

(_____) Published in the Derby Reporter on 11-21-03

ORDINANCE NO. 45-930

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 CITY OF WICHITA CODE SEC. 28.04.010.

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 City of Wichita Code Sec 28.04.010, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2002-27

Zone change request from to "SF-20" Single-Family Residential District to "LC" Limited Commercial District P-O #114 - Protective Overlay District, for property described as:

A tract of land in the NW 1/4 of Section 3, Township 28, Range 2 East described as follows:

Commencing at the southwest corner of said NW 1/4; thence north along an assumed bearing of N00° east a distance of 211.69 feet to the point of beginning; thence N90°E, 382 feet; thence N00° east, 123 feet; thence N90° west 142 feet; thence S00° west, 93 feet; thence 90° west, 240 feet to a point on the west line of said NW 1/4; thence S00° west along said west line, 30 feet to the point of beginning; except the west 60 feet thereof, Sedgwick County, Kansas.

Generally located on the east side of Greenwich Road, South of Pawnee.

SUBJECT TO THE FOLLOWING PROTECTIVE OVERLAY RESTRICTIONS:

1. The subject property shall be limited to all uses of the "SF-20" Single-Family Residential district and "vehicle repair, limited", as defined by the Wichita-Sedgwick County Unified Zoning Code, and the retailing of specialty automotive parts and accessories.
2. The subject property shall be maintained in accordance with the following standards:

- a) No alteration of the existing subject building or premises shall be made that changes the character or appearance thereof.
- b) The 800 square foot retail area contained within the existing building shall not be expanded.
- c) There shall be no outdoor storage of equipment, parts, waste, waste containers, or any other associated items related to the uses within the subject building. All vehicles associated with the vehicle repair and part sales business shall be stored inside the subject building.
- d) The subject property shall be tied together with the existing residential property to the south through the use of a restrictive covenant. The properties which are tied together shall include the area to be rezoned, the existing residential structure, and the sewage lagoon on a lot (or lots in aggregate) meeting the minimum size requirement of the "SF-20" district for properties with a sewage lagoon. The restrictive covenant shall prevent the subject property from being sold to an entity separate from the existing, or future, residential property owner. This restriction is to ensure that the use of the subject building will remain accessory to the principle residential use of the larger property. The restrictive covenant shall inure to Sedgwick County, shall only be amended or terminated with the approval of Board of County Commissioners, shall be in a form and content approved by the County Counselor, and shall be recorded with the Register of Deeds prior to publishing the zoning resolution.
- e) No more than four (4) persons, other than persons occupying such dwelling unit as their residence, shall be employed within the subject building.
- f) All retail sales and vehicle repair activities shall be conducted entirely within the subject building.
- g) No signs shall be permitted.
- h) Hours of operation for retail sales shall be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday.
- i) The applicant shall have the subject building inspected by County Code Enforcement and the County Fire Department to ensure that it meets all applicable codes, policies and standards. These inspections shall be completed and approved prior to publishing the zoning resolution.
- j) If applicable, the applicant shall develop a hazardous material waste storage and disposal plan to meet all applicable codes, policies and standards. This plan shall include the safe storage of all commercial waste; the prevention of any commercial waste from entering the on-site sewage disposal system, to include floor drain waste from the subject building; and the safe containment of any spilled commercial waste. This plan shall be approved by the Kansas Department of Health and Environment prior to publishing the zoning resolution.

STAFF REPORT

MAPC June 13, 2002

MAPC July 11, 2002

CASE NUMBER: ZON2002-00027

APPLICANT/AGENT: Vern and Toni Holzman (Owner/Applicant); Baughman Company, PA c/o Russ Ewy (Agent)

