



**Wichita-Sedgwick County Metropolitan Area Planning Department**

January 8, 2014

Barakeh Property, LLC  
10210 E. Peppertree Street  
Wichita, KS 67226

KE Miller Engineering  
117 East Lewis  
Wichita, KS 67202

**RE: CON2013-00030 and ZON2013-00034 – City conditional use to permit wrecking and salvage and a zone change from GC General Commercial (GC) to LI Limited Industrial (LI) on property generally located on the north side of MacArthur Road, between I-135 and South Hydraulic Avenue, 1200 E. MacArthur Road.**

Dear Ladies and Gentlemen:

At its regular meeting on **January 7, 2014**, the Wichita City Council considered the above captioned request. The action of the Council was to **APPROVE** the requests subject to conferring with the Stormwater Engineering regarding any restrictions on the applicant's use of the area labeled "10' utility easement" and the following conditions:

1. The Conditional Use shall permit the dismantling, storage and shipping of motor vehicles, appliances and other industrial scrap materials.
2. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. The site plan shall be revised to provide screening where required by the code or as a condition of approval. If necessary, a revised site plan that depicts all conditions of approval shall be submitted within 30 days of final approval for review and approval by the Director of Planning. *I conferred with the Stormwater Engineer and he indicated the City had purchased all the land north of the fence line shown on the site plan. The northern boundary of the area to be used for wrecking and salvage should be moved south to match the northern fence line. If you believe that to be incorrect, please let me know as soon as possible.*
3. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.

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4. Stored materials, containers or bales shall be stored on a surface approved the Metropolitan Area Building and Construction Department.
5. No scrap vehicles or scrap metal/appliances waiting to be processed shall be visible from ground-level view from any public right-of-way or abutting properties.
6. Storage of all of scrap materials (vehicles, metals, appliances, etc., including bales of the just mentioned) waiting to be processed and the containers they are stored in shall be organized and be installed in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
7. The applicant shall maintain at all times an active program for the eradication and control of rodents.
8. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
9. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
10. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
11. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
12. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
13. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
14. 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.

If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,



Dale Miller  
Current Plans Manager  
Current Plans Division

Copies to:      WCC III, James Clendenin, Mail Stop 1-13  
                     N.A. III, Case Bell, Mail Stop 1-135  
                     Paul Hays, OCI, Mailstop 1-72  
                     J. R. Cox, OCI, Mailstop 1-72  
                     Julianne Kallman, Engineering, Mail Stop 1-71

RESOLUTION No. 14018

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT A NIGHT CLUB ON APPROXIMATELY 0.38-ACRE ZONED LC LIMITED COMMERCIAL (LC), GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF EAST LINCOLN STREET AND SOUTH IDA AVENUE, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 44-975 AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS:

**SECTION 1.** That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, for a Conditional Use to allow a Night Club, on approximately 0.38-acre zoned LC Limited Commercial (LC) legally described below:

**Case No. CON2013-00030 (associated with ZON2013-00034)**

A Conditional Use to allow "wrecking and salvage" on approximately 2.13 acres zoned LI Limited Industrial (LI) generally located north of East MacArthur Road, 1,680 feet east of I-135 (1200 East MacArthur Road) described as:

Lot 1, Wilson & Brown Addition, all in Wichita, Sedgwick County, Kansas

**SUBJECT TO THE FOLLOWING CONDITIONS:**

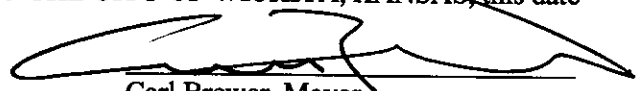
1. The Conditional Use shall permit the dismantling, storage and shipping of motor vehicles, appliances and other industrial scrap materials.
2. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. The site plan shall be revised to provide screening where required by the code or as a condition of approval. If necessary, a revised site plan that depicts all conditions of approval shall be submitted within 30 days of final approval for review and approval by the Director of Planning.
3. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
4. Stored materials, containers or bales shall be stored on a surface approved the Metropolitan Area Building and Construction Department.
5. No scrap vehicles or scrap metal/appliances waiting to be processed shall be visible from ground-level view from any public right-of-way or abutting properties.
6. Storage of all of scrap materials (vehicles, metals, appliances, etc., including bales of the just mentioned) waiting to be processed and the containers they are stored in shall be organized and be installed in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
7. The applicant shall maintain at all times an active program for the eradication and control of rodents.

8. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
9. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
10. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
11. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
12. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
13. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
14. 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.

**SECTION 2.** That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

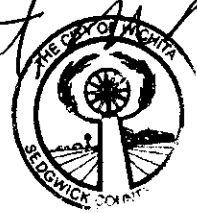
**SECTION 3.** That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

  
 Carl Brewer, Mayor

ATTEST:

  
 Karen Sublett, City Clerk



Approved as to form:

  
 Gary E. Rebenstorf, City Attorney



**BACKGROUND:** The application area is 2.13 acres located on the north side of East MacArthur Road, 1,680 feet east of I-135 (1200 East MacArthur Road). The property is platted as the Wilson & Brown 2nd Addition, and is currently occupied by Auto Recyclers of Kansas, which appears to be engaged in “wrecking and salvage” activity. The first approximately 55 feet of the application area is zoned SF-5 Single-family Residential (SF-5); the remaining approximately 389 feet of the property is zoned GC General Commercial (GC). The applicant is requesting LI Limited Industrial (LI) zoning and “conditional use” approval to permit “wrecking and salvage.” The reason given by the applicant for the current application is an intention to build a canopy next to the existing building that fronts East MacArthur. See the attached site plan which depicts the existing building and the proposed canopy. The existing building and proposed canopy will be used to support the site’s existing “wrecking and salvage” operation. The site plan also indicates the applicant leases property for his business activities from the property owner located to the east. Existing fencing is shown on the site plan as are 17 parking spaces.

In 2010, the applicant was granted LI zoning and a “conditional use” for “wrecking and salvage” on an abutting three acres located immediately west of the northernmost 219 feet of the current application (labeled on the site plan as “area already approved for wrecking/salvage.” If approved, the current application would bring the site’s use into conformance with existing Unified Zoning Code (UZC) standards. The applicant’s agent indicates the current business had been in operation at this location for some 10 to 12 years. The applicant also owns the land located immediately west of the application area, south of the three acres noted above that were zoned LI with a “conditional use” to permit “wrecking and salvage” (labeled on the site plan “area not approved for wrecking/salvage, but owned by applicant).”

The UZC permits a “wrecking and salvage yard” in the LI Limited Industrial (LI) and GI General Industrial (GI) districts, subject to Supplementary Use Regulations Section III-D.6.e and dd. “Wrecking and salvage yard” in the LI and GI districts may be approved as a “conditional use” provided that such operation: 1) is not abutting an arterial street, expressway or freeway; 2) in the opinion of the Planning Commission, will not adversely affect the character of the neighborhood; and 3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence. The outdoor storage and/or bailing of junk, scrap, paper, bottles, rags or similar materials are prohibited.

The submitted site plan and legal description for the zone change and the “conditional use” do not appear to comply with Supplementary Use Regulation Section III-D.6.e.1 that does not permit “wrecking and salvage” operations on property abutting an arterial street, expressway or freeway. The segment of East MacArthur Road abutting the application is designated by the 2030 Transportation Plan as an arterial street. There is a longstanding interpretation by the “zoning administrator” that if a “wrecking and salvage” operation is located 150 feet away from street right-of-way then the “wrecking and salvage” use is judged to comply with Supplementary Use Regulation III-D.6.e.1. The 150-foot distance falls approximately at the rear of the existing building shown on the site plan. The UZC permits the City Council to modify or waive Supplementary Use Regulations. The site plan also depicts the removal of existing fencing along the front of the proposed canopy, which would not be consistent with Supplementary Use Regulation III-D.6.e.3.

A presumed nonconforming salvage yard is located on GC zoned property that abuts the application area’s east property line (labeled on the site plan as “leased property.” To the east there is a restaurant on abutting GC zoned land. Further east, there is also a MH Manufactured Housing (MH) zoned manufactured home park. To the west is a LI zoned wrecking and salvage yard and a GC zoned vehicle storage yard. Located south of the site, across MacArthur Road is a LC zoned apartment complex and GC zoned vacant land. The Arkansas River is located directly north of the site, including the Wichita-Valley

Center Riverside Levee.

