south side of the site and the east and west sides where the site is adjacent to residential zoning, which shall be provided and maintained on the property as approved by the Planning Director.
9. A revised site plan reflecting the conditions of approval (including Section III.D.6.x. of the Unified Zoning Code) shall be submitted for approval by the Planning Director within six months of approval of the Conditional Use by the MAPC or governing body, as applicable. The site plan shall include a 6-foot wooden, stockade type fence located on the south side of the site and along the eastern and western portions of the site where it is adjacent to residential zoning, all lighting, including those on the building, the location and size of the office and garage space within the current building and any additional buildings, approved signage and solid screening around the trash receptacle.
10. The site shall be developed in general conformance with the approved site plan and landscape plan. All improvements shown on the approved site plan and landscape plan shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
11. The site shall be developed and operated in compliance with all federal, state and local rules and regulations.
12. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

During the January 13, 2005 MAPC meeting, the applicant was asked if he would agree to a Conditional Use to allow car sales, but not the auto body and paint shop. The applicant replied no; he wanted both the car sales lot and the auto body and paint shop. A motion was made to defer consideration of the case for 30 days to allow the District Advisory Board (DAB) I to consider whether they wanted to hear this case. A substitute motion was then made to approve the rezoning of the "B" zoned lot to "LC". This motion failed 3-7. The original motion to defer consideration of the case for 30 days to allow DAB I to consider this case was then approved 9-1. No one spoke in opposition to the requested zone change at this MAPC meeting.

DAB I considered this case at their February 7, 2005 meeting. Several members of the public in attendance at the DAB meeting spoke against the requested zoning change to "GC" with the Protective Overlay and against the zone change of the "B" zoned lot to "LC" with a Conditional Use to allow car sales at the site. The members of the public speaking against both of these proposed actions felt they were contrary to the intent and goals of the McAdams Rezoning Ordinance and the McAdams Revitalization Plan. During the meeting, the applicant was asked if it was acceptable to him if the "B" zoned lot was rezoned to "LC" with a Conditional Use to allow car sales at the site, without the whole site being rezoned "GC" to allow the auto body and paint shop. The applicant replied that he wanted both the car sales lot and auto body and paint shop. DAB I voted (8-0) to deny both the requested zoning change to "GC" with the Protective Overlay and against the zone change of the "B" zoned lot to "LC" with a Conditional Use to allow car sales at the site. The DAB voted to rezone the "B" zoned lot to "LC" to match it with the rest of the site's "LC" zoning.

The MAPC reconsidered this case at their February 10, 2005 meeting. At this meeting, one person spoke in opposition to the requested zoning to "GC" with the Protective Overlay to allow the car sales and the auto body and paint shop and against the zone change of the "B" zoned lot to "LC" with a Conditional Use to allow car sales at the site. During the meeting, the applicant again stated that he would not be agreeable to only the rezoning of the "B" zoned lot to "LC" with a Conditional Use to allow car sales at the site. The applicant wanted the "GC" zoning, with the Protective Overlay, allowing both the car sales lot and the auto body and paint shop. The applicant also objected to condition #3 of the proposed Protective Overlay, which is the dedication of 10-foot of right-of-way along the site's 13th Street frontage. A motion was made to deny the request for the "GC" zoning with the Protective Overlay, but to only rezone the "B" zoned lot to "LC" to match the rest of the site's "LC" zoning. The motion failed 3-6. A motion was then made and approved, 6-3, to approve the "GC" zoning with Protective Overlay #154:

- (1) Allow auto bodywork and painting and outdoor vehicle and equipment sales as the only permitted "GC" uses.
- (2) Enclose the area where the paint and body works would be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts the Legion Hall and on its east and west sides where it is adjacent to residential zoning
- (3) Close the entrances onto the site from Pennsylvania Avenue

Staff has received written protest against the requested zoning change with the protective overlay that represent 21.58% of the protest area. When a 20% or greater protest exists, a zoning change cannot be approved except by at least a $\frac{3}{4}$ vote of all members of the governing body.

The Wichita City Council considered this request at their May 3, 2005 meeting and voted (7-0) to send it back to the MAPC for reconsideration. During the Council meeting, Councilman Brewer noted that DAB I had recommended rezoning only the south most lot from "B" to "LC", and to deny both the request for "GC" zoning with a protective overlay allowing car sales and an auto body and paint shop on the site, and a Conditional Use for car sales on the site, with "LC" zoning on the southern most lot.

The MAPC voted (6-4) at their May 26, 2005 meeting to rezone Lot 295, the Granville Park Addition from "B" Multi-family Residential to "LC" Limited Commercial, as was recommended by DAB I.

Financial Considerations: None.

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

Recommendation/Actions:

1. Concur with the findings of the MAPC and approve the zone change from “B” Multi-family Residential to “LC” Limited Commercial on Lot 295, the Granville Park Addition and deny the requested zone change from “LC” Limited Commercial to “GC” General Commercial (requires a $\frac{3}{4}$ vote of all members of the governing body); place the ordinance establishing the zone change on first reading; or
2. Approve the requested “GC” General Commercial zoning with the protective overlay or the Conditional Use allowing car sales with the rezoning of the “B” zoned lot to “LC”(requires a $\frac{3}{4}$ vote of all members of the governing body); or.
3. Deny the application (simple majority required).