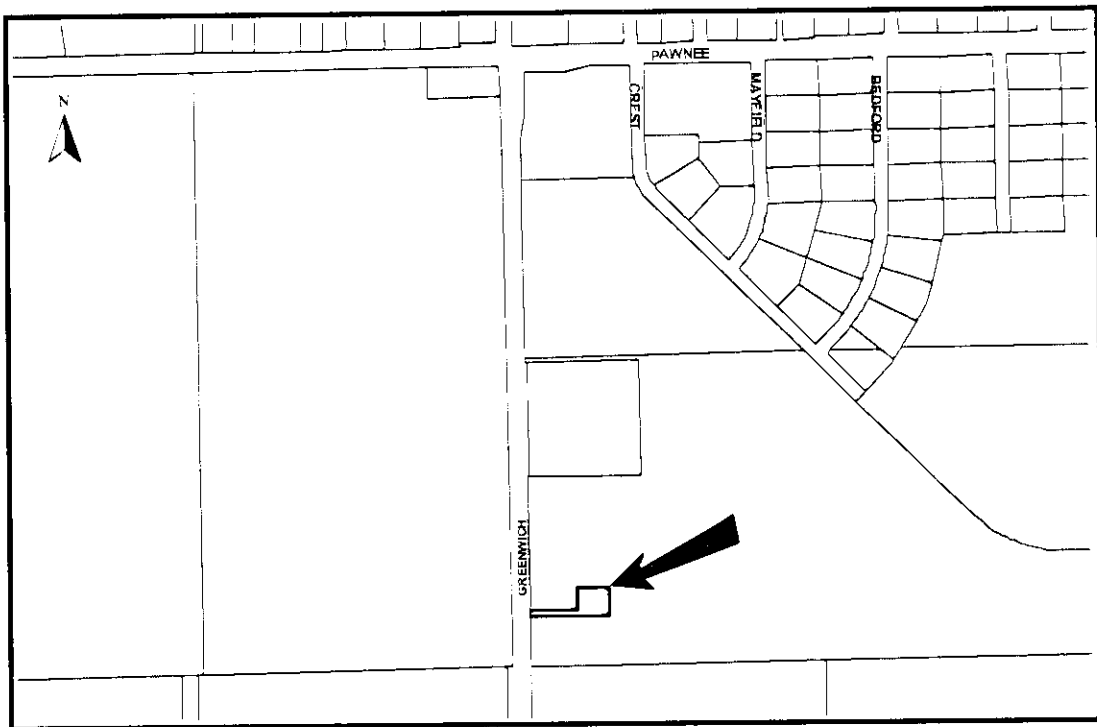
REQUEST: "LC" Limited Commercial with a Protective Overlay District

CURRENT ZONING: "SF-20" Single-Family Residential

SITE SIZE: 0.53 acres

LOCATION: One-half mile south of Pawnee and east of Greenwich

PROPOSED USE: Vehicle repair and vehicle parts sales



BACKGROUND: The applicant is requesting a zone change from "SF-20" Single-Family Residential to "LC" Limited Commercial. The applicant also is requesting a Protective Overlay District (see attached letter dated June 20, 2002) to limit uses on the property to those permitted in the "SF-20" Single-Family Residential district plus retailing of automotive parts and accessories and to limit use of the subject property to the rural home occupation regulations except the regulation prohibiting the inventory and sale of merchandise not manufactured on site.

The character of the surrounding area is primarily rural with some suburban scale development in the general vicinity. The property surrounding the subject property in all directions is zoned "SF-20" Single-Family Residential and is used for agriculture. Properties further to the north, closer to Pawnee, are developed with churches, retail uses, and single-family residences on suburban scale lots.

The subject property is a 0.53 unplatted tract in a flag lot configuration that is part of a 54 acre parent tract owned by the applicant. The applicant proposes to tie the area requested for rezoning with an adjoining residential tract in a more traditional lot configuration through a restrictive covenant. The size of the residential tract together with the proposed commercial tract will be determined at the time of platting, but likely will be at least 4.5 acres due to zoning regulations pertaining to sewage lagoons.

The subject property is located approximately one-half mile south of Pawnee on the east side of Greenwich. The parent tract is currently developed with a single-family residence, an accessory structure that houses a vehicle repair business, and another accessory structure housing personal property of the applicant. The vehicle repair business meets the rural home occupation regulations with the exception that vehicle parts are inventoried and sold to customers not receiving vehicle repair services. Therefore, the applicant's current use of the subject property is illegal. The applicant could request a Variance of the home occupation regulation prohibiting retail sales; however, planning staff advised the applicant to request a zone change since a Variance request likely would not meet the criteria necessary for granting a Variance.