**CASE HISTORY:** On November 7, 1963, the MAPC approved a request to zone some or all the application area from AA One-family Residential (today's SF-5 district) to C General Commercial district (today's GC district). Also on November 7, 1963, the MAPC approved the Wilson and Brown Addition. The MAPC's November 7, 1963, minutes also indicate Charles P. Brown stated that he wanted to build a masonry-type building to be used for retail and wholesale of automobile parts and storage of such parts. In 2005, the property was granted an "administrative adjustment" to waive the 25-foot compatibility setback to construct new building on property zoned GC adjoining SF-5 zoning (BZA2005-000044).

**ADJACENT ZONING AND LAND USE:**

North: Unzoned; Arkansas River and I-135 right-of-way  
South: GC and LC; apartments and vacant  
East: GC and LC; nonconforming wrecking and salvage, restaurant/commercial building  
West: LI and GC; wrecking and salvage, vehicle storage, contractor's storage yard

**PUBLIC SERVICES:** The application area is part of a site that has access to MacArthur Road, a principal arterial street that is four lanes with a raised median and a center turn lane between Broadway and Hydraulic. I-135 crosses over MacArthur but has no access to it. Traffic volumes at MacArthur and Broadway were approximately 12,000 AADT (annual average daily traffic) in 2007.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide* map of the Comprehensive Plan classifies the general location as appropriate for "local commercial" development. Wrecking/salvage yards are an inappropriate use for this classification. However, there is an existing LI zoned and "conditional use" approved salvage operation located to the west on property owned by the applicant. There is also and a presumed nonconforming "wrecking and salvage" use located to the east. In similar circumstances the MAPC has often viewed similar requests as an expansion of an existing use, and allowed the request despite the map designation.

The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provide good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses; the site has access to an arterial and the other uses north of MacArthur are more intensive than normally associated with local commercial designation. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site is located across from three isolated residences (one is on commercial zoning), and near some manufactured home parks. The application area is located near the new senior apartments under construction to the southeast but the apartments are being constructed on LC zoned land and they are located farther from this site than the existing nonconforming salvage operation.

**RECOMMENDATION:** Based upon this information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

1. The Conditional Use shall permit the dismantling, storage and shipping of motor vehicles, appliances and other industrial scrap materials.

2. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. The site plan shall be revised to provide screening where required by the code or as a condition of approval. If necessary, a revised site plan that depicts all conditions of approval shall be submitted within 30 days of final approval for review and approval by the Director of Planning.
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11. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
12. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
13. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
14. 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.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: A presumed nonconforming salvage yard is located on GC zoned property that abuts the application area's east property line. To the east there is a restaurant on abutting GC zoned land. Further east, there is also a MH Manufactured Housing (MH) zoned manufactured home park. To the west is a LI zoned wrecking and salvage yard and a GC zoned vehicle storage yard. Located south of the site, across MacArthur Road is a LC zoned apartment complex and GC zoned vacant land. The Arkansas River is located directly north of the site, including the Wichita-Valley Center Riverside Levee.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned GC and SF-5. General Commercial zoning permits a wide range of residential, office, retail and commercial uses, but not "wrecking and salvage. The GC zoned portion of site could continue to be economically viable. The SF-5 district has a very limited number of permitted uses, none of which would be considered appropriate given the SF-5's mid-mile location abutting a four-lane arterial and surrounded by GC, LC and LI zoning. If the requested LI zoning is not granted, the MAPC should consider rezoning the SF-5 zoned portion of the application area to GC.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on nearby property are lessened by the recommended conditions of approval, which include screening and monitoring of environmental impacts. These are particularly important due to the proximity of the site to the river. The presence of the existing nonconforming salvage operation on the east means that it is not introducing a new use to the area.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably represent an economic hardship to the current business occupant in that his expansion options would be limited. Approval would provide expanded wrecking and salvage options to the general public.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan classifies the general location as appropriate for "local commercial" development. Wrecking/salvage yards are an inappropriate use for this classification. However, there is an existing nonconforming salvage operation to the east, which, has in the past been viewed as an expansion of an existing use, and allowed despite the map designation. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provide good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses; the site has access to an arterial and the other uses north of MacArthur are more intensive than normally associated with local commercial designation. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site is located across from three isolated residences (one is on commercial zoning), and near some manufactured home parks. It is near the new senior apartments under construction to the southeast but the apartments are being constructed on LC zoned land and they are located farther from this site than the existing nonconforming salvage operation.
6. Impact of the proposed development on community facilities: All utilities are available to the

site. The use of this property should have limited impact on community facilities.