CASE HISTORY: The applicant's request was deferred by the MAPC on June 13, 2002 to allow the applicant time to modify the provisions of the requested Protective Overlay District.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20"	Agriculture
SOUTH:	"SF-20"	Agriculture
EAST:	"SF-20"	Agriculture
WEST:	"SF-20"	Agriculture

PUBLIC SERVICES: The subject property has access to Greenwich, a two-lane arterial street with current traffic volumes of approximately 3,200 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Greenwich will increase to approximately 5,300 vehicles per day. Municipal water and sewer service are not available to serve the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan indicates that the area is appropriate for "Low Density Residential" development. The subject property is outside the 2010 Urban Service Area, but within the 2030 Urban Service Area. The Commercial Locational Guidelines indicate that commercial uses should be located in compact clusters or nodes rather than at mid-mile, single-site locations such as the subject property, which would create a trend toward strip commercial development of the arterial frontage or hinder the logical development of surrounding property with residential uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to platting within one year and the following provisions of a Protective Overlay District:

1. The subject property shall be limited to all uses of the "SF-20" Single-Family Residential district and "vehicle repair, limited", as defined by the Wichita-Sedgwick County Unified Zoning Code, and the retailing of specialty automotive parts and accessories.
2. The subject property shall be maintained in accordance with the following standards:
 - a) No alteration of the existing subject building or premises shall be made that changes the character or appearance thereof.
 - b) The 800 square foot retail area contained within the existing building shall not be expanded.
 - c) There shall be no outdoor storage of equipment, parts, waste, waste containers, or any other associated items related to the uses within the subject building. All vehicles associated with the vehicle repair and part sales business shall be stored inside the subject building.
 - d) The subject property shall be tied together with the existing residential property to the south through the use of a restrictive covenant. The properties which are tied together shall include the area to be rezoned, the existing residential structure, and the sewage

lagoon on a lot (or lots in aggregate) meeting the minimum size requirement of the "SF-20" district for properties with a sewage lagoon. The restrictive covenant shall prevent the subject property from being sold to an entity separate from the existing, or future, residential property owner. This restriction is to ensure that the use of the subject building will remain accessory to the principle residential use of the larger property. The restrictive covenant shall inure to Sedgwick County, shall only be amended or terminated with the approval of Board of County Commissioners, shall be in a form and content approved by the County Counselor, and shall be recorded with the Register of Deeds prior to publishing the zoning resolution.

- e) No more than 4 persons, other than persons occupying such dwelling unit as their residence, shall be employed within the subject building.
- f) All retail sales and vehicle repair activities shall be conducted entirely within the subject building.
- g) No signs shall be permitted.
- h) Hours of operation for retail sales shall be limited to 8 am to 6 pm, Monday through Friday, and 8 am to 12 pm on Saturday.
- i) The applicant shall have the subject building inspected by County Code Enforcement and the County Fire Department to ensure that it meets all applicable codes, policies and standards. These inspections shall be completed and approved prior to publishing the zoning resolution.
- j) The applicant shall develop a hazardous material waste storage and disposal plan to meet all applicable codes, policies and standards. This plan shall include the safe storage of all commercial waste; the prevention of any commercial waste from entering the on-site sewage disposal system, to include floor drain waste from the subject building; and the safe containment of any spilled commercial waste. This plan shall be approved by the Kansas Department of Health and Environment prior to publishing the zoning resolution.
- k) The applicant shall submit the "Regulated Waste Activity Notification" form to the Kansas Department of Health and Environment, and obtain a regulated waste license from the Kansas Department of Health and Environment.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily rural with some suburban scale development in the general vicinity. The property surrounding the subject property in all directions is zoned "SF-20" Single-Family Residential and is used for agriculture. Commercial zoning of the subject property is not consistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-20" Single-Family Residential and is suitable for the suburban residential, agriculture, and rural home occupation uses to which it is restricted. The most appropriate long-term use of the subject property is low density residential use at such time as municipal water and sewer service is extended to the property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Permitting retail sales of vehicle parts and accessories on the subject property could detrimentally impact the future viability of nearby property for development with low-density residential uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan indicates that the area is appropriate for "Low Density Residential" development. The subject property is outside the 2010 Urban Service Area, but within the 2030 Urban Service Area. The Commercial Locational Guidelines indicate that commercial uses should be located in compact clusters or nodes rather than at mid-mile, single-site locations such as the subject property, which would create a trend toward strip commercial development of the arterial frontage or hinder the logical development of surrounding property with residential uses.